

## Packet Information

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**File #:** BILL NO. 19-262, **Version:** 1

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An Ordinance approving a rezoning from District AG and R-1 to District RP-3 and Preliminary Development Plan for approximately 32 acres located at southwest corner of SW M-150 Highway and SW Pryor Road, proposed Osage in accordance with the provisions of Chapter 33, the Unified Development Ordinance of Lee's Summit Code of Ordinances, for the City of Lee's Summit, Missouri.

Proposed City Council Motion:

I moved for a second reading of an Ordinance approving a rezoning from district AG and R-1 to district RP-3 and Preliminary Development Plan for approximately 32 acres located at southwest corner of SW M-150 Hwy and SW Pryor RD, proposed Osage in accordance with the provisions of Chapter 33, the Unified Development Ordinance of Lee's Summit Code of Ordinances, for the City of Lee's Summit, Missouri.

Josh Johnson, AICP, Assistant Director of Plan Services

## BILL NO. 19-262

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AN ORDINANCE APPROVING A REZONING FROM DISTRICT AG AND R-1 TO DISTRICT RP-3 AND PRELIMINARY DEVELOPMENT PLAN FOR APPROXIMATELY 32 ACRES LOCATED AT SOUTHWEST CORNER OF SW M-150 HIGHWAY AND SW PRYOR ROAD, PROPOSED OSAGE IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 33, THE UNIFIED DEVELOPMENT ORDINANCE OF LEE'S SUMMIT CODE OF ORDINANCES, FOR THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, Application #PL2019-307 submitted by Clayton Properties Group, Inc., requesting approval of a rezoning from AG (Agricultural District) and R-1 (Single-Family Residential District) to RP-3 (Planned Residential Mixed Use District) and preliminary development plan on land located at the southwest corner of SW M-150 Hwy and SW Pryor Rd was referred to the Planning Commission to hold a public hearing; and,

WHEREAS, the Unified Development Ordinance provides for the approval of a rezoning and preliminary development plan by the City following public hearings by the Planning Commission and City Council, and,

WHEREAS, after due public notice in the manner prescribed by law, the Planning Commission held public hearings for the consideration of the rezoning and preliminary development plan on November 14, 2019 and rendered a report to the City Council recommending that the rezoning and preliminary development plan be approved; and,

WHEREAS, after due public notice in the manner prescribed by law, the City Council held a public hearing on December 3, 2019, and rendered a decision to approve the rezoning and preliminary development plan for said property.

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

SECTION 1. That a rezoning and preliminary development plan is hereby approved on the following described property:

*A tract of land in the Northeast Quarter of the Northeast Quarter of Section 35, Township 47 North, Range 32 West of the 5th Principal Meridian, including part of Lots 1, 2 and 3, SALVAGGIO'S RANCH, a subdivision of land, all in Lee's Summit, Jackson County, Missouri being bounded and described as follows: Commencing at the Northeast corner of the Northeast Quarter of said Section 35; thence South 02°08'00" West, along the East line of said Northeast Quarter, 658.78 feet to the Southeast corner of the North Half of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 88°08'29" West, along the South line of said North Half, 50.00 feet to the Southeast Corner of said Lot 3, said point also being on the Westerly right of way line of SW Prior Road as now established and the Point of Beginning of the tract of land to be herein described; thence South 88°08'29" East, along said North Line and along said Westerly right of way line, 10.00 feet; to the Westerly right of way line of said SW Pryor Road as established by Document 19631814460, in Book 1634, at page 487, being on a line that 40.00 West of and parallel with the East line of the Northeast Quarter of said Section 35; thence South 02°08'00" West, along last said Westerly right of way line and said parallel line, 658.80 feet to a point on the South line of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 88°09'45" West, along said South line, 1280.31 feet to the*



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*Southwest corner of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 02°10'22" East, along the West line of the Northeast Quarter of the Northeast Quarter of said Section 35, 659.27 feet to the Southwest corner of the North Half of the Northeast Quarter of the Northeast Quarter of said Section 35; thence South 88°08'29" East, along the South line of said North Half of the Northeast Quarter of the Northeast Quarter of said Section 35, 329.96 feet to the Southwest corner of the East Half of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 02°09'46" East, along the West line of East Half of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of said Section 35, 558.45 feet to a point on the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E0064160, being 80.00 feet right of centerline Station 316+29.79 (Station 316+29.51 Deed); thence South 88°11'07" East, along said Southerly right of way line 170.21 feet to a point that is 80.00 feet right of centerline Station 318+00.00; thence South 58°26'25" East, along said Southerly right of way line, 40.31 feet to a point that is 100.00 feet right of centerline Station 318+35.00; thence South 88°11'07" East, along said Southerly right of way line, 30.00 feet to a point that is 100.00 feet right of centerline Station 318+65.00; thence North 76°55'17" East, along said Southerly right of way line, 97.27 feet to a point on the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E0006361, being 75.00 feet right of centerline Station 319+59.00; thence South 88°11'07" East, along said Southerly right of way line, 126.00 feet to a point that is 75.00 feet right of centerline Station 320+85.00; thence North 85°28'29" East, along said Southerly right of way line, 90.55 feet to a point that is 65.00 feet right of centerline Station 321+75.00; thence South 88°11'07" East, along said Southerly right of way line and along the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E0006351, 175.00 feet to a point that is 65.00 feet right of centerline Station 323+50.00; thence South 82°44'41" East, along said Southerly right of way line, 105.48 feet to a point that is 75.00 feet right of centerline Station 324+55.00; thence South 88°11'07" East, along said Southerly right of way line, 45.00 feet to a point that is 75.00 feet right of centerline Station 325+00.00; thence South 49°40'27" East, along said Southerly right of way line, 88.33 feet to a point that is 130.00 feet right of centerline Station 325+69.12 (Station 325+69.30 Deed), said point also being on the East line of said Lot 2, SALVAGGIO'S RANCH and on the West right of way of said SW Pryor Road as now established; thence South 02°08'00" West, along said East lot line and said West right of way line, 509.17 feet to the Point of Beginning. Containing 1,370,951 square feet or 31.473 acres, more or less.*

SECTION 2. That the following conditions of approval apply:

1. Development shall comply with the recommendation of the Transportation Impact Analysis (TIA) dated November 7, 2019, prepared by Michael Park, City Traffic Engineer.
2. Development shall comply with the Preliminary Development Plan with a revision date of October 15, 2019.

SECTION 3. Nonseverability. All provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, each other that no such provision would be enacted without all others. If a court of competent jurisdiction enters a final judgment on the merits that is not subject to appeal and that declares any provision or part of this ordinance void, unconstitutional, or unenforceable, then this ordinance, in its collective entirety, is invalid and shall have no legal effect as of the date of such judgment.

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SECTION 4. That failure to comply with all of the provisions contained in this ordinance shall constitute violations of both this ordinance and Chapter 33, the City's Unified Development Ordinance, of the Code of Ordinances for the City of Lee's Summit.

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

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

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

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

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *Brian W. Head*



**LEE'S SUMMIT**  
**MISSOURI**  
Development Services Department

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## Development Services Staff Report

<b>File Number</b>	PL2019-307
<b>File Name</b>	REZONING from AG and R-1 to RP-3 and PRELIMINARY DEVELOPMENT PLAN – Osage
<b>Applicant</b>	Clayton Properties Group, Inc.
<b>Property Address</b>	Southwest corner of SW M-150 Hwy and SW Pryor Rd
<b>Planning Commission Date</b>	November 14, 2019
<b>Heard by</b>	Planning Commission and City Council
<b>Analyst</b>	C. Shannon McGuire, Planner
<b>Checked By</b>	Hector Soto, Jr., AICP, Planning Manager Kent Monter, PE, Development Engineering Manager

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### Public Notification

Pre-application held: June 24, 2019  
Neighborhood meeting conducted: October 14, 2019  
Newspaper notification published on: October 26, 2019  
Radius notices mailed to properties within 300 feet on: October 25, 2019  
Site posted notice on: October 25, 2019

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### Attachments

Transportation Impact Analysis prepared by Michael Park, dated November 7, 2019 – 4 pages  
Osage Trip Generation Memo submitted by Olsson, dated September 12, 2019 – 7 pages  
Traffic Study submitted by Olsson, dated October 17, 2018 – 27 pages

Stormwater Drainage Study by Olsson, dated October 11, 2019 – 11 pages

Preliminary Development Plan, date stamped October 15, 2019 – 17 pages

Location Map

## 1. Project Data and Facts

Project Data	
<b>Applicant</b>	Clayton Properties Group, Inc.
<b>Applicant's Representative</b>	Vincent Walker/Owner Representative John Erpelding, PE/Engineer
<b>Location of Property</b>	Southwest corner of SW M-150 Hwy and SW Pryor Rd
<b>Size of Property</b>	31.47 Acres
<b>Zoning (Proposed)</b>	RP-3 (Planned Residential Mixed Use District)
<b>Zoning (Existing)</b>	AG (Agricultural District) R-1 (Single-Family Residential District)
<b>Density (Proposed)</b>	5.1 units/acre (including common area); 8.7 units/acre (excluding common area) – 10 units/acre max allowed in RP-3
<b>Comprehensive Plan Designation</b>	Planned Mixed Use Residential Mixed-density Low-density Residential
<b>Procedure</b>	The Planning Commission makes a recommendation to the City Council on the proposed rezoning and preliminary development plan. The City Council takes final action on the rezoning and preliminary development plan.
<b>Duration of Validity</b>	Preliminary development plan approval by the City Council shall not be valid for a period longer than twenty-four (24) months from the date of such approval, unless within such period a final development plan application is submitted. The City Council may grant one extension not exceeding twelve (12) months upon written request. There is no expiration to an approval for rezoning.

Current Land Use
The 31.47 acre property is a mix of three (3) un-platted and two (2) platted parcels. The platted parcels are currently zoned R-1 (Single-Family Residential), one of which has an existing single-family home. The remaining three unplatted lots are undeveloped, with two being zoned R-1 (Single-Family Residential) and one zoned AG (Agricultural).

Description of Applicant's Request
The applicant proposes to rezone 31.47 acres located at the southwest corner of SW Pryor Rd and SW M-150 Hwy from AG (Agricultural) and R-1 (Single-Family Residential) to RP-3 (Planned Residential Mixed Use). The proposed subdivision will be a three-phase development composed of 32 single-family lots, 22 two-family structures, 21 four-family structures and 16 common area tracts.

## 2. Land Use

### Description and Character of Surrounding Area

The surrounding area is a mix of single-family and undeveloped vacant properties. The properties to the north are large lot single-family homes. The properties to the east and west are undeveloped vacant parcels. To the south are large lot single-family homes. The Napa Valley single-family subdivision is located southeast of the proposed project. Grand Summit View and Arborwalk single-family subdivisions are located to the northeast.

### Adjacent Land Uses and Zoning

<b>North(across M-150 Hwy):</b>	AG (Agricultural) and R-1 (Single-Family Residential) — large lot single-family
<b>South:</b>	AG (Agricultural)—large lot single-family
<b>East</b>	CP-2 (Planned Community Commercial/Retail) and RP-3 (Planned Residential Mixed Use) —vacant ground
<b>West:</b>	AG (Agricultural) and R-1 (Single-Family Residential) —vacant ground

### Site Characteristics

The 31.47 acre property is currently a mix of three (3) unplatted and two (2) platted parcels. The platted parcels are currently zoned R-1 (Single-Family Residential), one of which has an existing single-family home. The remaining three unplatted lots are undeveloped with two being zoned R-1 (Single-Family Residential) and one zoned AG (Agricultural).

### Special Considerations

N/A

## 3. Project Proposal

### Parking

Proposed		Required	
Total parking spaces proposed (Subdivision swimming pool):	13	1 space per 16 lots in subdivision:	10

### Setbacks

Yard	Required	Proposed
<b>Single-Family (Lots 26-41, 60-75)</b>		
Front	25'/15' corner lots	25'/15' corner lots
Side	5'	5'
Rear	20'	20'
<b>Two-Family (Lots 16-25, 45, 49-59)</b>		

Front	25'/15' corner lots	25'/15' corner lots
Side	5'	5'
Rear	20'	20'
<b>Four-Family (Lots 1-15, 42-44, 46-48)</b>		
Front	25'/15' corner lots	25'/15' corner lots
Side	10'	10'
Rear	30'	30'

**Lot Dimensions**

	<b>Single-Family (Lots 26-41, 60-75)</b>	<b>Two-Family (Lots 16-25, 45, 49-59)</b>	<b>Four-Family (Lots 1-15, 42-44, 46-48)</b>
Minimum Depth	120'	118'	120'
Minimum Width	50'	70'	140'
Minimum Area	6,000 Sq. Ft.	8,260 Sq. Ft.	16,800 Sq. Ft.

**4. Unified Development Ordinance (UDO)**

<b>Section</b>	<b>Description</b>
2.240, 2.250, 2.260	Rezoning
2.260, 2.300, 2.310, 2.320	Preliminary Development Plan
4.120	Zoning District Regulations

**5. Comprehensive Plan**

<b>Focus Areas</b>	<b>Goals, Objectives &amp; Policies</b>
Overall Area Land Use	Objective 1.1 Objective 1.2 Objective 1.4
Residential Development	Objective 3.2 Objective 3.3

**6. Analysis****Background and History**

- November 11, 1975 – The City Council approved a rezoning (Appl. #1975-003) of approximately 87 acres generally located at the southwest corner of SW M-150 Hwy and SW Pryor Rd from AG to R-1 by Ordinance #1632. The south 20 acres of the proposed Osage residential development was included in this rezoning.
- June 1, 1993—The City Council approved a rezoning (Appl. #1993-017) of 10 acres located at the southwest corner of SW M-150 Hwy and SW Pryor Rd from AG (Agricultural) to R-1 (Single-Family Residential) for the proposed Salvaggio's Ranch final plat by Ordinance #3852. This property constitutes the northeast portion of the proposed Osage residential development.

- June 1, 1993—The City Council approved the final plat (Appl. #1993-235) of Salvaggio's Ranch, Lots 1-3 by Ordinance #3856.
- February 5, 2019 — Appl. #PL2018-184 – Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan – Proposed Allera single-family development failed to attain the minimum required affirmative votes to be approved.

### **Analysis of Rezoning**

The proposal is to rezone 31.47 acres from AG (Agricultural) and R-1 (Single-Family Residential) to RP-3 (Planned Residential Mixed Use). The proposed subdivision will be a three-phase development composed of 32 single-family lots, 22 two-family structures, 21 four-family structures and 16 common area tracts. All development of this site shall be tied an approved plan and any deviation will require a new preliminary development plan approval.

### **Comprehensive Plan**

The 2005 Lee's Summit Comprehensive Plan Land Use Map identifies the area of the proposed project as a mix of Planned Mixed Use, Residential Mixed-density and Low-density Residential. The intersection of SW Pryor Rd and SW M-150 Hwy is identified as an Activity Center.

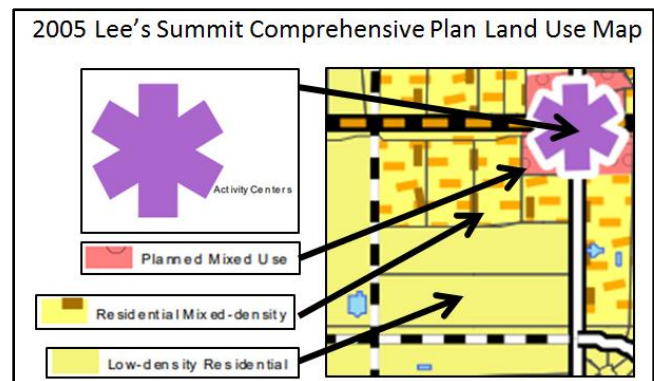
The M-150 Sustainable Corridor Vision and Framework Plan identifies an Activity Center as a Mixed-use center intended to promote compatibility with adjacent uses and to concentrate higher intensity uses such as retail, office, and multi-family residential in areas where they may be readily accessed and supported by existing and future neighborhoods.

The use is generally consistent with the Comprehensive Plan; is compatible with existing and planned surrounding land uses; and meets Comprehensive Plan objectives of providing a diverse housing type that meets an identified need in the market.

### **Compatibility**

The property is located at the southwest corner of the intersection of M-150 Hwy and SW Pryor Rd. M-150 Hwy serves as gateway into Lee's Summit.

Single-family and multi-family residential are compatible uses for the area and proposed zoning. Relative to existing development in the general area, the northeast corner of M-150 Hwy and SW Pryor Rd is developed as a single-family residential subdivision. Further to the northeast sits the 310-acre Arborwalk development. Arborwalk is a mixed use development that includes single-family villa lots, standard single-family lots, duplexes, tri-plexes, four-plexes and apartments. Villa lots in Arborwalk are allowed a minimum lot size of 3,675 sq. ft.



Southeast of the subject property sits the 80-acre Napa Valley development. Napa Valley has a mix of single-family villa lots, standard single-family lots and estate single-family lots. Villa lots in Napa Valley are allowed a minimum lot size of 4,950 sq. ft. The proposed 6,000 sq. ft. minimum lot size for single-family in the proposed Osage development is 2,325 sq. ft. larger than the minimum in Arborwalk and 1,050 sq. ft. larger than the minimum in Napa Valley.

The proposed building materials and architecture are similar and compatible with existing residential subdivisions in the area and throughout the city. The proposed building exterior is composed of stone veneer, LP Smart lap/panel siding, LP shake shingle siding and composite shingle roofs.

### **Adverse Impacts**

The proposed development will not detrimentally impact the surrounding area as the use is not expected to create excessive noise and air pollution. The proposed development will not create excessive storm water runoff. Stormwater will be managed on-site by the construction of a detention pond adjacent to the southeastern property line.

The development is designed and situated in such a way that the more intense multi-family use is adjacent to M-150 and the single-family use be situated adjacent to the surrounding residential homes. A 20' medium impact landscaping buffer will be installed along the west and south property lines to further provide screening to adjoin uses.

### **Public Services**

The increase in traffic caused by the proposed development will be mitigated by road improvements as outlined below and in the Transportation Impact Analysis dated November 7, 2019, prepared by Michael Park, City Traffic Engineer.

1. Right-of-way shall be dedicated along the west side of Pryor Road adjacent to the proposed development, where necessary, to accommodate a minimum 100-foot right-of-way centered on the existing section for the Pryor Road corridor.
2. Pryor Road shall have an interim road section compliant with the Unimproved Road Policy that includes at least two 12-foot lanes with 6-foot paved shoulders from M-150 Highway to Napa Valley Drive. This improvement shall be substantially completed prior to the issuance of any residential building permits.
3. A 200-foot, plus taper, northbound left-turn lane along Pryor Road at Osage Drive shall be constructed. This improvement shall be substantially completed prior to the issuance of any residential building permits.
4. A 150-foot, plus taper, eastbound right-turn lane along M-150 Highway at Clayton Place shall be constructed. This improvement shall be substantially completed prior to the issuance of any residential building permits. This improvement may be modified at the discretion of MoDOT.



5. A 150-foot, plus taper, southbound right-turn lane along Pryor Road at Osage Drive shall be constructed. This improvement shall be substantially completed prior to the issuance of any residential building permits.
6. A 150-foot, plus taper, northbound left-turn lane along Pryor Road at M-150 Highway shall be constructed. This improvement shall be substantially completed prior to the issuance of any residential building permits.

### **Unified Development Ordinance**

The requested RP-3 (Planned Residential Mixed Use District) provides for medium-density mixed residential uses at a maximum of ten units per gross acre. The RP-3 District allows for one-, two-, three- and four-family attached and detached dwelling units. Should the requested rezoning and preliminary development plan be granted, the proposed development would satisfy any requirements applicable to the zoning district pursuant to UDO.

### **Recommendation**

With the conditions of approval below, the application meets the requirements of the UDO and/or Design and Construction Manual (DCM).

## **7. Recommended Conditions of Approval**

### **Site Specific Conditions**

1. Development shall comply with the recommendation of the Transportation Impact Analysis (TIA) dated November 7, 2019, prepared by Michael Park, City Traffic Engineer.

### **Standard Conditions of Approval**

2. All required engineering plans and studies, including water lines, sanitary sewers, storm drainage, streets and erosion and sediment control shall be submitted along with the final plat and approved prior to the approval of the final plat. All public infrastructure must be substantially complete, prior to the issuance of any building permits
3. A Master Drainage Plan (MDP) shall be submitted and approved in accordance with the City's Design and Construction Manual for all areas of the development, including all surrounding impacted areas, along with the engineering plans for the development. The MDP shall address drainage level of service issues on an individual lot basis.
4. All Engineering Plan Review and Inspection Fees shall be paid prior to approval of the associated engineering plans and prior to the issuance of any infrastructure permits or the start of construction (excluding land disturbance permit).
5. All subdivision-related public improvements must have a Certificate of Final Acceptance prior to approval of the final plat, unless security is provided in the manner set forth in the City's Unified Development Ordinance (UDO). If security is provided, building permits may be issued upon

issuance of a Certificate of Substantial Completion of the public infrastructure as outlined in Section 1000 of the City's Design and Construction Manual.

6. The As-graded Master Drainage Plan shall be submitted to and accepted by the City prior to the issuance of a Certificate of Substantial Completion and prior to the issuance of any building permits for the development.
7. A Land Disturbance Permit shall be obtained from the City if ground breaking will take place prior to the issuance of an infrastructure permit, building permit, or prior to the approval of the engineering plans.
8. All permanent off-site easements, in a form acceptable to the City, shall be executed and recorded with the Jackson County Recorder of Deeds prior to the approval of any engineering plans. A certified copy shall be submitted to the City for verification.
9. A restriction note shall be included on the final plat stating: "Individual lot owner(s) shall not change or obstruct the drainage flow paths on the lots, as shown on the Master Drainage Plan, unless specific application is made and approved by the City Engineer."
10. Upon approval of the proposed rezoning, the applicant will become responsible to provide the appropriate level of right-of-way maintenance (mowing) during each growing season with the defined area abutting their property as defined and outlined in the City's Mowing Policy, approved by Council on November 3, 2005.
11. Any cut and / or fill operations, which cause public infrastructure to exceed the maximum / minimum depths of cover shall be mitigated by relocating the infrastructure vertically and / or horizontally to meet the specifications contained within the City's Design and Construction Manual.
12. All ADA sidewalk ramps shall be constructed by the developer at the time the street is constructed.
13. All sidewalks adjacent to a common area tract, unplatted land or any land where no structure is intended to be built, and is required, shall be constructed by the developer at the time the street is constructed.
14. All issues pertaining to life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises, and to the safety to fire fighters and emergency responders during emergency operations, shall be in accordance with the 2018 International Fire Code.
15. IFC 503.2.5 - Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) in length shall be provided with an approved area for turning around fire apparatus.
16. Sign permits shall be obtained prior to installation of any signs through the Development Services Department. All signs proposed must comply with the sign requirements as outlined in the sign section of the Unified Development Ordinance.
17. A final plat shall be approved and recorded prior to any building permits being issued.

**The City of Lee's Summit**  
**Action Letter - Draft**  
**Planning Commission**

Thursday, November 14, 2019

5:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

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Call to Order

**Present:** 7 - Board Member John Lovell  
Board Member Jake Loveless  
Board Member Carla Dial  
Chairperson Jason Norbury  
Board Member Terry Trafton  
Board Member Jeff Sims  
Board Member Dana Arth

**Absent:** 2 - Board Member Mark Kitchens  
Vice Chair Donnie Funk

Roll Call

Approval of Agenda

**A motion was made by Board Member Dial, seconded by Board Member Trafton, that the agenda be approved. The motion carried unanimously.**

Public Comments

**There were no public comments at the meeting.**

Approval of Consent Agenda

[TMP-1419](#) Appl. #PL2019-292 - VACATION OF EASEMENT - 1695 SE Decker St and 60 SE Thompson Dr; Thompson Properties, LLC, applicant

**A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.**

[2019-3143](#) Appl. #PL2019-370 - SIGN APPLICATION - Edward Jones, 500 SW Market St; Fastsigns, applicant

**A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be approved. The motion carried unanimously.**

[2019-3114](#) Minutes of the October 24, 2019, Planning Commission meeting

**A motion was made by Board Member Dial, seconded by Board Member Sims, that the minutes be approved. The motion carried unanimously.**

## Public Hearings

[2019-3140](#)

Public Hearing: Application #PL2019-305 - Preliminary Development Plan - Main Orchard, 510 NW Main St and 6 NW Orchard St; Engineering Solutions, LLC, applicant.

Chairperson Norbury opened the hearing at 5:06 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Matt Schlicht of Engineering Solutions gave his address as 50 SE 30th Street in Lee's Summit. The project was located on the west side of Main Street, north of Orchard Street; 510 Main and NW Orchard. This was a vacant property, about 2.5 acres. One existing home on 510 Main dated to about 1920 and was a bungalow-style, front porch home with a dormer and a gravel drive but no garage. The proposal was to divide the property into six residential lots, adding a garage and an above-garage loft space to the existing home. The other five lots would be sold. The applicants had provided staff with a memorandum of ideas, outlining the applicants' preference for the size and style of the homes, with the developer providing some help with what the applicant wanted to see. They wanted to leave the existing home in place, with the new homes being the early-mid 20th century style of 'foursquare' bungalow style with dormers, front porches and garages in the back.

The sheet that the applicant had given the Commissioners a summary of the house characteristics. They would be a minimum 1,000 square feet, with each having a garage, including the existing house; and each would have a front porch covering at least 50 percent of the front side and a minimum 6-foot depth. All would be one or two stories with a dormer on the two-story houses. These would all be consistent with the Craftsman style that was common throughout the Downtown area. The driveway width would be limited to 16 feet at the front and side, in order to keep the streetscape more similar to the older style.

A neighborhood meeting had been held at the Gamber Center, with all residents within a 300-foot radius of the property invited; however, only 3 neighbors attended. They had asked if the homes would be rentals, and he had replied that the lots would be sold for development. Mr. Schlicht noted that many of the same people attended these meetings: young couples who wanted to purchase a Downtown home. This would provide someone to have their desired home built. These houses were in the \$200,000-\$300,000 range.

Mr. Schlicht displayed a colored example of what the houses would look like. Each would be built slightly above grade with a welcoming stairway/porch entry. Each would have a sidewalk from the front steps to the public sidewalk. Like the style, the colors and materials would be standard for the older Downtown neighborhoods: shake shingles or Hardiboard siding, real stone or brick veneers. He wanted to avoid using vinyl or metal sidings or stucco. Colors would be low-contrast, but color palettes were provided for buyers who wanted a slightly different color.

Originally, the Old Lee's Summit development master plan had identified this specific area, and some areas to the west of it, as being parts of the Downtown core that were under-utilized. The applicants believed that this plan was consistent with the plan. Mr. Schlicht then displayed a photo of the existing home at 510 Main Street. It had been built in the early 1920s and was currently being rented. The house was 1,100 square feet, had a stone foundation and a faux dormer at the top. The plan was to add a garage with a loft behind it, and to replace the gravel drive with a concrete one. Other photos showed the interior of the existing house.

Mr. Schlicht stated that he had worked with staff to control some of the stormwater from nearby houses. He showed a diagram of individual detention pits. Stormwater would be piped down from all the roofs, downspouts and hard surfaces into the pit area for each lot. A rock chamber below would store water during major rain events. It was basically a design for a

rain garden. Rain gardens reduced some of the peak runoff that would go downstream.

The applicants were asking for one modification. The rule for the RP-2 zoning district dictated that a garage could not be any taller than the principal structure. That would rule out a loft above a garage in this case. He had done a sight line survey and showed that the garages would be far back enough to not be visible above the roofs of the houses.

Following Mr. Schlicht's presentation, Chairperson Norbury asked for staff comments.

Ms. Thompson entered Exhibit (A), list of exhibits 1-17 into the record. She confirmed that the applicant was submitting a preliminary development plan for five single-family homes at the northwest corner of NW Orchard and NE Main Street. This property and the surrounding properties were zoned RP-2, for planned two-family residences. She displayed a slide of the proposed site plan, showing the five vacant lots and one existing home; and footprints for the five proposed homes. She showed a number of elevations for similar structures, adding that once a residential building permit was submitted to the City, the planning staff would review these elevations to make sure they complied with what was approved. The modification request was for a detached garage with loft on Lot 3, with an overall building height of 26 feet. Staff did not support a detached garage that was taller than the principal structure, and requested that the garages conform to height limits.

Ms. Thompson confirmed that this area was part of the Old Downtown part of Lee's Summit. They were in favor of increasing the housing stock in the area, which this plan could do. Regarding sidewalks, they were required as part of the platting process; however, there were not many sidewalks in this particular area. The applicant asked for a waiver for a sidewalk along Orchard and to make a payment in lieu of construction. He did propose a sidewalk along NE Main Street, which would be constructed as each house was built.

The application had two Conditions of Approval. The detached garage would conform to the UDO requirements for building height, and the developer would pay the City of Lee's Summit for construction costs instead of constructing a sidewalk along NW Orchard.

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

Mr. Loveless noted Ms. Thompson's mention that before a builder applying for get a building permit on one of these lots would have to submit plans that staff would approve as architecturally consistent with the rest of the neighborhood. Ms. Thompson stated that they would have to submit a plot plan along with residential plans, including floor plans and elevations. This required a review from a planner, who would check for approved elevations and complied with what was approved.

Mr. Loveless then asked Mr. Schlicht for some details about the stormwater collection plan. He noted that with connectivity among the lots and asked why they could not be tied in with the typical water system. Mr. Schlicht pointed out on the map the about 30 acres in the neighborhood that drained a large area through Olive. It had open ditches and few collection systems. The idea was for the individual houses to collect rainwater off the roofs on site and give each homeowner individual control. They would also have the opportunity to start rain gardens. Mr. Loveless asked if it was accurate that this would effectively create a net zero in terms of impervious surface, and Mr. Schlicht replied that it was.

Mr. Loveless asked about driveways. Mr. Schlicht pointed out the two houses, including the existing one that would have two large maple trees on each side, and a corner with a few more large trees. One of the houses would be built behind the trees, which would enable landscaping along the north side with a long driveway. This was typical of the old Downtown

neighborhood, which had houses built varying distances from the street instead of just a row of houses directly next to each other. Mr. Loveless noted that Mr. Schlicht planned to keep the existing home but add a garage behind the home that would be taller than the house. Mr. Schlicht explained that he planned to build a garage with loft behind the existing house at 510 Main. He had discussed this with staff, and determined that a garage with loft could be permitted, up to a height of 40 feet. If the garage was first built and a loft added later it would not comply with the UDO. The garage was part of this application; but he would not ask for a modification at this time.

Mr. Trafton asked why Lot 1 was offset so far back. Mr. Schlicht stated that he wanted to keep the trees on the lots, and the lots had different characteristics, and provided different opportunities for buyers. A buyer could choose the narrow, elongated 60-foot lot or the corner lot which was a little bit larger. These lots reflected Downtown's unique character and lent itself to providing different opportunities. The L-shaped lot at the north end in particular made a bigger building and a choice of location for the garage. It was an opportunity to do something different.

Concerning the detention pit, Mr. Trafton said he assumed these were not tied to any kind of runoff from the street, but would provide a way to collect the water and let it naturally move into the system. He asked if there were other parts of Lee's Summit where this had been tried successfully. Mr. Schlicht did not know of any within the city limits, although a rain garden would be somewhat similar. They did lots of redevelopment in Leawood, Fairway and Prairie Village, tearing down homes and rebuilding in infill sites, and were using this system. It seemed to function well. With no infrastructure for stormwater, the water would just either run across the ground and continue onto another property or be diverted into a large detention basin that that was used by a number of residents. The latter was often a headache.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:32 p.m. and asked for discussion among the Commission members, or for a motion.

Ms. Dial made a motion to recommend approval of Application PL2019-305, Preliminary Development Plan, Main Orchard, 510 NW Main St and 6 NW Orchard St; Engineering Solutions, LLC, applicant; subject to staff's letter of November 7, specifically Conditions of Approval 1 through 11. Mr. Trafton seconded.

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

A motion was made by Board Member Dial, seconded by Board Member Lovell, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

[2019-3144](#)

Public Hearing: Application #PL2019-307 - Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan - Osage, approximately 32 acres located at the southwest corner of SW M-150 Hwy and SW Pryor Rd; Clayton Properties Group, Inc., applicant.

Chairperson Norbury opened the hearing at 5:34 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. John Erpelding of Olsson stated that Mr. Vince Walker and Mr. Travis Roof of Summit Homes were also present. They proposed a rezoning and preliminary development plan for Osage, which would cover about 31.5 acres at Pryor Road and 150 Highway. It would consist of a total 160 units. Mr. Erpelding displayed a color-coded map showing the different types of housing product. They planned 32 single-family homes, 22 two-family structures named "Twin Gallery", in the middle and 21 four-family townhomes. The property also included 16 common

area tracts that would be used for detention, landscaping, buffer areas, monument signs and amenities. These tracts totaled about 6.3 acres, about 20 percent of the property.

Osage was to be developed in three phases, and Mr. Erpelding pointed out these phases, indicated by dashed lines, on the map. The first would have two points of access, one on Pryor and one on M-150. The latter would be a right-in-right-out intersection due to an existing median. Mr. Erpelding listed improvements associated with the first phase. These included monument signs at both entrances and on the M-150 and Pryor Road corner, the stormwater detention facility at the property's southeast corner, an off-site sanitary sewer extension reaching about 780 feet to the east and some street stubs to adjacent properties to the south and west that would allow for future connectivity. Some street improvements were also planned. The M-150 entrance would have an eastbound right-turn lane and some and both northbound and southbound turn lanes at the Pryor Road access. The northbound left turn lane on Pryor Road would be extended. They would add paved shoulders on both sides of Pryor along the length of the east side. As part of another project, Summit Homes would also widen and add paved shoulders further to the south, from County Line Road to the subject properties south boundary. These were interim road improvements. The second phase would focus on the northwest quadrant of the development. Streets would be looped for better connectivity; and the third phase would develop the southwest corner of the property.

The single-family lots would be 50 to 70 feet wide and 120 feet deep. The Twin Gallery structures would be on lots about 70 by 118 feet; and both would have a minimum of 10 feet between each structure. The townhomes would be on 140 feet wide and 120 feet deep, with a minimum of 20 feet between buildings. The applicant was not requesting any modifications to the zoning requirements, as they were meeting all the requirements for setbacks, density, lot widths and depths, landscape buffers or parking. They would provide 20-foot wide landscape buffers between adjoining properties, and these buffers would confirm to UDO requirements. Additionally, a five-foot tract would run along the south property line, to preserve the existing trees and fence. The streets would be lined with trees with 30-foot spacing.

They had held two neighborhood meetings. One was an unofficial one in August, and a formal neighborhood meeting on October 14th. This was also sparsely attended, with about five people; but everyone within 300 feet had been invited. Most of the questions were about prices. The applicant agreed with all of staff's Conditions of Approval.

Mr. Vince Walker addressed the project's layout and architecture. They had heard and taken into account the feedback they had previously received. In using a variety of housing designs, they were able to provide prospective buyers a variety of options. The four-unit detached townhomes would be at the property's north end bordering M-150. The Twin Gallery units would be in the center section, and the "Lifestyle Collection" single-family homes would be on the south side. A central amenity section would include a 25-meter lap pool and children's "splash" area, clubhouse pavilion and a park. These would be administered by a Homeowners Association. All homes would be built using the same quality materials on both exteriors and interior finishes. He then presented a visual video of what Osage was planned to look like. It showed the road system, considerable green space including trees, playground, pavilion, and various types of housing.

Following the applicant's presentation, Chairperson Norbury asked for staff comments.

Mr. McGuire entered Exhibit (A), list of exhibits 1-16 into the record. He confirmed that the applicant was asking to rezone 31.47 acres at the corner of Pryor Road and 150 Highway from AG and R-1 to RP-3. The development would have 32 single-family lots, 22 two-family lots, 21 four-family lots and 16 common area tracts. The surrounding area was a mixture of single-family homes (to the north) and undeveloped properties (to the east and west). Large-lot single-family homes were to the south. The Napa Valley single-family subdivision was

to the southeast, and Grand Summit View and Arborwalk to the northeast.

Displaying colored elevations, of single-family and two-family dwellings and the proposed clubhouse Mr. McGuire observed that the applicant proposed to use materials and designs compatible with other nearby subdivisions and throughout Lee's Summit in general. Exteriors would be stone veneer, lap and panel or shake siding and composite shingle roofs. The requested RP-3 zoning would provide for medium-density mixed residential uses, and the project was generally consistent with the Comprehensive Plan, including the plan's objectives of providing diverse housing types. The maximum density would be 10 units per acre. Any deviation from the approved plan would require approval of a replacement preliminary development plan.

This project was compatible with existing and planned uses on surrounding properties. The 310-acre Arborwalk development was further to the northeast. This was also a mixed-use development that included single-family villa lots, standard single-family lots, duplexes, triplexes, fourplexes and apartments. Villa lots at Arborwalk were allowed a minimum size of 3,675 square feet. The 88-acre Napa Valley development was to the southeast. Napa Valley also had a mixture of single-family villa lots, standard single-family lots and estate-size lots. Napa Valley's villa lots had a minimum lot size of 4,950 square feet. This project's proposed 6,000 square foot minimum lot size for a single-family house was 2,325 square feet larger than the minimum at Arborwalk and 1,050 square feet larger than Napa Valley's minimum. If this application was approved, the plan would satisfy any requirements applicable to zoning district as outlined in the UDO and the Design and Construction Manual.

Following Mr. McGuire's comments, Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application.

Mr. Charles Ray gave his address as 4090 SW Pryor Road. He asked what the plans were for Pryor Road to the south, and asked where sidewalks would be. He noted that the small number of people attending the meeting was due to not many people living within 300 feet of this property. The neighbors who did live nearby had a nice park down the street that they had to get to on foot, so they knew that the traffic on Pryor Road had increased considerably. He knew that adding 160 housing units on that corner would increase the traffic even more.

Mr. Roofl stated that they had an obligation connected with Stoney Creek to make interim improvements to Pryor Road from County Line Road up to Pryor. The improved road would be 24 feet wide and restriped, with 6-foot paved shoulders on both sides up to Napa Valley's entrance. When the Osage project was completed, the road would be improved from Napa Valley to M-150 and additional rights-of-way were dedicated for future road improvements. This project would have sidewalks up to the property lines. The 6-foot paved shoulders could be used as pedestrian or bike lanes for the present.

Chairperson Norbury then asked if the Commission had questions for the applicant or staff.

Mr. Trafton asked if it was correct that the median on M-150 would be left intact, in order to prevent traffic problems generated by left turns. Mr. Walker answered that it was. Mr. Trafton then asked what the street widths inside the development were, remarking that the video had not shown cars parked on the streets and in driveways. There were likely to be many of them due to the fourplexes. Mr. Erpelding answered that they would be 28 feet wide, which was the City's standard for local streets. That was wide enough to allow for on-street parking. He acknowledged that cars parked on both sides could cause difficulties for other vehicles, including emergency vehicles. He displayed a parking diagram, with red lines indicating parts of streets in front of side yards. Parked cars would be less of a problem in those locations, as long as they did not block driveways. The plan identified a total of 77 on-street parking spaces.



Mr. Trafton then asked what was the reasoning for concentrating so much of the density in one north quadrant with about 180 residents. Mr. Walker answered that it was typical for this kind of land use to concentrate higher densities near a highway corridor and transition into lower-density product further down. M-150 would have a sidewalk just to the north side of the property line; but the interim improvements for Pryor Road did not require sidewalks on both sides. Mr. Trafton asked staff if this meant the Livable Streets ordinance would not require adding sidewalks on Pryor. Mr. Soto answered that Pryor would require sidewalks. He confirmed that for interim standards, the paved 6-foot wide shoulders could serve as a proxy for sidewalks until final improvements were made to the road.

Mr. Park noted that Pryor Road was in a state of transition from a rural to an urban roadway. The proposed improvements met the standards for an interim road, which Pryor Road was north of M-150 Highway. That meant a 24-foot width with turn lanes and paved shoulders required by the Access Management Code. The paved shoulders did serve as a pedestrian route in the absence of sidewalks. If Pryor was improved from this interim condition it would be brought up to urban standards which included curbs, sidewalks and traffic signals. At this point, the City's progression of Pryor started at M-150 and moved north to Longview Road. The capital improvement program had funds to begin develop Pryor to urban standard from Hook Road to Longview. After that, improvements would extend south from M-150 based on demand. Mr. Trafton asked if this meant that the City intended to just let kids and families walk on the road's shoulders; and Mr. Park replied that staff was following the standards that the City Council had adopted. They permitted an interim road standard at this point. It was within the Council's purview to require a development to exceed that standard. He added that if sidewalks were put in at this point, they would have to be torn out at the time that Pryor Road was improved along that stretch. At present, many people walked, jogged and ride bicycles on the paved shoulders of Pryor north of M-150.

Mr. Trafton asked what the average prices for the development were. Mr. Walker answered that the prices were not set at this time. They did intend to have three different price points. Concerning the parking, he pointed out that the development included two-car garages as well as 25-foot building lines. The latter allowed for two cars parked in a driveway as well. The subdivision's layout did follow the pattern of transitioning from a higher density at one end where there was a major roadway down to a lower single-family density at the opposite end. Mr. Trafton asked what the estimated square footage of the fourplexes would be. Mr. Walker answered that the townhomes would be about 1,500 square feet, with two-story and 1.5-story plans; and the Twin Gallery units would range from 1,300 to 1,900 square feet. The single-family homes would range from 1,500 to 2,500 square feet. All these units would have full basements. He did not specify the square footage of the fourplexes.

Mr. Lovell asked how many bedrooms the townhomes would have, and Mr. Walker answered that they would be 2 or 3 bedrooms. These would be for sale and not for rent. The streets were 28 feet wide from curb to curb. Mr. Lovell remarked at in New Longview where he lived, detached garages were in the back but residents had no room to park extra cars behind the garages, resulting in a lot of cars parked on the streets. Concerning the townhomes, he asked if they might be maintenance-free for yards. Mr. Walker answered that there had been discussion of that but nothing was finalized.

Chairperson Norbury remarked that much of tonight's application was in response to concerns raised in the previous application. Mr. Walker responded that the project as a whole had been a more uniform project, without the multiple home choices that tonight's version had. Much of the feedback they'd received had to do with the uniformity of the product. The elevations they'd shown had been contemporary; whereas tonight's version showed a 'modern farmhouse' look, which was a little more traditional. Traffic had also been an issue with the initial application; and the traffic impact would be less with tonight's plan than if the whole project had been a single-family development. 'Too much of one thing' was one of the criticisms they'd heard, and they had now provided more of a variety of choices. This was a

very conventional development in terms of what was provided in Lee's Summit. They had received feedback from the Napa Valley neighbors that this plan was a major improvement.

Mr. Walker confirmed for Chairperson Norbury that these units would all be for sale and not rentals. Chairperson Norbury recalled from the previous application that price points were \$225,000 to \$275,000, and asked about the prices of the townhome and duplex units. Mr. Walker answered that the single-family homes would be somewhat over \$300,000. They did not have price points for the other housing. He noted that M-150 did not have a crosswalk.

Mr. Loveless left the meeting, at 6:16 p.m.

Mr. Ray returned to the podium and asked about people coming out of the subdivision making U turns off M-150 to go west. Mr. Park consulted the traffic study and replied that the current traffic count at peak hour was about 3 doing a U turn at M-150 and Pryor. The traffic engineer hired by the applicant projected an increase of 9 over a 60-minute period at the busiest time. That would maintain a satisfactory level of service. He did think a pedestrian crosswalk was a very good suggestion, adding that M-150 was under the jurisdiction of MoDOT, not the City. He was willing to report this suggestion to MoDOT.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 6:17 p.m. and asked for discussion among the Commission members.

Mr. Lovell stated that in view of the changes in tonight's application, it looked like a very good project. It would accommodate upwardly mobile younger buyers who did not necessarily want to buy a large house; and Lee's Summit needed more product that would encourage them to remain in the community. He also liked developments that reflected thinking outside the box, and definitely supported this application.

Ms. Arth agreed with Mr. Lovell's commendation on the improvements, and said she had enjoyed the video. She also appreciated the applicant being aware of and responding to the parking issues, as well as the amenities and variety of housing options.

Mr. Trafton asked if there were covenants and restrictions covering the requirements for buying the townhomes, duplexes and fourplexes rather than renting or leasing. Chairperson Norbury stated that once these units were for sale, there was no guarantee that someone could not buy a unit and then rent it, subject to the City's rules regarding short-term renting.

Chairperson Norbury commended the applicant for making every effort to get a development done on this piece of land and responding to what the residents and the City Council had to say. However, he considered the prior project to be a better one, and the varying sizes of the homes and being able to have a single-family home in the price range now cited for townhomes was a far better idea for the community. The architecture now was rather standard-looking and unimpressive. The City Council had essentially cut off any capacity for the applicant to have any architectural variation or interest; and the city would be poorer for that. This was a precursor to the uniformity that Lee's Summit would end up with. He did think the applicant had done an admirable job of sticking to the original goal of offering housing product that someone of medium income could afford for new construction. He planned to recommend approval, though he would not if it was a rental project as that would not meet the goal he'd referenced. He hoped that there would be more vision from City officials in the future.

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

Ms. Dial made a motion to recommend approval of Application PL2019-307, Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan: Osage, approximately 32 acres located at

the southwest corner of SW M-150 Hwy and SW Pryor Rd; Clayton Properties Group, Inc., applicant; subject to staff's letter of November 7, 2019, specifically Conditions of Approval 1 through 17. Ms. Arth seconded.

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

Commissioner Loveless left the meeting at 6:14 P.M., before vote.

A motion was made by Board Member Dial, seconded by Board Member Arth, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

[2019-3137](#)

Public Hearing: Application #PL2019-359- Unified Development Ordinance (UDO) Amendment - Changes to Article 1 - General Provisions, Article 2 - Applications and Procedures and Article 8 - Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant.

Chairperson Norbury opened the hearing at 6:25 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Johnson entered Exhibit (A), list of exhibits 1-6 into the record. He stated that this amendment had two goals. One was create a reasonable accommodation process. It addressed situations such as someone needing something added to their home to accommodate a disability, such as a ramp, and that item had to be put in a setback. The City code currently required a variance that would be granted by the Board of Zoning Adjustments. The change would create a no-cost process where a staff board could approve it administratively. This board would consist of a member each of Development Services, the Fire Department and Public Works. A development review committee now met every week and could do that review so the process would be fairly quick.

The second part of the amendment would adopt standards from the building code for ADA standards for parking lot design. The City adopted new codes every 6 years and the International Building Code had been adopted by not only Lee's Summit but also most other jurisdictions in the metro area. All were now under the 2018 code.

The third revision was to require applicants to show accessible routes in final development plans, making it easier to evaluate parking areas for accommodation.

Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application. As there were none, he opened the hearing Commissioners' questions.

Chairperson Norbury asked if there was nothing that would prevent the City from either augmenting or varying from the IBC if they so decided on a particular issue. Mr. Johnson responded that the IBC was the guide for designing parking lot facilities. There could be code modification requests but it had not been the City's policy to do that when it involved the ADA. Chairperson Norbury said he was referring to a situation where the City decided that the IBC was outdated after a new standard was adopted.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 6:30 p.m. and asked for discussion among the Commission members, or for a motion.

Ms. Dial made a motion to recommend approval of Application PL2019-359, Unified Development Ordinance (UDO) Amendment: Changes to Article 1, General Provisions; Article

2, Applications and Procedures and Article 8, Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant. Mr. Sims seconded.

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

A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

## Roundtable

Regarding the earlier question about water management as proposed for the Main Orchard project, Mr. Monter stated that staff had taken some time reviewing this with the applicant. It was not much different from rainwater draining off a parking lot into a rain garden area. There was an example on Douglas at the Nationwide business. The apartments next to the Sonic were another example. This was something that staff wanted to encourage, especially for infill projects. It could be an improvement over detention basins that might or might not be maintained.

Ms. Dial said she had been contacted by some members of the public who had a problem with a developer who gave testimony under oath that they were going to use or not use a particular product on their building. In reality it turned out that the product was one the developer had said they would not use. The Homes Association and the Alliance had said this was not enforceable by the City because specific wording had not been included in the development plan approved by the City Council. She wanted to make the Commission aware that this had happened, and hopefully they could find a way to ensure it would not happen again. Mr. Johnson replied that this concerned an email exchange between the Alliance and himself. During public testimony at the Kessler Ridge application, the president of Inspired Homes promised not to use a certain product and made a few other commitments. This was not added to the ordinance as a condition of approval, and the elevations they had provided did not call out any materials. There was nothing holding the project to a specific set of materials. It had to be locked into an ordinance and public testimony itself was not binding. This had been reflected in the Main Orchard application, where specific criteria about items such as front porches. Chairperson Norbury remarked that if a developer wanted to make a specific promise it could be made a condition of recommendation.

## Adjournment

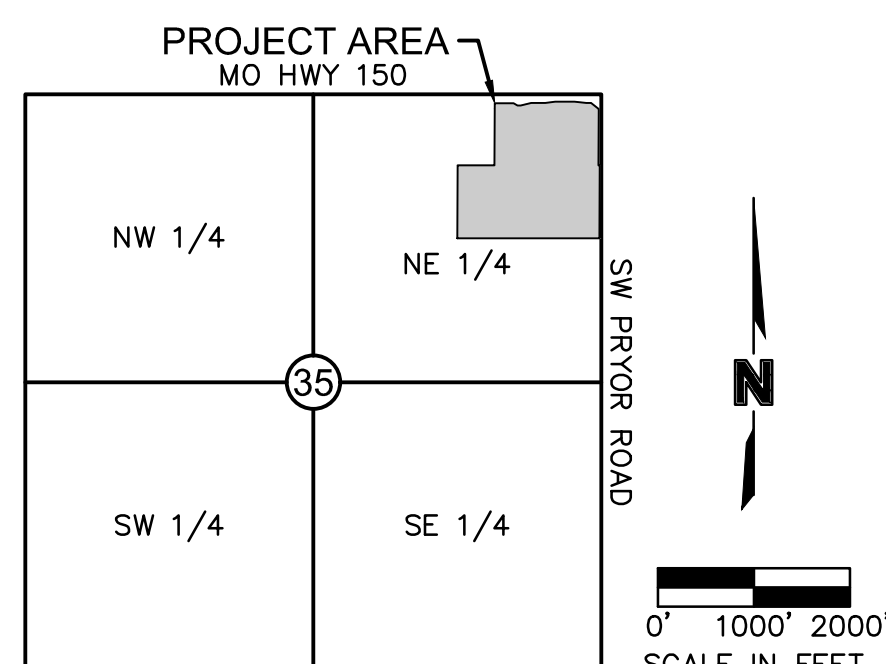
There being no further business, Chairperson Norbury adjourned the meeting at 6:33 P.M.

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# OSAGE REZONING & PRELIMINARY DEVELOPMENT PLAN

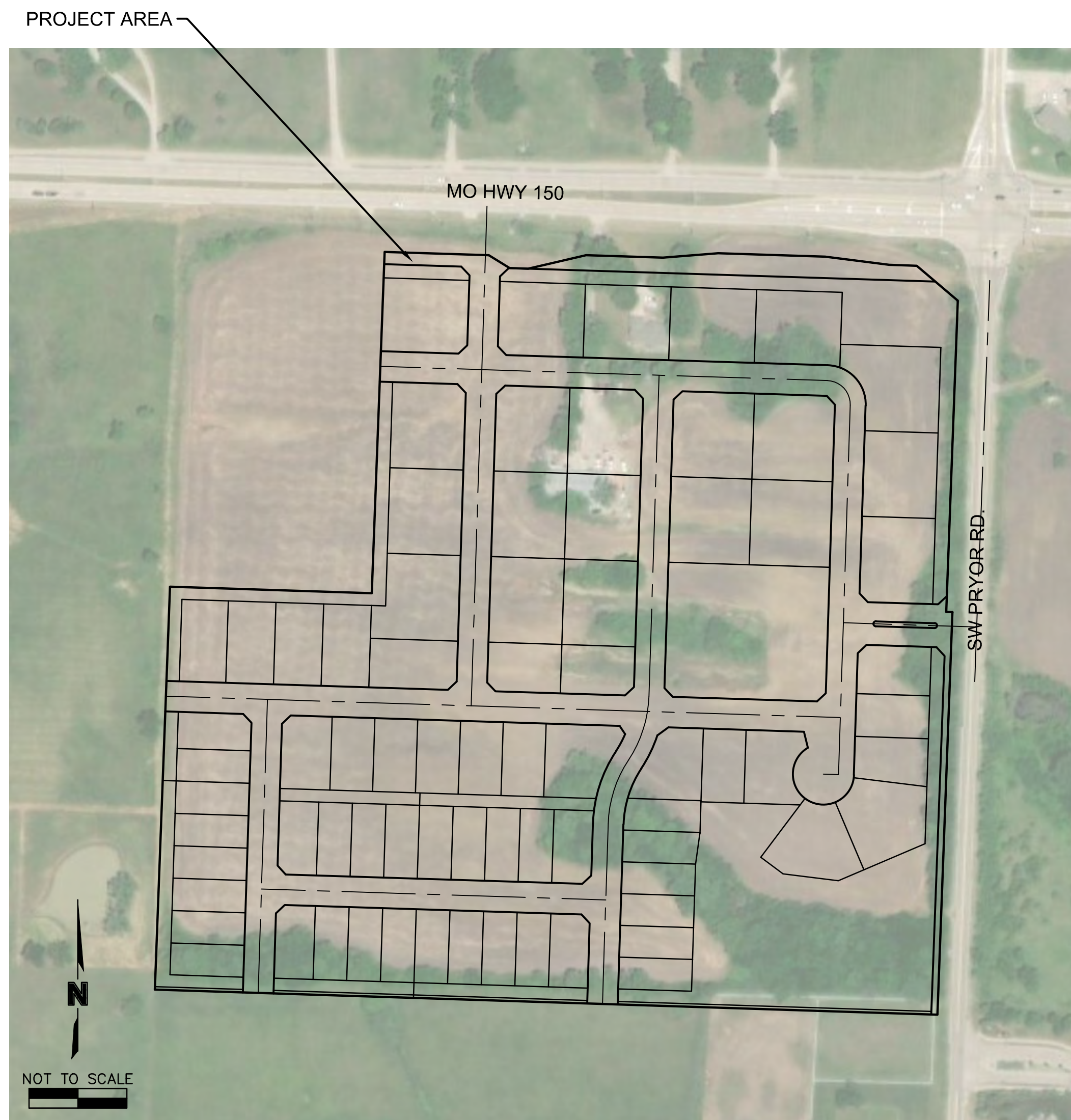
SECTION 35, TOWNSHIP 47N, RANGE 32W  
IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI



## VICINITY MAP

S35, T47N, R32W  
SCALE 1"=2000'

<p><b>PROJECT TEAM CONTACT LIST</b></p>
<p><u>OWNER / DEVELOPER</u> CLAYTON PROPERTIES GROUP, INC. DBA SUMMIT HOMES 120 SE 30TH ST. LEE'S SUMMIT, MO 64082 CONTACT: VINCENT WALKER PHONE: 816.246.6700 EMAIL: VINCENT@SUMMITHOMESKC.COM</p>
<p><u>ENGINEER</u> OLSSON 1301 BURLINGTON, SUITE 100 NORTH KANSAS CITY, MO 64116 CONTACT: JOHN ERPELDING PHONE: 816.361.1177 EMAIL: JERPELDING@OLSSON.COM</p>



PROPERTY DESCRIPTION:

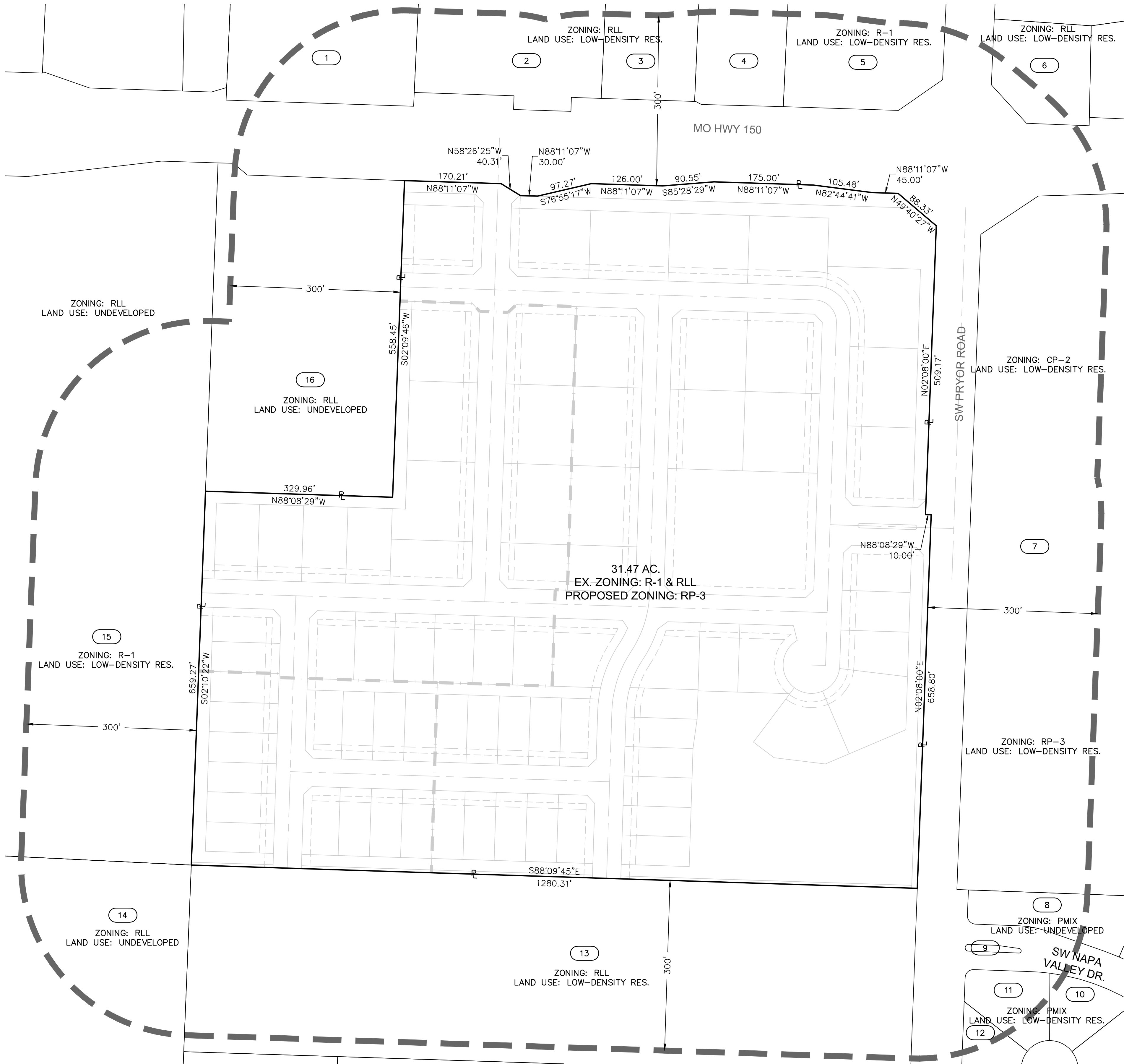
A tract of land in the Northeast Quarter of the Northeast Quarter of Section 35, Township 47 North, Range 32 West of the 5th Principal Meridian, including part of Lot 1, 2 and 3, SALVAGGIO'S RANCH, a subdivision of land, all in Lee's Summit, Jackson County, Missouri, being bounded and described as follows: Commencing at the Northeast corner of the Northeast Quarter of said Section 35; thence South 02°08'00" West, along the East line of said Northeast Quarter, 658.78 feet to the Southeast corner of the North Half of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 88°08'29" West, along the South line of said North Half, 50.00 feet to the Southeast Corner of said Lot 3, said point also being on the Westerly right of way line of SW Pryor Road as now established and the Point of Beginning of the tract of land to be herein described; thence South 88°08'29" East, along the South line of said North Half, 99.96 feet to the Southeast corner of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 35; thence South 88°08'29" East, along the South line of said North Half, 1280.31 feet to the Southwest corner of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 88°09'45" West, along said South line of said North Half, 1280.31 feet to the Southwest corner of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 02°10'22" East, along the West line of the Northeast Quarter of the Northeast Quarter of said Section 35, 659.27 feet to the Southwest corner of the North Half of the Northeast Quarter of the Northeast Quarter of said Section 35; thence South 88°08'29" East, along the South line of said North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 35, 99.96 feet to the Southeast corner of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 35; thence North 02°09'46" East, along the West line of East Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of said Section 35, 558.45 feet to a point on the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E0064160, being 80.00 feet right of centerline Station 3164+29.79 (Station 3164+29.52 Deed); thence South 88°11°07" East, along said Southerly right of way line 170.21 feet to a point that is 80.00 feet right of centerline Station 318+00.00; thence South 58°26'25" East, along said Southerly right of way line, 40.31 feet to a point that is 100.00 feet right of centerline Station 318+35.00; thence South 88°11°07" East, along said Southerly right of way line, 30.00 feet to a point that is 100.00 feet right of centerline Station 318+65.00; thence North 65°51'17" East, along said Southerly right of way line, 97.27 feet to a point on the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E0064160, being 80.00 feet right of centerline Station 320+85.00; thence North 85°28'29" East, along said Southerly right of way line, 126.00 feet to a point that is 75.00 feet right of centerline Station 320+85.00; thence North 85°28'29" East, along said Southerly right of way line, 90.55 feet to a point that is 65.00 feet right of centerline Station 321+75.00; thence South 88°11°07" East, along said Southerly right of way line and along the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E0006351, 175.00 feet to a point that is 65.00 feet right of centerline Station 323+50.00; thence South 82°44'41" East, along said Southerly right of way line, 105.48 feet to a point that is 75.00 feet right of centerline Station 324+55.00; thence South 88°11°07" East, along said Southerly right of way line, 45.00 feet to a point that is 75.00 feet right of centerline Station 325+00.00; thence South 49°40'27" East, along said Southerly right of way line, 88.33 feet to a point that is 130.00 feet right of centerline Station 325+69.12 (Station 325+69.30 Deed), said point also being on the South line of said Lot 2, SALVAGGIO'S RANCH, and on the West right of way of said SW Pryor Road as now established; thence South 02°08'00" West, along said South line of said Lot line and said West right of way line, 509.17 feet to the Point of Beginning. Containing 1,370,951 square feet (31.473 acres, more or less.

Sheet Title	Sheet Number
TITLE SHEET	01
REZONING PLAN	02
EXISTING CONDITIONS	03
SITE PLAN	04
PRELIMINARY GRADING PLAN	05
PRELIMINARY UTILITY PLAN	06
PRELIMINARY UTILITY PLAN (CONT'D.)	07
OVERALL PLAN (LANDSCAPE)	L1
ENTRY MONUMENTS	L2
ENTRY MONUMENTS	L3
ENTRY MONUMENTS	L4
AMENITY AREA PLAN	L5
AMENITY AREA PLAN	L6
ARCHITECTURAL ELEVATIONS - TOWNHOMES	A1
ARCHITECTURAL ELEVATIONS - TWIN GALLERY	A2
ARCHITECTURAL ELEVATIONS - SINGLE-FAMILY	A3
POOL RENDERINGS	A4

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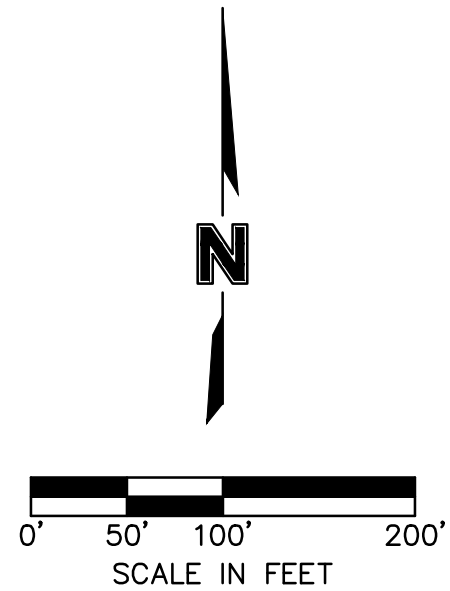


PROPERTY OWNERS WITHIN 300'		
KEY	ADDRESS	OWNER(S) & MAILING ADDRESS
1	2124 SW MO 150 HWY LEE'S SUMMIT, MO 64082	DANIELS NANCY SUE & G MARK-TR 13320 S PRATT RD LEE'S SUMMIT, MO 64086
2	2052 SW MO 150 HWY LEE'S SUMMIT, MO 64082	DALE DONALD RAY-TRUSTEE 2052 SW MO 150 HWY LEE'S SUMMIT, MO 64082
3	2040 SW MO 150 HWY LEE'S SUMMIT, MO 64082	RYAN JOHN C 2040 SW MO 150 HWY LEE'S SUMMIT, MO 64082
4	2030 SW MO 150 HWY LEE'S SUMMIT, MO 64082	HARRISON JERRY DALE & DONNA C 2030 SW MO 150 HWY LEE'S SUMMIT, MO 64063
5	3540 SW PRYOR RD LEE'S SUMMIT, MO 64082	DOANE ERIC J & JULIE A-TRUSTEES 3540 SW PRYOR RD LEE'S SUMMIT, MO 64082
6	3699 SW PRYOR RD LEE'S SUMMIT, MO 64082	MC MILLIN PAULA 3699 SW PRYOR RD LEE'S SUMMIT, MO 64082
7	1905 SW MO 150 HWY LEE'S SUMMIT, MO 64082	GRIFFIN RILEY INVESTMENTS LLC 120 SE 30TH ST LEE'S SUMMIT, MO 64082
8	** NO ADDRESS **	NAPA VALLEY INVESTMENTS LLC PO BOX 375 GREENWOOD, MO 64034
9	TRAFFIC MEDIAN LEE'S SUMMIT, MO 64082	NAPA VALLEY INVESTMENTS LLC PO BOX 375 GREENWOOD, MO 64034
10	1912 SW SAGE CANYON RD LEE'S SUMMIT, MO 64082	COX COLIN G & JESSICA S 1912 SW SAGE CANYON RD LEE'S SUMMIT, MO 64082
11	1916 SW SAGE CANYON RD LEE'S SUMMIT, MO 64082	DEL FRATTE GEORGE & BETTY J TRUSTEE 1916 SW SAGE CANYON RD LEE'S SUMMIT, MO 64082
12	1917 SW SAGE CANYON RD LEE'S SUMMIT, MO 64082	THOMAS JOHN R & CHRISTINE D 1917 SW SAGE CANYON RD LEE'S SUMMIT, MO 64082
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14	** NO ADDRESS **	HIGHVIEW PROPERTIES LLC 2422 SW SPRINGWATER RDG LEE'S SUMMIT, MO 64081
15	2201 SW MO 150 HWY LEE'S SUMMIT, MO 64082	SOLANO CESAR E & CARLA EVANS 316 S SHORE DR LAKE WINNEBAGO, MO 64034
16	14501 SW MO 150 HWY LEE'S SUMMIT, MO 64082	SHERRARD LAWRENCE III & MARY 4603 W 122ND ST APT 715 LEAWOOD, KS 66209



PROPERTY DESCRIPTION:

A tract of land in the Northeast Quarter of the Northeast Quarter of Section 35, Township 47 North, Range 32 West of the 5th Principal Meridian, including part of Lots 1, 2 and 3, SALVAGGIO'S RANCH, a subdivision of land, all in Lee's Summit, Jackson County, Missouri being bounded and described as follows: Commencing at the Northeast corner of the Northeast Quarter of said Section 35; thence South 02°08'00" West, along the East line of said Northeast Quarter, 658.78 feet to the Southeast corner of the North Half of the Northeast Quarter of said Section 35; thence North 88°08'29" West, along the South line of said North Half, 50.00 feet to the Southeast Corner of said Lot 3, said point also being on the Westerly right of way line of SW Pryor Road as now established and the Point of Beginning of the tract of land to be herein described; thence South 88°08'29" East, along said North Line and along said Westerly right of way line, 10.00 feet; to the Westerly right of way line of said SW Pryor Road as established by Document 19631814460, in Book 1634, at page 487, being on a line that 40.00 West of and parallel with the East line of the Northeast Quarter of said Section 35; thence South 02°08'00" West, along last said Westerly right of way line and said parallel line, 658.80 feet to a point on the South line of the Northeast Quarter of said Section 35; thence North 88°09'45" West, along said South line, 1280.31 feet to the Southwest corner of the Northeast Quarter of said Section 35; thence North 02°10'22" East, along the West line of the Northeast Quarter of said Section 35, 659.27 feet to the Southwest corner of the North Half of the Northeast Quarter of the Northeast Quarter of said Section 35; thence South 88°08'29" East, along the South line of said North Half of the Northeast Quarter of said Section 35, 329.96 feet to the Southwest corner of the East Half of the Northwest Quarter of the Northeast Quarter of said Section 35; thence North 02°09'46" East, along the West line of East Half of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of said Section 35, 558.45 feet to a point on the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E0064160, being 80.00 feet right of centerline Station 316+29.79 (Station 316+29.51 Deed); thence South 88°11'07" East, along said Southerly right of way line 170.21 feet to a point that is 80.00 feet right of centerline Station 318+35.00; thence South 58°26'25" East, along said Southerly right of way line, 40.31 feet to a point that is 100.00 feet right of centerline Station 318+35.00; thence South 88°11'07" East, along said Southerly right of way line, 30.00 feet to a point that is 100.00 feet right of centerline Station 318+65.00; thence North 76°55'17" East, along said Southerly right of way line, 97.27 feet to a point on the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E006361, being 75.00 feet right of centerline Station 319+59.00; thence South 88°11'07" East, along said Southerly right of way line, 126.00 feet to a point that is 75.00 feet right of centerline Station 320+85.00; thence North 85°28'29" East, along said Southerly right of way line, 90.55 feet to a point that is 65.00 feet right of centerline Station 321+75.00; thence South 88°11'07" East, along said Southerly right of way line and along the Southerly right of way line of Missouri State Highway No. 150 as established by Document 2009E006351, 175.00 feet to a point that is 65.00 feet right of centerline Station 323+50.00; thence South 82°44'41" East, along said Southerly right of way line, 105.48 feet to a point that is 75.00 feet right of centerline Station 324+55.00; thence South 88°11'07" East, along said Southerly right of way line, 45.00 feet to a point that is 75.00 feet right of centerline Station 325+00.00; thence South 49°40'27" East, along said Southerly right of way line, 88.33 feet to a point that is 130.00 feet right of centerline Station 325+69.12 (Station 325+69.30 Deed), said point also being on the East line of said Lot 2, SALVAGGIO'S RANCH and on the West right of way of said SW Pryor Road as now established; thence South 02°08'00" West, along said East lot line and said West right of way line, 509.17 feet to the Point of Beginning. Containing 1,370,951 square feet or 31.473 acres, more or less.



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REV. NO.

DATE

REVISIONS DESCRIPTION

BY

1

2019.10.15

Revised per DRC comments.

CJH

REZONING PLAN

OSAGE

REZONING & PRELIMINARY DEVELOPMENT PLAN

2019

LEE'S SUMMIT, MO

drawn by: CJH

checked by: CGW

approved by: JFE

QA/QC by: MGD

project no.: 019-2339

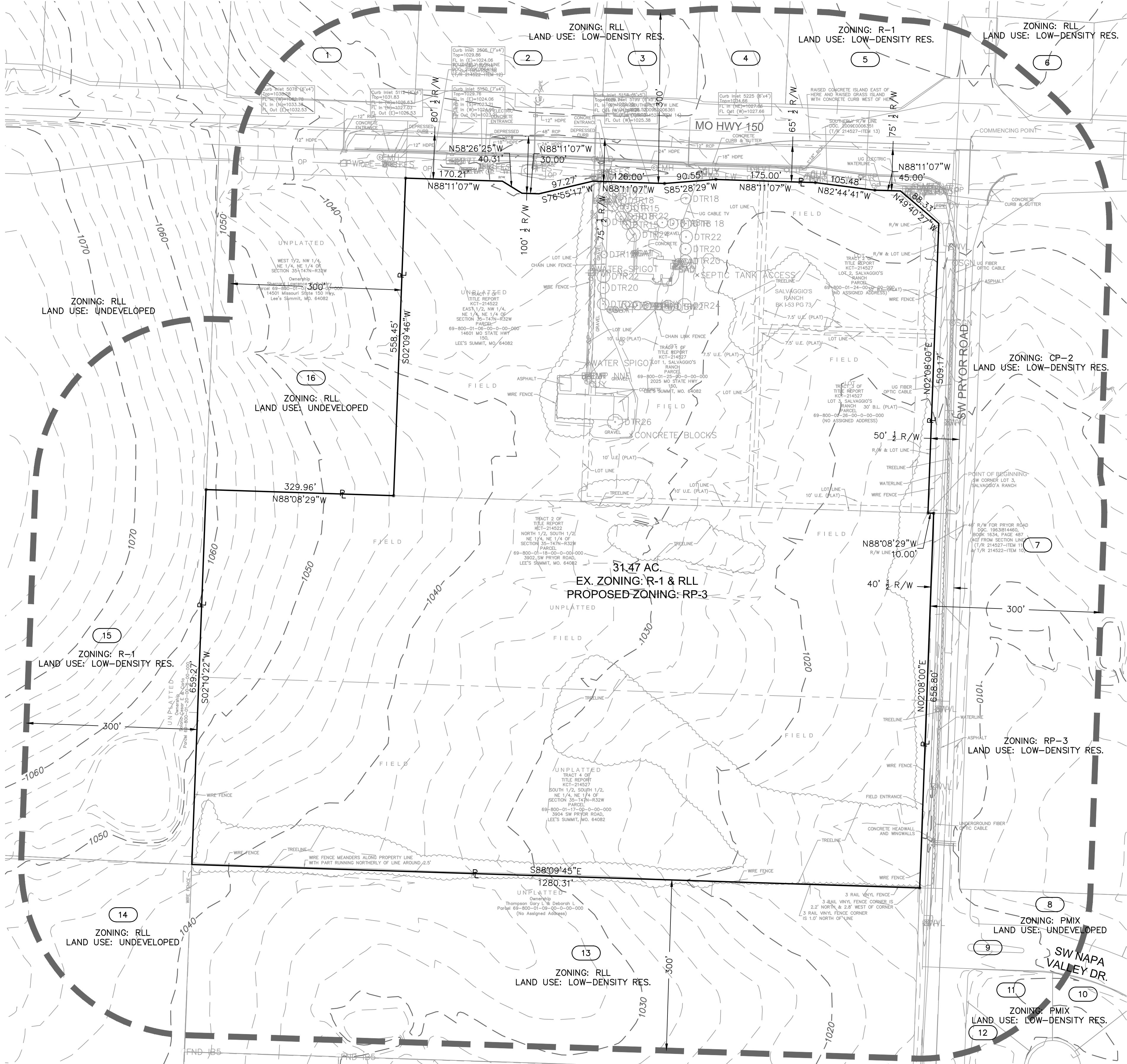
drawing no.: C-REZ01\_0192339

date: 2019.09.13

SHEET

02

PROPERTY OWNERS WITHIN 300'		
KEY	ADDRESS	OWNER(S) & MAILING ADDRESS
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16	14501 SW MO 150 HWY LEE'S SUMMIT, MO 64082	SHERRARD LAWRENCE III & MARY 4603 W 122ND ST APT 715 LEAWOOD, KS 66209



NOTES:  
1. EXISTING ZONING: R-1 & RLL  
2. EXISTING LAND USE: LOW-DENSITY RESIDENTIAL & UNDEVELOPED  
3. NO OIL OR GAS WELLS ARE LOCATED ON THE PROPERTY.  
INFORMATION VERIFIED VIA MISSOURI DNR:  
<https://dnr.mo.gov/geology/geosrv/oilandgas.htm>  
(UPDATED AUGUST 2018)  
4. FEMA FLOODPLAIN ZONE: AREA OF MINIMAL FLOOD HAZARD, PER MAP 29095C0531G, EFF. 1/20/2017

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BY

CJH

REVISIONS DESCRIPTION

1 2019.10.15 Revised per DRC comments.

REV. NO.

1

DATE

2019.10.15

REVISIONS DESCRIPTION

1 2019.10.15 Revised per DRC comments.

EXISTING CONDITIONS

OSAGE  
REZONING & PRELIMINARY DEVELOPMENT PLAN

2019

LEE'S SUMMIT, MO

drawn by: CJH  
checked by: CGW  
approved by: JFE  
QA/QC by: MGD  
project no.: 019-2339  
drawing no.: C\_EXC01\_0192339  
date: 2019.09.13

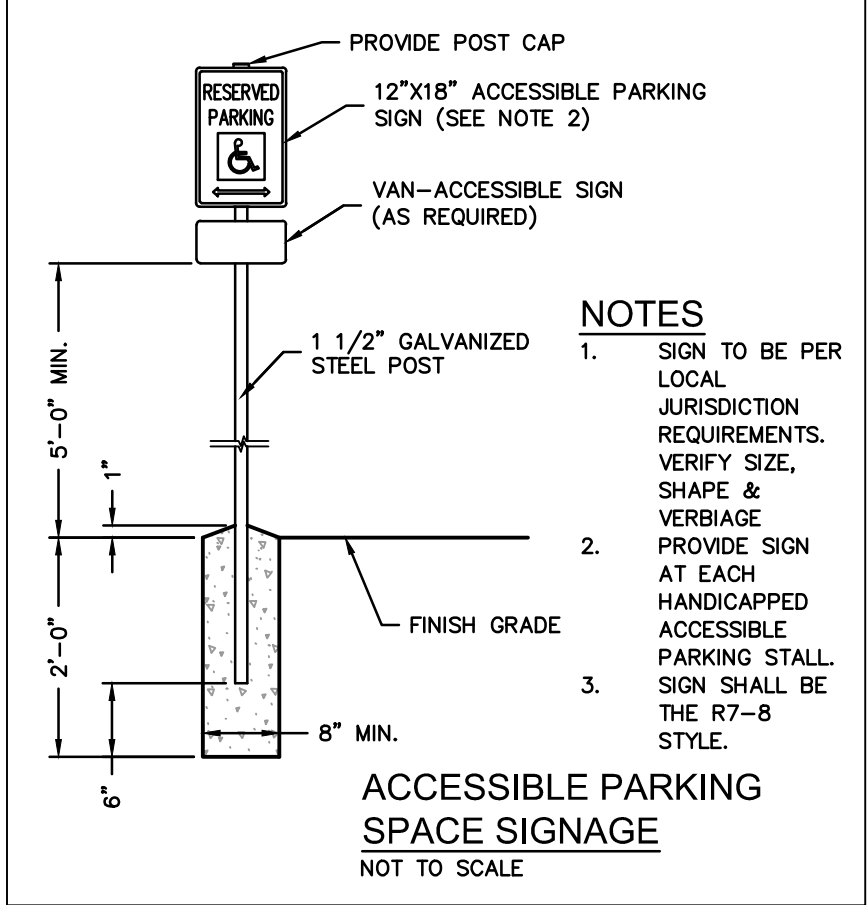
SHEET  
03



DEVELOPMENT DATA													
PHASE	EX ZONING	PR ZONING	GROSS ACRES	STREET R/W (AC)	OPEN SPACE (AC)	DETENTION (AC)	NET ACRES	LAND USE	LOTS	UNITS	REQUIRED PARKING	PROVIDED PARKING (OFF-STREET ONLY)	D.U./AC (GROSS)
1	R-1 & RLL	RP-3	21.06	4.79	2.74	2.61	10.92	4 FAMILY DWELLING 2 FAMILY DWELLING SINGLE-FAMILY	1-15 16-25 26-41	60	192	384	4.56
2	R-1 & RLL	RP-3	7.14	1.42	0.46	0.00	5.26	4 FAMILY DWELLING 2 FAMILY DWELLING SINGLE-FAMILY	42-44 45-49 50-61	24	100	200	7.00
3	R-1 & RLL	RP-3	3.27	0.65	0.50	0.00	2.12	4 FAMILY DWELLING 2 FAMILY DWELLING SINGLE-FAMILY	62-75 76-82 83-90	14	28	56	4.28
TOTAL			31.47	6.86	3.70	2.61	18.30		160	320	640	5.08	8.74

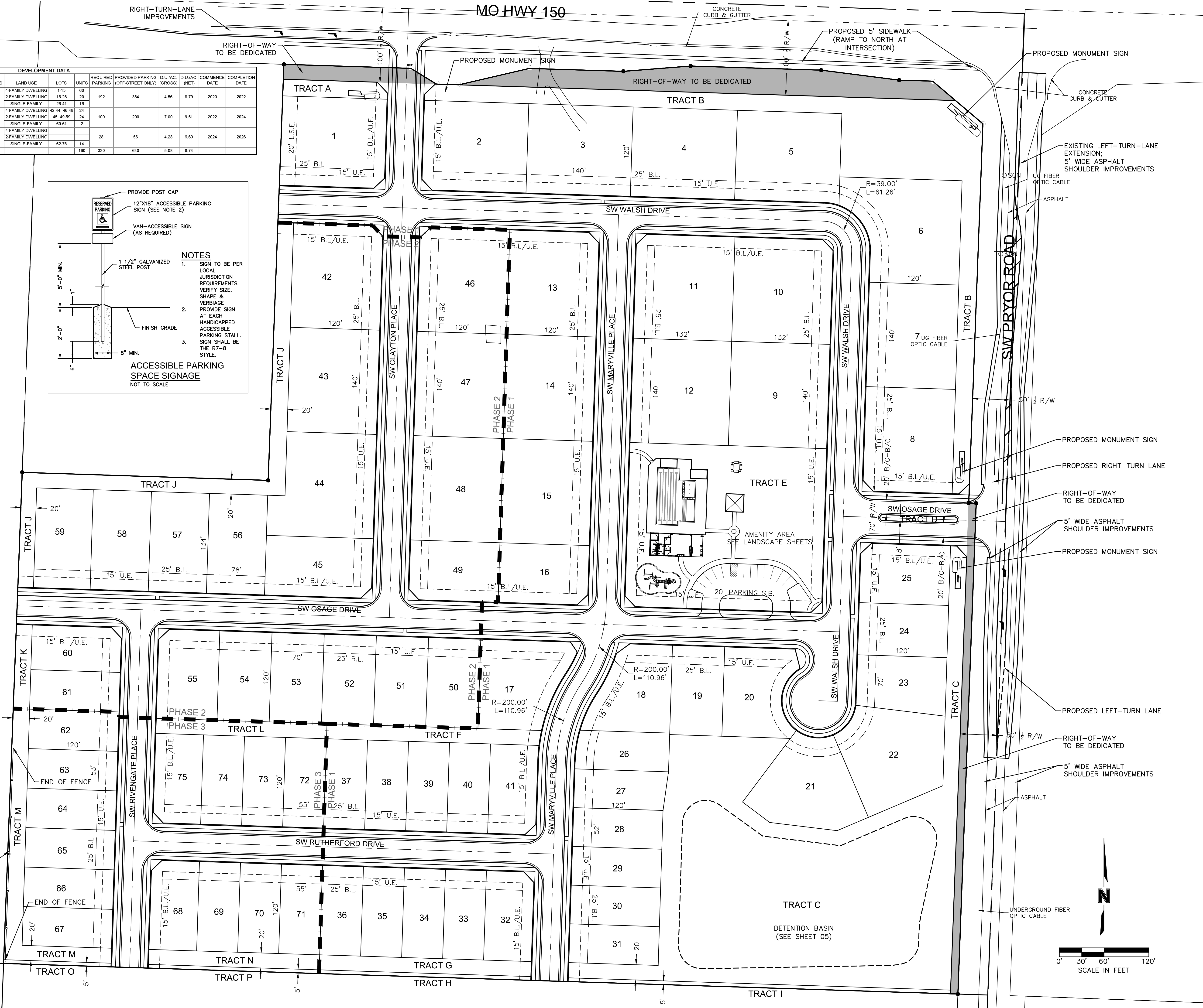
TRACTS	
TRACT	AREA (AC.)
A	0.07
B	0.97
C	2.61
D	0.02
E	1.33
F	0.13
G	0.13
H	0.03
I	0.06
J	0.40
K	0.06
L	0.11
M	0.23
N	0.11
O	0.02
P	0.03

- NOTES:
- RIGHT-OF-WAY WIDTH SHALL BE 50', EXCEPT WHERE OTHERWISE NOTED. CUL-DE-SAC R/W SHALL BE A 50' RADIUS AS MEASURED FROM THE CENTER OF THE CUL-DE-SAC.
  - STREET WIDTHS AS MEASURED BETWEEN BACKS OF CURBS SHALL BE 28', EXCEPT WHERE OTHERWISE NOTED. CUL-DE-SAC PAVEMENT SHALL BE A 39' RADIUS AS MEASURED FROM THE CENTER OF THE CUL-DE-SAC TO BACK OF CURB.
  - 5' SIDEWALKS SHALL BE INSTALLED ALONG BOTH SIDES OF ALL PROPOSED STREETS.
  - TRACTS A, B, & C SHALL BE A MINIMUM OF 20' WIDE WHERE SEPARATING REAR LOT LINES AND RIGHT-OF-WAY.
  - MEDIUM-DENSITY BUFFERS TO ADJACENT LAND USES SHALL BE LOCATED WITHIN 20' LANDSCAPE EASEMENTS WITHIN LOTS.
  - LOTS 1, 2, 8, 25 SHALL NOT BE PERMITTED DRIVEWAY ACCESS TO STREETS ALONG SIDES OF LOTS.
  - LOT DIMENSIONS AND SETBACKS:
    - LOTS 1-15, 42-44, 46-48
      - (4-FAMILY BUILDINGS):
        - MINIMUM DEPTH: 120'
        - MINIMUM WIDTH: 140'
        - MINIMUM AREA: 16,800 SF
        - FRONT SETBACK: 25'
        - SIDE YARD SETBACK: 10' MIN.
        - REAR YARD SETBACK: 30' MIN.
        - CORNER LOTS: 15' MIN.
      - LOTS 16-25, 45, 49-59 (2-FAMILY BUILDINGS):
        - MINIMUM DEPTH: 118'
        - MINIMUM WIDTH: 70'
        - MINIMUM AREA: 8260 SF
        - FRONT SETBACK: 25'
        - SIDE YARD SETBACK: 5' MIN.
        - REAR YARD SETBACK: 20' MIN.
        - CORNER LOTS: 15' MIN.
      - LOTS 26-41, 62-75 (SINGLE-FAMILY):
        - MINIMUM DEPTH: 120'
        - MINIMUM WIDTH: 50'
        - MINIMUM AREA: 6000 SF
        - FRONT SETBACK: 25'
        - SIDE YARD SETBACK: 5' MIN.
        - REAR YARD SETBACK: 20' MIN.
        - CORNER LOTS: 15' MIN.
    - THE HOUSING ASSOCIATION SHALL AT ALL TIMES, FROM AND AFTER ITS DATE OF FORMATION AND AT ITS EXPENSE, BE RESPONSIBLE FOR PROPERLY REPAIRING, REPLACING, CONTROLLING, MAINTAINING, OPERATING AND INSURING, AS APPLICABLE, ALL COMMON AREAS, SUBJECT TO ANY CONTROL THEREOVER MAINTAINED BY ANY GOVERNMENTAL AUTHORITY, UTILITY OR SIMILAR PERSON OR ENTITY.



- NOTES
- SIGN TO BE PER LOCAL JURISDICTION REQUIREMENTS. VERIFY SIZE, SHAPE & VERBIAGE.
  - PROVIDE SIGN AT EACH HANDICAPPED ACCESSIBLE PARKING STALL.
  - SIGN SHALL BE THE R7-8 STYLE.

ACCESSIBLE PARKING SPACE SIGNAGE  
NOT TO SCALE



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REVISIONS

REV. NO.	DATE	REVISIONS DESCRIPTION	BY
1	2019.10.15	Revised per DRC comments.	CJH

SITE PLAN

OSAGE  
REZONING & PRELIMINARY DEVELOPMENT PLAN

2019

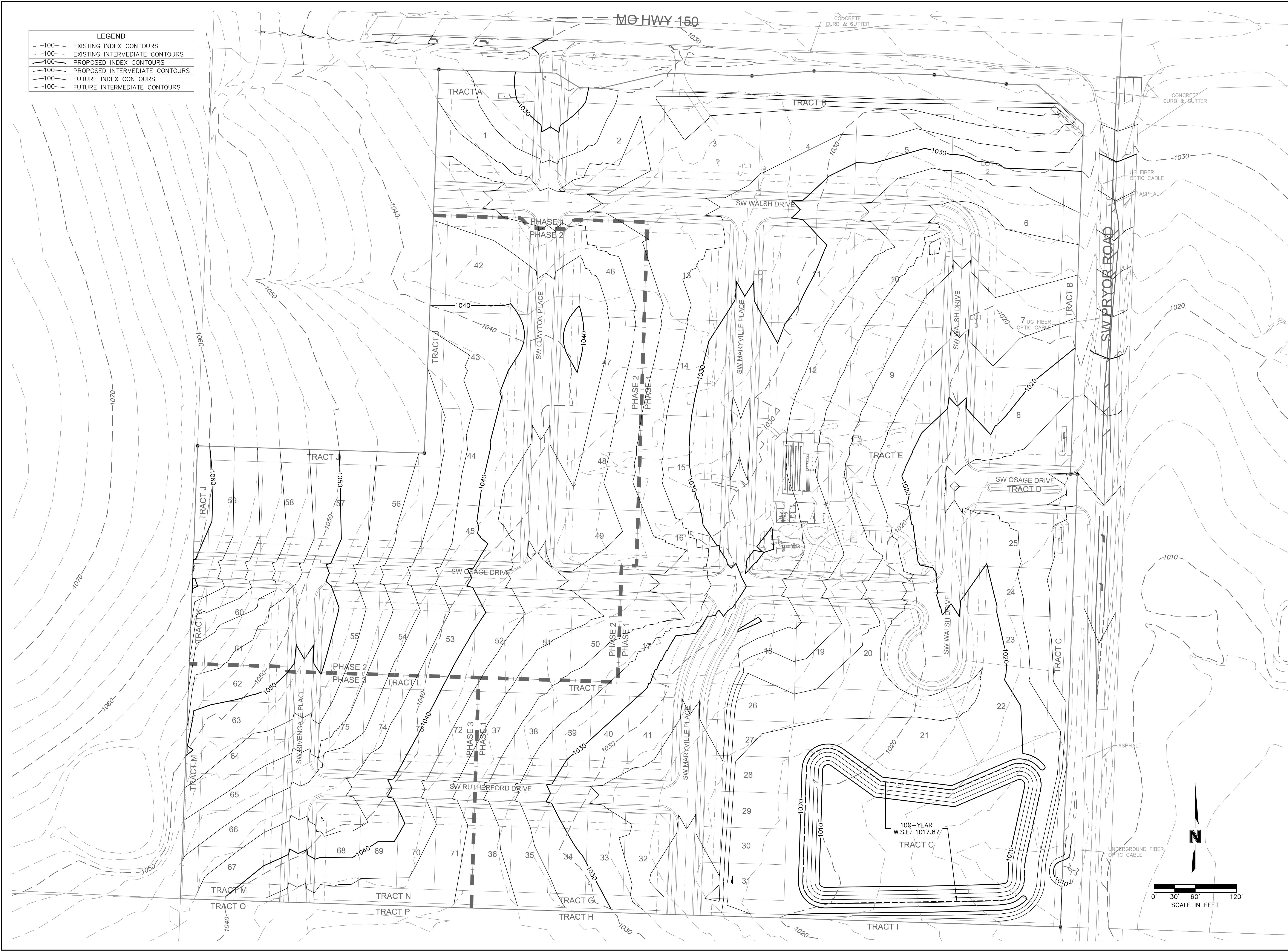
SHEET  
04

drawn by: CJH  
checked by: CGW  
approved by: JFE  
QA/QC by: MGD  
project no.: 019-2339  
drawing no.: C\_SIT01\_0192339  
date: 2019.09.13



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LEGEND	
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-100-	EXISTING INTERMEDIATE CONTOURS
100	PROPOSED INDEX CONTOURS
100	PROPOSED INTERMEDIATE CONTOURS
100	FUTURE INDEX CONTOURS
100	FUTURE INTERMEDIATE CONTOURS



PRELIMINARY GRADING PLAN

OSAGE  
REZONING & PRELIMINARY DEVELOPMENT PLAN

LEE'S SUMMIT, MO

2019

drawn by: CJH  
checked by: CGW  
approved by: JFE  
QA/QC by: MGD  
project no.: 019-2339  
drawing no.: C\_GRD01\_0192339  
date: 2019.09.13

SHEET  
05

REV. NO. DATE REVISIONS DESCRIPTION

1 2019.10.15 Revised per DRC comments.

BY

CJH

REVISIONS

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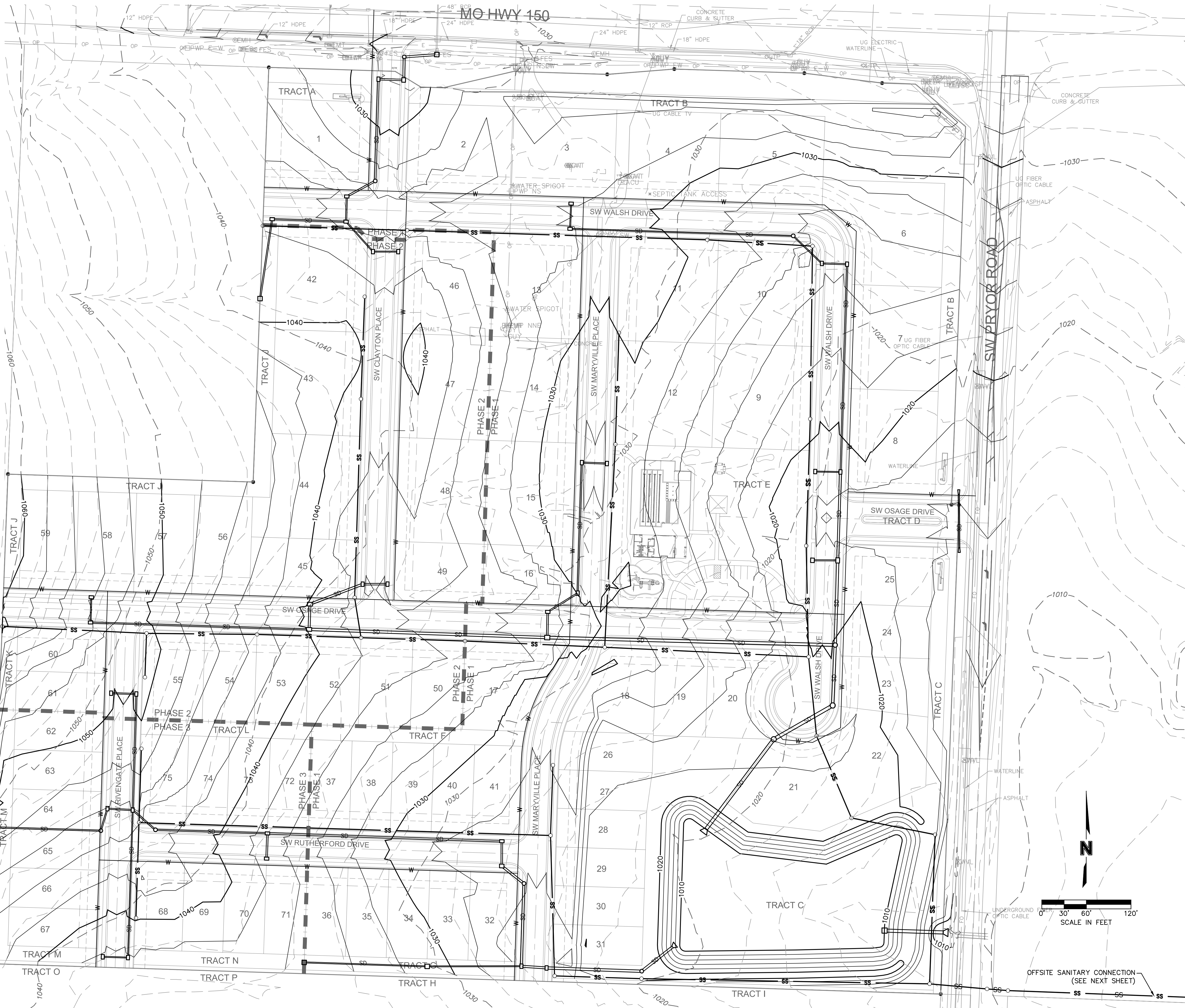
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DWG: F:\2019\2001-2500\019-2339\40-Design\AutoCAD\Preliminary Plans\Sheets\GNV\C-UTL01\_0192339.dwg USER: chelmaquist  
DATE: Oct 14, 2019 9:56am XREFS: C\_XBASE\_0192339 C\_PBASE\_0192339 C\_PUTIL\_0192339 C\_PTBK\_0192339

LEGEND	
ECTVOH	EXISTING CABLE TV, OVERHEAD
ECTV	EXISTING CABLE TV, UNDERGROUND
CTVOH	PROPOSED CABLE TV, OVERHEAD
CTV	PROPOSED CABLE TV, UNDERGROUND
FGTVOH	FUTURE CABLE TV, OVERHEAD
FGTV	FUTURE CABLE TV, UNDERGROUND
EFOOH	EXISTING FIBER OPTIC, OVERHEAD
EFO	EXISTING FIBER OPTIC, UNDERGROUND
FOOH	PROPOSED FIBER OPTIC, OVERHEAD
FO	PROPOSED FIBER OPTIC, UNDERGROUND
FGOOH	FUTURE FIBER OPTIC, OVERHEAD
FGO	FUTURE FIBER OPTIC, UNDERGROUND
EFP	EXISTING FIRE PROTECTION SYSTEM LINE
FP	PROPOSED FIRE PROTECTION SYSTEM LINE
FEP	FUTURE FIRE PROTECTION SYSTEM LINE
EFL	EXISTING FUEL LINE
FL	PROPOSED FUEL LINE
FFL	FUTURE FUEL LINE
EG	EXISTING NATURAL GAS LINE
G	PROPOSED NATURAL GAS LINE
FG	FUTURE NATURAL GAS LINE
ETELOH	EXISTING TELEPHONE LINE, OVERHEAD
ETEL	EXISTING TELEPHONE LINE, UNDERGROUND
TELOH	PROPOSED TELEPHONE LINE, OVERHEAD
TEL	PROPOSED TELEPHONE LINE, UNDERGROUND
FTELOH	FUTURE TELEPHONE LINE, OVERHEAD
FTEL	FUTURE TELEPHONE LINE, UNDERGROUND
EEOH	EXISTING POWER/ELECTRIC LINE, OVERHEAD
EE	EXISTING POWER/ELECTRIC LINE, UNDERGROUND
EOH	PROPOSED POWER/ELECTRIC LINE, OVERHEAD
E	PROPOSED POWER/ELECTRIC LINE, UNDERGROUND
FEOH	FUTURE POWER/ELECTRIC LINE, OVERHEAD
FE	FUTURE POWER/ELECTRIC LINE, UNDERGROUND
ESS	EXISTING SANITARY SEWER
SS	PROPOSED SANITARY SEWER
FSS	FUTURE SANITARY SEWER
ESL	EXISTING STEAM LINE
SL	PROPOSED STEAM LINE
FSL	FUTURE STEAM LINE
ESD	EXISTING STORM SEWER
SD	PROPOSED STORM SEWER
FSD	FUTURE STORM SEWER
EW	EXISTING WATER LINE
W	PROPOSED WATER LINE
FEW	FUTURE WATER LINE

LEGEND	
-100-	EXISTING INDEX CONTOURS
-100-	EXISTING INTERMEDIATE CONTOURS
-100-	PROPOSED INDEX CONTOURS
-100-	PROPOSED INTERMEDIATE CONTOURS
-100-	FUTURE INDEX CONTOURS
-100-	FUTURE INTERMEDIATE CONTOURS



PRELIMINARY UTILITY PLAN

OSAGE  
REZONING & PRELIMINARY DEVELOPMENT PLAN

LEE'S SUMMIT, MO

2019

REV. NO.	DATE	REVISIONS DESCRIPTION	BY
1	2019.10.15	Revised per DRC comments.	CJH

REVISIONS

drawn by: CJH  
checked by: CGW  
approved by: JFE  
QA/QC by: MGD  
project no.: 019-2339  
drawing no.: C-UTL01\_0192339  
date: 2019.09.13

SHEET  
06

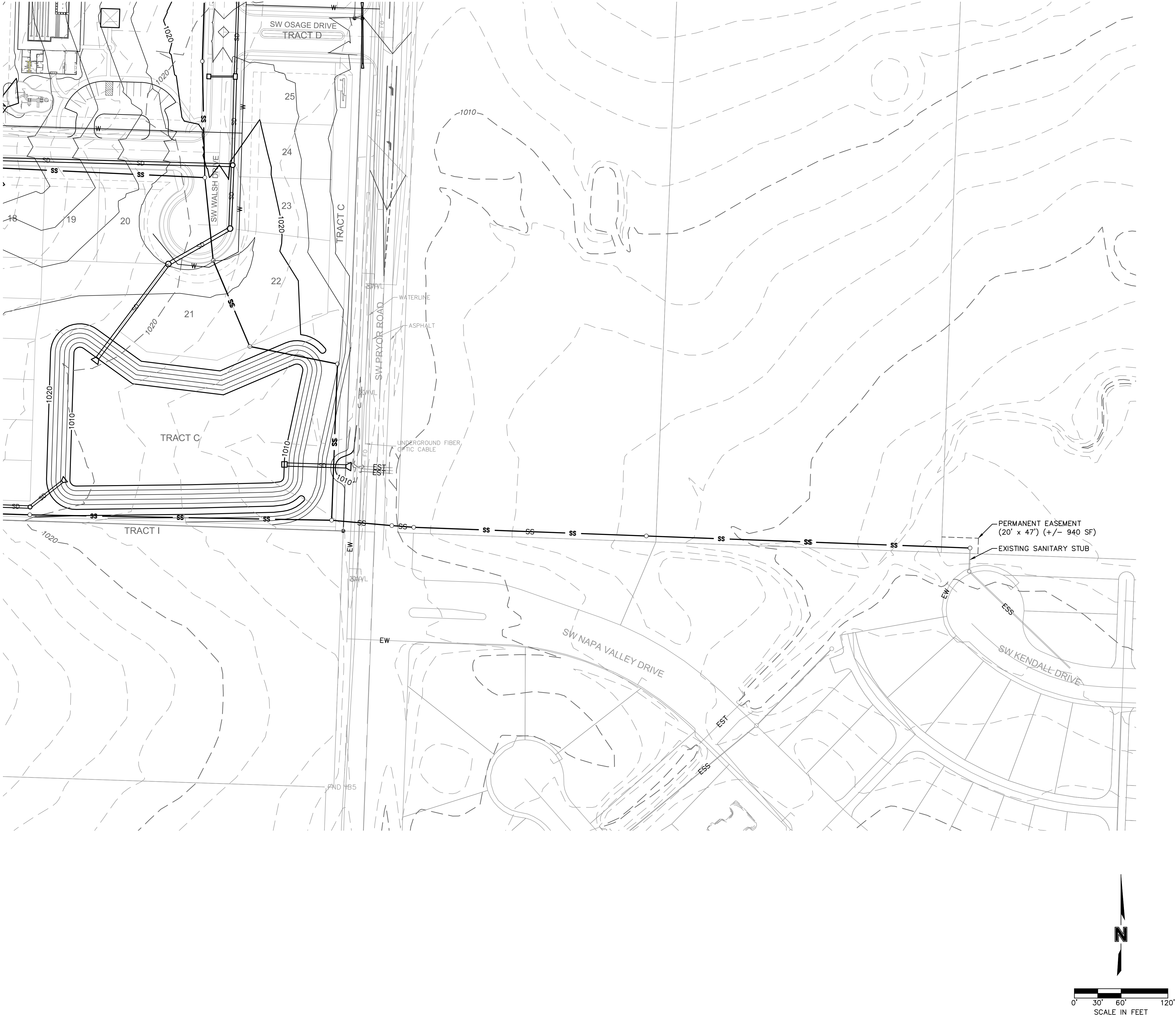
olsson

Olsson - Civil Engineering  
Missouri Certificate of Authority #001992  
1301 Burlington Street  
North Kansas City, MO 64116  
TEL 816.361.1177  
www.olsson.com



LEGEND	
	EXISTING CABLE TV, OVERHEAD
	EXISTING CABLE TV, UNDERGROUND
	PROPOSED CABLE TV, OVERHEAD
	PROPOSED CABLE TV, UNDERGROUND
	FUTURE CABLE TV, OVERHEAD
	FUTURE CABLE TV, UNDERGROUND
	EXISTING FIBER OPTIC, OVERHEAD
	EXISTING FIBER OPTIC, UNDERGROUND
	PROPOSED FIBER OPTIC, OVERHEAD
	PROPOSED FIBER OPTIC, UNDERGROUND
	FUTURE FIBER OPTIC, OVERHEAD
	FUTURE FIBER OPTIC, UNDERGROUND
	EXISTING FIRE PROTECTION SYSTEM LINE
	PROPOSED FIRE PROTECTION SYSTEM LINE
	FUTURE FIRE PROTECTION SYSTEM LINE
	EXISTING FUEL LINE
	PROPOSED FUEL LINE
	FUTURE FUEL LINE
	EXISTING NATURAL GAS LINE
	PROPOSED NATURAL GAS LINE
	FUTURE NATURAL GAS LINE
	EXISTING TELEPHONE LINE, OVERHEAD
	EXISTING TELEPHONE LINE, UNDERGROUND
	PROPOSED TELEPHONE LINE, OVERHEAD
	PROPOSED TELEPHONE LINE, UNDERGROUND
	FUTURE TELEPHONE LINE, OVERHEAD
	FUTURE TELEPHONE LINE, UNDERGROUND
	EXISTING POWER/ELECTRIC LINE, OVERHEAD
	EXISTING POWER/ELECTRIC LINE, UNDERGROUND
	PROPOSED POWER/ELECTRIC LINE, OVERHEAD
	PROPOSED POWER/ELECTRIC LINE, UNDERGROUND
	FUTURE POWER/ELECTRIC LINE, OVERHEAD
	FUTURE POWER/ELECTRIC LINE, UNDERGROUND
	EXISTING SANITARY SEWER
	PROPOSED SANITARY SEWER
	FUTURE SANITARY SEWER
	EXISTING STEAM LINE
	PROPOSED STEAM LINE
	FUTURE STEAM LINE
	EXISTING STORM SEWER
	PROPOSED STORM SEWER
	FUTURE STORM SEWER
	EXISTING WATER LINE
	PROPOSED WATER LINE
	FUTURE WATER LINE

LEGEND	
	EXISTING INDEX CONTOURS
	EXISTING INTERMEDIATE CONTOURS
	PROPOSED INDEX CONTOURS
	PROPOSED INTERMEDIATE CONTOURS
	FUTURE INDEX CONTOURS
	FUTURE INTERMEDIATE CONTOURS



PRELIMINARY UTILITY PLAN (CONT'D.)

OSAGE  
REZONING & PRELIMINARY DEVELOPMENT PLAN

LEE'S SUMMIT, MO

REV. NO. DATE REVISIONS DESCRIPTION BY

1	2019.10.15	Revised per DRC comments.	CJH

REVISIONS

2019

drawn by: CJH  
checked by: CGW  
approved by: JFE  
QA/QC by: MGD  
project no.: 019-2339  
drawing no.: C\_UTL02\_0192339  
date: 2019.09.13

SHEET  
07

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Landscape Schedule

Symbol	Qty.	Botanical Name	Common Name	Min.Root	Min.Size	Caliper	Remarks
OVERSTORY TREES							
	55	Gleditsia triacanthos "Skyline"	Shademaster Honeylocust		3"	6" min. clear., ground to canopy	
	104	Platanus x acerifolia	London Plane Tree		3"	6" min. clear., ground to canopy	
	121	Acer x truncatum "Warrenred"	Pacific Sunset Maple		3"	6" min. clear., ground to canopy	
	53	Quercus bicolor	Swamp White Oak		3"	6" min. clear., ground to canopy	
	68	Acer griseum	Paperbark Maple		3"	6" min. clear., ground to canopy	
	36	Ulmus parvifolia	Lacebark Elm		3"	6" min. clear., ground to canopy	
EVERGREEN TREES							
	107	Juniperus chinensis "Keteleeri"	Keteleeri Juniper		8" ht.	symmetrical pyramidal form	
	78	Picea abies	Norway Spruce		8" ht.	symmetrical pyramidal form	
	101	Picea pungens	Colorado Blue Spruce		6" ht.	symmetrical pyramidal form	
ORNAMENTAL TREES							
	82	Cercis canadensis	Eastern Redbud		3"		
	20	Cornus florida "Cloud Nine"	Cloud 9 Dogwood		3"		
DECIDUOUS SHRUBS/GRASSES							
	101	Lil'ope spicata "Silver Dragon"	Silver Dragon Lil'ope	1 gal.		Plant @ 18" O.C.	
	80	Festuca ovina glauca	Dwarf Blue Fescue	1 gal.		Plant @ 18" O.C.	
	13	Abelia x grandiflora Kaleidoscope	Kaleidoscope Abelia	3 gal. 18" ht. min.		Plant @ 4' O.C.	
	138	Equisetum hyemale	Horsetail Reed	1 gal.		Plant @ 18" O.C.	
EVERGREEN SHRUBS							
	51	Juniperus chinensis "Spartan"	Spartan Juniper		5' ht.	Symmetrical pyramidal form	

Landscape Calculations/Requirements

**Street Frontage:** (For all Districts) One (1) tree shall be planted for each thirty (30) feet of street frontage, within 20' setback. REQUIREMENTS MET

**Amenity Parking:** (For all Districts) One parking stall per every 16 units. 160 total units.  
10 Stalls required.  
10 stalls provided.  
REQUIREMENTS MET

**Buffer Landscape:** Medium Density Buffer (type B) provided on all West and South sides of development. Also, provided on north side of Amenity area as shown. REQUIREMENTS MET

Planting Notes

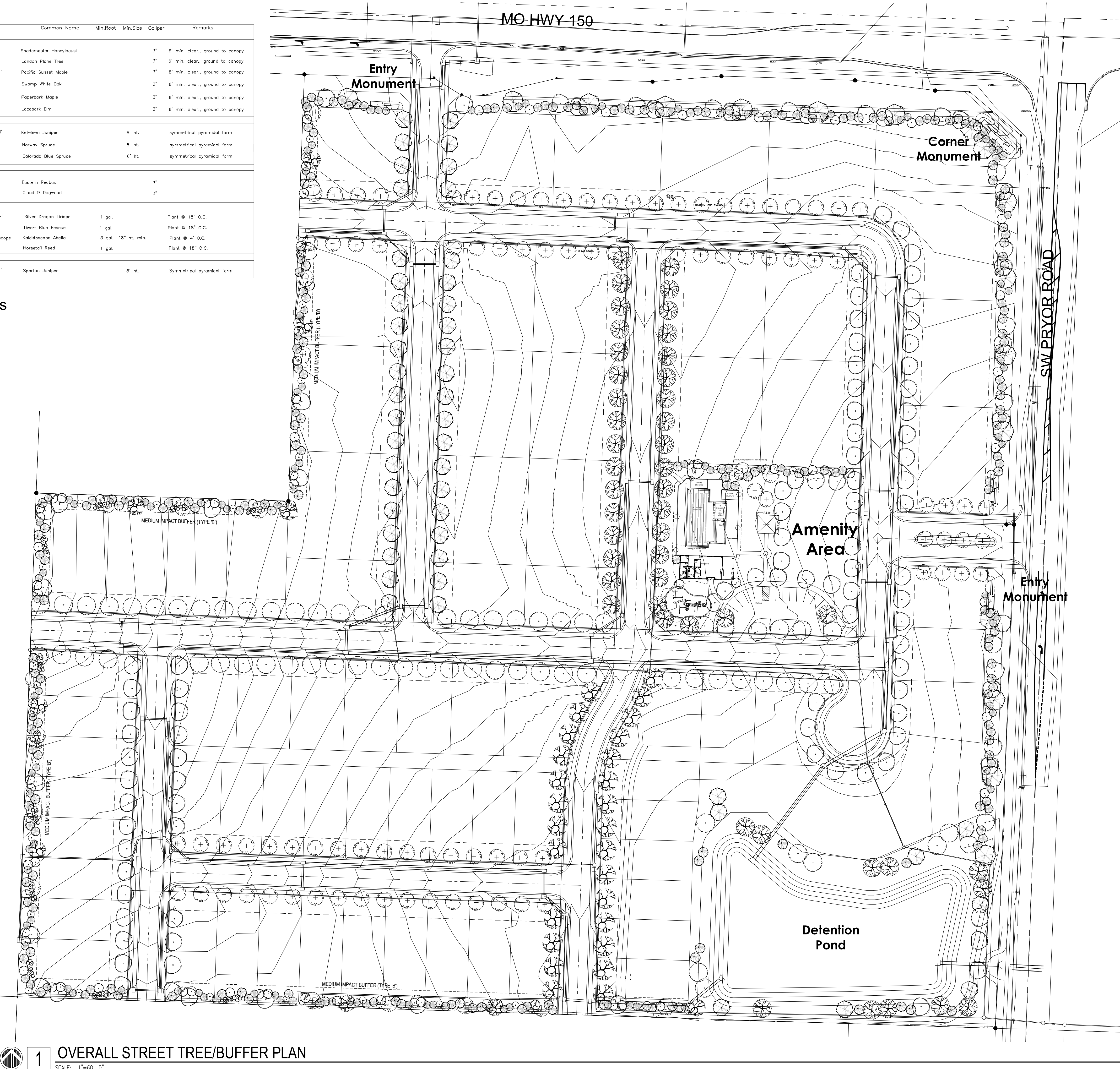
1. Location of all existing utilities needs to done before commencing work.
2. The planting plan graphically illustrates overall plant massings. Each plant species massing shall be placed in the field to utilize the greatest coverage of ground plane. The following applies for individual plantings:
  - a. Creeping groundcover shall be a minimum of 6" from paving edge.
  - b. All trees shall be a minimum of 3' from paving edge.
  - c. All plants of the same species shall be equally spaced apart and placed for best aesthetic viewing.
  - d. All shrubs shall be a minimum of 2' from paved edge.
3. Mulch all planting bed areas to a minimum depth of 3". Mulch individual trees to a minimum depth of 4".
4. Note: If plants are not labeled - they are existing and shall remain.
5. All landscaped areas in ROW shall be sodded and irrigated unless otherwise specified.

**Materials:**

1. Plant material shall be healthy, vigorous, and free of disease and insects as per AAN standards.
2. Shredded bark mulch installed at trees shall be finely chipped and shredded hardwood chips, consisting of pure wood products and free of all other foreign substances. Pine bark compost mulch installed at planting bed areas shall be free of all other foreign substances.

**Installation:**

1. All planting beds shall be amended with 1 cubic yard of peat moss per 1,000 square feet. Till peat moss into soil to a 6" depth. A 10-10-10 fertilizer shall be spread over all planting areas prior to planting, at a rate of 50 pounds per 2,000 square feet.
2. After plants have been installed, all planting beds shall be treated with Dacthal pre-emergent herbicide prior to mulch application.
3. Plant pit backfill for trees and shrubs shall be 50% peat or well composted manure and 50% topsoil.
4. Plant material shall be maintained and guaranteed for a period of one year after Owner's acceptance of finished job. All dead or damaged plant material shall be replaced at Landscape Contractor's expense.
6. Landscape contractor shall maintain all plant material until final acceptance, at which point the one year guarantee begins.

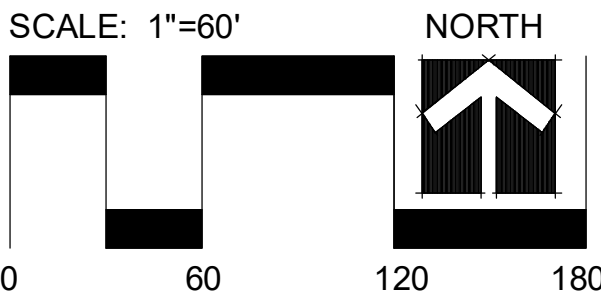


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Overland Park, KS 66223  
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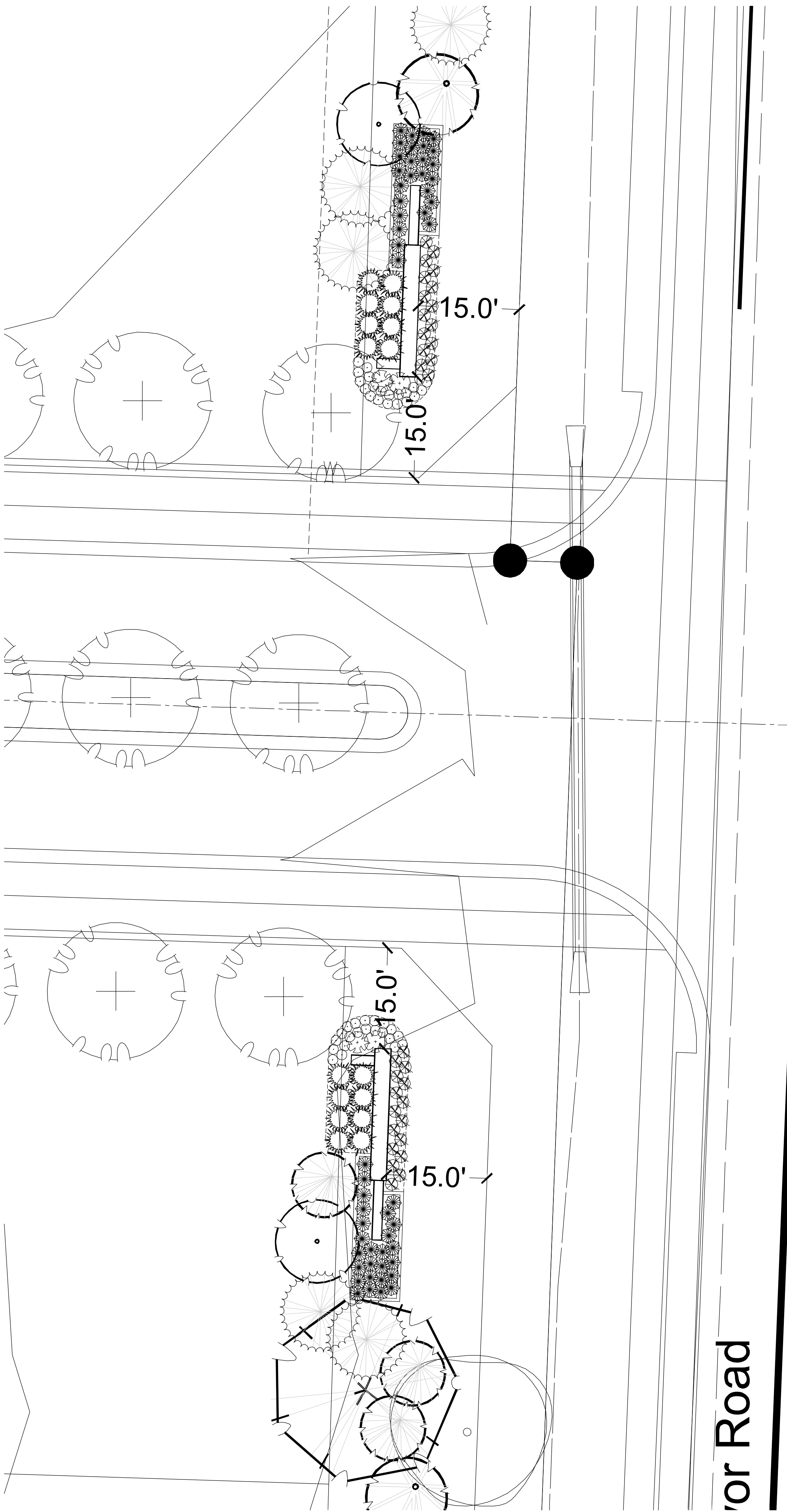
PROJECT  
Osage  
Highway 150 and  
Pryor Road  
Lee's Summit, MO



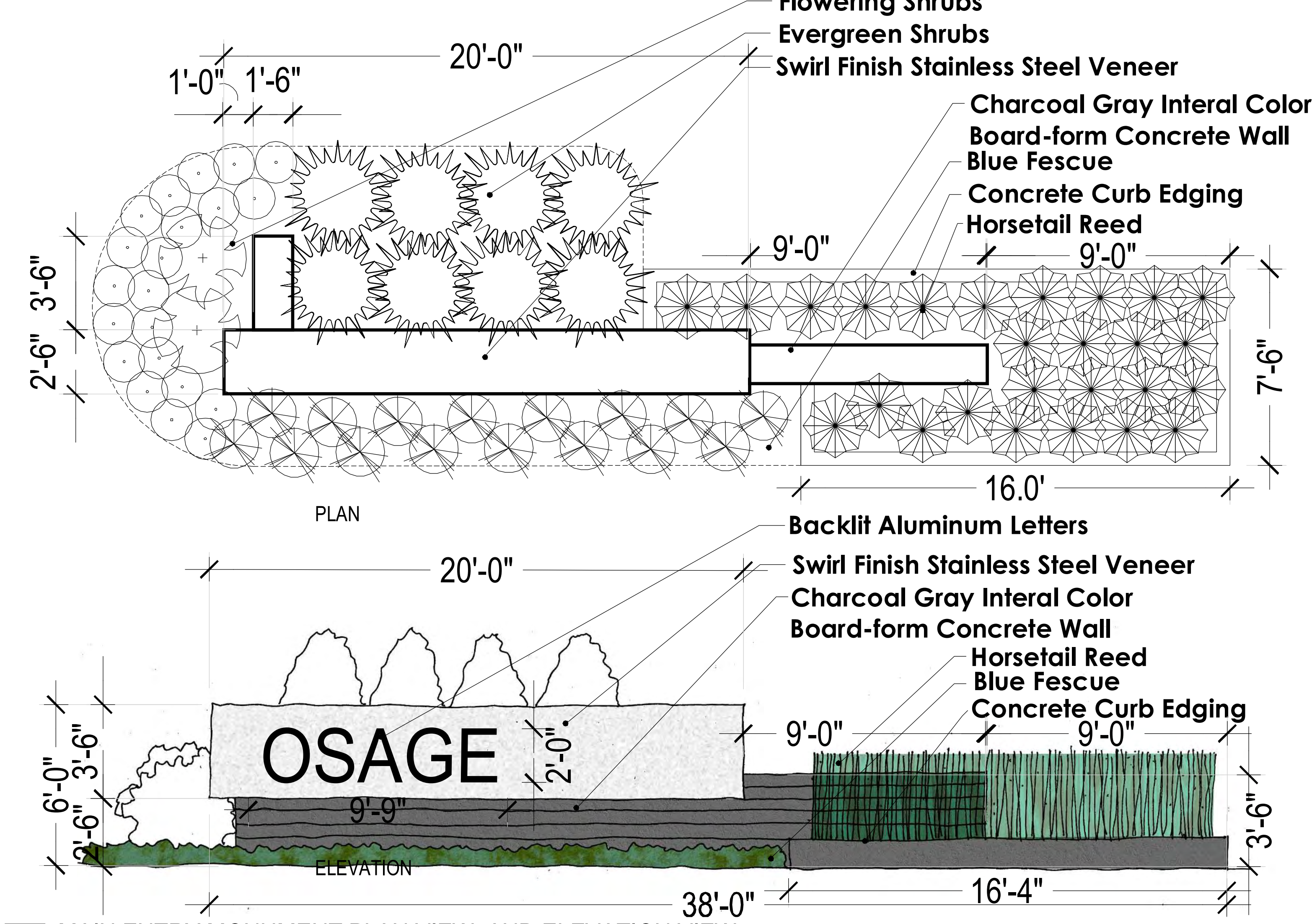
Date: 10.3.19  
Project #: 482  
Overall Plan

L1

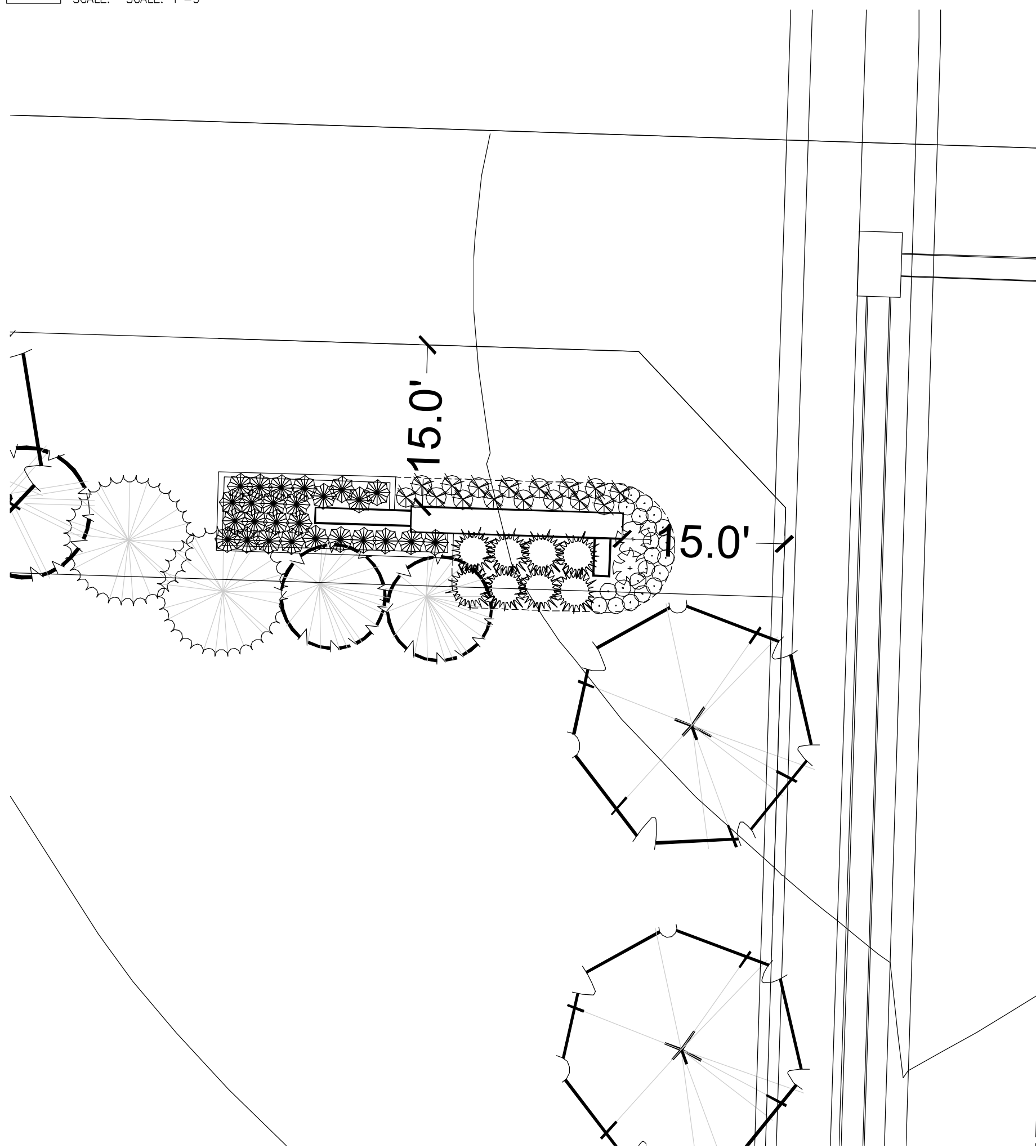




1 PRYOR ROAD ENTRY MONUMENT LANDSCAPE PLAN  
SCALE: 1"=10'-0"



2 MAIN ENTRY MONUMENT PLAN VIEW, AND ELEVATION VIEW  
SCALE: SCALE: 1"=3'



3 CLAYTON PLACE ENTRY MONUMENT LANDSCAPE PLAN  
SCALE: 1"=20'-0"

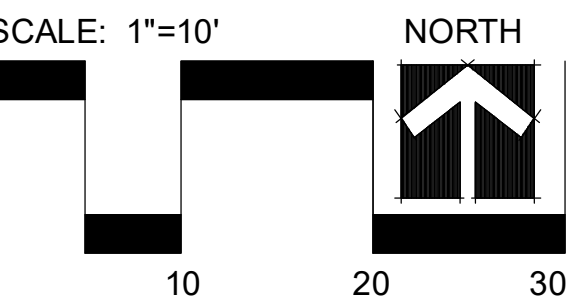
#### Landscape Schedule

Symbol	Qty.	Botanical Name	Common Name	Min.Root	Min.Size	Caliper	Remarks
OVERSTORY TREES							
55	Gleditsia triacanthos "Skyline"	Shademaster Honeylocust				3"	6' min. clear., ground to canopy
104	Platanus x acerifolia	London Plane Tree				3"	6' min. clear., ground to canopy
121	Acer x truncatum "Warrenred"	Pacific Sunset Maple				3"	6' min. clear., ground to canopy
53	Quercus bicolor	Swamp White Oak				3"	6' min. clear., ground to canopy
68	Acer griseum	Paperbark Maple				3"	6' min. clear., ground to canopy
36	Ulmus parvifolia	Lacebark Elm				3"	6' min. clear., ground to canopy
EVERGREEN TREES							
107	Juniperus chinensis "Keteleeri"	Keteleeri Juniper			8' ht.		symmetrical pyramidal form
78	Picea abies	Norway Spruce			8' ht.		symmetrical pyramidal form
101	Picea pungens	Colorado Blue Spruce			6' ht.		symmetrical pyramidal form
ORNAMENTAL TREES							
82	Cercis canadensis	Eastern Redbud				3"	
20	Cornus florida "Cloud Nine"	Cloud 9 Dogwood				3"	
DECIDUOUS SHRUBS/GRASSES							
101	Liriope spicata "Silver Dragon"	Silver Dragon Liriope		1 gal.			Plant @ 18" O.C.
80	Festuca ovina glauca	Dwarf Blue Fescue		1 gal.			Plant @ 18" O.C.
13	Abelia x grandiflora Kaleidoscope	Kaleidoscope Abelia		3 gal.	18" ht. min.		Plant @ 4' O.C.
138	Equisetum hyemale	Horsetail Reed		1 gal.			Plant @ 18" O.C.
EVERGREEN SHRUBS							
51	Juniperus chinensis "Spartan"	Spartan Juniper			5' ht.		Symmetrical pyramidal form



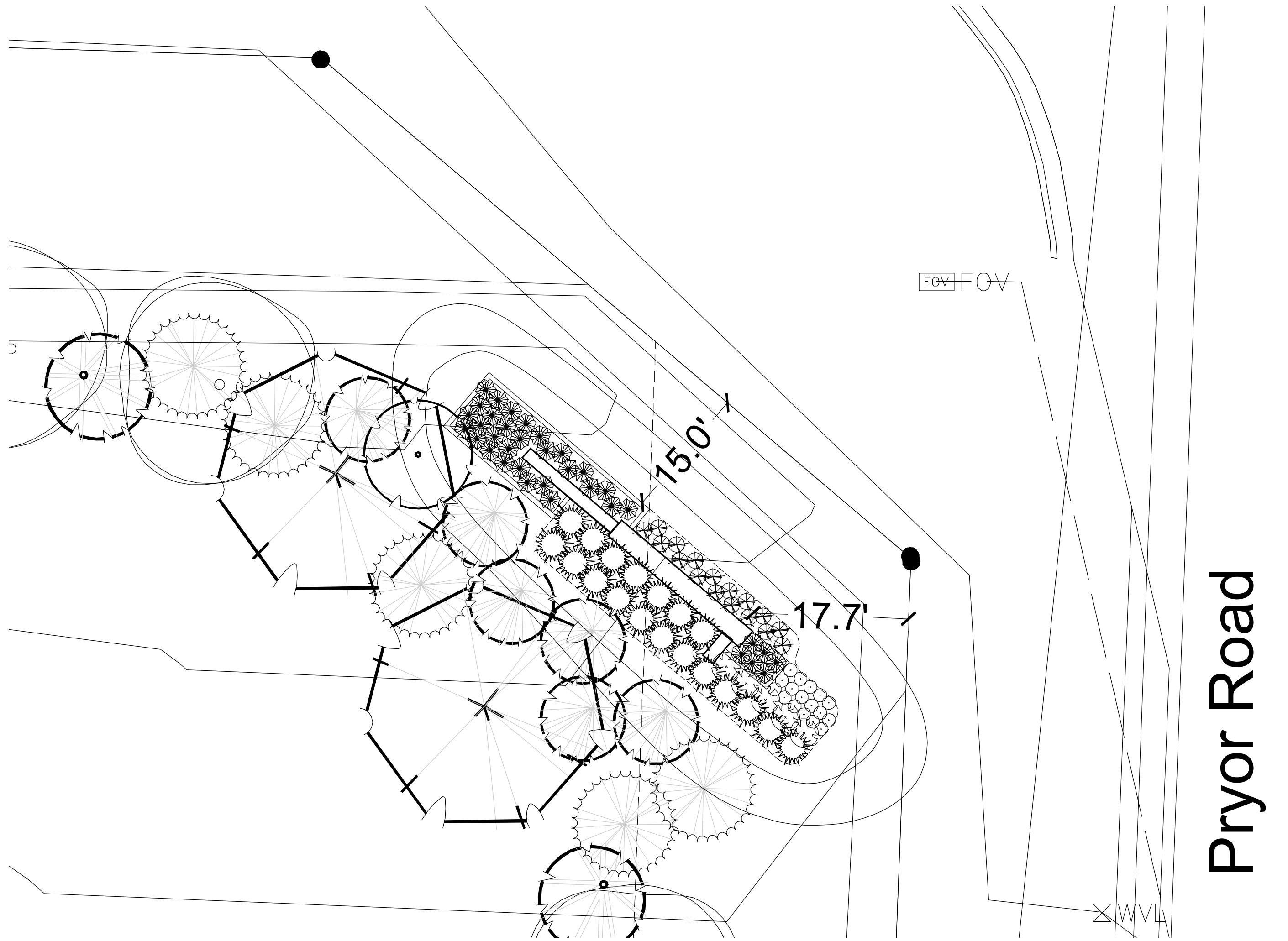
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120 SE 30th St  
Lee's Summit, MO 64082

PROJECT  
Osage  
Highway 150 and  
Pryor Road  
Lee's Summit, MO

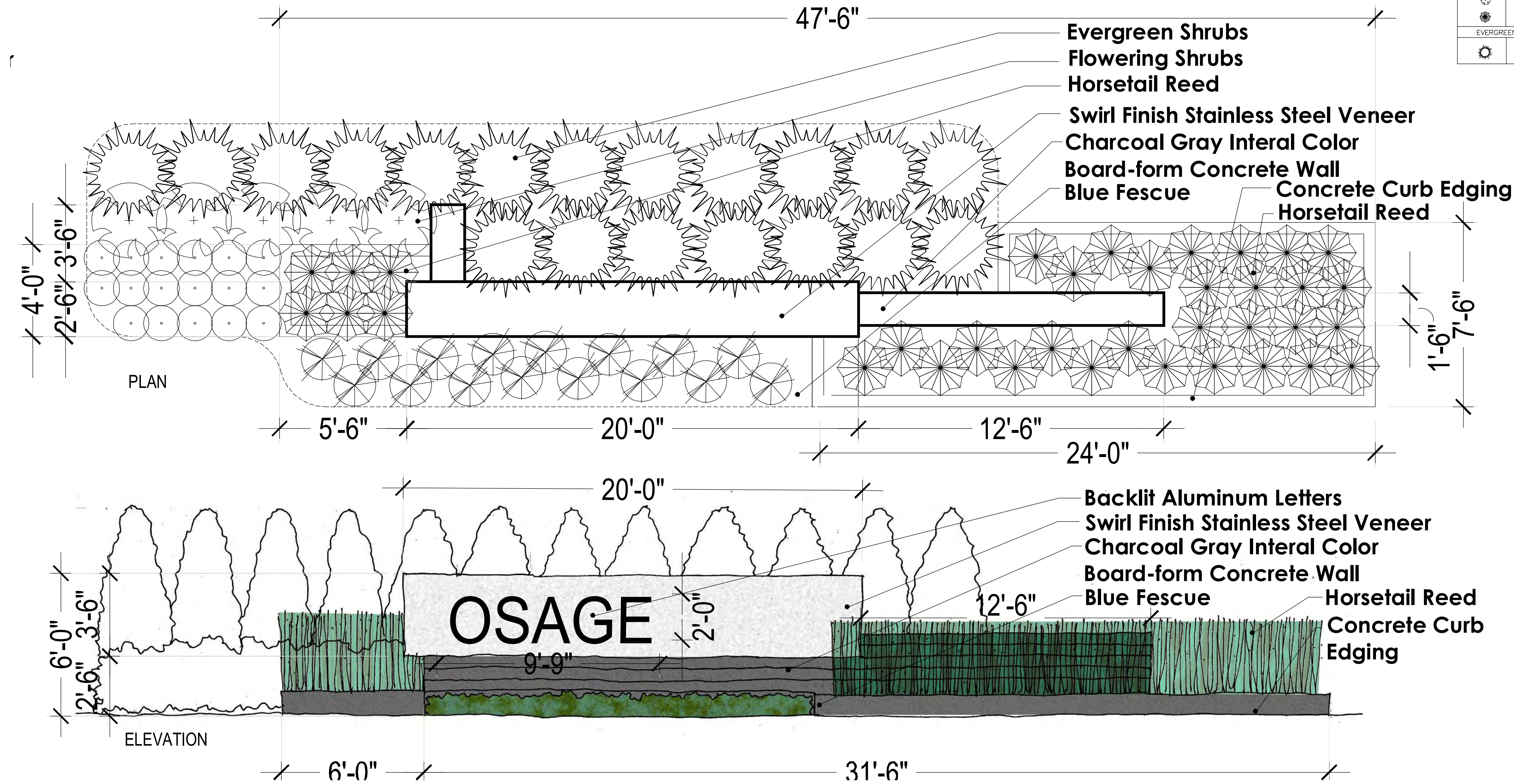


Date: 10.3.19  
Project #: 482  
Entry Monuments





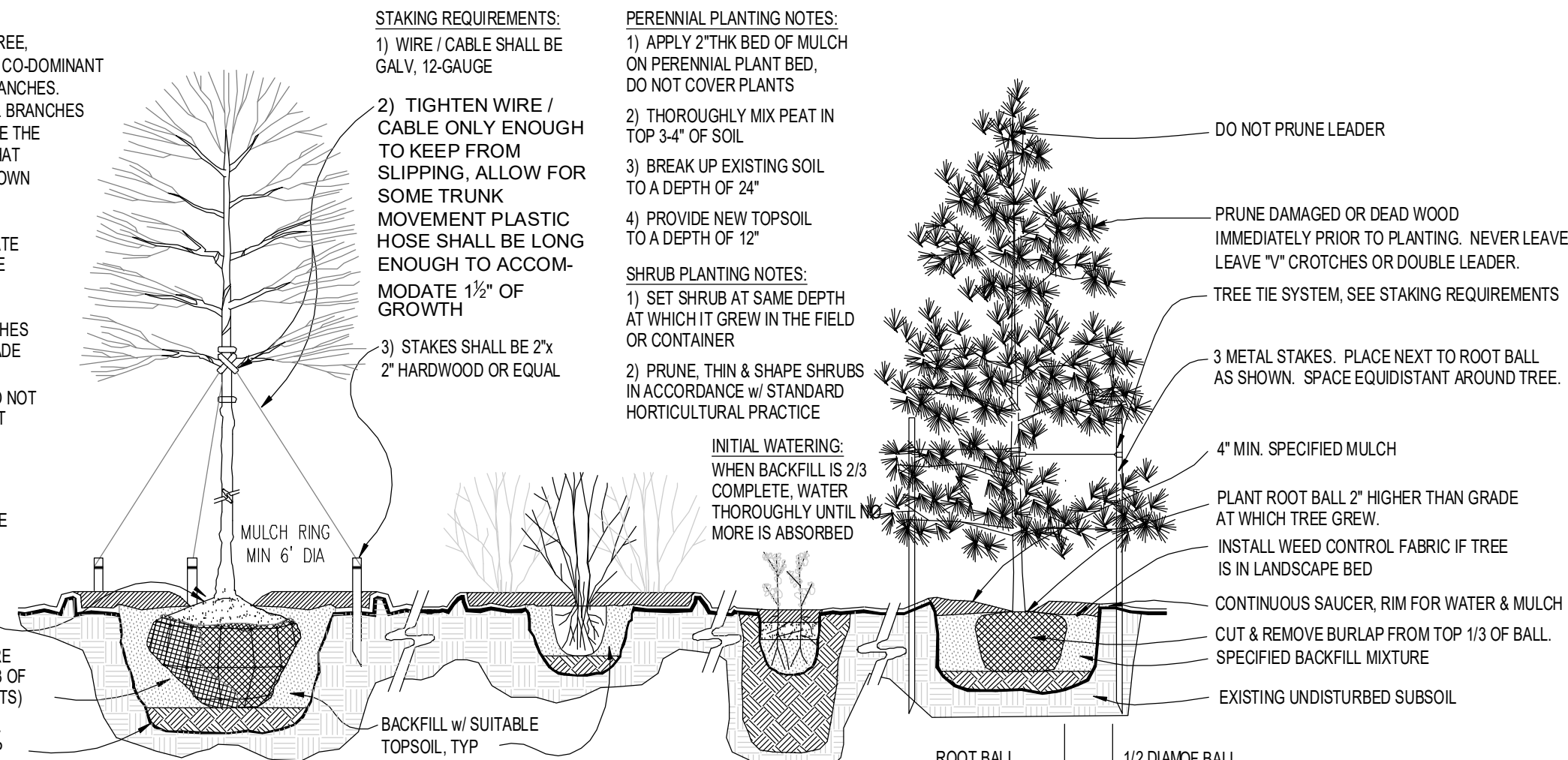
1 CORNER ENTRY MONUMENT LANDSCAPE PLAN  
SCALE: 1"=10'-0"



3 CORNER ENTRY MONUMENT  
SCALE: 1"=3'

TREE PLANTING NOTES:  
1) DO NOT HEAVILY PRUNE THE TREE, PRUNE ONLY CROSSOVER LIMBS, CO-DOMINANT LEADERS, & BROKEN OR DEAD BRANCHES. SOME INTERIOR TWIGS & LATERAL BRANCHES MAY BE PRUNED. DO NOT REMOVE THE TERMINAL BUDS OF BRANCHES THAT EXTEND TO THE EDGE OF THE CROWN  
2) MARK THE NORTH SIDE OF THE TREE IN THE NURSERY, AND ROTATE TREE TO FACE NORTH AT THE SITE WHENEVER POSSIBLE  
3) SET TOP OF ROOT BALL 1-2 INCHES HIGHER THAN SURROUNDING GRADE  
4) APPLY 4"THK WOOD MULCH. DO NOT PLACE MULCH IN DIRECT CONTACT W/ TREE TRUNK  
5) EACH TREE MUST BE PLANTED SUCH THE TRUNK FLARE IS VISIBLE AT THE TOP OF THE ROOT BALL. TREES WHERE THE FLARE IS NOT VISIBLE SHALL BE REJECTED. DO NOT COVER THE TOP OF THE ROOT BALL W/ SOIL  
6) REMOVE ALL TWINE, ROPE, WIRE AND BURLAP FROM THE UPPER 1/3 OF ROOT BALL (REMOVE WIRE BASKETS)  
7) PLACE ALL ROOT BALLS ON UN-EXCAVATED OR TAMPED SOIL, TYP

2 PLANTING INSTALLATION DETAILS  
SCALE: NTS



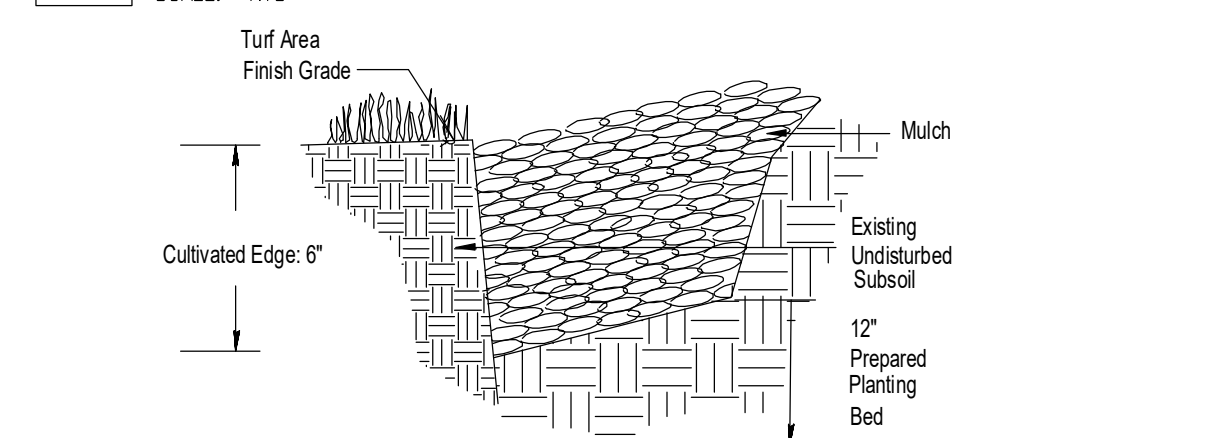
Landscape Schedule

Symbol	Qty.	Botanical Name	Common Name	Min.Root	Min.Size	Caliper	Remarks
OVERSTORY TREES							
	55	Oedipata triacanthos "Skyline"	Shademaster Honeylocust			3"	6' min. clear., ground to canopy
	104	Platanus x acerifolia	London Plane Tree			3"	6' min. clear., ground to canopy
	121	Acer x truncatum "Warrenred"	Pacific Sunset Maple			3"	6' min. clear., ground to canopy
	53	Quercus bicolor	Swamp White Oak			3"	6' min. clear., ground to canopy
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EVERGREEN TREES							
	107	Juniperus chinensis "Keteleeri"	Keteleeri Juniper		8' ht.		symmetrical pyramidal form
	78	Picea abies	Norway Spruce		8' ht.		symmetrical pyramidal form
	101	Picea pungens	Colorado Blue Spruce		6' ht.		symmetrical pyramidal form
ORNAMENTAL TREES							
	82	Cercia canadensis	Eastern Redbud			3"	
	20	Cornus florida "Cloud Nine"	Cloud 9 Dogwood			3"	
DECIDUOUS SHRUBS/GRASSES							
	101	Liriope spicata "Silver Dragon"	Silver Dragon Liriope	1 gal.			Plant @ 18" O.C.
	80	Festuca ovina glauca	Dwarf Blue Fescue	1 gal.			Plant @ 18" O.C.
	13	Abelia x grandiflora Kaleidoscope	Kaleidoscope Abelia	3 gal. 18" ht. min.			Plant @ 4' O.C.
	138	Equisetum hyemale	Horsetail Reed	1 gal.			Plant @ 18" O.C.
EVERGREEN SHRUBS							
	51	Juniperus chinensis "Spartan"	Spartan Juniper		5' ht.		Symmetrical pyramidal form.

Groundcover or Shrub Pit	Container	Shredded Bark Mulch	Inches Between Plants	Plant Quantities Per Square Foot
			10"	Square Feet x 1.50
			12"	Square Feet x 1.00
			18"	Square Feet x .44
			30"	Square Feet x .16
			36"	Square Feet x .11

NOTES: 1. SPACING FOR GROUNDCOVERS, SHRUBS, AND PERENNIALS NOTED ON PLANS.  
2. TILL SOIL IN BED TO A 12" MINIMUM DEPTH AND THOROUGHLY MIX IN SOIL AMENITIES AS NOTED ON PLANS.

4 GROUNDCOVER/SHRUB DETAIL  
SCALE: NTS



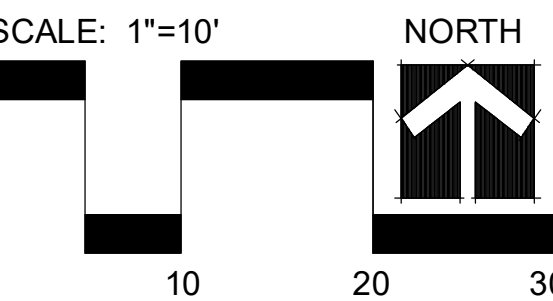
5 CULTIVATED EDGE DETAIL  
SCALE: NTS

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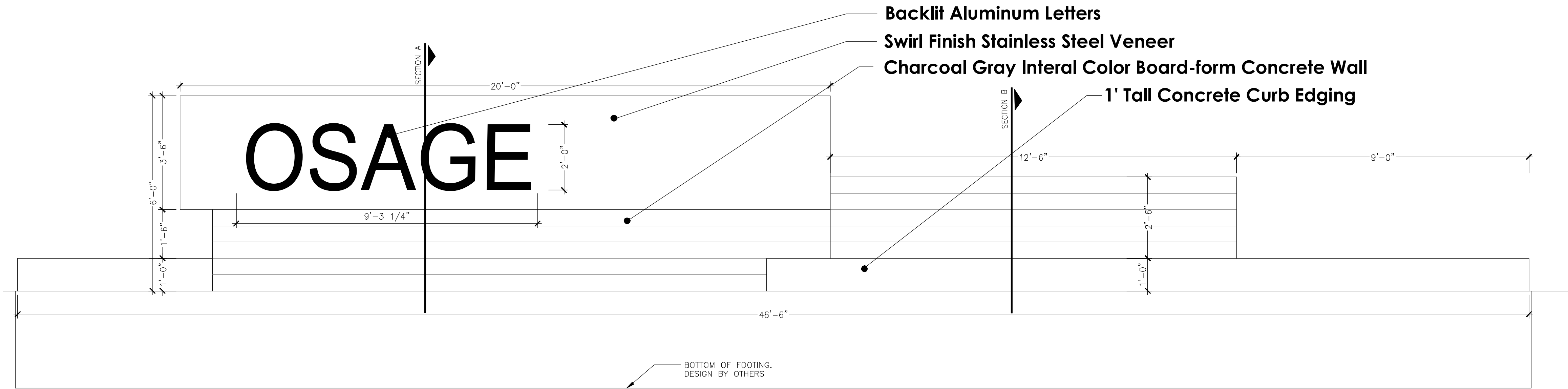
PROJECT  
Osage  
Highway 150 and  
Pryor Road  
Lee's Summit, MO



Date: 10.3.19  
Project #: 482  
Entry Monuments

L3





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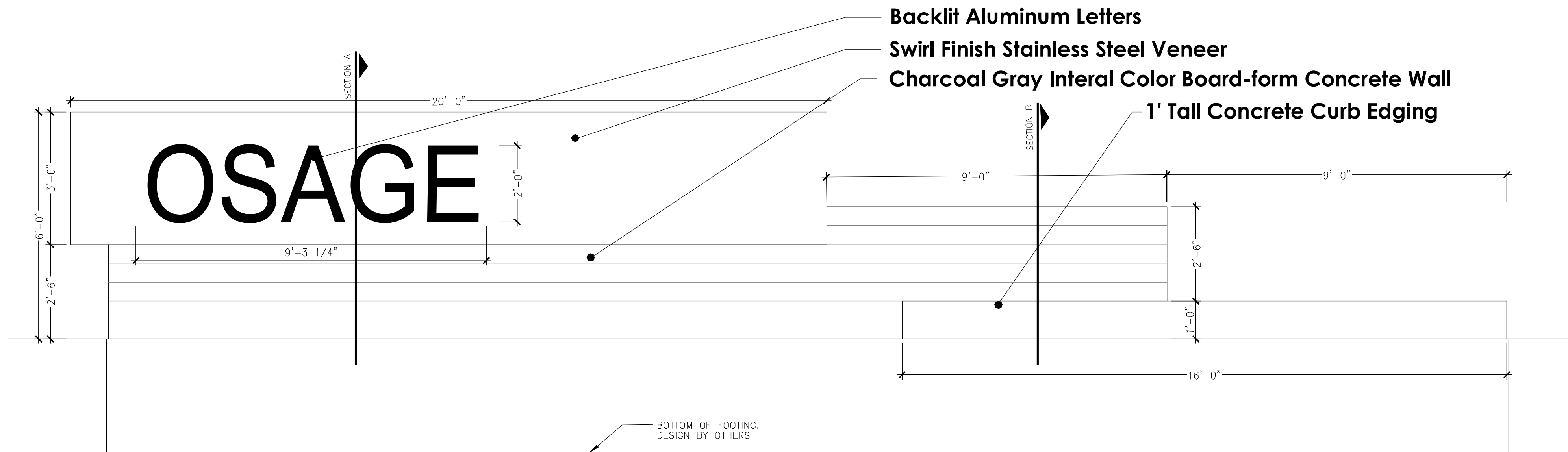


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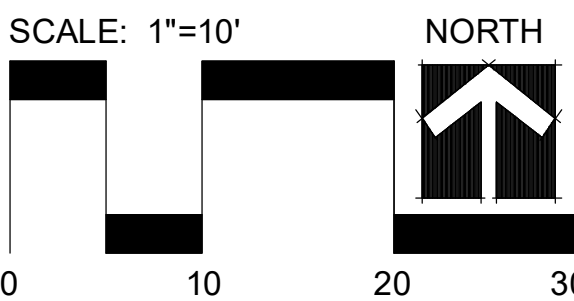
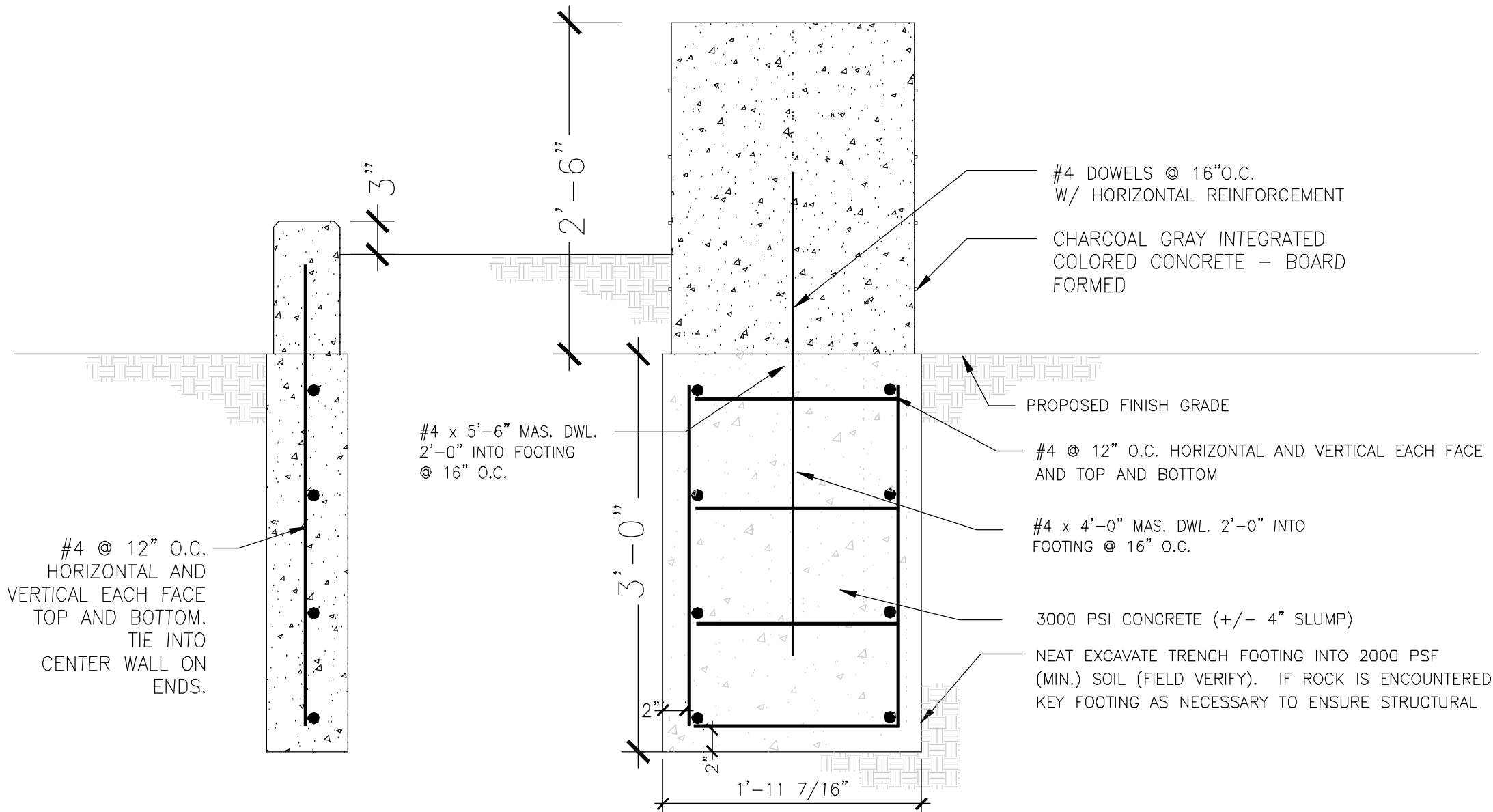
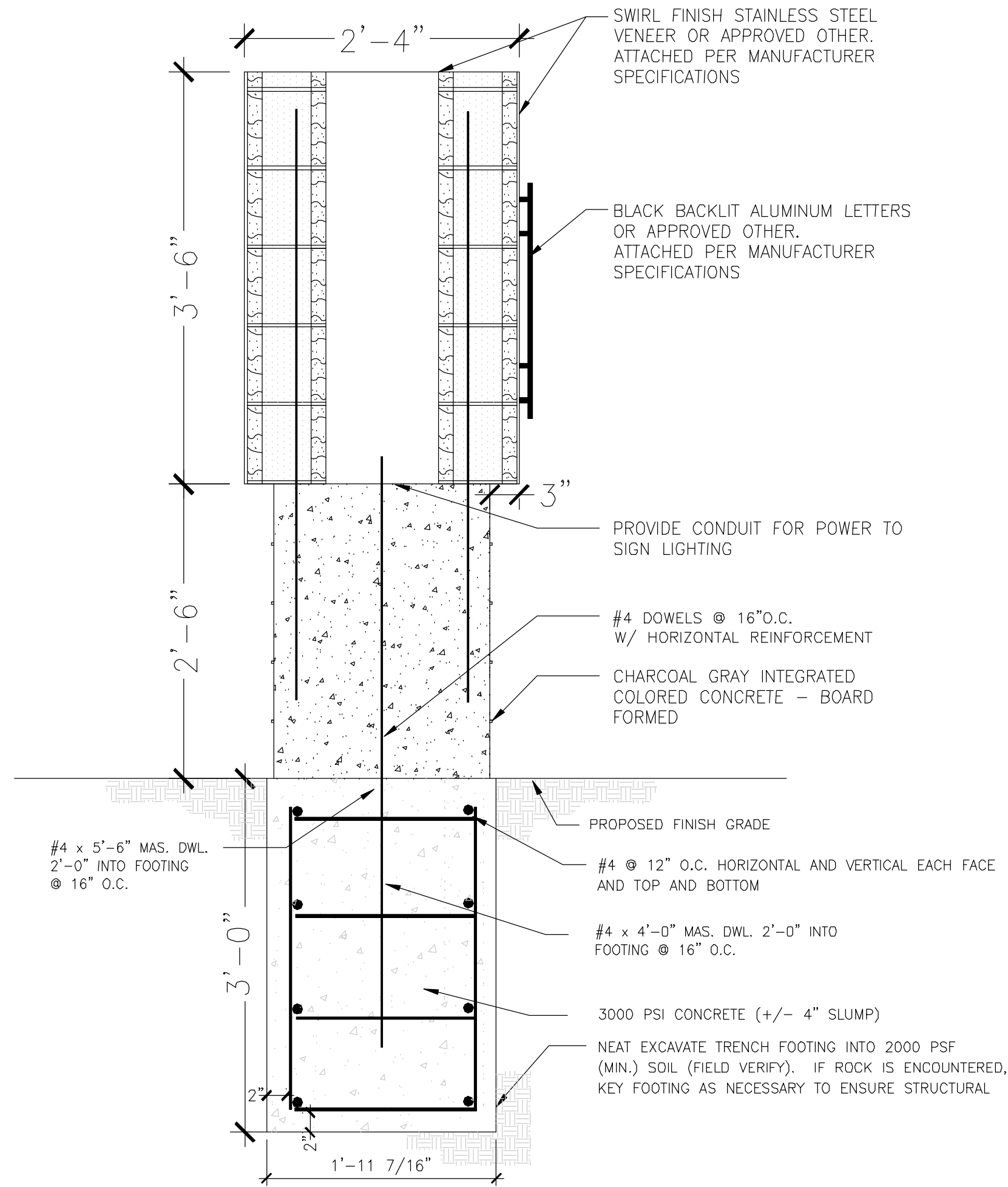
**PROJECT**  
Osage  
Highway 150 and  
Pryor Road  
Lee's Summit, MO

**1 MAIN ENTRY MONUMENT ELEVATION DETAIL**  
SCALE: NTS

**2 BOARD FORMED WALL IMAGE**  
SCALE: NTS



**3 CORNER ENTRY MONUMENT ELEVATION DETAIL**  
SCALE: NTS



Date: 10.3.19  
Project #: 482  
Entry Monuments

**4 SECTION DETAILS FOR ENTRY MONUMENTS**  
SCALE: NTS

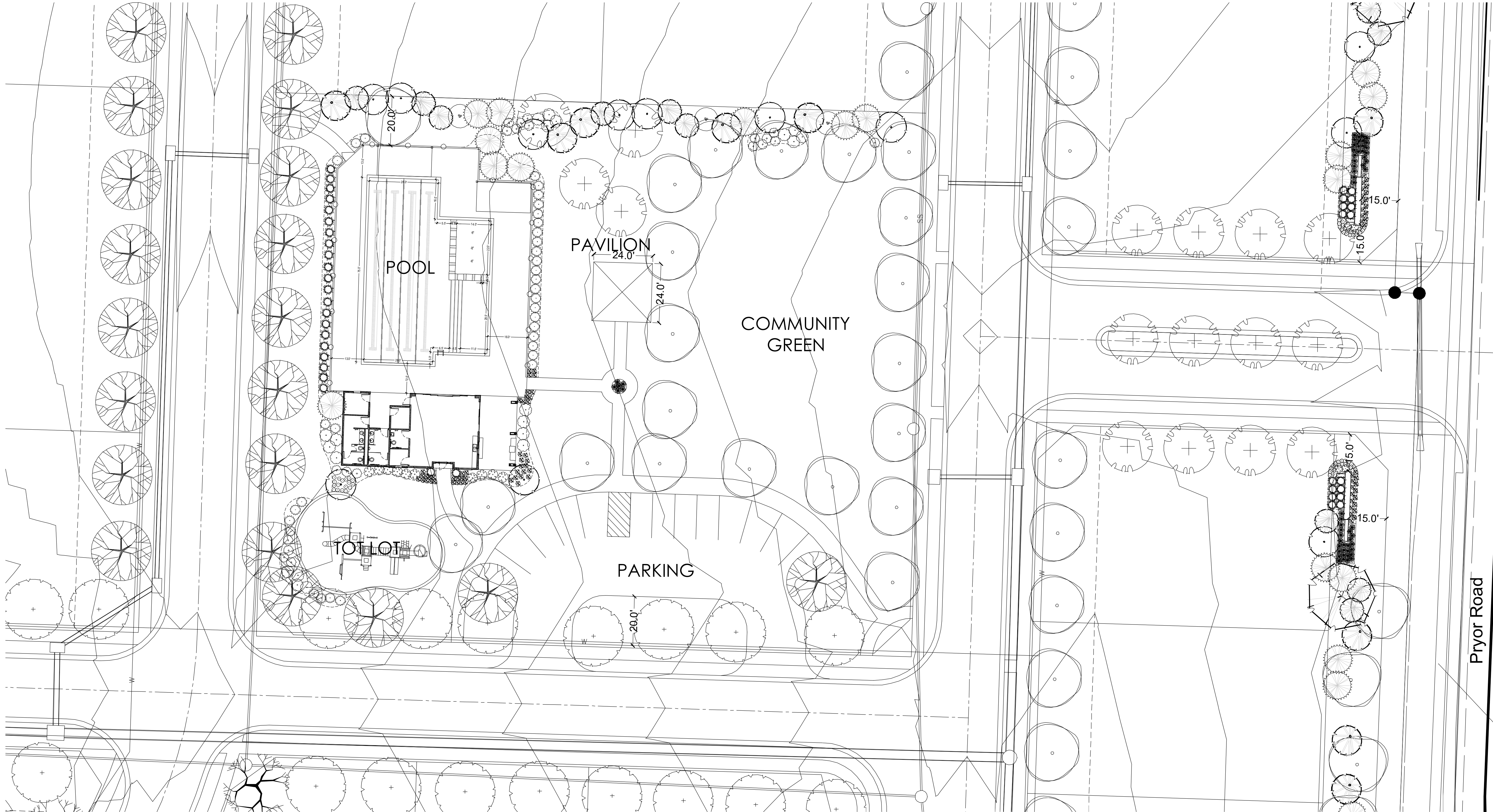
**5 SECTION DETAILS FOR ENTRY MONUMENTS**  
SCALE: NTS

**L4**

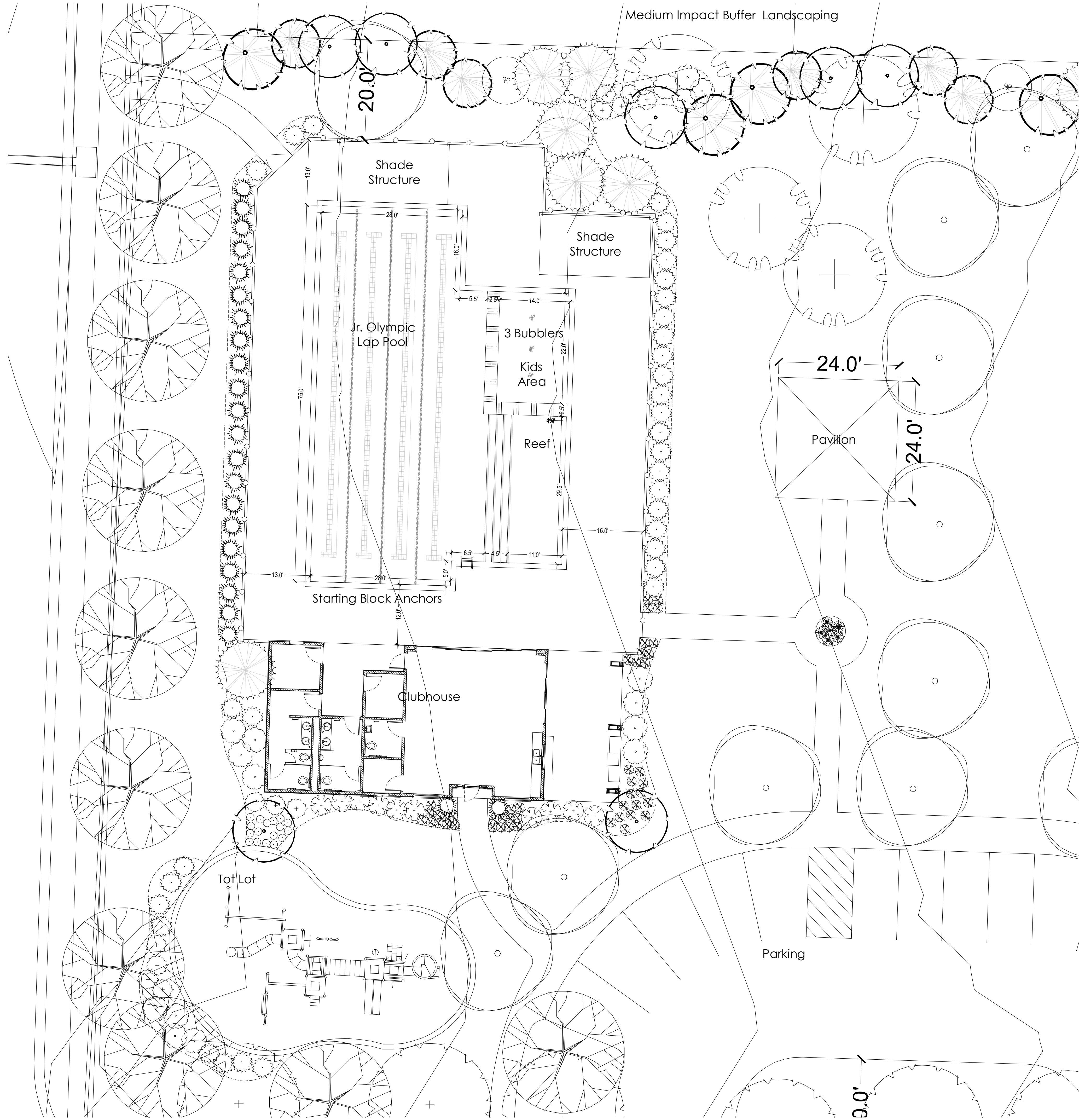


Landscape Schedule (Amenity area only)

Symbol	Qty.	Botanical Name	Common Name	Min.Root	Min.Size	Caliper	Remarks
OVERSTORY TREES							
	4	Platanus x acerifolia	London Plane Tree			3"	6' min. clear., ground to canopy
	14	Acer x truncatum 'Warrenred'	Pacific Sunset Maple			3"	6' min. clear., ground to canopy
	8	Quercus bicolor	Swamp White Oak			3"	6' min. clear., ground to canopy
EVERGREEN TREES							
	9	Juniperus chinensis 'Keteleeri'	Keteleeri Juniper		8' ht.		symmetrical pyramidal form
	5	Picea abies	Norway Spruce		8' ht.		symmetrical pyramidal form
	6	Picea pungens	Colorado Blue Spruce		6' ht.		symmetrical pyramidal form
ORNAMENTAL TREES							
	9	Cercis canadensis	Eastern Redbud			3"	
	2	Cornus florida 'Cloud Nine'	Cloud 9 Dogwood			3"	
DECIDUOUS SHRUBS/GRASSES							
	17	Liriope spicata 'Silver Dragon'	Silver Dragon Liriope	1 gal.			Plant @ 18" O.C.
	45	Festuca ovina glauca	Dwarf Blue Fescue	1 gal.			Plant @ 18" O.C.
	10	Hydrangea paniculata 'Quick Fire'	Little Quick Fire Hydrangea	3 gal.	18" Ht. min.		Plant @ 4' O.C.
	6	Equisetum hyemale	Horsetail Reed	1 gal.			Plant @ 18" O.C.
	20	Syringa X 'Penda'	Blooming Purple Lilac	5 gal.			Plant @ 5' O.C.
EVERGREEN SHRUBS							
	23	Juniperus chinensis 'Spartan'	Spartan Juniper		5' ht.		Symmetrical pyramidal form
	34	Juniperus chinensis 'Sea Green'	Sea Green Juniper	3 gal.			Plant @ 4' O.C.
	20	Juniperus chinensis 'Gold Coast'	Gold Coast Juniper	3 gal.			Plant @ 4' O.C.







Landscape Schedule (Amenity area only)

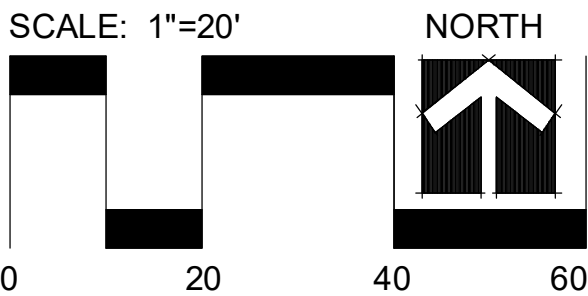
Symbol	Qty.	Botanical Name	Common Name	Min.Root	Min.Size	Caliper	Remarks
OVERSTORY TREES							
	4	Platanus x acerifolia	London Plane Tree		3"	6'	min. clear, ground to canopy
	14	Acer x truncatum 'Warrenred'	Pacific Sunset Maple		3"	6'	min. clear, ground to canopy
	8	Quercus bicolor	Swamp White Oak		3"	6'	min. clear, ground to canopy
EVERGREEN TREES							
	9	Juniperus chinensis 'Keteleeri'	Keteleeri Juniper		8"	ht.	symmetrical pyramidal form
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	6	Picea pungens	Colorado Blue Spruce		6"	ht.	symmetrical pyramidal form
ORNAMENTAL TREES							
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	2	Cornus florida 'Cloud Nine'	Cloud 9 Dogwood		3"		
DECIDUOUS SHRUBS/GRASSES							
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	45	Festuca ovina glauca	Dwarf Blue Fescue	1 gal.			Plant @ 18" O.C.
	10	Hydrangea paniculata 'Quick Fire'	Little Quick Fire Hydrangea	3 gal.	18"	ht. min.	Plant @ 4' O.C.
	6	Equisetum hyemale	Horsetail Reed	1 gal.			Plant @ 18" O.C.
	20	Syringa X 'Penda'	Blooming Purple Lilac	5 gal.			Plant @ 5' O.C.
EVERGREEN SHRUBS							
	23	Juniperus chinensis 'Spartan'	Spartan Juniper		5"	ht.	Symmetrical pyramidal form
	34	Juniperus chinensis 'Sea Green'	Sea Green Juniper	3 gal.			Plant @ 4' O.C.
	20	Juniperus chinensis 'Gold Coast'	Gold Coast Juniper	3 gal.			Plant @ 4' O.C.

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PROJECT  
Osage  
Highway 150 and  
Pryor Road  
Lee's Summit, MO



Date: 10.3.19  
Project #: 482  
Amenity Area Plan

L6





- BUILDING MATERIALS:**
- LP SMART LAP
  - LP SMART PANEL
  - LP TRIM
  - BOARD AND BAT
  - STUCCO
  - LP SHAKE SHINGLE SIDING
  - MANUFACTURED STONE VENEER
  - COMPOSITE SHINGLES
  - CEDAR BRACKETS AND CORBEL
  - TRIMMED FAUX LOUVER ACCENTS
  - COACH LIGHTS

OSAGE

---

TOWNHOME  
CONCEPT



Main	Tin Lizzie	SW7063
Accent	Cyanique	SW7067
Trim	Gray Matters	SW7069

Main	Krystone Gray	SW7504
Accent	Krystone Steel	SW7415
Trim	White Duck	SW701D

Main	Gauntlet Gray	SW7019
Accent	Bovetail	SW7018
Trim	Snowbound	SW7084

Main	Attitude Gray	SW7090
Accent	Cornwall Slate	SW9193
Trim	Natural Tan	SW7567

Main	Summit Gray	SW7669
Accent	Web Gray	SW7075
Trim	Alabaster	SW7008

Main	Grays Harbor	SW6236
Accent	Cadet	SW9343
Trim	Repose Gray	SW7015

ARCHITECTURAL ELEVATIONS - TOWNHOMES

# OSAGE REZONING & PRELIMINARY DEVELOPMENT PLAN

LEE'S SUMMIT, MO

2019

[illegible]

## REVISIONS





- BUILDING MATERIALS:
- LP SMART LAP
  - LP SMART PANEL
  - LP TRIM
  - BOARD AND BAT
  - STUCCO
  - LP SHAKE SHINGLE SIDING
  - MANUFACTURED STONE VENEER
  - COMPOSITE SHINGLES
  - CEDAR BRACKETS AND CORBEL
  - TRIMMED FAUX LOUVER ACCENTS
  - COACH LIGHTS



ARCHITECTURAL ELEVATIONS - TWIN GALLERY

OSAGE  
REZONING & PRELIMINARY DEVELOPMENT PLAN

LEE'S SUMMIT, MO

2019

drawn by: CJH  
checked by: CGW  
approved by: JFE  
QA/QC by: MGD  
project no.: 019-2339  
drawing no.: C\_ARC02\_0192339  
date: 2019.09.13

SHEET  
A2

REV. NO.	DATE	REVISIONS DESCRIPTION	BY
1	2019.10.15	Revised per DRC comments.	CJH

REVISIONS

**olsson**

Olsson - Civil Engineering  
Missouri Certificate of Authority #001592  
1301 Burlington Street  
North Kansas City, MO 64116

www.olson.com





- BUILDING MATERIALS:
- LP SMART LAP
  - LP SMART PANEL
  - LP TRIM
  - BOARD AND BAT
  - STUCCO
  - LP SHAKE SHINGLE SIDING
  - MANUFACTURED STONE VENEER
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olsson

Olsson - Civil Engineering  
Missouri Certificate of Authority #001592  
1301 Burlington Street  
North Kansas City, MO 64116

TEL 816.361.1177  
www.olsson.com

REV. NO.	DATE	REVISIONS DESCRIPTION	BY
1	2019.10.15	Revised per DRC comments.	CJH

ARCHITECTURAL ELEVATIONS - SINGLE-FAMILY

OSAGE  
REZONING & PRELIMINARY DEVELOPMENT PLAN

LEE'S SUMMIT, MO

drawn by: CJH

checked by: CGW

approved by: JFE

QA/QC by: MGD

project no.: 019-2339

drawing no.: C\_ARC03\_0192339

date: 2019.09.13

SHEET

A3



- BUILDING MATERIALS:**
- LP SMART LAP
  - LP SMART PANEL
  - LP TRIM
  - BOARD AND BAT
  - STUCCO
  - LP SHAKE SHINGLE SIDING
  - MANUFACTURED STONE VENEER
  - COMPOSITE SHINGLES
  - CEDAR BRACKETS AND CORBEL
  - TRIMMED FAUX LOUVER ACCENTS
  - COACH LIGHTS



## POOL RENDERINGS

# OSAGE REZONING & PRELIMINARY DEVELOPMENT PLAN

LEE'S SUMMIT, MO

2019

drawn by: C.J.H.  
checked by: CGW  
approved by: JFE  
QA/QC by: MGD  
project no.: 019-2339  
drawing no.: C\_ARC04\_0192339  
date: 2019.09.13

SHEET  
A4

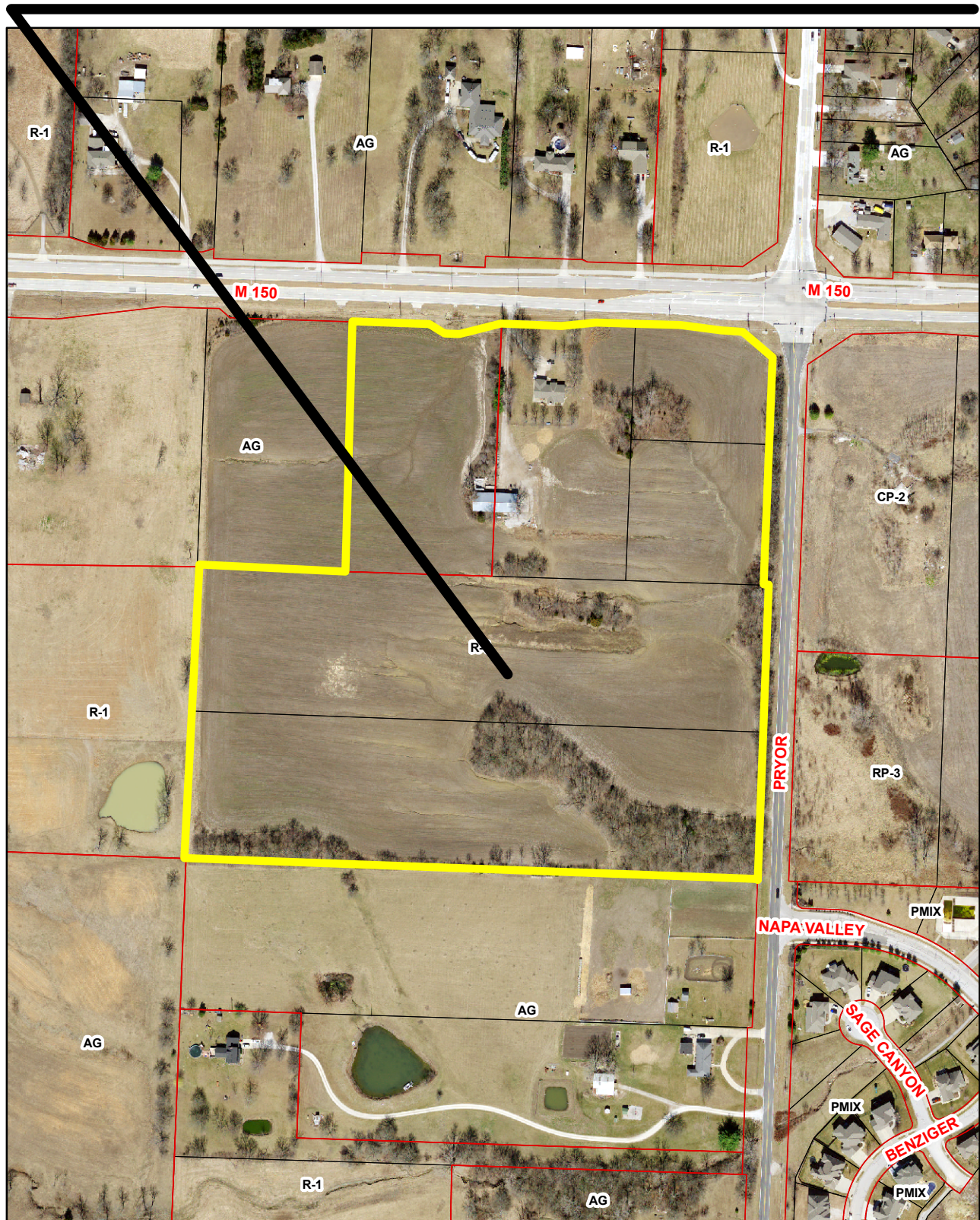
**olson**

Olsson - Civil Engineering  
Missouri Certificate of Authority #001592  
1301 Burlington Street  
North Kansas City, MO 64116

## REVISIONS



**Appl. #PL2019-307 - REZONING from AG and R-1 to RP-3  
and PRELIMINARY DEVELOPMENT PLAN - Osage  
Approximately 32 acres located at the southwest corner  
of SW M-150 Hwy and SW Pryor Rd  
Clayton Properties Group, Inc., applicant**



## Packet Information

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**File #: 2019-3137, Version: 1**

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Public Hearing: Application #PL2019-359- Unified Development Ordinance (UDO) Amendment - Changes to Article 1 - General Provisions, Article 2 - Applications and Procedures and Article 8 - Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant.

Issue/Request:

The purpose of this amendment is to create an administrative process for reasonable accommodations related to disabilities and to create a reference to ADA standards in the International Building Code (IBC).

Background:

Other communities have adopted administrative processes to allow for items such as wheelchair ramps in setbacks to accommodate those with disabilities. Normally structures located in setbacks require a variance and involve a minimum 30 day process with fees totaling \$465. As drafted, the amendment allows a staff board to examine each situation on a case-by-case basis and grant relief with minimal process. The other part of the amendment takes the ADA parking lot standards out of the UDO and creates a reference to the IBC. This is better for the City as new building codes are adopted every 6 years and some ADA standards change between code cycles.

Josh Johnson, AICP, Assistant Director of Plan Services

Ms. Dial made a motion to recommend approval of Application PL2019-359, Unified Development Ordinance (UDO) Amendment: Changes to Article 1, General Provisions; Article 2, Applications and Procedures and Article 8, Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant. Mr. Sims seconded. The motion carried unanimously.



### **Section 1.300 Reasonable Accommodation (New Section)**

- A. **Purpose.** This Section implements the policy of the City of Lee's Summit on requests for reasonable accommodation in its rules, policies and procedures for persons with disabilities as required by the Fair Housing Act, as amended, 42 U.S.C. Section 3604(f)(3)(B) and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132. The policy of the City is to comply fully with the provisions of the Fair Housing Act and Title II of the Americans with Disabilities Act.

Any person with disabilities and eligible under the Fair Housing Act or Title II of the Americans with Disabilities Act may request a reasonable accommodation with respect to the various provisions of the UDO including land use or zoning laws, rules, policies, practices and/or procedures of the City as provided by the Fair Housing Act and Title II of the Americans with Disabilities Act pursuant to the procedures set out in this Section.

Nothing in this Section requires persons with disabilities or operators of group homes for persons with disabilities acting or operating in accordance with applicable zoning, licensing or land use laws or practices to seek reasonable accommodation under this Section.

- B. **Definitions.** For the purposes of this Section, certain terms and words are hereby defined as follows:

*ACTS.* Collectively, the FHA and the ADA.

*ADA.* Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*, and its implementing regulations, 28 C.F.R. Part 35.

*APPLICANT.* An individual, group or entity making a request for reasonable accommodation pursuant to this Section.

*FHA.* The Fair Housing Act, Title III of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 *et seq.*, as may be amended.

*DISABLED PERSON.* Any person who is "handicapped" within the meaning of 42 U.S.C. § 3602(h) or a "qualified individual with a disability" within the meaning of 42 U.S.C. § 12131(2).

*DWELLING.* A "dwelling" as defined in 42 U.S.C. § 3602(b).

*UNIFIED DEVELOPMENT ORDINANCE,* The City of Lee's Summit Unified Development Ordinance consisting of Title IV of the City's Codes of Ordinances .

Unless specifically defined in this section all terms have the same meaning as contained in Chapter 411 of the City Code.



C. Requesting Reasonable Accommodations:

In order to make specific housing available to one or more individuals with disabilities, a disabled person or a person acting on his or her behalf at his or her request (collectively, the "Applicant") may request a reasonable accommodation relating to the various land use or zoning rules, policies, practices and/or procedure of the City applicable to such housing.

1. A request by an Applicant for reasonable accommodation relating to the UDO, rules, policies, practices and/or procedures shall be made orally or in writing on a reasonable accommodation request form provided by Development Services. The form shall contain:
  - a. The current zoning for the property;
  - b. The name, phone number and address of the owner of the fee interest of the property (if other than the Applicant);
  - c. The nature of the disability that requires the reasonable accommodation. In the event that the specific individuals who are expected to reside at the property are not known to the Applicant in advance of making the application, the Applicant shall not be precluded from filing the application, but shall submit details describing the range of disabilities that prospective residents are expected to have to qualify for the housing. The Applicant shall notify Development Services, in the event the residents at the location are not within the range described. Development Services shall then determine if an amended application and subsequent determination of reasonable accommodation is appropriate;
  - d. The specific type of accommodation requested by the Applicant. To the extent practicable, this portion should include information concerning the impact of the reasonable accommodation on the adjoining properties and area, the number of people who are expected to be availing themselves of the reasonable accommodation, the estimated number of people in an average week who will be necessary to provide services to the person(s) with disabilities at the property on an on-going basis, whether or not this type of reasonable accommodation is required to obtain a license from any state or county authority to operate, and any other information the Applicant thinks would assist in determining the reasonableness of the accommodation;
  - e. The Applicant should also note, if known, whether this accommodation requires any additional permits or licensure (e.g. business license); and
  - f. Whether the accommodation requested may be necessary to afford one or more disabled persons equal opportunity to use and enjoy a specific dwelling.
2. Development Services will provide the assistance necessary to an Applicant in making a request for reasonable accommodation, including information which the Development Services deems necessary to complete a reasonable accommodation request form. Upon the City's receipt of the necessary information to process the Applicant's request for reasonable accommodation, the Development Services shall use the information to complete a reasonable accommodation request form.
3. Development Services will provide the assistance necessary to any Applicant wishing to appeal a denial of a request for reasonable accommodation to ensure the process is accessible to the Applicant. The Applicant is entitled to be represented at all stages of the proceedings identified in this Section by a person designated by the Applicant.

4. Should the information provided by the Applicant to Development Services include medical information or records of the Applicant, including records indicating the medical condition, diagnosis or medical history of the Applicant, the Applicant may, at the time of submitting such medical information, request that Development Services to the extent allowed by law, treat such medical information as confidential information of the Applicant.
5. Development Services shall provide written notice to the Applicant, and any person designated by the Applicant to represent the Applicant in the application proceeding, of any request received by the Development Services for disclosure of the medical information or documentation which the Applicant has previously requested be treated as confidential by Development Services. Development Services will cooperate with the Applicant, to the extent allowed by law, in actions initiated by the Applicant to oppose the disclosure of such medical information or documentation.

D. Jurisdiction.

1. **Directors Consideration (Staff Committee).** A Staff Committee comprised of Development Services, Public Works and the Fire Department Directors or their designees (Staff Committee) is hereby created and charged with the responsibilities and duties set out herein. The Staff Committee shall have the authority to consider and act on requests for reasonable accommodation. When a request for reasonable accommodation is filed with Development Services, it will be referred to the Staff Committee for review and consideration. The Staff Committee shall issue a written determination within thirty (30) days of the date of receipt of a completed application and may: (1) grant the accommodation request, or (2) deny the request, in accordance with federal or state law. Any such denial shall be in writing and shall state the grounds therefore. All written determinations shall give notice of the right to appeal and the right to request reasonable accommodation in the appeals process. The notice of determination shall be sent to the Applicant by certified mail, return receipt requested and by regular mail.
2. If reasonably necessary to reach a determination on the request for reasonable accommodation, the Staff Committee may, prior to the end of said thirty (30) day period, request additional information from the Applicant, specifying in detail what information is required. The Applicant shall have fifteen (15) days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the thirty (30) day period to issue a written determination shall be stayed. The Staff Committee shall issue a written determination within thirty (30) days after receipt of the additional information. If the Applicant fails to provide the requested additional information within said fifteen (15) day period, the Staff Committee shall issue a written determination within thirty (30) days after expiration of said fifteen (15) day period.

E. Findings for Reasonable Accommodation.

The following findings, while not exhaustive of all considerations and findings that may be relevant, must be made before any action is taken to approve or deny a request for reasonable accommodation and must be incorporated into the record relating to such approval or denial:

1. **Whether** the accommodation requested may be necessary to afford one or more persons with disabilities equal opportunity to use and enjoy a specific dwelling;

2. Whether the requested accommodation would require a fundamental alteration to the City's zoning scheme; and
3. Whether the requested accommodation would impose undue financial or administrative burdens on the City.

A request for a reasonable accommodation shall not be denied for reasons which violate the provisions of the Acts. This order does not obligate the City to grant any accommodation request unless required by the provisions of the Acts or applicable Missouri State law.

**F. Appeals.**

1. Within thirty (30) days after the date the Staff Committee mails a written adverse determination to the Applicant, the Applicant requesting reasonable accommodation may appeal the adverse determination.
2. All appeals shall contain a statement of the grounds for the appeal.
3. If an individual Applicant needs assistance in appealing a determination, Development Services will provide the assistance necessary to ensure that the appeal process is accessible to the Applicant. All Applicants are entitled to be represented at all stages of the appeal proceeding by a person designated by the Applicant.
4. Appeals shall be to the Board of Zoning Adjustment pursuant to Section \_\_\_\_\_. All determinations on appeal shall address and be based upon the finding that the accommodation requested is necessary to afford one or more disabled persons equal opportunity to use and enjoy a specific dwelling and shall be consistent with the Acts.
5. An Applicant may request reasonable accommodation in the procedure by which an appeal will be conducted.

G. **Fees.** The City shall not impose any additional fees or costs in connection with a request for reasonable accommodation under the provisions of this Section or an appeal of a denial of such request by the Staff Committee. Nothing in this ordinance obligates the City to pay an Applicant's attorney fees or costs.

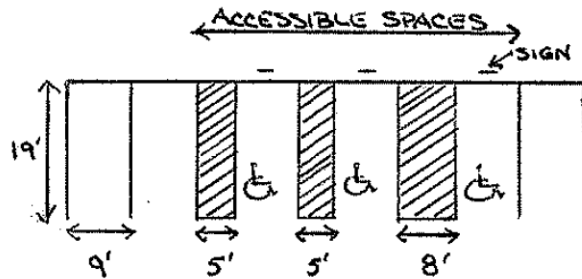
H. **Stay of Enforcement.** While an application for reasonable accommodation or appeal of a denial of said application is pending before the City, the City will not enforce the subject zoning ordinance against the Applicant.

I. **Record-keeping.** The City shall maintain records of all oral and written requests submitted under the provisions of this Section, and the City's responses thereto, as required by state law.

**Sec. 8.580. - Accessible parking spaces.**

Accessible parking spaces shall be designed and constructed to the standards found in the City's adopted version of the International Building Code.

- A. ~~A portion of the total number of required off-street parking spaces in each parking area shall be specifically designated and reserved for use by persons with physical disabilities.~~
- B. ~~One in every eight required accessible spaces (but no less than one) shall be adjacent to an aisle eight feet wide clearly marked with a sign indicating that the space is "van accessible". All other accessible spaces shall have an adjacent aisle five feet wide.~~



- C. ~~Accessible spaces shall be provided in each parking lot in the following ratio to the total number of spaces required for the use. These spaces shall be counted as part of the total number of parking spaces required by this division. A modification or variance may not be granted for the number of required accessible spaces.~~

Table 8-3  
ACCESSIBLE SPACES REQUIRED

Spaces Required for Use	Auto Accessible	Van Accessible	Total
1 to 25	0	4	4
26 to 50	4	4	2

51 to 75	2	1	3
76 to 100	3	1	4
101 to 150	4	1	5
151 to 200	5	1	6
201 to 300	6	1	7
301 to 400	7	1	8
401 to 500	7	2	9
501 to 1,000	7 per 8 accessible spaces	1 per 8 accessible spaces	2% of total spaces
1,001 and over	7 per 8 accessible spaces	1 per 8 accessible spaces	20, plus 1 per 100 spaces over 1,000

- 
- ~~D. Access aisles shall be on the same level as the parking spaces they serve.~~
- ~~E. Accessible parking spaces shall be located on a surface with a slope not exceeding one vertical foot in 50 horizontal feet.~~
- ~~F. Accessible spaces shall be located at the nearest point to the front building entry and/or accessible ramp. Accessible spaces separated from the front building entry by a drive aisle shall have clearly discernable cross walks.~~
- ~~G. Accessible ramps shall be designed and constructed so as to be integrated into the sidewalk. Ramps shall not be located within or extend into an accessible space, access aisle or any other portion of the parking lot.~~
- ~~H. Parking spaces for vans shall have a vertical clearance of 98 inches minimum at the space and along the vehicular route thereto. In cases of a loading zone, a minimum vertical clearance of 114 inches shall be provided at passenger loading zones and along vehicle access routes to such areas from site entrances.~~
- ~~I. Every accessible parking space required by this division shall be identified by a sign, mounted on a pole or other structure, located between 36 inches and 60 inches above the ground, measured from the bottom of the sign, at the head of the parking space. A sign identifying an accessible parallel parking space shall be mounted 84 inches above the ground, measured~~

~~from the bottom of the sign, and shall be placed at a point parallel to the center of the parking space. All identifying signs shall be 12 inches wide by 18 inches in height and meet the requirements set forth in the Manual on Uniform Traffic Control Devices, as referenced in the Lee's Summit General Code of Ordinances.~~

- ~~J. In addition to the requirements of this section, all accessible parking spaces and areas shall comply with the requirements of the federal Americans with Disabilities Act.~~

**Sec. 2.360. - Final development plans; applications—Contents and submission requirements.**

- A. All general application requirements contained in Section 2.040.A.
- B. All plan submission requirements in Section 2.040.B.
- C. Contents. The proposed final development plan shall also include the following:
  - 1. A legal description which accurately describes the limits of the property.
  - 2. Area of land in square feet and acres.
  - 3. Location and limits of the one percent annual chance flood, as set forth on the current FEMA maps with reference to the panel number. Elevations shall be provided if shown on the FEMA map.
  - 4. Layout, number and approximate dimensions of lots and approximate lot areas.
  - 5. Name, location, width, radii, centerline, and grade of streets and alleys, both public and private.
  - 6. Location, width and limits of all existing and proposed sidewalks and public walkways.
  - 7. Location and width of proposed easements.
  - 8. Building setback lines from streets with dimensions.
  - 9. Location and approximate dimensions of culverts and bridges.
  - 10. Location of existing and proposed driveways, curb cuts, median breaks and turn lanes.
  - 11. The location and size of all utility lines, including water, storm water, and sanitary sewers.
  - 12. Final analysis of the capacity of the existing sanitary sewer receiving system.
  - 13. Final water and sanitary sewer plans.
  - 14. Appropriate water service demand data (including, but not limited to, planned land usage, densities of proposed development, pipe sizes, contours and fire hydrant layout) to allow for the preliminary analysis of the demand for water service if required by the City Engineer.
  - 15. Final storm water collection, detention and erosion control plans.
  - 16. Information (proposed size, nature and general location) on all proposed storm water management facilities and detention facilities. A final storm water report shall be submitted unless the storm water report requirement was waived by the City Engineer or there are no required revisions to the preliminary storm water report. All storm water reports shall include:

- a. Current and proposed land use assumptions,
  - b. Identification of the watershed in which the project is located,
  - c. Identification of offsite drainage areas,
  - d. Surrounding property information,
  - e. Any other pertinent information about the site which may influence storm water runoff,
  - f. Proposed storm water facilities,
  - g. The downstream effects of the development,
  - h. Calculations for the 100 percent, ten percent, and one percent storms. All calculations must be submitted with the report; a summary table is not acceptable,
  - i. If the storm water report indicates that detention is not required, supporting calculations evaluating the downstream effects must be provided,
  - j. All reports shall be signed and sealed by a professional engineer registered in the State of Missouri.
17. Location and size of proposed open space for public use proposed to be dedicated or reserved and any conditions of such dedication or reservation; parks, playgrounds, churches, or school sites or other special uses of land to be considered for public use, or to be reserved by deed or covenant for the use of all property owners in the subdivision.
  18. Location and dimensions of all parking spaces, accessible spaces, accessible routes, drive aisles, driveways, and curbs.
  19. Finished grades showing one-foot contours for the entire site (2-foot contour intervals may be allowed by the Director, depending on the site).
  20. All proposed and existing adjacent public street rights-of-way with centerline location.
  21. All proposed and existing adjacent public street and public drive locations, widths, curb cuts and radii.
  22. Sufficient dimensions to indicate relationship between buildings, property lines, parking areas and other elements of the plan.
  23. Location of all required building and parking setbacks.
  24. Location, dimensions, number of stories and area in square feet of all proposed buildings.
  25. The location of all oil and/or gas wells within the subject property.
  26. Limits, location, size and material to be used in all proposed retaining walls.
  27. Location and dimensions of all driveways, parking lots, parking stalls, aisles, loading and service areas and docks.
  28. Location, height, intensity and type of outside lighting fixtures for buildings and parking lots.
  29. Photometric diagram indicating the foot candle levels throughout the site and at the property lines.

30. The manufacturer's specification sheets for proposed exterior lighting to include both parking lot pole mounted and wall mounted fixtures. The specification sheets shall indicate the exact fixture to be used.
  31. Location, size, and type of material to be used in all screening of ground mounted mechanical equipment.
  32. The manufacturer's specification sheets for proposed mechanical equipment to be used.
  33. Location, size, and type of material of all proposed monument or freestanding signs.
  34. The location of adjacent developments, alignment and location of existing public and private driveways and streets, medians, and public and semi-public easements.
  35. Locations of existing and proposed fire hydrants.
  36. Sight triangles. (See Article 8, Division I.)
- D. Exterior building elevations.
1. Elevations of all sides of proposed buildings including notation indicating building materials to be used on exteriors and roofs.
  2. Location, size and materials to be used in all screening of rooftop mechanical equipment.
  3. A dashed line indicating the roof line and rooftop mechanical equipment.
- E. Floor plan showing dimensions and areas of all floors within proposed buildings and structures.
- F. Landscaping plans shall be submitted in accordance with Article III.
- G. Land Use Schedule. A land use schedule shall include the following:
1. Total floor area,
  2. Number of dwelling units,
  3. Land area,
  4. Number of required and proposed parking spaces,
  5. Impervious coverage, and
  6. Floor area ratio (FAR).
- H. The following shall be submitted in support of the application for final development plan approval:
1. Deeds of dedication for all rights-of-way or easements required as a result of preliminary development plan approval, if conveyance thereof is not to be made by plat.
  2. A copy of all proposed covenants and restrictions applicable to the development.
  3. A copy of the property owners association bylaws as evidence of the establishment of the agency for the ownership and maintenance of any common open space and all assurances of the financial and administrative ability of such agency.
  4. Evidence of satisfaction of any conditions of the preliminary development plan approval that were conditions precedent to consideration of the final development plan.



5. An application for engineering approval pursuant to the Design and Construction Manual. All applications for engineering approval shall be accompanied by the number of copies of the following as required by the City Engineer:
  - a. Engineering drawings with the information required in the Design and Construction Manual;
  - b. Plans, profiles and details for streets, curb and gutters, sidewalks, storm and sanitary sewers, and water lines;
  - c. A written benchmark description and elevation;
  - d. A storm water Master Drainage Plan that contains detailed plans for storm drainage, storm water detention, and grading plans, as specified in the Design and Construction Manual.

**SECTION 1106**  
**PARKING AND PASSENGER LOADING FACILITIES**

**1106.1 Required.**

Where parking is provided, *accessible* parking spaces shall be provided in compliance with Table 1106.1, except as required by Sections 1106.2 through 1106.4. Where more than one parking facility is provided on a *site*, the number of parking spaces required to be *accessible* shall be calculated separately for each parking facility.

**Exception:** This section does not apply to parking spaces used exclusively for buses, trucks, other delivery vehicles, law enforcement vehicles or vehicular impound and motor pools where lots accessed by the public are provided with an *accessible* passenger loading zone.

**TABLE 1106.1**  
**ACCESSIBLE PARKING SPACES**

<b>TOTAL PARKING SPACES PROVIDED IN PARKING FACILITIES</b>	<b>REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES</b>
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of total
1,001 and over	20, plus one for each 100, or fraction thereof, over 1,000

#### 1106.5 Van spaces.

For every six or fraction of six *accessible* parking spaces, at least one shall be a van-accessible parking space.

**Exception:** In Group U *private garages* that serve Group R-2 and R-3 occupancies, van-accessible spaces shall be permitted to have vehicular routes, entrances, parking spaces and access aisles with a minimum vertical clearance of 7 feet (2134 mm).

#### 1106.6 Location.

*Accessible* parking spaces shall be located on the shortest *accessible route* of travel from adjacent parking to an *accessible* building entrance. In parking facilities that do not serve a particular building, *accessible* parking spaces shall be located on the shortest route to an *accessible* pedestrian entrance to the parking facility. Where buildings have multiple *accessible* entrances with adjacent parking, *accessible* parking spaces shall be dispersed and located near the *accessible* entrances.

##### Exceptions:

1. In multilevel parking structures, van-accessible parking spaces are permitted on one level.
2. *Accessible* parking spaces shall be permitted to be located in different parking facilities if substantially equivalent or greater accessibility is provided in terms of distance from an *accessible* entrance or entrances, parking fee and user convenience.

#### 1106.7 Passenger loading zones.

Passenger loading zones shall be *accessible*.

##### 1106.7.1 Continuous loading zones.

Where passenger loading zones are provided, one passenger loading zone in every continuous 100 linear feet (30.4 m) maximum of loading zone space shall be *accessible*.

##### 1106.7.2 Medical facilities.

A passenger loading zone shall be provided at an *accessible* entrance to licensed medical and long-term care facilities where people receive physical or medical treatment or care and where the period of stay exceeds 24 hours.

##### 1106.7.3 Valet parking.

A passenger loading zone shall be provided at valet parking services.

##### 1106.7.4 Mechanical access parking garages.

Mechanical access parking garages shall provide at least one passenger loading zone at vehicle drop-off and vehicle pick-up areas.

## SECTION 502 PARKING SPACES

### 502.1 General.

Car and van parking spaces in parking lots shall comply with Sections 502.2 through 502.8. Car and van parking spaces provided as part of on-street parking shall comply with Sections 502.9 and 502.10. Where an electrical vehicle charging station is provided at a parking space, it shall comply with Section 502.11.

### 502.2 Vehicle space size.

Car parking spaces shall be 96 inches (2440 mm) minimum in width. Van parking spaces shall be 132 inches (3355 mm) minimum in width.

**Exception:** Where the adjacent access aisle is 96 inches (2440 mm) minimum in width, van parking spaces shall be 96 inches (2440 mm) minimum in width.

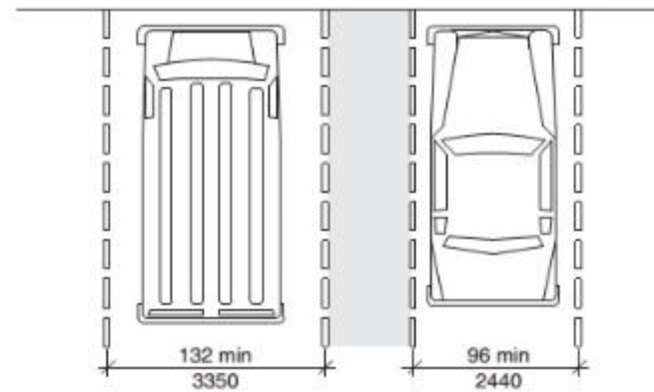


FIGURE 502.2(A)  
VEHICLE PARKING SPACE SIZE

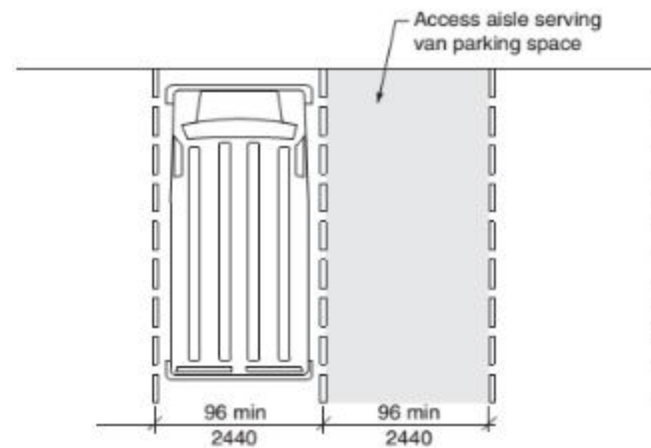


FIGURE 502.2(B)  
VAN PARKING SPACE SIZE EXCEPTION

**502.3 Vehicle space marking.**

Car and van parking spaces shall be marked to define the width. Where parking spaces are marked with lines, the width measurements of parking spaces and adjacent access aisles shall be made from the centerline of the markings.

**Exception:** Where parking spaces or access aisles are not adjacent to another parking space or access aisle, measurements shall be permitted to include the full width of the line defining the parking space or access aisle.

**502.4 Access aisle.**

Car and van parking spaces shall have an adjacent access aisle complying with Section 502.4.

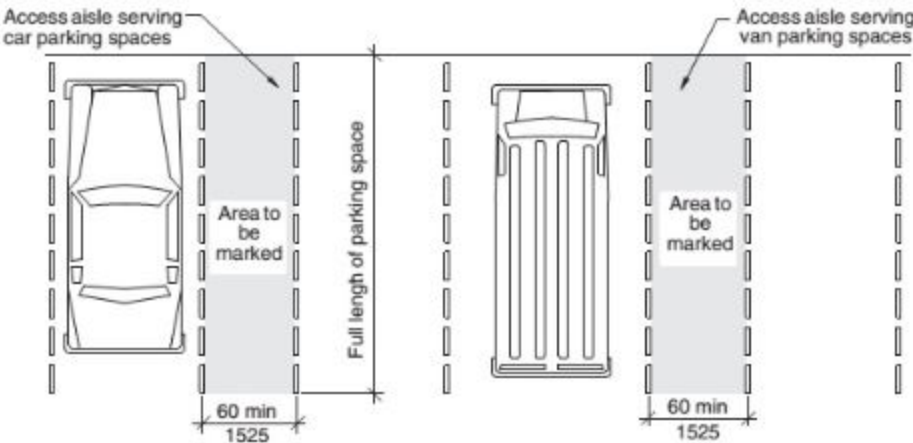


FIGURE 502.4  
PARKING SPACE ACCESS AISLE

**502.4.1 Location.**

Access aisles shall adjoin an accessible route. Two parking spaces shall be permitted to share a common access aisle. Access aisles shall not overlap with the vehicular way. Parking spaces shall be permitted to have access aisles placed on either side of the car or van parking space. Van parking spaces that are angled shall have access aisles located on the passenger side of the parking space.

**502.4.2 Width.**

Access aisles serving car and van parking spaces shall be 60 inches (1525 mm) minimum in width.

**502.4.3 Length.**

Access aisles shall extend the full length of the parking spaces they serve.

**502.4.4 Marking.**

Access aisles shall be marked so as to discourage parking in them. Where access aisles are marked with lines, the width measurements of access aisles and adjacent parking spaces shall be made from the centerline of the markings.

**Exception:** Where access aisles or parking spaces are not adjacent to another access aisle or parking space, measurements shall be permitted to include the full width of the line defining the access aisle or parking space.

#### **502.5 Floor surfaces.**

Parking spaces and access aisles shall comply with Section 302 and have surface slopes not steeper than 1:48. Access aisles shall be at the same level as the parking spaces they serve.

#### **502.6 Vertical clearance.**

A vertical clearance of 98 inches (2490 mm) minimum shall be provided at the following locations:

1. Parking spaces for vans.
2. The access aisles serving parking spaces for vans.
3. The vehicular routes serving parking spaces for vans.

#### **502.7 Identification.**

Where parking spaces are required to be identified by signs, the signs shall include the International Symbol of Accessibility complying with Section 703.6.3.1. Signs identifying van parking spaces shall contain the designation "van accessible." Signs shall be 60 inches (1525 mm) minimum above the floor of the parking space, measured to the bottom of the sign.

#### **502.8 Relationship to accessible routes.**

Parking spaces and access aisles shall be designed so that cars and vans, when parked, do not obstruct the required clear width of adjacent accessible routes.



# LEE'S SUMMIT MISSOURI

Development Services Department

## Application Information

Appl. #PL2019-359– Unified Development Ordinance (UDO) Amendment – Changes to Article 1 – General Provisions, Article 2 - Applications and Procedures and Article 8 – Site Design, to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant.

## Overview of Amendment

The purpose of this amendment is to create an administrative process for reasonable accommodations related to disabilities and to create a reference to ADA standards in the International Building Code (IBC).

## Background

Other communities have adopted administrative processes to allow for items such as wheelchair ramps in setbacks to accommodate those with disabilities. Normally, structures located in setbacks require a variance and involve a minimum 30-day process with fees totaling \$465. As drafted, the amendment allows a staff board to examine each situation on a case-by-case basis and grant relief with minimal process. The other part of the amendment takes the ADA parking lot standards out of the UDO and creates a reference to the IBC. This is better for the City as new building codes are adopted every 6 years and some ADA standards change between code cycles.

## Effective Date

Pending approval

## Affected UDO Section(s)

Article 1 – General Provisions, Section 1.300 Reasonable Accommodation (New Section)

### New Standard(s)

- A. **Purpose.** This Section implements the policy of the City of Lee's Summit on requests for reasonable accommodation in its rules, policies and procedures for persons with disabilities as required by the Fair Housing Act, as amended, 42 U.S.C. Section 3604(f)(3)(B) and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132. The policy of the City is to comply fully with the provisions of the Fair Housing Act and Title II of the Americans with Disabilities Act.

Any person with disabilities and eligible under the Fair Housing Act or Title II of the Americans with Disabilities Act may request a reasonable accommodation with respect to the various provisions of the UDO including land use or zoning laws, rules, policies, practices and/or procedures of the City as provided by the Fair Housing Act and Title II of the Americans with Disabilities Act pursuant to the procedures set out in this Section.

Nothing in this Section requires persons with disabilities or operators of group homes for persons with disabilities acting or operating in accordance with applicable zoning, licensing or land use laws or practices to seek reasonable accommodation under this Section.

- B. **Definitions.** For the purposes of this Section, certain terms and words are hereby defined as follows:  
**ACTS.** Collectively, the FHA and the ADA.

**ADA.** Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*, and its implementing regulations, 28 C.F.R. Part 35.

**APPLICANT.** An individual, group or entity making a request for reasonable accommodation pursuant to this Section.

*FHA*. The Fair Housing Act, Title III of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 *et seq.*, as may be amended.

*DISABLED PERSON*. Any person who is “handicapped” within the meaning of 42 U.S.C. § 3602(h) or a “qualified individual with a disability” within the meaning of 42 U.S.C. § 12131(2).

*DWELLING*. A “dwelling” as defined in 42 U.S.C. § 3602(b).

*UNIFIED DEVELOPMENT ORDINANCE*. The City of Lee’s Summit Unified Development Ordinance consisting of Title IV of the City’s Codes of Ordinances .

Unless specifically defined in this section all terms have the same meaning as contained in Chapter 411 of the City Code.

C. Requesting Reasonable Accommodations:

In order to make specific housing available to one or more individuals with disabilities, a disabled person or a person acting on his or her behalf at his or her request (collectively, the “Applicant”) may request a reasonable accommodation relating to the various land use or zoning rules, policies, practices and/or procedure of the City applicable to such housing.

1. A request by an Applicant for reasonable accommodation relating to the UDO, rules, policies, practices and/or procedures shall be made orally or in writing on a reasonable accommodation request form provided by Development Services. The form shall contain:
  - a. The current zoning for the property;
  - b. The name, phone number and address of the owner of the fee interest of the property (if other than the Applicant);
  - c. The nature of the disability that requires the reasonable accommodation. In the event that the specific individuals who are expected to reside at the property are not known to the Applicant in advance of making the application, the Applicant shall not be precluded from filing the application, but shall submit details describing the range of disabilities that prospective residents are expected to have to qualify for the housing. The Applicant shall notify Development Services, in the event the residents at the location are not within the range described. Development Services shall then determine if an amended application and subsequent determination of reasonable accommodation is appropriate;
  - d. The specific type of accommodation requested by the Applicant. To the extent practicable, this portion should include information concerning the impact of the reasonable accommodation on the adjoining properties and area, the number of people who are expected to be availing themselves of the reasonable accommodation, the estimated number of people in an average week who will be necessary to provide services to the person(s) with disabilities at the property on an on-going basis, whether or not this type of reasonable accommodation is required to obtain a license from any state or county authority to operate, and any other information the Applicant thinks would assist in determining the reasonableness of the accommodation;
  - e. The Applicant should also note, if known, whether this accommodation requires any additional permits or licensure (e.g. business license); and
  - f. Whether the accommodation requested may be necessary to afford one or more disabled persons equal opportunity to use and enjoy a specific dwelling.
2. Development Services will provide the assistance necessary to an Applicant in making a request for reasonable accommodation, including information which the Development Services deems necessary to complete a reasonable accommodation request form. Upon the City's receipt of the necessary information to process the Applicant's request for reasonable accommodation, the Development Services shall use the information to complete a reasonable accommodation request form.
3. Development Services will provide the assistance necessary to any Applicant wishing to appeal a denial of a request for reasonable accommodation to ensure the process is accessible to the Applicant. The Applicant is entitled to be represented at all stages of the proceedings identified in this Section by a person designated by the Applicant.



4. Should the information provided by the Applicant to Development Services include medical information or records of the Applicant, including records indicating the medical condition, diagnosis or medical history of the Applicant, the Applicant may, at the time of submitting such medical information, request that Development Services to the extent allowed by law, treat such medical information as confidential information of the Applicant.
5. Development Services shall provide written notice to the Applicant, and any person designated by the Applicant to represent the Applicant in the application proceeding, of any request received by the Development Services for disclosure of the medical information or documentation which the Applicant has previously requested be treated as confidential by Development Services. Development Services will cooperate with the Applicant, to the extent allowed by law, in actions initiated by the Applicant to oppose the disclosure of such medical information or documentation.

D. Jurisdiction.

1. **Directors Consideration (Staff Committee).** A Staff Committee comprised of Development Services, Public Works and the Fire Department Directors or their designees (Staff Committee) is hereby created and charged with the responsibilities and duties set out herein. The Staff Committee shall have the authority to consider and act on requests for reasonable accommodation. When a request for reasonable accommodation is filed with Development Services, it will be referred to the Staff Committee for review and consideration. The Staff Committee shall issue a written determination within thirty (30) days of the date of receipt of a completed application and may: (1) grant the accommodation request, or (2) deny the request, in accordance with federal or state law. Any such denial shall be in writing and shall state the grounds therefore. All written determinations shall give notice of the right to appeal and the right to request reasonable accommodation in the appeals process. The notice of determination shall be sent to the Applicant by certified mail, return receipt requested and by regular mail.
2. If reasonably necessary to reach a determination on the request for reasonable accommodation, the Staff Committee may, prior to the end of said thirty (30) day period, request additional information from the Applicant, specifying in detail what information is required. The Applicant shall have fifteen (15) days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the thirty (30) day period to issue a written determination shall be stayed. The Staff Committee shall issue a written determination within thirty (30) days after receipt of the additional information. If the Applicant fails to provide the requested additional information within said fifteen (15) day period, the Staff Committee shall issue a written determination within thirty (30) days after expiration of said fifteen (15) day period.

E. Findings for Reasonable Accommodation.

The following findings, while not exhaustive of all considerations and findings that may be relevant, must be made before any action is taken to approve or deny a request for reasonable accommodation and must be incorporated into the record relating to such approval or denial:

1. **Whether** the accommodation requested may be necessary to afford one or more persons with disabilities equal opportunity to use and enjoy a specific dwelling;
2. Whether the requested accommodation would require a fundamental alteration to the City's zoning scheme; and
3. Whether the requested accommodation would impose undue financial or administrative burdens on the City.

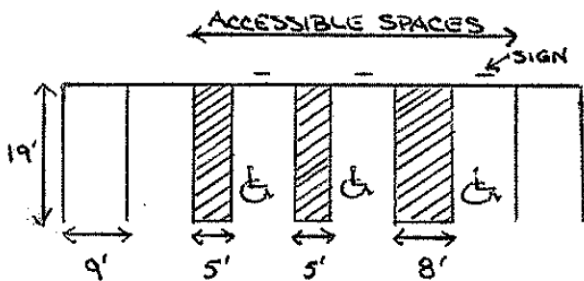


A request for a reasonable accommodation shall not be denied for reasons which violate the provisions of the Acts. This order does not obligate the City to grant any accommodation request unless required by the provisions of the Acts or applicable Missouri State law.

F. Appeals.

1. Within thirty (30) days after the date the Staff Committee mails a written adverse determination to the Applicant, the Applicant requesting reasonable accommodation may appeal the adverse determination.
2. All appeals shall contain a statement of the grounds for the appeal.

3. If an individual Applicant needs assistance in appealing a determination, Development Services will provide the assistance necessary to ensure that the appeal process is accessible to the Applicant. All Applicants are entitled to be represented at all stages of the appeal proceeding by a person designated by the Applicant.
4. Appeals shall be to the Board of Zoning Adjustment pursuant to Section \_\_\_\_\_. All determinations on appeal shall address and be based upon the finding that the accommodation requested is necessary to afford one or more disabled persons equal opportunity to use and enjoy a specific dwelling and shall be consistent with the Acts.
5. An Applicant may request reasonable accommodation in the procedure by which an appeal will be conducted.
- G. **Fees.** The City shall not impose any additional fees or costs in connection with a request for reasonable accommodation under the provisions of this Section or an appeal of a denial of such request by the Staff Committee. Nothing in this ordinance obligates the City to pay an Applicant's attorney fees or costs.
- H. **Stay of Enforcement.** While an application for reasonable accommodation or appeal of a denial of said application is pending before the City, the City will not enforce the subject zoning ordinance against the Applicant.
- I. **Record-keeping.** The City shall maintain records of all oral and written requests submitted under the provisions of this Section, and the City's responses thereto, as required by state law.

#### Article 8- Site Standards, Section 8.580 Accessible Parking Spaces

Explanation	New Standard(s) (changes shown below in underline and strikeout)
<p>The City adopts a new suite of building codes every 6 years. The building code contains parking lot design, minimum accessible space quantities and designs standards for accessible routes. By centralizing these standards, the City will be adhering to more current, internationally accepted standards.</p>	<p><u>Accessible parking spaces shall be designed and constructed to the standards found in the City's adopted version of the International Building Code.</u></p> <p><del>A. A portion of the total number of required off-street parking spaces in each parking area shall be specifically designated and reserved for use by persons with physical disabilities.</del></p> <p><del>B. One in every eight required accessible spaces (but no less than one) shall be adjacent to an aisle eight feet wide clearly marked with a sign indicating that the space is "van accessible". All other accessible spaces shall have an adjacent aisle five feet wide.</del></p>   

~~C. Accessible spaces shall be provided in each parking lot in the following ratio to the total number of spaces required for the use. These spaces shall be counted as part of the total number of parking spaces required by this division. A modification or variance may not be granted for the number of required accessible spaces.~~

~~Table 8-3-  
ACCESSIBLE SPACES REQUIRED~~

<del>Spaces Required for Use</del>	<del>Auto Accessible</del>	<del>Van Accessible</del>	<del>Total</del>
<del>1 to 25</del>	<del>0</del>	<del>1</del>	<del>1</del>
<del>26 to 50</del>	<del>1</del>	<del>1</del>	<del>2</del>
<del>51 to 75</del>	<del>2</del>	<del>1</del>	<del>3</del>
<del>76 to 100</del>	<del>3</del>	<del>1</del>	<del>4</del>
<del>101 to 150</del>	<del>4</del>	<del>1</del>	<del>5</del>
<del>151 to 200</del>	<del>5</del>	<del>1</del>	<del>6</del>
<del>201 to 300</del>	<del>6</del>	<del>1</del>	<del>7</del>
<del>301 to 400</del>	<del>7</del>	<del>1</del>	<del>8</del>
<del>401 to 500</del>	<del>7</del>	<del>2</del>	<del>9</del>
<del>501 to 1,000</del>	<del>7 per 8 accessible spaces</del>	<del>1 per 8 accessible spaces</del>	<del>2% of total spaces</del>
<del>1,001 and over</del>	<del>7 per 8 accessible spaces</del>	<del>1 per 8 accessible spaces</del>	<del>20, plus 1 per 100 spaces over 1,000</del>

~~-~~

~~D. Access aisles shall be on the same level as the parking spaces they serve.~~

~~E. Accessible parking spaces shall be located on a surface with a slope not exceeding one vertical foot in 50 horizontal feet.~~

~~F. Accessible spaces shall be located at the nearest point to the front building entry and/or accessible ramp. Accessible spaces separated from the front building entry by a drive aisle shall have clearly discernable cross walks.~~

~~G. Accessible ramps shall be designed and constructed so as to be integrated into the sidewalk. Ramps shall not be located within or~~

	<p><del>extend into an accessible space, access aisle or any other portion of the parking lot.</del></p> <p><del>H. — Parking spaces for vans shall have a vertical clearance of 98 inches minimum at the space and along the vehicular route thereto. In cases of a loading zone, a minimum vertical clearance of 114 inches shall be provided at passenger loading zones and along vehicle access routes to such areas from site entrances.</del></p> <p><del>I. — Every accessible parking space required by this division shall be identified by a sign, mounted on a pole or other structure, located between 36 inches and 60 inches above the ground, measured from the bottom of the sign, at the head of the parking space. A sign identifying an accessible parallel parking space shall be mounted 84 inches above the ground, measured from the bottom of the sign, and shall be placed at a point parallel to the center of the parking space. All identifying signs shall be 12 inches wide by 18 inches in height and meet the requirements set forth in the Manual on Uniform Traffic Control Devices, as referenced in the Lee's Summit General Code of Ordinances.</del></p> <p><del>J. — In addition to the requirements of this section, all accessible parking spaces and areas shall comply with the requirements of the federal Americans with Disabilities Act.</del></p>
Article 2 –Applications and Procedures, Section 2.360- - Final development plans; applications—Contents and submission requirements.	
Explanation	New Standard(s) (changes shown below in underline and strikeout)
By requiring applicants to label accessible routes on Final Development Plans, staff can more accurately review and inspect these routes for compliance with ADA standards.	18. Location and dimensions of all parking spaces, accessible spaces, <u>accessible routes</u> , drive aisles, driveways, and curbs.

Comprehensive Plan	
Focus Area(s)	Goals, Objectives and Policies
Overall Area Land Use	Objective 1.1 Objective 1.4
Economic Development	Objective 2.1
Residential Development	Objective 3.2 Objective 3.3
Commercial Development	Objective 4.2 (B)
<p>The Comprehensive Plan supports the reasonable accommodation process and general ADA standards through encouraging residential housing opportunities for all members of the community. Commercial and Economic Development plan policies emphasize site design that is functional for pedestrian and vehicular movement. The change of referencing ADA standards in the building code allows the City to use more up to date designs for ADA parking lot features allowing for commercial development that work for all users.</p>	

Recommendation
Staff recommends <b>APPROVAL</b> of the UDO amendment to Articles 1, 2 and 8 as presented.

**The City of Lee's Summit**  
**Action Letter - Draft**  
**Planning Commission**

Thursday, November 14, 2019

5:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

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Call to Order

**Present:** 7 - Board Member John Lovell  
Board Member Jake Loveless  
Board Member Carla Dial  
Chairperson Jason Norbury  
Board Member Terry Trafton  
Board Member Jeff Sims  
Board Member Dana Arth

**Absent:** 2 - Board Member Mark Kitchens  
Vice Chair Donnie Funk

Roll Call

Approval of Agenda

**A motion was made by Board Member Dial, seconded by Board Member Trafton, that the agenda be approved. The motion carried unanimously.**

Public Comments

**There were no public comments at the meeting.**

Approval of Consent Agenda

[TMP-1419](#) Appl. #PL2019-292 - VACATION OF EASEMENT - 1695 SE Decker St and 60 SE Thompson Dr; Thompson Properties, LLC, applicant

**A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.**

[2019-3143](#) Appl. #PL2019-370 - SIGN APPLICATION - Edward Jones, 500 SW Market St; Fastsigns, applicant

**A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be approved. The motion carried unanimously.**

[2019-3114](#) Minutes of the October 24, 2019, Planning Commission meeting

**A motion was made by Board Member Dial, seconded by Board Member Sims, that the minutes be approved. The motion carried unanimously.**

## Public Hearings

[2019-3140](#)

Public Hearing: Application #PL2019-305 - Preliminary Development Plan - Main Orchard, 510 NW Main St and 6 NW Orchard St; Engineering Solutions, LLC, applicant.

Chairperson Norbury opened the hearing at 5:06 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Matt Schlicht of Engineering Solutions gave his address as 50 SE 30th Street in Lee's Summit. The project was located on the west side of Main Street, north of Orchard Street; 510 Main and NW Orchard. This was a vacant property, about 2.5 acres. One existing home on 510 Main dated to about 1920 and was a bungalow-style, front porch home with a dormer and a gravel drive but no garage. The proposal was to divide the property into six residential lots, adding a garage and an above-garage loft space to the existing home. The other five lots would be sold. The applicants had provided staff with a memorandum of ideas, outlining the applicants' preference for the size and style of the homes, with the developer providing some help with what the applicant wanted to see. They wanted to leave the existing home in place, with the new homes being the early-mid 20th century style of 'foursquare' bungalow style with dormers, front porches and garages in the back.

The sheet that the applicant had given the Commissioners a summary of the house characteristics. They would be a minimum 1,000 square feet, with each having a garage, including the existing house; and each would have a front porch covering at least 50 percent of the front side and a minimum 6-foot depth. All would be one or two stories with a dormer on the two-story houses. These would all be consistent with the Craftsman style that was common throughout the Downtown area. The driveway width would be limited to 16 feet at the front and side, in order to keep the streetscape more similar to the older style.

A neighborhood meeting had been held at the Gamber Center, with all residents within a 300-foot radius of the property invited; however, only 3 neighbors attended. They had asked if the homes would be rentals, and he had replied that the lots would be sold for development. Mr. Schlicht noted that many of the same people attended these meetings: young couples who wanted to purchase a Downtown home. This would provide someone to have their desired home built. These houses were in the \$200,000-\$300,000 range.

Mr. Schlicht displayed a colored example of what the houses would look like. Each would be built slightly above grade with a welcoming stairway/porch entry. Each would have a sidewalk from the front steps to the public sidewalk. Like the style, the colors and materials would be standard for the older Downtown neighborhoods: shake shingles or Hardiboard siding, real stone or brick veneers. He wanted to avoid using vinyl or metal sidings or stucco. Colors would be low-contrast, but color palettes were provided for buyers who wanted a slightly different color.

Originally, the Old Lee's Summit development master plan had identified this specific area, and some areas to the west of it, as being parts of the Downtown core that were under-utilized. The applicants believed that this plan was consistent with the plan. Mr. Schlicht then displayed a photo of the existing home at 510 Main Street. It had been built in the early 1920s and was currently being rented. The house was 1,100 square feet, had a stone foundation and a faux dormer at the top. The plan was to add a garage with a loft behind it, and to replace the gravel drive with a concrete one. Other photos showed the interior of the existing house.

Mr. Schlicht stated that he had worked with staff to control some of the stormwater from nearby houses. He showed a diagram of individual detention pits. Stormwater would be piped down from all the roofs, downspouts and hard surfaces into the pit area for each lot. A rock chamber below would store water during major rain events. It was basically a design for a

rain garden. Rain gardens reduced some of the peak runoff that would go downstream.

The applicants were asking for one modification. The rule for the RP-2 zoning district dictated that a garage could not be any taller than the principal structure. That would rule out a loft above a garage in this case. He had done a sight line survey and showed that the garages would be far back enough to not be visible above the roofs of the houses.

Following Mr. Schlicht's presentation, Chairperson Norbury asked for staff comments.

Ms. Thompson entered Exhibit (A), list of exhibits 1-17 into the record. She confirmed that the applicant was submitting a preliminary development plan for five single-family homes at the northwest corner of NW Orchard and NE Main Street. This property and the surrounding properties were zoned RP-2, for planned two-family residences. She displayed a slide of the proposed site plan, showing the five vacant lots and one existing home; and footprints for the five proposed homes. She showed a number of elevations for similar structures, adding that once a residential building permit was submitted to the City, the planning staff would review these elevations to make sure they complied with what was approved. The modification request was for a detached garage with loft on Lot 3, with an overall building height of 26 feet. Staff did not support a detached garage that was taller than the principal structure, and requested that the garages conform to height limits.

Ms. Thompson confirmed that this area was part of the Old Downtown part of Lee's Summit. They were in favor of increasing the housing stock in the area, which this plan could do. Regarding sidewalks, they were required as part of the platting process; however, there were not many sidewalks in this particular area. The applicant asked for a waiver for a sidewalk along Orchard and to make a payment in lieu of construction. He did propose a sidewalk along NE Main Street, which would be constructed as each house was built.

The application had two Conditions of Approval. The detached garage would conform to the UDO requirements for building height, and the developer would pay the City of Lee's Summit for construction costs instead of constructing a sidewalk along NW Orchard.

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

Mr. Loveless noted Ms. Thompson's mention that before a builder applying for get a building permit on one of these lots would have to submit plans that staff would approve as architecturally consistent with the rest of the neighborhood. Ms. Thompson stated that they would have to submit a plot plan along with residential plans, including floor plans and elevations. This required a review from a planner, who would check for approved elevations and complied with what was approved.

Mr. Loveless then asked Mr. Schlicht for some details about the stormwater collection plan. He noted that with connectivity among the lots and asked why they could not be tied in with the typical water system. Mr. Schlicht pointed out on the map the about 30 acres in the neighborhood that drained a large area through Olive. It had open ditches and few collection systems. The idea was for the individual houses to collect rainwater off the roofs on site and give each homeowner individual control. They would also have the opportunity to start rain gardens. Mr. Loveless asked if it was accurate that this would effectively create a net zero in terms of impervious surface, and Mr. Schlicht replied that it was.

Mr. Loveless asked about driveways. Mr. Schlicht pointed out the two houses, including the existing one that would have two large maple trees on each side, and a corner with a few more large trees. One of the houses would be built behind the trees, which would enable landscaping along the north side with a long driveway. This was typical of the old Downtown



neighborhood, which had houses built varying distances from the street instead of just a row of houses directly next to each other. Mr. Loveless noted that Mr. Schlicht planned to keep the existing home but add a garage behind the home that would be taller than the house. Mr. Schlicht explained that he planned to build a garage with loft behind the existing house at 510 Main. He had discussed this with staff, and determined that a garage with loft could be permitted, up to a height of 40 feet. If the garage was first built and a loft added later it would not comply with the UDO. The garage was part of this application; but he would not ask for a modification at this time.

Mr. Trafton asked why Lot 1 was offset so far back. Mr. Schlicht stated that he wanted to keep the trees on the lots, and the lots had different characteristics, and provided different opportunities for buyers. A buyer could choose the narrow, elongated 60-foot lot or the corner lot which was a little bit larger. These lots reflected Downtown's unique character and lent itself to providing different opportunities. The L-shaped lot at the north end in particular made a bigger building and a choice of location for the garage. It was an opportunity to do something different.

Concerning the detention pit, Mr. Trafton said he assumed these were not tied to any kind of runoff from the street, but would provide a way to collect the water and let it naturally move into the system. He asked if there were other parts of Lee's Summit where this had been tried successfully. Mr. Schlicht did not know of any within the city limits, although a rain garden would be somewhat similar. They did lots of redevelopment in Leawood, Fairway and Prairie Village, tearing down homes and rebuilding in infill sites, and were using this system. It seemed to function well. With no infrastructure for stormwater, the water would just either run across the ground and continue onto another property or be diverted into a large detention basin that that was used by a number of residents. The latter was often a headache.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:32 p.m. and asked for discussion among the Commission members, or for a motion.

Ms. Dial made a motion to recommend approval of Application PL2019-305, Preliminary Development Plan, Main Orchard, 510 NW Main St and 6 NW Orchard St; Engineering Solutions, LLC, applicant; subject to staff's letter of November 7, specifically Conditions of Approval 1 through 11. Mr. Trafton seconded.

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

A motion was made by Board Member Dial, seconded by Board Member Lovell, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

[2019-3144](#)

Public Hearing: Application #PL2019-307 - Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan - Osage, approximately 32 acres located at the southwest corner of SW M-150 Hwy and SW Pryor Rd; Clayton Properties Group, Inc., applicant.

Chairperson Norbury opened the hearing at 5:34 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. John Erpelding of Olsson stated that Mr. Vince Walker and Mr. Travis Roof of Summit Homes were also present. They proposed a rezoning and preliminary development plan for Osage, which would cover about 31.5 acres at Pryor Road and 150 Highway. It would consist of a total 160 units. Mr. Erpelding displayed a color-coded map showing the different types of housing product. They planned 32 single-family homes, 22 two-family structures named "Twin Gallery", in the middle and 21 four-family townhomes. The property also included 16 common

area tracts that would be used for detention, landscaping, buffer areas, monument signs and amenities. These tracts totaled about 6.3 acres, about 20 percent of the property.

Osage was to be developed in three phases, and Mr. Erpelding pointed out these phases, indicated by dashed lines, on the map. The first would have two points of access, one on Pryor and one on M-150. The latter would be a right-in-right-out intersection due to an existing median. Mr. Erpelding listed improvements associated with the first phase. These included monument signs at both entrances and on the M-150 and Pryor Road corner, the stormwater detention facility at the property's southeast corner, an off-site sanitary sewer extension reaching about 780 feet to the east and some street stubs to adjacent properties to the south and west that would allow for future connectivity. Some street improvements were also planned. The M-150 entrance would have an eastbound right-turn lane and some and both northbound and southbound turn lanes at the Pryor Road access. The northbound left turn lane on Pryor Road would be extended. They would add paved shoulders on both sides of Pryor along the length of the east side. As part of another project, Summit Homes would also widen and add paved shoulders further to the south, from County Line Road to the subject properties south boundary. These were interim road improvements. The second phase would focus on the northwest quadrant of the development. Streets would be looped for better connectivity; and the third phase would develop the southwest corner of the property.

The single-family lots would be 50 to 70 feet wide and 120 feet deep. The Twin Gallery structures would be on lots about 70 by 118 feet; and both would have a minimum of 10 feet between each structure. The townhomes would be on 140 feet wide and 120 feet deep, with a minimum of 20 feet between buildings. The applicant was not requesting any modifications to the zoning requirements, as they were meeting all the requirements for setbacks, density, lot widths and depths, landscape buffers or parking. They would provide 20-foot wide landscape buffers between adjoining properties, and these buffers would confirm to UDO requirements. Additionally, a five-foot tract would run along the south property line, to preserve the existing trees and fence. The streets would be lined with trees with 30-foot spacing.

They had held two neighborhood meetings. One was an unofficial one in August, and a formal neighborhood meeting on October 14th. This was also sparsely attended, with about five people; but everyone within 300 feet had been invited. Most of the questions were about prices. The applicant agreed with all of staff's Conditions of Approval.

Mr. Vince Walker addressed the project's layout and architecture. They had heard and taken into account the feedback they had previously received. In using a variety of housing designs, they were able to provide prospective buyers a variety of options. The four-unit detached townhomes would be at the property's north end bordering M-150. The Twin Gallery units would be in the center section, and the "Lifestyle Collection" single-family homes would be on the south side. A central amenity section would include a 25-meter lap pool and children's "splash" area, clubhouse pavilion and a park. These would be administered by a Homeowners Association. All homes would be built using the same quality materials on both exteriors and interior finishes. He then presented a visual video of what Osage was planned to look like. It showed the road system, considerable green space including trees, playground, pavilion, and various types of housing.

Following the applicant's presentation, Chairperson Norbury asked for staff comments.

Mr. McGuire entered Exhibit (A), list of exhibits 1-16 into the record. He confirmed that the applicant was asking to rezone 31.47 acres at the corner of Pryor Road and 150 Highway from AG and R-1 to RP-3. The development would have 32 single-family lots, 22 two-family lots, 21 four-family lots and 16 common area tracts. The surrounding area was a mixture of single-family homes (to the north) and undeveloped properties (to the east and west). Large-lot single-family homes were to the south. The Napa Valley single-family subdivision was

to the southeast, and Grand Summit View and Arborwalk to the northeast.

Displaying colored elevations, of single-family and two-family dwellings and the proposed clubhouse Mr. McGuire observed that the applicant proposed to use materials and designs compatible with other nearby subdivisions and throughout Lee's Summit in general. Exteriors would be stone veneer, lap and panel or shake siding and composite shingle roofs. The requested RP-3 zoning would provide for medium-density mixed residential uses, and the project was generally consistent with the Comprehensive Plan, including the plan's objectives of providing diverse housing types. The maximum density would be 10 units per acre. Any deviation from the approved plan would require approval of a replacement preliminary development plan.

This project was compatible with existing and planned uses on surrounding properties. The 310-acre Arborwalk development was further to the northeast. This was also a mixed-use development that included single-family villa lots, standard single-family lots, duplexes, triplexes, fourplexes and apartments. Villa lots at Arborwalk were allowed a minimum size of 3,675 square feet. The 88-acre Napa Valley development was to the southeast. Napa Valley also had a mixture of single-family villa lots, standard single-family lots and estate-size lots. Napa Valley's villa lots had a minimum lot size of 4,950 square feet. This project's proposed 6,000 square foot minimum lot size for a single-family house was 2,325 square feet larger than the minimum at Arborwalk and 1,050 square feet larger than Napa Valley's minimum. If this application was approved, the plan would satisfy any requirements applicable to zoning district as outlined in the UDO and the Design and Construction Manual.

Following Mr. McGuire's comments, Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application.

Mr. Charles Ray gave his address as 4090 SW Pryor Road. He asked what the plans were for Pryor Road to the south, and asked where sidewalks would be. He noted that the small number of people attending the meeting was due to not many people living within 300 feet of this property. The neighbors who did live nearby had a nice park down the street that they had to get to on foot, so they knew that the traffic on Pryor Road had increased considerably. He knew that adding 160 housing units on that corner would increase the traffic even more.

Mr. Roofl stated that they had an obligation connected with Stoney Creek to make interim improvements to Pryor Road from County Line Road up to Pryor. The improved road would be 24 feet wide and restriped, with 6-foot paved shoulders on both sides up to Napa Valley's entrance. When the Osage project was completed, the road would be improved from Napa Valley to M-150 and additional rights-of-way were dedicated for future road improvements. This project would have sidewalks up to the property lines. The 6-foot paved shoulders could be used as pedestrian or bike lanes for the present.

Chairperson Norbury then asked if the Commission had questions for the applicant or staff.

Mr. Trafton asked if it was correct that the median on M-150 would be left intact, in order to prevent traffic problems generated by left turns. Mr. Walker answered that it was. Mr. Trafton then asked what the street widths inside the development were, remarking that the video had not shown cars parked on the streets and in driveways. There were likely to be many of them due to the fourplexes. Mr. Erpelding answered that they would be 28 feet wide, which was the City's standard for local streets. That was wide enough to allow for on-street parking. He acknowledged that cars parked on both sides could cause difficulties for other vehicles, including emergency vehicles. He displayed a parking diagram, with red lines indicating parts of streets in front of side yards. Parked cars would be less of a problem in those locations, as long as they did not block driveways. The plan identified a total of 77 on-street parking spaces.

Mr. Trafton then asked what was the reasoning for concentrating so much of the density in one north quadrant with about 180 residents. Mr. Walker answered that it was typical for this kind of land use to concentrate higher densities near a highway corridor and transition into lower-density product further down. M-150 would have a sidewalk just to the north side of the property line; but the interim improvements for Pryor Road did not require sidewalks on both sides. Mr. Trafton asked staff if this meant the Livable Streets ordinance would not require adding sidewalks on Pryor. Mr. Soto answered that Pryor would require sidewalks. He confirmed that for interim standards, the paved 6-foot wide shoulders could serve as a proxy for sidewalks until final improvements were made to the road.

Mr. Park noted that Pryor Road was in a state of transition from a rural to an urban roadway. The proposed improvements met the standards for an interim road, which Pryor Road was north of M-150 Highway. That meant a 24-foot width with turn lanes and paved shoulders required by the Access Management Code. The paved shoulders did serve as a pedestrian route in the absence of sidewalks. If Pryor was improved from this interim condition it would be brought up to urban standards which included curbs, sidewalks and traffic signals. At this point, the City's progression of Pryor started at M-150 and moved north to Longview Road. The capital improvement program had funds to begin develop Pryor to urban standard from Hook Road to Longview. After that, improvements would extend south from M-150 based on demand. Mr. Trafton asked if this meant that the City intended to just let kids and families walk on the road's shoulders; and Mr. Park replied that staff was following the standards that the City Council had adopted. They permitted an interim road standard at this point. It was within the Council's purview to require a development to exceed that standard. He added that if sidewalks were put in at this point, they would have to be torn out at the time that Pryor Road was improved along that stretch. At present, many people walked, jogged and ride bicycles on the paved shoulders of Pryor north of M-150.

Mr. Trafton asked what the average prices for the development were. Mr. Walker answered that the prices were not set at this time. They did intend to have three different price points. Concerning the parking, he pointed out that the development included two-car garages as well as 25-foot building lines. The latter allowed for two cars parked in a driveway as well. The subdivision's layout did follow the pattern of transitioning from a higher density at one end where there was a major roadway down to a lower single-family density at the opposite end. Mr. Trafton asked what the estimated square footage of the fourplexes would be. Mr. Walker answered that the townhomes would be about 1,500 square feet, with two-story and 1.5-story plans; and the Twin Gallery units would range from 1,300 to 1,900 square feet. The single-family homes would range from 1,500 to 2,500 square feet. All these units would have full basements. He did not specify the square footage of the fourplexes.

Mr. Lovell asked how many bedrooms the townhomes would have, and Mr. Walker answered that they would be 2 or 3 bedrooms. These would be for sale and not for rent. The streets were 28 feet wide from curb to curb. Mr. Lovell remarked at in New Longview where he lived, detached garages were in the back but residents had no room to park extra cars behind the garages, resulting in a lot of cars parked on the streets. Concerning the townhomes, he asked if they might be maintenance-free for yards. Mr. Walker answered that there had been discussion of that but nothing was finalized.

Chairperson Norbury remarked that much of tonight's application was in response to concerns raised in the previous application. Mr. Walker responded that the project as a whole had been a more uniform project, without the multiple home choices that tonight's version had. Much of the feedback they'd received had to do with the uniformity of the product. The elevations they'd shown had been contemporary; whereas tonight's version showed a 'modern farmhouse' look, which was a little more traditional. Traffic had also been an issue with the initial application; and the traffic impact would be less with tonight's plan than if the whole project had been a single-family development. 'Too much of one thing' was one of the criticisms they'd heard, and they had now provided more of a variety of choices. This was a

very conventional development in terms of what was provided in Lee's Summit. They had received feedback from the Napa Valley neighbors that this plan was a major improvement.

Mr. Walker confirmed for Chairperson Norbury that these units would all be for sale and not rentals. Chairperson Norbury recalled from the previous application that price points were \$225,000 to \$275,000, and asked about the prices of the townhome and duplex units. Mr. Walker answered that the single-family homes would be somewhat over \$300,000. They did not have price points for the other housing. He noted that M-150 did not have a crosswalk.

Mr. Loveless left the meeting, at 6:16 p.m.

Mr. Ray returned to the podium and asked about people coming out of the subdivision making U turns off M-150 to go west. Mr. Park consulted the traffic study and replied that the current traffic count at peak hour was about 3 doing a U turn at M-150 and Pryor. The traffic engineer hired by the applicant projected an increase of 9 over a 60-minute period at the busiest time. That would maintain a satisfactory level of service. He did think a pedestrian crosswalk was a very good suggestion, adding that M-150 was under the jurisdiction of MoDOT, not the City. He was willing to report this suggestion to MoDOT.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 6:17 p.m. and asked for discussion among the Commission members.

Mr. Lovell stated that in view of the changes in tonight's application, it looked like a very good project. It would accommodate upwardly mobile younger buyers who did not necessarily want to buy a large house; and Lee's Summit needed more product that would encourage them to remain in the community. He also liked developments that reflected thinking outside the box, and definitely supported this application.

Ms. Arth agreed with Mr. Lovell's commendation on the improvements, and said she had enjoyed the video. She also appreciated the applicant being aware of and responding to the parking issues, as well as the amenities and variety of housing options.

Mr. Trafton asked if there were covenants and restrictions covering the requirements for buying the townhomes, duplexes and fourplexes rather than renting or leasing. Chairperson Norbury stated that once these units were for sale, there was no guarantee that someone could not buy a unit and then rent it, subject to the City's rules regarding short-term renting.

Chairperson Norbury commended the applicant for making every effort to get a development done on this piece of land and responding to what the residents and the City Council had to say. However, he considered the prior project to be a better one, and the varying sizes of the homes and being able to have a single-family home in the price range now cited for townhomes was a far better idea for the community. The architecture now was rather standard-looking and unimpressive. The City Council had essentially cut off any capacity for the applicant to have any architectural variation or interest; and the city would be poorer for that. This was a precursor to the uniformity that Lee's Summit would end up with. He did think the applicant had done an admirable job of sticking to the original goal of offering housing product that someone of medium income could afford for new construction. He planned to recommend approval, though he would not if it was a rental project as that would not meet the goal he'd referenced. He hoped that there would be more vision from City officials in the future.

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

Ms. Dial made a motion to recommend approval of Application PL2019-307, Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan: Osage, approximately 32 acres located at

the southwest corner of SW M-150 Hwy and SW Pryor Rd; Clayton Properties Group, Inc., applicant; subject to staff's letter of November 7, 2019, specifically Conditions of Approval 1 through 17. Ms. Arth seconded.

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

Commissioner Loveless left the meeting at 6:14 P.M., before vote.

A motion was made by Board Member Dial, seconded by Board Member Arth, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

[2019-3137](#)

Public Hearing: Application #PL2019-359- Unified Development Ordinance (UDO) Amendment - Changes to Article 1 - General Provisions, Article 2 - Applications and Procedures and Article 8 - Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant.

Chairperson Norbury opened the hearing at 6:25 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Johnson entered Exhibit (A), list of exhibits 1-6 into the record. He stated that this amendment had two goals. One was create a reasonable accommodation process. It addressed situations such as someone needing something added to their home to accommodate a disability, such as a ramp, and that item had to be put in a setback. The City code currently required a variance that would be granted by the Board of Zoning Adjustments. The change would create a no-cost process where a staff board could approve it administratively. This board would consist of a member each of Development Services, the Fire Department and Public Works. A development review committee now met every week and could do that review so the process would be fairly quick.

The second part of the amendment would adopt standards from the building code for ADA standards for parking lot design. The City adopted new codes every 6 years and the International Building Code had been adopted by not only Lee's Summit but also most other jurisdictions in the metro area. All were now under the 2018 code.

The third revision was to require applicants to show accessible routes in final development plans, making it easier to evaluate parking areas for accommodation.

Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application. As there were none, he opened the hearing Commissioners' questions.

Chairperson Norbury asked if there was nothing that would prevent the City from either augmenting or varying from the IBC if they so decided on a particular issue. Mr. Johnson responded that the IBC was the guide for designing parking lot facilities. There could be code modification requests but it had not been the City's policy to do that when it involved the ADA. Chairperson Norbury said he was referring to a situation where the City decided that the IBC was outdated after a new standard was adopted.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 6:30 p.m. and asked for discussion among the Commission members, or for a motion.

Ms. Dial made a motion to recommend approval of Application PL2019-359, Unified Development Ordinance (UDO) Amendment: Changes to Article 1, General Provisions; Article

2, Applications and Procedures and Article 8, Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant. Mr. Sims seconded.

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

A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

## Roundtable

Regarding the earlier question about water management as proposed for the Main Orchard project, Mr. Monter stated that staff had taken some time reviewing this with the applicant. It was not much different from rainwater draining off a parking lot into a rain garden area. There was an example on Douglas at the Nationwide business. The apartments next to the Sonic were another example. This was something that staff wanted to encourage, especially for infill projects. It could be an improvement over detention basins that might or might not be maintained.

Ms. Dial said she had been contacted by some members of the public who had a problem with a developer who gave testimony under oath that they were going to use or not use a particular product on their building. In reality it turned out that the product was one the developer had said they would not use. The Homes Association and the Alliance had said this was not enforceable by the City because specific wording had not been included in the development plan approved by the City Council. She wanted to make the Commission aware that this had happened, and hopefully they could find a way to ensure it would not happen again. Mr. Johnson replied that this concerned an email exchange between the Alliance and himself. During public testimony at the Kessler Ridge application, the president of Inspired Homes promised not to use a certain product and made a few other commitments. This was not added to the ordinance as a condition of approval, and the elevations they had provided did not call out any materials. There was nothing holding the project to a specific set of materials. It had to be locked into an ordinance and public testimony itself was not binding. This had been reflected in the Main Orchard application, where specific criteria about items such as front porches. Chairperson Norbury remarked that if a developer wanted to make a specific promise it could be made a condition of recommendation.

## Adjournment

There being no further business, Chairperson Norbury adjourned the meeting at 6:33 P.M.

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

# Reasonable Accommodation and ADA Standards UDO Amendment

PL2019-359  
December 3, 2019



**LEE'S SUMMIT**  
MISSOURI



*Yours Truly*



# Core Provisions

- Administrative Reasonable Accommodation process
- Reference ADA standards from the International Building Code
- Require accessible routes to be called-out on Final Development Plans

# Reasonable Accommodation

- No fee
- Staff board approval
- Shorter timeframe than the Board of Zoning Adjustment

# International Building Code ADA Standards

- Parallel codes
- Updated every 6 years
- More universal for our customers
- ADA routes allow staff to focus review

## Packet Information

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**File #:** BILL NO. 19-263, **Version:** 1

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An Ordinance approving application #PL2019-359 - Unified Development Ordinance (UDO) Amendment Changes to Article 1 - General Provisions, Article 2 - Applications and Procedures and Article 8 - Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant.

Proposed City Council Motion:

I move for a second reading of an Ordinance approving application #PL2019-359 - Unified Development Ordinance (UDO) Amendment Changes to Article 1 - General Provisions, Article 2 - Applications and Procedures and Article 8 - Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant.

Josh Johnson, AICP, Assistant Director of Plan Services

## **BILL NO. 19-263**

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AN ORDINANCE APPROVING APPLICATION #PL2019-359 - UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT CHANGES TO ARTICLE 1 - GENERAL PROVISIONS, ARTICLE 2 - APPLICATIONS AND PROCEDURES AND ARTICLE 8 - SITE DESIGN TO CREATE AN ADMINISTRATIVE REASONABLE ACCOMMODATION PROCESS AND REFERENCE ADA DESIGN STANDARDS IN THE INTERNATIONAL BUILDING CODE; CITY OF LEE'S SUMMIT, APPLICANT.

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

WHEREAS, Application #PL2019-359 proposing amendments to an ordinance approving application #PL2019-359 - Unified Development Ordinance (UDO) Amendment changes to Article 1 - General Provisions, Article 2 - Applications and Procedures and Article 8 - Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; and,

WHEREAS, the Community and Economic Development Committee considered the proposed UDO Amendment to Article 1 - General Provisions, Article 2 - Applications and Procedures and Article 8 - Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; and on July 11, 2018, and authorized the amendments to be advertised for public hearings; and,

WHEREAS, after due public notice in the manner prescribed by law, the Planning Commission held a public hearing for Application #PL2019-359 on November 14, 2019 and rendered a report to the City Council recommending that the proposed amendment to Article 1 - General Provisions, Article 2 - Applications and Procedures and Article 8 - Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; and be approved, and,

WHEREAS, after due public notice in the manner prescribed by law, the City Council held a public hearing on Application #PL2019-359 on December 3, 2019; and,

WHEREAS, the City Council determined that the proposed UDO amendment contained in Application #PL2019-359 would serve the interests of the citizens of Lee's Summit.

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

SECTION 1. That Article 1 - General Provisions, Article 2 - Applications and Procedures and Article 8 - Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; and, are hereby amended in the manner shown on the copy appended hereto as Exhibit "A" and incorporated herein by reference.

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

**BILL NO. 19-263**

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

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

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *Brian W. Head*

### **Section 1.300 Reasonable Accommodation (New Section)**

- A. **Purpose.** This Section implements the policy of the City of Lee's Summit on requests for reasonable accommodation in its rules, policies and procedures for persons with disabilities as required by the Fair Housing Act, as amended, 42 U.S.C. Section 3604(f)(3)(B) and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132. The policy of the City is to comply fully with the provisions of the Fair Housing Act and Title II of the Americans with Disabilities Act.

Any person with disabilities and eligible under the Fair Housing Act or Title II of the Americans with Disabilities Act may request a reasonable accommodation with respect to the various provisions of the UDO including land use or zoning laws, rules, policies, practices and/or procedures of the City as provided by the Fair Housing Act and Title II of the Americans with Disabilities Act pursuant to the procedures set out in this Section.

Nothing in this Section requires persons with disabilities or operators of group homes for persons with disabilities acting or operating in accordance with applicable zoning, licensing or land use laws or practices to seek reasonable accommodation under this Section.

- B. **Definitions.** For the purposes of this Section, certain terms and words are hereby defined as follows:

*ACTS.* Collectively, the FHA and the ADA.

*ADA.* Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*, and its implementing regulations, 28 C.F.R. Part 35.

*APPLICANT.* An individual, group or entity making a request for reasonable accommodation pursuant to this Section.

*FHA.* The Fair Housing Act, Title III of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 *et seq.*, as may be amended.

*DISABLED PERSON.* Any person who is "handicapped" within the meaning of 42 U.S.C. § 3602(h) or a "qualified individual with a disability" within the meaning of 42 U.S.C. § 12131(2).

*DWELLING.* A "dwelling" as defined in 42 U.S.C. § 3602(b).

*UNIFIED DEVELOPMENT ORDINANCE,* The City of Lee's Summit Unified Development Ordinance consisting of Title IV of the City's Codes of Ordinances .

Unless specifically defined in this section all terms have the same meaning as contained in Chapter 411 of the City Code.



C. Requesting Reasonable Accommodations:

In order to make specific housing available to one or more individuals with disabilities, a disabled person or a person acting on his or her behalf at his or her request (collectively, the "Applicant") may request a reasonable accommodation relating to the various land use or zoning rules, policies, practices and/or procedure of the City applicable to such housing.

1. A request by an Applicant for reasonable accommodation relating to the UDO, rules, policies, practices and/or procedures shall be made orally or in writing on a reasonable accommodation request form provided by Development Services. The form shall contain:
  - a. The current zoning for the property;
  - b. The name, phone number and address of the owner of the fee interest of the property (if other than the Applicant);
  - c. The nature of the disability that requires the reasonable accommodation. In the event that the specific individuals who are expected to reside at the property are not known to the Applicant in advance of making the application, the Applicant shall not be precluded from filing the application, but shall submit details describing the range of disabilities that prospective residents are expected to have to qualify for the housing. The Applicant shall notify Development Services, in the event the residents at the location are not within the range described. Development Services shall then determine if an amended application and subsequent determination of reasonable accommodation is appropriate;
  - d. The specific type of accommodation requested by the Applicant. To the extent practicable, this portion should include information concerning the impact of the reasonable accommodation on the adjoining properties and area, the number of people who are expected to be availing themselves of the reasonable accommodation, the estimated number of people in an average week who will be necessary to provide services to the person(s) with disabilities at the property on an on-going basis, whether or not this type of reasonable accommodation is required to obtain a license from any state or county authority to operate, and any other information the Applicant thinks would assist in determining the reasonableness of the accommodation;
  - e. The Applicant should also note, if known, whether this accommodation requires any additional permits or licensure (e.g. business license); and
  - f. Whether the accommodation requested may be necessary to afford one or more disabled persons equal opportunity to use and enjoy a specific dwelling.
2. Development Services will provide the assistance necessary to an Applicant in making a request for reasonable accommodation, including information which the Development Services deems necessary to complete a reasonable accommodation request form. Upon the City's receipt of the necessary information to process the Applicant's request for reasonable accommodation, the Development Services shall use the information to complete a reasonable accommodation request form.
3. Development Services will provide the assistance necessary to any Applicant wishing to appeal a denial of a request for reasonable accommodation to ensure the process is accessible to the Applicant. The Applicant is entitled to be represented at all stages of the proceedings identified in this Section by a person designated by the Applicant.

4. Should the information provided by the Applicant to Development Services include medical information or records of the Applicant, including records indicating the medical condition, diagnosis or medical history of the Applicant, the Applicant may, at the time of submitting such medical information, request that Development Services to the extent allowed by law, treat such medical information as confidential information of the Applicant.
5. Development Services shall provide written notice to the Applicant, and any person designated by the Applicant to represent the Applicant in the application proceeding, of any request received by the Development Services for disclosure of the medical information or documentation which the Applicant has previously requested be treated as confidential by Development Services. Development Services will cooperate with the Applicant, to the extent allowed by law, in actions initiated by the Applicant to oppose the disclosure of such medical information or documentation.

D. Jurisdiction.

1. **Directors Consideration (Staff Committee).** A Staff Committee comprised of Development Services, Public Works and the Fire Department Directors or their designees (Staff Committee) is hereby created and charged with the responsibilities and duties set out herein. The Staff Committee shall have the authority to consider and act on requests for reasonable accommodation. When a request for reasonable accommodation is filed with Development Services, it will be referred to the Staff Committee for review and consideration. The Staff Committee shall issue a written determination within thirty (30) days of the date of receipt of a completed application and may: (1) grant the accommodation request, or (2) deny the request, in accordance with federal or state law. Any such denial shall be in writing and shall state the grounds therefore. All written determinations shall give notice of the right to appeal and the right to request reasonable accommodation in the appeals process. The notice of determination shall be sent to the Applicant by certified mail, return receipt requested and by regular mail.
2. If reasonably necessary to reach a determination on the request for reasonable accommodation, the Staff Committee may, prior to the end of said thirty (30) day period, request additional information from the Applicant, specifying in detail what information is required. The Applicant shall have fifteen (15) days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the thirty (30) day period to issue a written determination shall be stayed. The Staff Committee shall issue a written determination within thirty (30) days after receipt of the additional information. If the Applicant fails to provide the requested additional information within said fifteen (15) day period, the Staff Committee shall issue a written determination within thirty (30) days after expiration of said fifteen (15) day period.

E. Findings for Reasonable Accommodation.

The following findings, while not exhaustive of all considerations and findings that may be relevant, must be made before any action is taken to approve or deny a request for reasonable accommodation and must be incorporated into the record relating to such approval or denial:

1. **Whether** the accommodation requested may be necessary to afford one or more persons with disabilities equal opportunity to use and enjoy a specific dwelling;

2. Whether the requested accommodation would require a fundamental alteration to the City's zoning scheme; and
3. Whether the requested accommodation would impose undue financial or administrative burdens on the City.

A request for a reasonable accommodation shall not be denied for reasons which violate the provisions of the Acts. This order does not obligate the City to grant any accommodation request unless required by the provisions of the Acts or applicable Missouri State law.

**F. Appeals.**

1. Within thirty (30) days after the date the Staff Committee mails a written adverse determination to the Applicant, the Applicant requesting reasonable accommodation may appeal the adverse determination.
2. All appeals shall contain a statement of the grounds for the appeal.
3. If an individual Applicant needs assistance in appealing a determination, Development Services will provide the assistance necessary to ensure that the appeal process is accessible to the Applicant. All Applicants are entitled to be represented at all stages of the appeal proceeding by a person designated by the Applicant.
4. Appeals shall be to the Board of Zoning Adjustment pursuant to Section \_\_\_\_\_. All determinations on appeal shall address and be based upon the finding that the accommodation requested is necessary to afford one or more disabled persons equal opportunity to use and enjoy a specific dwelling and shall be consistent with the Acts.
5. An Applicant may request reasonable accommodation in the procedure by which an appeal will be conducted.

G. **Fees.** The City shall not impose any additional fees or costs in connection with a request for reasonable accommodation under the provisions of this Section or an appeal of a denial of such request by the Staff Committee. Nothing in this ordinance obligates the City to pay an Applicant's attorney fees or costs.

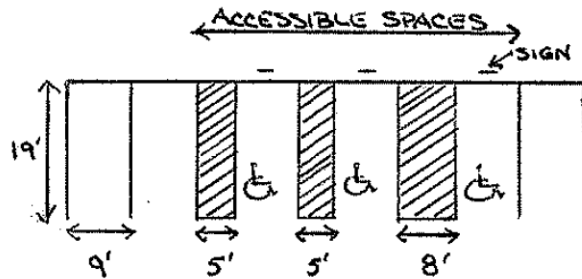
H. **Stay of Enforcement.** While an application for reasonable accommodation or appeal of a denial of said application is pending before the City, the City will not enforce the subject zoning ordinance against the Applicant.

I. **Record-keeping.** The City shall maintain records of all oral and written requests submitted under the provisions of this Section, and the City's responses thereto, as required by state law.

**Sec. 8.580. - Accessible parking spaces.**

Accessible parking spaces shall be designed and constructed to the standards found in the City's adopted version of the International Building Code.

- A. ~~A portion of the total number of required off-street parking spaces in each parking area shall be specifically designated and reserved for use by persons with physical disabilities.~~
- B. ~~One in every eight required accessible spaces (but no less than one) shall be adjacent to an aisle eight feet wide clearly marked with a sign indicating that the space is "van accessible". All other accessible spaces shall have an adjacent aisle five feet wide.~~



- C. ~~Accessible spaces shall be provided in each parking lot in the following ratio to the total number of spaces required for the use. These spaces shall be counted as part of the total number of parking spaces required by this division. A modification or variance may not be granted for the number of required accessible spaces.~~

Table 8-3  
ACCESSIBLE SPACES REQUIRED

Spaces Required for Use	Auto Accessible	Van Accessible	Total
1 to 25	0	1	1
26 to 50	1	1	2

51 to 75	2	1	3
76 to 100	3	1	4
101 to 150	4	1	5
151 to 200	5	1	6
201 to 300	6	1	7
301 to 400	7	1	8
401 to 500	7	2	9
501 to 1,000	7 per 8 accessible spaces	1 per 8 accessible spaces	2% of total spaces
1,001 and over	7 per 8 accessible spaces	1 per 8 accessible spaces	20, plus 1 per 100 spaces over 1,000

- 
- ~~D. Access aisles shall be on the same level as the parking spaces they serve.~~
- ~~E. Accessible parking spaces shall be located on a surface with a slope not exceeding one vertical foot in 50 horizontal feet.~~
- ~~F. Accessible spaces shall be located at the nearest point to the front building entry and/or accessible ramp. Accessible spaces separated from the front building entry by a drive aisle shall have clearly discernable cross walks.~~
- ~~G. Accessible ramps shall be designed and constructed so as to be integrated into the sidewalk. Ramps shall not be located within or extend into an accessible space, access aisle or any other portion of the parking lot.~~
- ~~H. Parking spaces for vans shall have a vertical clearance of 98 inches minimum at the space and along the vehicular route thereto. In cases of a loading zone, a minimum vertical clearance of 114 inches shall be provided at passenger loading zones and along vehicle access routes to such areas from site entrances.~~
- ~~I. Every accessible parking space required by this division shall be identified by a sign, mounted on a pole or other structure, located between 36 inches and 60 inches above the ground, measured from the bottom of the sign, at the head of the parking space. A sign identifying an accessible parallel parking space shall be mounted 84 inches above the ground, measured~~

~~from the bottom of the sign, and shall be placed at a point parallel to the center of the parking space. All identifying signs shall be 12 inches wide by 18 inches in height and meet the requirements set forth in the Manual on Uniform Traffic Control Devices, as referenced in the Lee's Summit General Code of Ordinances.~~

- ~~J. In addition to the requirements of this section, all accessible parking spaces and areas shall comply with the requirements of the federal Americans with Disabilities Act.~~

**Sec. 2.360. - Final development plans; applications—Contents and submission requirements.**

- A. All general application requirements contained in Section 2.040.A.
- B. All plan submission requirements in Section 2.040.B.
- C. Contents. The proposed final development plan shall also include the following:
  - 1. A legal description which accurately describes the limits of the property.
  - 2. Area of land in square feet and acres.
  - 3. Location and limits of the one percent annual chance flood, as set forth on the current FEMA maps with reference to the panel number. Elevations shall be provided if shown on the FEMA map.
  - 4. Layout, number and approximate dimensions of lots and approximate lot areas.
  - 5. Name, location, width, radii, centerline, and grade of streets and alleys, both public and private.
  - 6. Location, width and limits of all existing and proposed sidewalks and public walkways.
  - 7. Location and width of proposed easements.
  - 8. Building setback lines from streets with dimensions.
  - 9. Location and approximate dimensions of culverts and bridges.
  - 10. Location of existing and proposed driveways, curb cuts, median breaks and turn lanes.
  - 11. The location and size of all utility lines, including water, storm water, and sanitary sewers.
  - 12. Final analysis of the capacity of the existing sanitary sewer receiving system.
  - 13. Final water and sanitary sewer plans.
  - 14. Appropriate water service demand data (including, but not limited to, planned land usage, densities of proposed development, pipe sizes, contours and fire hydrant layout) to allow for the preliminary analysis of the demand for water service if required by the City Engineer.
  - 15. Final storm water collection, detention and erosion control plans.
  - 16. Information (proposed size, nature and general location) on all proposed storm water management facilities and detention facilities. A final storm water report shall be submitted unless the storm water report requirement was waived by the City Engineer or there are no required revisions to the preliminary storm water report. All storm water reports shall include:

- a. Current and proposed land use assumptions,
  - b. Identification of the watershed in which the project is located,
  - c. Identification of offsite drainage areas,
  - d. Surrounding property information,
  - e. Any other pertinent information about the site which may influence storm water runoff,
  - f. Proposed storm water facilities,
  - g. The downstream effects of the development,
  - h. Calculations for the 100 percent, ten percent, and one percent storms. All calculations must be submitted with the report; a summary table is not acceptable,
  - i. If the storm water report indicates that detention is not required, supporting calculations evaluating the downstream effects must be provided,
  - j. All reports shall be signed and sealed by a professional engineer registered in the State of Missouri.
17. Location and size of proposed open space for public use proposed to be dedicated or reserved and any conditions of such dedication or reservation; parks, playgrounds, churches, or school sites or other special uses of land to be considered for public use, or to be reserved by deed or covenant for the use of all property owners in the subdivision.
  18. Location and dimensions of all parking spaces, accessible spaces, [accessible routes](#), drive aisles, driveways, and curbs.
  19. Finished grades showing one-foot contours for the entire site (2-foot contour intervals may be allowed by the Director, depending on the site).
  20. All proposed and existing adjacent public street rights-of-way with centerline location.
  21. All proposed and existing adjacent public street and public drive locations, widths, curb cuts and radii.
  22. Sufficient dimensions to indicate relationship between buildings, property lines, parking areas and other elements of the plan.
  23. Location of all required building and parking setbacks.
  24. Location, dimensions, number of stories and area in square feet of all proposed buildings.
  25. The location of all oil and/or gas wells within the subject property.
  26. Limits, location, size and material to be used in all proposed retaining walls.
  27. Location and dimensions of all driveways, parking lots, parking stalls, aisles, loading and service areas and docks.
  28. Location, height, intensity and type of outside lighting fixtures for buildings and parking lots.
  29. Photometric diagram indicating the foot candle levels throughout the site and at the property lines.



30. The manufacturer's specification sheets for proposed exterior lighting to include both parking lot pole mounted and wall mounted fixtures. The specification sheets shall indicate the exact fixture to be used.
31. Location, size, and type of material to be used in all screening of ground mounted mechanical equipment.
32. The manufacturer's specification sheets for proposed mechanical equipment to be used.
33. Location, size, and type of material of all proposed monument or freestanding signs.
34. The location of adjacent developments, alignment and location of existing public and private driveways and streets, medians, and public and semi-public easements.
35. Locations of existing and proposed fire hydrants.
36. Sight triangles. (See Article 8, Division I.)

D. Exterior building elevations.

1. Elevations of all sides of proposed buildings including notation indicating building materials to be used on exteriors and roofs.
2. Location, size and materials to be used in all screening of rooftop mechanical equipment.
3. A dashed line indicating the roof line and rooftop mechanical equipment.

E. Floor plan showing dimensions and areas of all floors within proposed buildings and structures.

F. Landscaping plans shall be submitted in accordance with Article III.

G. Land Use Schedule. A land use schedule shall include the following:

1. Total floor area,
2. Number of dwelling units,
3. Land area,
4. Number of required and proposed parking spaces,
5. Impervious coverage, and
6. Floor area ratio (FAR).

H. The following shall be submitted in support of the application for final development plan approval:

1. Deeds of dedication for all rights-of-way or easements required as a result of preliminary development plan approval, if conveyance thereof is not to be made by plat.
2. A copy of all proposed covenants and restrictions applicable to the development.
3. A copy of the property owners association bylaws as evidence of the establishment of the agency for the ownership and maintenance of any common open space and all assurances of the financial and administrative ability of such agency.
4. Evidence of satisfaction of any conditions of the preliminary development plan approval that were conditions precedent to consideration of the final development plan.

5. An application for engineering approval pursuant to the Design and Construction Manual. All applications for engineering approval shall be accompanied by the number of copies of the following as required by the City Engineer:
  - a. Engineering drawings with the information required in the Design and Construction Manual;
  - b. Plans, profiles and details for streets, curb and gutters, sidewalks, storm and sanitary sewers, and water lines;
  - c. A written benchmark description and elevation;
  - d. A storm water Master Drainage Plan that contains detailed plans for storm drainage, storm water detention, and grading plans, as specified in the Design and Construction Manual.

**The City of Lee's Summit**  
**Action Letter - Draft**  
**Planning Commission**

Thursday, November 14, 2019

5:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

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Call to Order

**Present:** 7 - Board Member John Lovell  
Board Member Jake Loveless  
Board Member Carla Dial  
Chairperson Jason Norbury  
Board Member Terry Trafton  
Board Member Jeff Sims  
Board Member Dana Arth

**Absent:** 2 - Board Member Mark Kitchens  
Vice Chair Donnie Funk

Roll Call

Approval of Agenda

A motion was made by Board Member Dial, seconded by Board Member Trafton, that the agenda be approved. The motion carried unanimously.

Public Comments

There were no public comments at the meeting.

Approval of Consent Agenda

[TMP-1419](#) Appl. #PL2019-292 - VACATION OF EASEMENT - 1695 SE Decker St and 60 SE Thompson Dr; Thompson Properties, LLC, applicant

A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

[2019-3143](#) Appl. #PL2019-370 - SIGN APPLICATION - Edward Jones, 500 SW Market St; Fastsigns, applicant

A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be approved. The motion carried unanimously.

[2019-3114](#) Minutes of the October 24, 2019, Planning Commission meeting

A motion was made by Board Member Dial, seconded by Board Member Sims, that the minutes be approved. The motion carried unanimously.

## Public Hearings

[2019-3140](#)

Public Hearing: Application #PL2019-305 - Preliminary Development Plan - Main Orchard, 510 NW Main St and 6 NW Orchard St; Engineering Solutions, LLC, applicant.

Chairperson Norbury opened the hearing at 5:06 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Matt Schlicht of Engineering Solutions gave his address as 50 SE 30th Street in Lee's Summit. The project was located on the west side of Main Street, north of Orchard Street; 510 Main and NW Orchard. This was a vacant property, about 2.5 acres. One existing home on 510 Main dated to about 1920 and was a bungalow-style, front porch home with a dormer and a gravel drive but no garage. The proposal was to divide the property into six residential lots, adding a garage and an above-garage loft space to the existing home. The other five lots would be sold. The applicants had provided staff with a memorandum of ideas, outlining the applicants' preference for the size and style of the homes, with the developer providing some help with what the applicant wanted to see. They wanted to leave the existing home in place, with the new homes being the early-mid 20th century style of 'foursquare' bungalow style with dormers, front porches and garages in the back.

The sheet that the applicant had given the Commissioners a summary of the house characteristics. They would be a minimum 1,000 square feet, with each having a garage, including the existing house; and each would have a front porch covering at least 50 percent of the front side and a minimum 6-foot depth. All would be one or two stories with a dormer on the two-story houses. These would all be consistent with the Craftsman style that was common throughout the Downtown area. The driveway width would be limited to 16 feet at the front and side, in order to keep the streetscape more similar to the older style.

A neighborhood meeting had been held at the Gamber Center, with all residents within a 300-foot radius of the property invited; however, only 3 neighbors attended. They had asked if the homes would be rentals, and he had replied that the lots would be sold for development. Mr. Schlicht noted that many of the same people attended these meetings: young couples who wanted to purchase a Downtown home. This would provide someone to have their desired home built. These houses were in the \$200,000-\$300,000 range.

Mr. Schlicht displayed a colored example of what the houses would look like. Each would be built slightly above grade with a welcoming stairway/porch entry. Each would have a sidewalk from the front steps to the public sidewalk. Like the style, the colors and materials would be standard for the older Downtown neighborhoods: shake shingles or Hardiboard siding, real stone or brick veneers. He wanted to avoid using vinyl or metal sidings or stucco. Colors would be low-contrast, but color palettes were provided for buyers who wanted a slightly different color.

Originally, the Old Lee's Summit development master plan had identified this specific area, and some areas to the west of it, as being parts of the Downtown core that were under-utilized. The applicants believed that this plan was consistent with the plan. Mr. Schlicht then displayed a photo of the existing home at 510 Main Street. It had been built in the early 1920s and was currently being rented. The house was 1,100 square feet, had a stone foundation and a faux dormer at the top. The plan was to add a garage with a loft behind it, and to replace the gravel drive with a concrete one. Other photos showed the interior of the existing house.

Mr. Schlicht stated that he had worked with staff to control some of the stormwater from nearby houses. He showed a diagram of individual detention pits. Stormwater would be piped down from all the roofs, downspouts and hard surfaces into the pit area for each lot. A rock chamber below would store water during major rain events. It was basically a design for a

rain garden. Rain gardens reduced some of the peak runoff that would go downstream.

The applicants were asking for one modification. The rule for the RP-2 zoning district dictated that a garage could not be any taller than the principal structure. That would rule out a loft above a garage in this case. He had done a sight line survey and showed that the garages would be far back enough to not be visible above the roofs of the houses.

Following Mr. Schlicht's presentation, Chairperson Norbury asked for staff comments.

Ms. Thompson entered Exhibit (A), list of exhibits 1-17 into the record. She confirmed that the applicant was submitting a preliminary development plan for five single-family homes at the northwest corner of NW Orchard and NE Main Street. This property and the surrounding properties were zoned RP-2, for planned two-family residences. She displayed a slide of the proposed site plan, showing the five vacant lots and one existing home; and footprints for the five proposed homes. She showed a number of elevations for similar structures, adding that once a residential building permit was submitted to the City, the planning staff would review these elevations to make sure they complied with what was approved. The modification request was for a detached garage with loft on Lot 3, with an overall building height of 26 feet. Staff did not support a detached garage that was taller than the principal structure, and requested that the garages conform to height limits.

Ms. Thompson confirmed that this area was part of the Old Downtown part of Lee's Summit. They were in favor of increasing the housing stock in the area, which this plan could do. Regarding sidewalks, they were required as part of the platting process; however, there were not many sidewalks in this particular area. The applicant asked for a waiver for a sidewalk along Orchard and to make a payment in lieu of construction. He did propose a sidewalk along NE Main Street, which would be constructed as each house was built.

The application had two Conditions of Approval. The detached garage would conform to the UDO requirements for building height, and the developer would pay the City of Lee's Summit for construction costs instead of constructing a sidewalk along NW Orchard.

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

Mr. Loveless noted Ms. Thompson's mention that before a builder applying for get a building permit on one of these lots would have to submit plans that staff would approve as architecturally consistent with the rest of the neighborhood. Ms. Thompson stated that they would have to submit a plot plan along with residential plans, including floor plans and elevations. This required a review from a planner, who would check for approved elevations and complied with what was approved.

Mr. Loveless then asked Mr. Schlicht for some details about the stormwater collection plan. He noted that with connectivity among the lots and asked why they could not be tied in with the typical water system. Mr. Schlicht pointed out on the map the about 30 acres in the neighborhood that drained a large area through Olive. It had open ditches and few collection systems. The idea was for the individual houses to collect rainwater off the roofs on site and give each homeowner individual control. They would also have the opportunity to start rain gardens. Mr. Loveless asked if it was accurate that this would effectively create a net zero in terms of impervious surface, and Mr. Schlicht replied that it was.

Mr. Loveless asked about driveways. Mr. Schlicht pointed out the two houses, including the existing one that would have two large maple trees on each side, and a corner with a few more large trees. One of the houses would be built behind the trees, which would enable landscaping along the north side with a long driveway. This was typical of the old Downtown

neighborhood, which had houses built varying distances from the street instead of just a row of houses directly next to each other. Mr. Loveless noted that Mr. Schlicht planned to keep the existing home but add a garage behind the home that would be taller than the house. Mr. Schlicht explained that he planned to build a garage with loft behind the existing house at 510 Main. He had discussed this with staff, and determined that a garage with loft could be permitted, up to a height of 40 feet. If the garage was first built and a loft added later it would not comply with the UDO. The garage was part of this application; but he would not ask for a modification at this time.

Mr. Trafton asked why Lot 1 was offset so far back. Mr. Schlicht stated that he wanted to keep the trees on the lots, and the lots had different characteristics, and provided different opportunities for buyers. A buyer could choose the narrow, elongated 60-foot lot or the corner lot which was a little bit larger. These lots reflected Downtown's unique character and lent itself to providing different opportunities. The L-shaped lot at the north end in particular made a bigger building and a choice of location for the garage. It was an opportunity to do something different.

Concerning the detention pit, Mr. Trafton said he assumed these were not tied to any kind of runoff from the street, but would provide a way to collect the water and let it naturally move into the system. He asked if there were other parts of Lee's Summit where this had been tried successfully. Mr. Schlicht did not know of any within the city limits, although a rain garden would be somewhat similar. They did lots of redevelopment in Leawood, Fairway and Prairie Village, tearing down homes and rebuilding in infill sites, and were using this system. It seemed to function well. With no infrastructure for stormwater, the water would just either run across the ground and continue onto another property or be diverted into a large detention basin that that was used by a number of residents. The latter was often a headache.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:32 p.m. and asked for discussion among the Commission members, or for a motion.

Ms. Dial made a motion to recommend approval of Application PL2019-305, Preliminary Development Plan, Main Orchard, 510 NW Main St and 6 NW Orchard St; Engineering Solutions, LLC, applicant; subject to staff's letter of November 7, specifically Conditions of Approval 1 through 11. Mr. Trafton seconded.

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

A motion was made by Board Member Dial, seconded by Board Member Lovell, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

[2019-3144](#)

Public Hearing: Application #PL2019-307 - Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan - Osage, approximately 32 acres located at the southwest corner of SW M-150 Hwy and SW Pryor Rd; Clayton Properties Group, Inc., applicant.

Chairperson Norbury opened the hearing at 5:34 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. John Erpelding of Olsson stated that Mr. Vince Walker and Mr. Travis Roof of Summit Homes were also present. They proposed a rezoning and preliminary development plan for Osage, which would cover about 31.5 acres at Pryor Road and 150 Highway. It would consist of a total 160 units. Mr. Erpelding displayed a color-coded map showing the different types of housing product. They planned 32 single-family homes, 22 two-family structures named "Twin Gallery", in the middle and 21 four-family townhomes. The property also included 16 common

area tracts that would be used for detention, landscaping, buffer areas, monument signs and amenities. These tracts totaled about 6.3 acres, about 20 percent of the property.

Osage was to be developed in three phases, and Mr. Erpelding pointed out these phases, indicated by dashed lines, on the map. The first would have two points of access, one on Pryor and one on M-150. The latter would be a right-in-right-out intersection due to an existing median. Mr. Erpelding listed improvements associated with the first phase. These included monument signs at both entrances and on the M-150 and Pryor Road corner, the stormwater detention facility at the property's southeast corner, an off-site sanitary sewer extension reaching about 780 feet to the east and some street stubs to adjacent properties to the south and west that would allow for future connectivity. Some street improvements were also planned. The M-150 entrance would have an eastbound right-turn lane and some and both northbound and southbound turn lanes at the Pryor Road access. The northbound left turn lane on Pryor Road would be extended. They would add paved shoulders on both sides of Pryor along the length of the east side. As part of another project, Summit Homes would also widen and add paved shoulders further to the south, from County Line Road to the subject properties south boundary. These were interim road improvements. The second phase would focus on the northwest quadrant of the development. Streets would be looped for better connectivity; and the third phase would develop the southwest corner of the property.

The single-family lots would be 50 to 70 feet wide and 120 feet deep. The Twin Gallery structures would be on lots about 70 by 118 feet; and both would have a minimum of 10 feet between each structure. The townhomes would be on 140 feet wide and 120 feet deep, with a minimum of 20 feet between buildings. The applicant was not requesting any modifications to the zoning requirements, as they were meeting all the requirements for setbacks, density, lot widths and depths, landscape buffers or parking. They would provide 20-foot wide landscape buffers between adjoining properties, and these buffers would confirm to UDO requirements. Additionally, a five-foot tract would run along the south property line, to preserve the existing trees and fence. The streets would be lined with trees with 30-foot spacing.

They had held two neighborhood meetings. One was an unofficial one in August, and a formal neighborhood meeting on October 14th. This was also sparsely attended, with about five people; but everyone within 300 feet had been invited. Most of the questions were about prices. The applicant agreed with all of staff's Conditions of Approval.

Mr. Vince Walker addressed the project's layout and architecture. They had heard and taken into account the feedback they had previously received. In using a variety of housing designs, they were able to provide prospective buyers a variety of options. The four-unit detached townhomes would be at the property's north end bordering M-150. The Twin Gallery units would be in the center section, and the "Lifestyle Collection" single-family homes would be on the south side. A central amenity section would include a 25-meter lap pool and children's "splash" area, clubhouse pavilion and a park. These would be administered by a Homeowners Association. All homes would be built using the same quality materials on both exteriors and interior finishes. He then presented a visual video of what Osage was planned to look like. It showed the road system, considerable green space including trees, playground, pavilion, and various types of housing.

Following the applicant's presentation, Chairperson Norbury asked for staff comments.

Mr. McGuire entered Exhibit (A), list of exhibits 1-16 into the record. He confirmed that the applicant was asking to rezone 31.47 acres at the corner of Pryor Road and 150 Highway from AG and R-1 to RP-3. The development would have 32 single-family lots, 22 two-family lots, 21 four-family lots and 16 common area tracts. The surrounding area was a mixture of single-family homes (to the north) and undeveloped properties (to the east and west). Large-lot single-family homes were to the south. The Napa Valley single-family subdivision was

to the southeast, and Grand Summit View and Arborwalk to the northeast.

Displaying colored elevations, of single-family and two-family dwellings and the proposed clubhouse Mr. McGuire observed that the applicant proposed to use materials and designs compatible with other nearby subdivisions and throughout Lee's Summit in general. Exteriors would be stone veneer, lap and panel or shake siding and composite shingle roofs. The requested RP-3 zoning would provide for medium-density mixed residential uses, and the project was generally consistent with the Comprehensive Plan, including the plan's objectives of providing diverse housing types. The maximum density would be 10 units per acre. Any deviation from the approved plan would require approval of a replacement preliminary development plan.

This project was compatible with existing and planned uses on surrounding properties. The 310-acre Arborwalk development was further to the northeast. This was also a mixed-use development that included single-family villa lots, standard single-family lots, duplexes, triplexes, fourplexes and apartments. Villa lots at Arborwalk were allowed a minimum size of 3,675 square feet. The 88-acre Napa Valley development was to the southeast. Napa Valley also had a mixture of single-family villa lots, standard single-family lots and estate-size lots. Napa Valley's villa lots had a minimum lot size of 4,950 square feet. This project's proposed 6,000 square foot minimum lot size for a single-family house was 2,325 square feet larger than the minimum at Arborwalk and 1,050 square feet larger than Napa Valley's minimum. If this application was approved, the plan would satisfy any requirements applicable to zoning district as outlined in the UDO and the Design and Construction Manual.

Following Mr. McGuire's comments, Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application.

Mr. Charles Ray gave his address as 4090 SW Pryor Road. He asked what the plans were for Pryor Road to the south, and asked where sidewalks would be. He noted that the small number of people attending the meeting was due to not many people living within 300 feet of this property. The neighbors who did live nearby had a nice park down the street that they had to get to on foot, so they knew that the traffic on Pryor Road had increased considerably. He knew that adding 160 housing units on that corner would increase the traffic even more.

Mr. Roofl stated that they had an obligation connected with Stoney Creek to make interim improvements to Pryor Road from County Line Road up to Pryor. The improved road would be 24 feet wide and restriped, with 6-foot paved shoulders on both sides up to Napa Valley's entrance. When the Osage project was completed, the road would be improved from Napa Valley to M-150 and additional rights-of-way were dedicated for future road improvements. This project would have sidewalks up to the property lines. The 6-foot paved shoulders could be used as pedestrian or bike lanes for the present.

Chairperson Norbury then asked if the Commission had questions for the applicant or staff.

Mr. Trafton asked if it was correct that the median on M-150 would be left intact, in order to prevent traffic problems generated by left turns. Mr. Walker answered that it was. Mr. Trafton then asked what the street widths inside the development were, remarking that the video had not shown cars parked on the streets and in driveways. There were likely to be many of them due to the fourplexes. Mr. Erpelding answered that they would be 28 feet wide, which was the City's standard for local streets. That was wide enough to allow for on-street parking. He acknowledged that cars parked on both sides could cause difficulties for other vehicles, including emergency vehicles. He displayed a parking diagram, with red lines indicating parts of streets in front of side yards. Parked cars would be less of a problem in those locations, as long as they did not block driveways. The plan identified a total of 77 on-street parking spaces.



Mr. Trafton then asked what was the reasoning for concentrating so much of the density in one north quadrant with about 180 residents. Mr. Walker answered that it was typical for this kind of land use to concentrate higher densities near a highway corridor and transition into lower-density product further down. M-150 would have a sidewalk just to the north side of the property line; but the interim improvements for Pryor Road did not require sidewalks on both sides. Mr. Trafton asked staff if this meant the Livable Streets ordinance would not require adding sidewalks on Pryor. Mr. Soto answered that Pryor would require sidewalks. He confirmed that for interim standards, the paved 6-foot wide shoulders could serve as a proxy for sidewalks until final improvements were made to the road.

Mr. Park noted that Pryor Road was in a state of transition from a rural to an urban roadway. The proposed improvements met the standards for an interim road, which Pryor Road was north of M-150 Highway. That meant a 24-foot width with turn lanes and paved shoulders required by the Access Management Code. The paved shoulders did serve as a pedestrian route in the absence of sidewalks. If Pryor was improved from this interim condition it would be brought up to urban standards which included curbs, sidewalks and traffic signals. At this point, the City's progression of Pryor started at M-150 and moved north to Longview Road. The capital improvement program had funds to begin develop Pryor to urban standard from Hook Road to Longview. After that, improvements would extend south from M-150 based on demand. Mr. Trafton asked if this meant that the City intended to just let kids and families walk on the road's shoulders; and Mr. Park replied that staff was following the standards that the City Council had adopted. They permitted an interim road standard at this point. It was within the Council's purview to require a development to exceed that standard. He added that if sidewalks were put in at this point, they would have to be torn out at the time that Pryor Road was improved along that stretch. At present, many people walked, jogged and ride bicycles on the paved shoulders of Pryor north of M-150.

Mr. Trafton asked what the average prices for the development were. Mr. Walker answered that the prices were not set at this time. They did intend to have three different price points. Concerning the parking, he pointed out that the development included two-car garages as well as 25-foot building lines. The latter allowed for two cars parked in a driveway as well. The subdivision's layout did follow the pattern of transitioning from a higher density at one end where there was a major roadway down to a lower single-family density at the opposite end. Mr. Trafton asked what the estimated square footage of the fourplexes would be. Mr. Walker answered that the townhomes would be about 1,500 square feet, with two-story and 1.5-story plans; and the Twin Gallery units would range from 1,300 to 1,900 square feet. The single-family homes would range from 1,500 to 2,500 square feet. All these units would have full basements. He did not specify the square footage of the fourplexes.

Mr. Lovell asked how many bedrooms the townhomes would have, and Mr. Walker answered that they would be 2 or 3 bedrooms. These would be for sale and not for rent. The streets were 28 feet wide from curb to curb. Mr. Lovell remarked at in New Longview where he lived, detached garages were in the back but residents had no room to park extra cars behind the garages, resulting in a lot of cars parked on the streets. Concerning the townhomes, he asked if they might be maintenance-free for yards. Mr. Walker answered that there had been discussion of that but nothing was finalized.

Chairperson Norbury remarked that much of tonight's application was in response to concerns raised in the previous application. Mr. Walker responded that the project as a whole had been a more uniform project, without the multiple home choices that tonight's version had. Much of the feedback they'd received had to do with the uniformity of the product. The elevations they'd shown had been contemporary; whereas tonight's version showed a 'modern farmhouse' look, which was a little more traditional. Traffic had also been an issue with the initial application; and the traffic impact would be less with tonight's plan than if the whole project had been a single-family development. 'Too much of one thing' was one of the criticisms they'd heard, and they had now provided more of a variety of choices. This was a

very conventional development in terms of what was provided in Lee's Summit. They had received feedback from the Napa Valley neighbors that this plan was a major improvement.

Mr. Walker confirmed for Chairperson Norbury that these units would all be for sale and not rentals. Chairperson Norbury recalled from the previous application that price points were \$225,000 to \$275,000, and asked about the prices of the townhome and duplex units. Mr. Walker answered that the single-family homes would be somewhat over \$300,000. They did not have price points for the other housing. He noted that M-150 did not have a crosswalk.

Mr. Loveless left the meeting, at 6:16 p.m.

Mr. Ray returned to the podium and asked about people coming out of the subdivision making U turns off M-150 to go west. Mr. Park consulted the traffic study and replied that the current traffic count at peak hour was about 3 doing a U turn at M-150 and Pryor. The traffic engineer hired by the applicant projected an increase of 9 over a 60-minute period at the busiest time. That would maintain a satisfactory level of service. He did think a pedestrian crosswalk was a very good suggestion, adding that M-150 was under the jurisdiction of MoDOT, not the City. He was willing to report this suggestion to MoDOT.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 6:17 p.m. and asked for discussion among the Commission members.

Mr. Lovell stated that in view of the changes in tonight's application, it looked like a very good project. It would accommodate upwardly mobile younger buyers who did not necessarily want to buy a large house; and Lee's Summit needed more product that would encourage them to remain in the community. He also liked developments that reflected thinking outside the box, and definitely supported this application.

Ms. Arth agreed with Mr. Lovell's commendation on the improvements, and said she had enjoyed the video. She also appreciated the applicant being aware of and responding to the parking issues, as well as the amenities and variety of housing options.

Mr. Trafton asked if there were covenants and restrictions covering the requirements for buying the townhomes, duplexes and fourplexes rather than renting or leasing. Chairperson Norbury stated that once these units were for sale, there was no guarantee that someone could not buy a unit and then rent it, subject to the City's rules regarding short-term renting.

Chairperson Norbury commended the applicant for making every effort to get a development done on this piece of land and responding to what the residents and the City Council had to say. However, he considered the prior project to be a better one, and the varying sizes of the homes and being able to have a single-family home in the price range now cited for townhomes was a far better idea for the community. The architecture now was rather standard-looking and unimpressive. The City Council had essentially cut off any capacity for the applicant to have any architectural variation or interest; and the city would be poorer for that. This was a precursor to the uniformity that Lee's Summit would end up with. He did think the applicant had done an admirable job of sticking to the original goal of offering housing product that someone of medium income could afford for new construction. He planned to recommend approval, though he would not if it was a rental project as that would not meet the goal he'd referenced. He hoped that there would be more vision from City officials in the future.

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

Ms. Dial made a motion to recommend approval of Application PL2019-307, Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan: Osage, approximately 32 acres located at

the southwest corner of SW M-150 Hwy and SW Pryor Rd; Clayton Properties Group, Inc., applicant; subject to staff's letter of November 7, 2019, specifically Conditions of Approval 1 through 17. Ms. Arth seconded.

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

Commissioner Loveless left the meeting at 6:14 P.M., before vote.

A motion was made by Board Member Dial, seconded by Board Member Arth, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

[2019-3137](#)

Public Hearing: Application #PL2019-359- Unified Development Ordinance (UDO) Amendment - Changes to Article 1 - General Provisions, Article 2 - Applications and Procedures and Article 8 - Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant.

Chairperson Norbury opened the hearing at 6:25 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Johnson entered Exhibit (A), list of exhibits 1-6 into the record. He stated that this amendment had two goals. One was create a reasonable accommodation process. It addressed situations such as someone needing something added to their home to accommodate a disability, such as a ramp, and that item had to be put in a setback. The City code currently required a variance that would be granted by the Board of Zoning Adjustments. The change would create a no-cost process where a staff board could approve it administratively. This board would consist of a member each of Development Services, the Fire Department and Public Works. A development review committee now met every week and could do that review so the process would be fairly quick.

The second part of the amendment would adopt standards from the building code for ADA standards for parking lot design. The City adopted new codes every 6 years and the International Building Code had been adopted by not only Lee's Summit but also most other jurisdictions in the metro area. All were now under the 2018 code.

The third revision was to require applicants to show accessible routes in final development plans, making it easier to evaluate parking areas for accommodation.

Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application. As there were none, he opened the hearing Commissioners' questions.

Chairperson Norbury asked if there was nothing that would prevent the City from either augmenting or varying from the IBC if they so decided on a particular issue. Mr. Johnson responded that the IBC was the guide for designing parking lot facilities. There could be code modification requests but it had not been the City's policy to do that when it involved the ADA. Chairperson Norbury said he was referring to a situation where the City decided that the IBC was outdated after a new standard was adopted.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 6:30 p.m. and asked for discussion among the Commission members, or for a motion.

Ms. Dial made a motion to recommend approval of Application PL2019-359, Unified Development Ordinance (UDO) Amendment: Changes to Article 1, General Provisions; Article

2, Applications and Procedures and Article 8, Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant. Mr. Sims seconded.

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

A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

## Roundtable

Regarding the earlier question about water management as proposed for the Main Orchard project, Mr. Monter stated that staff had taken some time reviewing this with the applicant. It was not much different from rainwater draining off a parking lot into a rain garden area. There was an example on Douglas at the Nationwide business. The apartments next to the Sonic were another example. This was something that staff wanted to encourage, especially for infill projects. It could be an improvement over detention basins that might or might not be maintained.

Ms. Dial said she had been contacted by some members of the public who had a problem with a developer who gave testimony under oath that they were going to use or not use a particular product on their building. In reality it turned out that the product was one the developer had said they would not use. The Homes Association and the Alliance had said this was not enforceable by the City because specific wording had not been included in the development plan approved by the City Council. She wanted to make the Commission aware that this had happened, and hopefully they could find a way to ensure it would not happen again. Mr. Johnson replied that this concerned an email exchange between the Alliance and himself. During public testimony at the Kessler Ridge application, the president of Inspired Homes promised not to use a certain product and made a few other commitments. This was not added to the ordinance as a condition of approval, and the elevations they had provided did not call out any materials. There was nothing holding the project to a specific set of materials. It had to be locked into an ordinance and public testimony itself was not binding. This had been reflected in the Main Orchard application, where specific criteria about items such as front porches. Chairperson Norbury remarked that if a developer wanted to make a specific promise it could be made a condition of recommendation.

## Adjournment

There being no further business, Chairperson Norbury adjourned the meeting at 6:33 P.M.

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

## Packet Information

**File #:** 2019-3131, **Version:** 1

Public Hearing: Residences at Echelon Amendments to Chapter 100 Industrial Development Project.

### Issue/Request:

M-150 Echelon Land Development, LLC is the developer of the 243 unit multi-family Residences at Echelon project currently under construction on 12.6 acres immediately north of Aldersgate Methodist Church located on M-150 Hwy. M-150 Echelon Land Development, LLC is requesting to amend the Chapter 100 Industrial Development Project to amend the Payment in Lieu of Tax (PILOT) schedule and authorize additional bond capacity in the amount of \$9,000,000 for a total maximum principal amount not to exceed \$36,000,000 to complete the project. The request to amend the approved Chapter 100 Industrial Development Project is due to construction delays caused by various factors.

### Key Issues:

M-150 Echelon Land Development, LLC is requesting to amend the current PILOT schedule to allow for one additional year for construction completion. The current approved PILOT schedule allows for the first two year PILOTS to be nominal amounts to allow for project completion during 2017 - 2018 with 2019 PILOTS established for project completion and full occupancy. The PILOT structure for the completed project is approved to be in place through 2028 (ten year period). As the project is not fully completed, M-150 Echelon Land Development, LLC is requesting one additional year of nominal PILOT's to allow for project completion and occupancy prior to triggering the "full" PILOT payment for the completed project. In summary, this would adjust the PILOT schedule by deferring the "full" PILOT payment by one year. Provided below is a comparison of the approved PILOT schedule and the proposed/requested PILOT schedule.

<u>Approved PILOT Schedule</u>		<u>Proposed/Requested PILOT Schedule</u>	
YEAR	AMOUNT	YEAR	AMOUNT
2017	20,421	2017	20,421
2018	20,421	2018	20,421
2019	241,299	2019	20,421
2020	241,299	2020	241,299
2021	241,299	2021	241,299
2022	247,331	2022	241,299
2023	247,331	2023	247,331
2024	247,331	2024	247,331
2025	247,331	2025	247,331
2026	247,331	2026	247,331
2027	253,514	2027	247,331
2028	253,514	2028	253,514
		2029	253,514

In addition to adjusting the PILOT schedule to allow for completion of the project, M-150 Echelon Land Development is requesting an increase in bond capacity of \$9,000,000 for a total maximum principal amount

not to exceed \$36,000,000. This requested increase does not change the risk of the project for the City and only adjusts the bond amount to to cover project costs.

In making these adjustments, the maturity of the bonds would be extended for one year to December 1, 2029; the term of the lease would be extended by one year to December 1, 2029; and the term of the PILOT schedule extended by one year through 2029.

Proposed City Council Motion:

No motion necessary - a proposed ordinance has been placed on the December 3, 2019 agenda for consideration.

Background:

On January 12, 2017 the City Council passed Ordinance No. 8069, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Residences at Echelon Project), Series 2017, in the maximum principal amount of \$27,000,000 for the purpose of acquiring and improving certain real property including the construction and improvement of a luxury multi-family apartment project on the project site. The project consists of the design and construction of a 243 unit luxury apartment development in which the company receives tax abatement under the Chapter 100 structure on the real property included in the project. However, the company makes fixed PILOTS in accordance with the approved PILOT schedule. The PILOT schedule was based on information provided to the Council by City staff regarding the tax payments on comparable properties at the time of consideration. The approved PILOT amount was based on \$993 per unit beginning in 2019 upon anticipated project completion.

Mark Dunning, Assistant City Manager  
David Bushek, Chief Counsel of Economic Development & Planning  
Kimberly Spies, Rouse Frets White Goss Gentile Rhodes, P.C.  
Jake Loveless, M-150 Echelon Land Development, LLC

## **NOTICE TO TAXING JURISDICTIONS**

On behalf of the City of Lee's Summit, Missouri (the "City"), please find enclosed a copy of the proposed Second Amended and Restated Plan for an Industrial Development Project and Cost-Benefit Analysis for the Residences at Echelon (the "Second Amended and Restated Plan").

The City Council will consider an ordinance to approve the Second Amended and Restated Plan during the City Council's meeting on December 3, 2019, at 6:00 p.m. in the City Council Chambers at the Lee's Summit City Hall, 220 SE Green Street, Lee's Summit, Missouri.

The City invites you to submit comments to the Council on the proposed Second Amended and Restated Plan. All comments will be fairly and duly considered by the City.

A copy of the Second Amended and Restated Plan will be on file in the office of the City Clerk and will be available for public inspection during normal business hours.

Dated: November 13, 2019

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

## **Taxing Jurisdictions -- Distribution List**

Lee's Summit R-7 School District  
Superintendent  
301 NE Tudor Road  
Lee's Summit, MO 64086

Mid Continent Public Library  
Director  
15616 E. Highway 24  
Independence, MO 64050-2057

Jackson County Board of Disabled Services  
Executive Director  
8511 Hillcrest Road, Suite 300  
Kansas City, MO 64138

Jackson County  
County Executive  
415 E. 12th Street  
Kansas City, MO 64106

Jackson County Health Department  
Director  
313 S. Liberty Street  
Independence, MO 64050

Jackson County Assessment Department  
Director  
415 E. 12th Street, 1M  
Kansas City, MO 64106

Department of Economic Development  
Development Finance  
Missouri Department of Economic Development  
301 West High  
Post Office Box 118 – Room 770  
Jefferson City MO 65102

Missouri Department of Economic Development  
Director  
P O Box 118 – Room 770  
301 West High Street  
Jefferson City MO 65102

Metropolitan Community College  
Chancellor  
3200 Broadway  
Kansas City, MO 64111

Jackson County Community Mental Health  
Executive Director  
1627 Main Street, Suite 500  
Kansas City, MO 64108

City of Lee's Summit  
Director of Finance  
220 SE Green Street  
Lee's Summit, MO 64063

Jackson County Collections Department  
Director  
415 E. 12th Street, 1st Floor  
Kansas City, MO 64106

Missouri Department of Revenue  
County Tax Section  
State Blind Pension Fund  
Post Office Box 453, 301 West High Street  
Jefferson City MO 65101



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**CITY OF LEE'S SUMMIT, MISSOURI**

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

**FOR  
THE RESIDENCES AT ECHELON**

NOVEMBER 13, 2019

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# **CITY OF LEE'S SUMMIT, MISSOURI**

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## **SECOND AMENDED AND RESTATED PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT AND COST-BENEFIT ANALYSIS FOR RESIDENCES AT ECHELON**

### **I. PURPOSE OF THIS SECOND AMENDED AND RESTATED PLAN**

On November 23, 2016, the City mailed a Plan for an Industrial Development Project and Cost-Benefit Analysis (the "Original Plan") to the taxing districts for a proposal to authorize the issuance by the City of its taxable industrial development revenue bonds in the aggregate principal amount of not to exceed \$27,000,000 (the "Bonds"), to finance costs of an industrial development project (the "Project") for M150 Echelon Land Development LLC, a Missouri limited liability company (the "Company") as more fully described and defined herein. The Original Plan was amended on December 22, 2016 (the "First Amended Plan") to provide for an increase in the payments in lieu of taxes to be paid to the taxing districts. The Bonds were issued on March 31, 2017 pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, as amended and Sections 100.010 to 100.200 of the Revised Statutes of Missouri, as amended (collectively, the "Act"). The Project is under construction but is taking longer than expected due to certain unanticipated delays. This Second Amended and Restated Plan provides for a later termination date at the request of the Company, effectively extending the life of the Original Plan by one year by extending the construction period, provides for an updated schedule of payments in lieu of taxes (the "PILOTs"), and provides for additional bond capacity of \$9,000,000, for a total bond capacity not to exceed \$36,000,000. The City Council of the City of Lee's Summit, Missouri (the "City") will consider an ordinance approving this Second Amended Plan (defined below).

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

### **II. GENERAL DESCRIPTION OF CHAPTER 100 FINANCINGS**

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

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

Concurrently with the closing of the Bonds, the Company conveyed to the City title to the property included in the Project (the municipality must be the legal owner of the property while the bonds are

outstanding for the property to be eligible for tax abatement, as further described below). At the same time, the City leased the property, including the Project, back to the Company pursuant to a lease agreement. The lease agreement requires the Company, acting on behalf of the City, to use the Bond proceeds to pay the costs or reimburse the costs of purchasing, constructing and installing the Project, as applicable.

Under the lease agreement, the Company: (1) unconditionally agreed to make payments sufficient to pay the principal of and interest on the Bonds as they become due; (2) agreed, at its own expense, to maintain the Project, to pay all taxes and assessments with respect to the Project, and to maintain adequate insurance; (3) has the right, at its own expense, to make certain additions, modifications or improvements to the Project; (4) may assign its interests under the lease agreement or sublease the Project while remaining responsible for payments under the lease agreement; (5) agreed to maintain its corporate existence during the term of the Bond issue; and (6) agreed to indemnify the City for any liability the City might incur as a result of its participation in the transaction.

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

The company has agreed to make “payments in lieu of taxes” with respect to the Project, which agreement will be amended to reflect the payments in lieu of taxes shown below on Page 3. The payments in lieu of taxes are payable by December 31 of each year, and are distributed to the municipality and to each political subdivision within the boundaries of the Project in the same manner and in the same proportion as property taxes would otherwise be distributed under Missouri law.

### **III. DESCRIPTION OF THE PARTIES**

***The Company.*** The Company is a limited liability company organized and existing under the laws of the State of Missouri.

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

### **IV. REQUIREMENTS OF THE ACT**

***Description of the Project.*** The Project being financed by the Bonds consists of (1) the design and construction of the Residences at Echelon, a 243-unit luxury apartment complex and (2) associated site work and infrastructure. The Project being financed by the Bonds will be constructed on approximately 12.59 acres at the Northwest corner of 291 and 150 Highways, which is referred to as the “Project Site.”

***Estimate of the Costs of the Project.*** The Project is expected to cost approximately \$36,000,000 and to be constructed during the years 2017, 2018, 2019, and 2020.

***Source of Funds to be Expended for the Project.*** The sources of funds to be expended for the Project will be the proceeds of the Bonds in a principal amount not to exceed \$27,000,000, which have

been issued by the City and purchased by the Company (the “Bondholder”) and, if needed, other available funds of the Company. If this Second Amended Plan is approved by the City Council, the City intends to authorize the additional bond capacity of \$9,000,000, for a total bond capacity not to exceed \$36,000,000. The Bonds are payable solely from the revenues derived by the City from the lease or other disposition of the Project (as further described below). The Bonds will not be an indebtedness or general obligation, debt or liability of the City or the State of Missouri.

***Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City.*** The City will continue to hold title to the Project Site under the Chapter 100 transaction. The City will continue to lease the Project to the Company for lease payments equal to the principal and interest payments on the Bonds. Under the terms of the lease agreement with the City, the Company has the option to purchase the Project at any time and will have the obligation to purchase the Project at the termination of the lease. The lease between the City and the Company will terminate in 2029, unless terminated sooner pursuant to the terms of the lease.

***Affected Taxing Districts.*** The Lee’s Summit R-7 School District is the school district affected by the Project. Jackson County, Missouri is the county affected by the Project. Metropolitan Community College is the community college district affected by the Project. The City is the city affected by the Project. No emergency services districts are affected by the Project. The Cost-Benefit Analysis attached hereto identifies all other taxing districts affected by the Project.

***Assessed Valuation.*** The most recent equalized assessed valuation of the Project Site is \$199,262 (due to ownership by the City, the Project Site currently has no assessed valuation). The estimated total equalized assessed valuation of the Project Site after construction of the Project is \$3,720,142. This valuation was calculated based upon an assumed appraised value of \$19,579,697 for the Project Site and the completed Project, multiplied by the assessment rate of 19%.

***Payments in Lieu of Taxes.*** The City issued the Bonds in 2017 and, if this Second Amended Plan is approved by the City Council, the City intends to provide tax abatement to the Company for the Project for a period of ten years beginning in 2020. During years 2017, 2018, and 2019 the Company will pay a payment in lieu of taxes as set forth below. For all the years that the Project Site is subject to tax abatement as provided herein, the Company will make a fixed PILOT payment in December of each year in accordance with the following schedule:

2017-19	\$ 20,421
2020-22	\$ 241,299
2023-27	\$ 247,331
2028-29	\$ 253,514

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

***Cost-Benefit Analysis and Discussion of Exhibits.*** In compliance with Section 100.050.2(3) of the Revised Statutes of Missouri, this Second Amended Plan has been prepared to show the costs and benefits to the City and to other taxing jurisdictions affected by the tax abatements and exemptions of the Project. The following is a summary of the exhibits attached to this Second Amended Plan that show the direct tax impact the Project is expected to have on each taxing jurisdiction. This Second Amended Plan does not attempt to quantify the overall economic impact of the Project.

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

*Summary of Cost-Benefit Analysis.* **Exhibit 2** presents a summary for each affected taxing district of (1) the total estimated tax revenues that would be generated if the Project did not occur, (2) the total estimated tax revenues that would be generated if the Project occurred but no abatement was granted, (3) the total estimated value of the payments in lieu of taxes (“PILOT Amounts”) to be made by the Company for the proposed abatement period, and (4) the projected tax abatement based on this Second Amended Plan.

*Real Property.* **Exhibit 3** provides the projected tax revenues which would be paid on the Project Site without tax abatement and without the Project. **Exhibit 4** provides the projected tax revenues which would be paid on the completed Project without tax abatement. **Exhibit 5** provides the projected value of PILOT Amounts to be paid by the Company. **Exhibit 6** provides the anticipated tax abatement that results from differences between the anticipated tax revenues and the agreed-upon payments in lieu of taxes, which differences were caused by updated tax liability assumptions intended to reflect the real property reassessments occurring in Jackson County for tax year 2019.

## **V. ASSUMPTIONS AND BASIS OF SECOND AMENDED PLAN**

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

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

\* \* \*

## ATTACHMENT A

### SUMMARY OF KEY ASSUMPTIONS

1. The cost of designing and constructing the Project is estimated to be approximately \$36,000,000.

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

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

4. During the entire term of the Bonds through 2029, the Company will make payments in lieu of taxes in accordance with that portion of Section IV above in the Second Amended Plan entitled "Payments in Lieu of Taxes."

5. Real property taxes are calculated using the following formula:

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

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

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

7. The tax rates used in this Second Amended Plan reflect the rates in effect for the tax year 2019. The tax rates were held constant through the 2029 tax year.

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**City of Lee's Summit, Missouri  
(The Residences at Echelon)**

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

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This information is provided based on the factual information and assumptions provided to Gilmore & Bell, P.C. by a party to or a representative of a party to the proposed transaction. This information is intended to provide factual information only and is provided in conjunction with our legal representation. It is not intended as financial advice or a financial recommendation to any party. Gilmore & Bell, P.C. is not a financial advisor or a “municipal advisor” as defined in the Securities Exchange Act of 1934, as amended.



**Exhibit 1**  
**Project Assumptions**

♦ 2017 assessed value of project site		\$ 199,262
♦ Projected assessed value as a percentage of appraised value		19.0%
♦ Investment in the new project	2017-2020	\$36,000,000
♦ Projected appraised value (2020)		\$19,579,697
♦ Projected assessed value (2020)		\$ 3,720,142

- ♦ Fixed PILOT as described below:

<b>Year(s)</b>	<b>Amount</b>
2017-2019	\$20,421
2020-2022	\$241,299
2023-2027	\$247,331
2028-2029	\$253,514

**Exhibit 2**  
**Summary of Cost Benefit Analysis**

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<b>Tax Distribution</b>	<b>Tax Rate</b>	<b>Projected Tax Revenues on Project Site Without Project</b>	<b>Projected Tax Revenues on Project without Abatement</b>	<b>Projected PILOT Amounts</b>	<b>Projected Tax Abatement</b>
Board of Disabled Services	0.0620	\$ 1,698	\$ 24,715	\$ 19,372	\$ 5,343
City - Lees Summit	1.3936	38,161	555,540	435,441	120,100
Jackson County	0.6110	16,731	243,567	190,911	52,656
Lees Summit R-VII	5.3280	145,899	2,123,937	1,664,773	459,164
Mental Health	0.1008	2,760	40,183	31,496	8,687
Metro Junior College	0.2047	5,605	81,601	63,960	17,641
Mid-Continent Library	0.3633	9,948	144,825	113,516	31,309
State Blind Pension	0.0300	822	11,959	9,374	2,585
	8.0934	\$ 221,625	\$ 3,226,328	\$ 2,528,843	\$ 697,485

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

Assessed Value of Project Site Without Project	\$199,262	\$199,262	\$203,247	\$203,247	\$207,312	\$207,312	\$211,458	\$211,458	\$215,688	\$215,688	\$220,001	\$220,001	\$224,401		
Taxing Jurisdiction	Tax Rate per \$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Board of Disabled Services	0.0620	\$ 124	\$ 124	\$ 126	\$ 126	\$ 129	\$ 129	\$ 131	\$ 131	\$ 134	\$ 134	\$ 136	\$ 136	\$ 139	\$ 1,698
City - Lees Summit	1.3936	2,777	2,777	2,832	2,832	2,889	2,889	2,947	2,947	3,006	3,006	3,066	3,066	3,127	38,161
Jackson County	0.6110	1,217	1,217	1,242	1,242	1,267	1,267	1,292	1,292	1,318	1,318	1,344	1,344	1,371	16,731
Lees Summit R-VII	5.3280	10,617	10,617	10,829	10,829	11,046	11,046	11,267	11,267	11,492	11,492	11,722	11,722	11,956	145,899
Mental Health	0.1008	201	201	205	205	209	209	213	213	217	217	222	222	226	2,760
Metro Junior College	0.2047	408	408	416	416	424	424	433	433	442	442	450	450	459	5,605
Mid-Continent Library	0.3633	724	724	738	738	753	753	768	768	784	784	799	799	815	9,948
State Blind Pension	0.0300	60	60	61	61	62	62	63	63	65	65	66	66	67	822
	8.0934	\$ 16,127	\$ 16,127	\$ 16,450	\$ 16,450	\$ 16,779	\$ 16,779	\$ 17,114	\$ 17,114	\$ 17,456	\$ 17,456	\$ 17,806	\$ 17,806	\$ 18,162	\$221,625

**Exhibit 4**  
**Projected Tax Revenues on Project (No Abatement)**

Projected Tax Revenues		\$20,421	\$20,421	\$20,421	\$301,086	\$307,108	\$307,108	\$313,250	\$313,250	\$319,515	\$319,515	\$325,905	\$325,905	\$332,423	
Taxing Jurisdiction	Tax Rate per \$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Board of Disabled Services	0.0620	\$ 156	\$ 156	\$ 156	\$ 2,306	\$ 2,353	\$ 2,353	\$ 2,400	\$ 2,400	\$ 2,448	\$ 2,448	\$ 2,497	\$ 2,497	\$ 2,547	\$ 24,715
City - Lees Summit	1.3936	3,516	3,516	3,516	51,844	52,881	52,881	53,938	53,938	55,017	55,017	56,118	56,118	57,240	555,540
Jackson County	0.6110	1,542	1,542	1,542	22,730	23,185	23,185	23,648	23,648	24,121	24,121	24,604	24,604	25,096	243,567
Lees Summit R-VII	5.3280	13,443	13,443	13,443	198,209	202,173	202,173	206,217	206,217	210,341	210,341	214,548	214,548	218,839	2,123,937
Mental Health	0.1008	254	254	254	3,750	3,825	3,825	3,901	3,901	3,979	3,979	4,059	4,059	4,140	40,183
Metro Junior College	0.2047	516	516	516	7,615	7,767	7,767	7,923	7,923	8,081	8,081	8,243	8,243	8,408	81,601
Mid-Continent Library	0.3633	917	917	917	13,515	13,786	13,786	14,061	14,061	14,343	14,343	14,629	14,629	14,922	144,825
State Blind Pension	0.0300	76	76	76	1,116	1,138	1,138	1,161	1,161	1,184	1,184	1,208	1,208	1,232	11,959
	8.0934	\$20,421	\$20,421	\$20,421	\$301,086	\$307,108	\$307,108	\$313,250	\$313,250	\$319,515	\$319,515	\$325,905	\$325,905	\$332,423	\$3,226,328

**Exhibit 5**  
**Projected PILOT Amounts**

PILOT Payment		\$20,421	\$20,421	\$20,421	\$241,299	\$241,299	\$241,299	\$247,331	\$247,331	\$247,331	\$247,331	\$247,331	\$253,514	\$253,514	
Taxing Jurisdiction	Tax Rate per \$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Board of Disabled Services	0.0620	\$ 156	\$ 156	\$ 156	\$ 1,848	\$ 1,848	\$ 1,848	\$ 1,895	\$ 1,895	\$ 1,895	\$ 1,895	\$ 1,895	\$ 1,942	\$ 1,942	\$ 19,372
City - Lees Summit	1.3936	3,516	3,516	3,516	41,549	41,549	41,549	42,588	42,588	42,588	42,588	42,588	43,652	43,652	435,441
Jackson County	0.6110	1,542	1,542	1,542	18,217	18,217	18,217	18,672	18,672	18,672	18,672	18,672	19,139	19,139	190,911
Lees Summit R-VII	5.3280	13,443	13,443	13,443	158,851	158,851	158,851	162,822	162,822	162,822	162,822	162,822	166,892	166,892	1,664,773
Mental Health	0.1008	254	254	254	3,005	3,005	3,005	3,080	3,080	3,080	3,080	3,080	3,157	3,157	31,496
Metro Junior College	0.2047	516	516	516	6,103	6,103	6,103	6,256	6,256	6,256	6,256	6,256	6,412	6,412	63,960
Mid-Continent Library	0.3633	917	917	917	10,832	10,832	10,832	11,102	11,102	11,102	11,102	11,102	11,380	11,380	113,516
State Blind Pension	0.0300	76	76	76	894	894	894	917	917	917	917	917	940	940	9,374
	8.0934	\$ 20,421	\$ 20,421	\$ 20,421	\$ 241,299	\$ 241,299	\$ 241,299	\$ 247,331	\$ 247,331	\$ 247,331	\$ 247,331	\$ 247,331	\$ 253,514	\$ 253,514	\$ 2,528,843

**Exhibit 6**  
**Projected Tax Abatement**

Taxing Jurisdiction	Tax Rate per \$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Board of Disabled Services	0.0620	\$ -	\$ -	\$ -	\$ 458	\$ 504	\$ 504	\$ 505	\$ 505	\$ 553	\$ 553	\$ 602	\$ 555	\$ 604	\$ 5,343
City - Lees Summit	1.3936	-	-	-	10,295	11,332	11,332	11,351	11,351	12,429	12,429	13,530	12,465	13,587	120,100
Jackson County	0.6110	-	-	-	4,514	4,968	4,968	4,976	4,976	5,449	5,449	5,932	5,465	5,957	52,656
Lees Summit R-VII	5.3280	-	-	-	39,359	43,323	43,323	43,395	43,395	47,520	47,520	51,726	47,656	51,947	459,164
Mental Health	0.1008	-	-	-	745	820	820	821	821	899	899	979	902	983	8,687
Metro Junior College	0.2047	-	-	-	1,512	1,664	1,664	1,667	1,667	1,826	1,826	1,987	1,831	1,996	17,641
Mid-Continent Library	0.3633	-	-	-	2,684	2,954	2,954	2,959	2,959	3,240	3,240	3,527	3,250	3,542	31,309
State Blind Pension	0.0300	-	-	-	222	244	244	244	244	268	268	291	268	292	2,585
	8.0934	\$ -	\$ -	\$ -	\$ 59,787	\$ 65,809	\$ 65,809	\$ 65,919	\$ 65,919	\$ 72,184	\$ 72,184	\$ 78,574	\$ 72,391	\$ 78,909	\$ 697,485

October 31, 2019

David Bushek  
Chief Counsel of Econ. Dev. & Planning  
Office of the City Attorney  
220 SE Green Street  
Lee's Summit, MO 64063

**Re: City of Lee's Summit, Missouri Taxable Industrial Development Revenue  
Bonds (Residences at Echelon Project) Series 2017**

Dear David:

The city of Lee's Summit issued the referenced chapter 100 Bonds in 2017 for a 243 unit luxury apartment complex. Construction of the project has been delayed and is currently expected to be completed in 2020. As a result, we request that the city issue a new Project Exemption Certificate to permit sales tax exemption, with a project end date of 12/31/2020. We also are respectfully requesting that the city consider amendments to the bond documents to address the timing issues and increase the maximum amount of the bonds.

It is currently estimated that by mid-2020, the project will be 100% complete, which is 1 year behind schedule. There are two buildings on line with tenants living in them, another expected to come online November 1, and the developer is still dealing with cabinetry supply issues for the remaining buildings. Construction delays have been caused by several issues:

- (a) *Shipping Delays*: Project completion was hampered by shipping delays on products sourced from China such as cabinets and counter tops. Due to the US – China trade war, products from overseas were not shipped, new vendors had to be identified and manufacturing moved to other locations.
- (b) *Prolonged Site Development Schedule*: Site development took more time than expected. Lee's Summit requires base asphalt in place at the site prior to commencing vertical construction. The contractor's schedule anticipated base gravel rather than asphalt. The change was not known until the pre-construction meeting, which occurred after the bond terms were set. This pushed back the framing schedule by 4 to 6 months.
- (c) *Weather Delays*: The first year of construction was a particularly harsh winter. Despite significant cost outlay to stabilize soils, very little earthwork and site preparation could occur, which delayed the start of construction by up to three months.

The PILOT schedule was set with 2 years of PILOTs equal to the taxes otherwise due, and 10 years of abatement with a schedule of fixed PILOT payments from 2019 through 2028. The original PILOT schedule, and the adjusted schedule we are requesting is on Exhibit A. Because

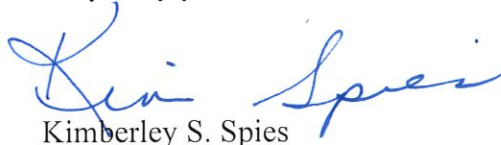
David Bushek  
October 31, 2019  
Page 2

the construction period is extended by one year, we are requesting that the city adjust the 2019 PILOT to \$20,421, which is the same amount paid in each of 2017 and 2018. Then the fixed PILOT amount currently shown as due in 2019 (\$241,299) would shift to 2020. We request that the schedule be amended to shift each of the fixed payments by a year, so the final year is in 2029.

Finally, when the amount of the Series 2017 Bonds was set, standard construction contingency funds and soft costs were not included. We also request that the city increase the maximum amount of the Bonds to \$36 million to allow additional bond capacity.

We would be pleased to discuss any questions on this information and the process for making the requested adjustments to the bonds.

Very truly yours,



Kimberley S. Spies

KSS:arc  
cc: Jake Loveless



**EXHIBIT A**

**EXISTING PILOT SCHEDULE**

Year	Amount
2017	20,421
2018	20,421
2019	241,299
2020	241,299
2021	241,299
2022	247,331
2023	247,331
2024	247,331
2025	247,331
2026	247,331
2027	253,514
2028	253,514

**NEW PILOT SCHEDULE**

The new schedule would be as follows:

Year	Amount
2017	20,421
2018	20,421
2019	20,421
2020	241,299
2021	241,299
2022	241,299
2023	247,331
2024	247,331
2025	247,331
2026	247,331
2027	247,331
2028	253,514
2029	253,514

AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR M150 ECHELON LAND DEVELOPMENT, LLC, A MISSOURI LIMITED LIABILITY COMPANY, CONSISTING OF THE CONSTRUCTION AND IMPROVEMENT OF A COMMERCIAL FACILITY FOR THE COMPANY; AUTHORIZING THE CITY OF LEE'S SUMMIT, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (RESIDENCES AT ECHELON PROJECT), SERIES 2017, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$27,000,000 TO FINANCE THE COSTS OF SUCH PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

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

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

WHEREAS, the City, in accordance with Section 100.050 of the Act, has prepared an Amended and Restated Plan for industrial development (the "Plan") for M150 Echelon Land Development, LLC, a Missouri limited liability company (the "Company"), with respect to a project consisting of the construction and improvement of a luxury apartment complex located generally at the Northwest corner of 291 and 150 Highways in the City (the "Project"), notice of the Project was given to the taxing jurisdictions in accordance with Section 100.059.1 of the Act and the City now desires to approve the Plan; and,

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

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

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

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

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

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

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

SECTION 2. Approval of Plan. The Council hereby approves the Amended and Restated Plan for Industrial Development Project attached hereto as Exhibit A in accordance with Section 100.050 of the Act.

SECTION 3. Authorization and Sale of the Bonds. The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (Residences at Echelon Project), Series 2017, in an aggregate principal amount not to exceed \$27,000,000, for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued and secured pursuant to the herein authorized Trust Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rate, shall be in such form, shall be subject to redemption, shall have such other terms and provisions, shall be issued, executed and delivered in such manner and shall be subject to such provisions, covenants and agreements as are specified in the Trust Indenture upon the execution thereof, and the signatures of the officers of the City executing the Trust Indenture shall constitute conclusive evidence of their approval and the City's approval thereof. The sale of the Bonds to the Company at private sale pursuant to the provisions of Section 108.170 of Revised Statutes of Missouri, as amended, at the interest rate and upon the terms set forth in the Trust Indenture is hereby approved.

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

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

(a) Trust Indenture dated as of the date set forth therein (the "Trust Indenture"), between the City and BOKF, N.A., as trustee (the "Trustee"), pursuant to which the Bonds shall be issued and the City shall pledge and assign the payments, revenues and receipts received pursuant to the Lease Agreement to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Trust Indenture;

(b) Lease Agreement dated as of the date set forth therein (the "Lease Agreement"), between the City and the Company, under which the City will provide funds for the construction and improvement of the Project and lease the Project to the Company pursuant to the terms and conditions in the Lease Agreement, in consideration of rental payments by the Company which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds;

(c) Bond Purchase Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the Company agrees to purchase the Bonds; and

(d) Performance Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the City has granted the Company certain rights with respect to the abatement of *ad valorem* real property taxes on the Project in consideration for the Company's agreement to pay certain payments in lieu of taxes.

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

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

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

PASSED by the City Council of the City of Lee's Summit, Missouri, this 12<sup>th</sup> day of January, 2017.



Mayor Randall L. Rhoads

ATTEST:



City Clerk Denise R. Chisum

APPROVED by the Mayor of said City this 17<sup>th</sup> day of January, 2017.



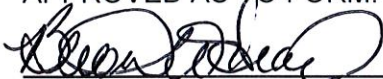
Mayor Randall L. Rhoads

ATTEST:



City Clerk Denise R. Chisum

APPROVED AS TO FORM:



City Attorney Brian W. Head

**BILL NO. 17-15**

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EXHIBIT A  
TO ORDINANCE NO. 8069

PLAN FOR INDUSTRIAL DEVELOPMENT PROJECT  
FOR M150 ECHELON LAND DEVELOPMENT, LLC

## Packet Information

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**File #:** BILL NO. 19-264, **Version:** 1

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An Ordinance approving an Amended and Restated Plan for an Industrial Development Project for Residences at Echelon, approving the issuance of an additional \$9,000,000 of Industrial Development Revenue Bonds for the Project, and approving the amendment of certain documents in connection therewith.

Issue/Request:

An Ordinance approving an Amended and Restated Plan for an Industrial Development Project for Residences at Echelon, approving the issuance of an additional \$9,000,000 of Industrial Development Revenue Bonds for the Project, and approving the amendment of certain documents in connection therewith.

Key Issues:

Approval of this ordinance will amend the currently approved Payment in Lieu of Taxes (PILOT) schedule for the project by extending the PILOT schedule by one year from 2028 to 2029; authorize additional bond capacity in the amount of \$9,000,000 for a total maximum principal amount not to exceed \$36,000,000; extend the maturity of the Bonds by one year to December 1, 2029; and extend the term of the Lease by one year to December 1, 2029. Approval of the ordinance would authorize the Mayor, City Manager, Director of Finance, City Clerk and other officials, agents, and employees of the City to take such further action and execute such documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the ordinance.

Proposed City Council Motion:

I move for Second Reading of an Ordinance approving an Amended and Restated Plan for an Industrial Development Project for Residences at Echelon, approving the issuance of an additional \$9,000,000 of Industrial Development Revenue Bonds for the Project, and approving the amendment of certain documents in connection therewith.

Background:

On January 12, 2017 the City Council passed Ordinance No. 8069, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Residences at Echelon Project), Series 2017, in the maximum principal amount of \$27,000,000 for the purpose of acquiring and improving certain real property including the construction and improvement of a luxury multi-family apartment project on the project site. The project consists of the design and construction of a 243 unit luxury apartment development in which the company receives tax abatement under the Chapter 100 structure on the real property included in the project. However, the company makes fixed PILOTS in accordance with the approved PILOT schedule. The PILOT schedule was based on information provided to the Council by City staff regarding the tax payments on comparable properties at the time of consideration. The approved PILOT amount was based on \$993 per unit beginning in 2019 upon anticipated project completion.

Mark Dunning, Assistant City Manager

David Bushek, Chief Counsel of Economic Development & Planning

Staff recommends approval of the ordinance.



## **BILL NO. 19-264**

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AN ORDINANCE APPROVING AN AMENDED AND RESTATED PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR RESIDENCES AT ECHELON, APPROVING THE ISSUANCE OF AN ADDITIONAL \$9,000,000 OF INDUSTRIAL DEVELOPMENT REVENUE BONDS FOR THE PROJECT, AND APPROVING THE AMENDMENT OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH.

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

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

WHEREAS, pursuant to the Act, the City Council passed Ordinance No. 8069 on January 12, 2017, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Residences at Echelon Project), Series 2017, in the maximum principal amount of \$27,000,000 (the "Bonds"), for the purpose of acquiring and improving certain real property located generally at the Northwest corner of 291 and 150 Highways in the City (the "Project Site"), including the construction and improvement of a luxury apartment complex on the Project Site (the "Project Improvements," together with the Project Site, the "Project"); and,

WHEREAS, the City leased the Project to M150 Echelon Land Development, LLC, a Missouri limited liability company (the "Company") pursuant to a Lease Agreement dated as of March 1, 2017 (the "Lease") between the City and the Company; and,

WHEREAS, the completion of the Project Improvements has been delayed, causing the economic effect of the current schedule of payments in lieu of taxes to have an unanticipated negative consequence on the Company, in that a full payment in lieu of tax computed based on full project completion is due for 2019, but the Project Improvements are not yet complete; and,

WHEREAS, unanticipated cost increases have caused the estimated cost of completing the Project Improvements to exceed the existing capacity of the Bonds, and

WHEREAS, the Company and the City desire to extend the maturity of the Bonds by one year to December 1, 2029, to extend the term of the Lease by one year to December 1, 2029, and to extend the abatement period by one year through 2029; and

WHEREAS, the Company and the City desire to authorize additional bond capacity in the amount of \$9,000,000 for a total maximum principal amount not to exceed \$36,000,000; and,

## **BILL NO. 19-264**

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WHEREAS, the City, in accordance with Section 100.050 of the Act, has prepared a Second Amended and Restated Plan for an Industrial Development Project for Residences at Echelon (the "Amended Plan"); and,

WHEREAS, notice of the Amended Plan was provided to the taxing jurisdictions by mail, in accordance with Section 100.059.1 of the Act and the City now desires to approve the Amended Plan and the amendment of certain documents in connection therewith; and,

WHEREAS, the City has and does hereby find and determine that it is desirable for the economic development of the City and within the public purposes of the Act that the City approve the Amended Plan and the amendment of certain documents in connection therewith.

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

SECTION 1. Promotion of Economic Development. The Council hereby finds and determines that the Project under the Amended Plan will promote the economic welfare and the development of the City and will be in furtherance of the public purposes set forth in the Act. The Project constitutes a "commercial" facility for purposes of the Act.

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

SECTION 3. Approval and Authorization of Documents. In order to carry out the purposes of the Amended Plan and this Ordinance, the Omnibus Amendment of Documents (the "Amendment") is hereby approved in substantially the form presented to the Council at this meeting (copies of which document shall be filed in the records of the City), and the City is hereby authorized to execute and deliver the Amendment with such changes therein as shall be approved by the officials of the City executing such documents, such officials' signatures thereon being conclusive evidence of their approval thereof.

SECTION 4. Approval of Additional Bond Capacity. The City hereby authorizes the reissuance of the Bonds with an increase in maximum aggregate principal amount not to exceed an additional \$9,000,000, for a total maximum aggregate principal amount not to exceed \$36,000,000.

SECTION 5. Execution of Documents. The Mayor of the City is hereby authorized and directed to execute a replacement Bond and to deliver such replacement Bond to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor, City Manager or Director of Finance of the City is hereby authorized and directed to execute the Amendment and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds and the Amendment and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

## BILL NO. 19-264

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SECTION 6. Further Authority. The Mayor, City Manager, Director of Finance, City Clerk and other officials, agents and employees of the City as required are hereby authorized and directed to take such further action and execute such documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION 7. Effective Date. This Ordinance shall take effect and be in full force from and after its passage and adoption by the City Council and approval by the Mayor.

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

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said City this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *Brian W. Head*

EXHIBIT A

AMENDED PLAN

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\_\_\_\_\_

**OMNIBUS AMENDMENT OF DOCUMENTS**

**Dated as of December \_\_, 2019**

\_\_\_\_\_

**Among**

**CITY OF LEE'S SUMMIT, MISSOURI,  
the City**

**M150 ECHELON LAND DEVELOPMENT, LLC,**

**and**

**BOKF, N.A.,  
as Trustee**

\_\_\_\_\_

**Relating to:**

**City of Lee's Summit, Missouri  
Taxable Industrial Development Revenue Bonds  
(Residences at Echelon Project)  
Series 2017**

\_\_\_\_\_

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## **OMNIBUS AMENDMENT OF DOCUMENTS**

**THIS OMNIBUS AMENDMENT OF DOCUMENTS** dated as of December \_\_, 2019 (the “Amendment”), among the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the “City”), **M150 ECHELON LAND DEVELOPMENT, LLC**, a Missouri limited liability company (the “Company”), and **BOKF, N.A.**, Kansas City, Missouri, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, with a corporate trust office located in Kansas City, Missouri, as Trustee (the “Trustee”);

### **RECITALS**

**1.** The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “Act”), to purchase, construct, extend and improve certain “projects” (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or businesses for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

**2.** Pursuant to the Act, the City Council passed Ordinance No. 8069 (the “Ordinance”) on January 12, 2017, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Residences at Echelon Project), Series 2017, in the maximum principal amount of \$27,000,000 (the “Bonds”), for the purpose of acquiring and improving certain real property located generally at the Northwest corner of 291 and 150 Highways in the City (the “Project Site”), including the construction and improvement of a luxury apartment complex on the Project Site (the “Project Improvements,” together with the Project Site, the “Project”).

**3.** The City leased the Project to the Company pursuant to the Lease Agreement dated as of March 1, 2017 (the “Lease”) between the City and the Company.

**4.** The Company is the sole bondowner with respect to the Bonds (the “Bondowner”).

**5.** In connection with the Project, the City entered into a Performance Agreement dated as of March 1, 2017 (the “Performance Agreement”), with the Company, pursuant to which the Company agreed to make certain payments in lieu of taxes for a period starting in 2017 and ending in 2028.

**6.** The completion of the Project Improvements has been delayed, causing the economic effect of the current schedule of payments in lieu of taxes to have an unanticipated negative consequence on the Company, in that a full payment in lieu of tax computed based on the full project completion is due under the Performance Agreement for 2019, but the Project Improvements are not yet complete.

**7.** Unanticipated cost increases have caused the estimated cost of completing the Project Improvements to exceed the existing capacity of the Bonds.

8. The Company, the City, the Trustee and the Bondowner desire to extend the maturity of the Bond to December 1, 2029, to extend the term of the Lease to December 1, 2029, and to extend the abatement period under the Performance Agreement through 2029.

9. The Company, the City, the Trustee and the Bondowner desire to authorize additional bond capacity in the amount of \$9,000,000 for a total maximum principal amount of Bonds not to exceed \$36,000,000.

**NOW, THEREFORE,** for good and valuable consideration the Company, the City, the Trustee and the Bondowner agree as follows:

**Section 1.1. Definitions of Words and Terms.** For all purposes of this Amendment, except as otherwise provided or unless the context otherwise requires, words and terms used in this Amendment have the same meanings as set forth in **Section 101** of the Trust Indenture dated as of March 1, 2017 relating to the Bonds (the “Indenture”).

**Section 1.2. Authority for Amendments.** This Amendment is authorized and permitted in accordance with Section 1102 and Section 1202 of the Indenture, and Section 14.1 of the Lease. This Amendment constitutes a Supplemental Indenture, a Supplemental Lease and an amendment to the Lease, as described under such sections. This Amendment is also an amendment to the Performance Agreement.

**Section 1.3. Amendment of Lease.** Section 3.2 of the Lease is deleted and the following inserted in lieu thereof:

**Section 3.2. Lease Term.** This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have a term commencing as of the date of this Lease and terminating on December 1, 2029.

Additionally, the reference to “December 1, 2028” in Section 5.1 of the Lease is hereby deleted and replaced with “December 1, 2029.”

**Section 1.4. Amendment of and Supplement to Indenture.** **Exhibit C** of the Indenture is hereby deleted, and **Exhibit A** attached to this Amendment is inserted in lieu thereof, and as soon as possible after the date of this Amendment, a new Bond in substantially the form attached hereto shall be issued for no additional consideration. Such new Bond shall be issued only upon the surrender and cancellation of the original Bond held by the Company as Bondowner. The Company, as sole Bondowner of the Bond, hereby consents to the terms of this Amendment, surrenders the Bond to the Trustee for cancellation and directs the Trustee to execute this Amendment. All references to “December 1, 2028” in Section 208(a) and Section 208(f) of the Indenture are hereby deleted and replaced with “December 1, 2029.” The provisions of Section 1104 and Section 1203 of the Indenture are hereby waived with respect to this Amendment.

**Section 1.5. Amendment of Performance Agreement.** Section 3.1 of the Performance Agreement is hereby amended by the deletion of “2028” and the insertion of “2029” as the last year of the exemption period. Article VII of the Performance Agreement is hereby amended by the deletion of “December 1, 2028” and the insertion of “December 1, 2029” as the Stated Expiration Date for the Performance Agreement. **Exhibit B – PILOT SCHEDULE**, of the Performance Agreement is hereby deleted and **Exhibit B** attached to this Amendment is inserted in lieu thereof.

**Section 1.6. Amendment of Aggregate Maximum Principal Amount.** The applicable provisions of the Indenture, the Lease, the Performance Agreement and the Bond Purchase Agreement dated as of March 1, 2017, relating to the Bonds, are hereby amended to authorize a total Cumulative Outstanding Principal Amount of Bonds not to exceed \$36,000,000. The Company, as Bondowner, hereby restates and confirms the representations made by it in the Representation Letter dated as of March 31, 2017 with respect to the Bonds as of the date of this Amendment and with respect to the reissued Bond in the amount of not to exceed \$36,000,000.

**Section 1.7. Legal Description.** The legal description for the Project Site shown in **Exhibit A** to the Indenture, **Exhibit A** to the Lease, and **Exhibit A** to the Performance Agreement is hereby deleted and replaced with the legal description shown on **Exhibit C** attached hereto.

*[remainder of page intentionally left blank]*



**IN WITNESS WHEREOF**, the Company, the City, the Trustee and the Bondowner have caused this Amendment to be duly executed by their duly authorized officers, all as of the day and year first above written.

**M150 ECHELON LAND DEVELOPMENT, LLC,**  
a Missouri limited liability company,  
*as Company*

By its Member:

Frederick J. Delibero Trust Agreement dated November  
6, 2013

By: \_\_\_\_\_  
Name: Frederick J. Delibero  
Title: Trustee

**M150 ECHELON LAND DEVELOPMENT, LLC,**  
a Missouri limited liability company,  
*as Bondowner*

By its Member:

Frederick J. Delibero Trust Agreement dated November  
6, 2013

By: \_\_\_\_\_  
Name: Frederick J. Delibero  
Title: Trustee

**THE CITY OF LEE'S SUMMIT,  
MISSOURI**

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

ATTEST:

\_\_\_\_\_  
City Clerk

**BOKF, N.A.,** as Trustee

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

Name:

Title:

ACKNOWLEDGMENT AND CONSENT

The undersigned, as “Lender” under the above described Indenture and Lease, hereby consents to the execution and delivery of the foregoing Omnibus Amendment of Documents.

**[\*\*MORTGAGE LENDER\*\*]**

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

Name:

Title:

**EXHIBIT A**

**(FORM OF SERIES 2017 BOND)**

***THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR  
NEGOTIATED ONLY AS PROVIDED IN THE HEREIN DESCRIBED INDENTURE.***

**No. 1**

**Not to Exceed  
\$36,000,000**

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**

**CITY OF LEE'S SUMMIT, MISSOURI  
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND  
(RESIDENCES AT ECHELON PROJECT)  
SERIES 2017**

**Interest Rate**

**2.00%**

**Maturity Date**

**December 1, 2029**

**Dated Date**

**March 31, 2017**

**OWNER:**

**M150 ECHELON LAND DEVELOPMENT,  
LLC**

**MAXIMUM PRINCIPAL AMOUNT:**

**NOT TO EXCEED THIRTY-SIX MILLION  
DOLLARS**

**THE CITY OF LEE'S SUMMIT, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the "City"), for value received, promises to pay, but solely from the source hereinafter referred to, to the Owner named above, or registered assigns thereof, on the Maturity Date shown above, the principal amount shown above, or such lesser amount as may be outstanding hereunder as reflected on **Schedule I** hereto held by the Trustee as provided in the hereinafter referred to Indenture. The City agrees to pay such principal amount to the Owner in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the Owner hereof, either by check or draft mailed to the Owner at a stated address as it appears on the bond registration books of the City kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the continental United States. Interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum Interest Rate stated above, payable in arrears on each December 1, commencing on December 1, 2017, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount is paid in full or the Maturity Date. Interest on each advancement of the principal amount of this Bond shall accrue from the date that such advancement is made, computed on the basis of a year of 360 days consisting of 12 months of 30 days each.

As used herein, the term “Cumulative Outstanding Principal Amount” means all Bonds outstanding under the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

**THIS BOND** is one of a duly authorized series of Bonds of the City designated “City of Lee’s Summit, Missouri, Taxable Industrial Development Revenue Bonds (Residences at Echelon Project), Series 2017,” in the maximum aggregate principal amount of \$36,000,000 (the “Bonds”), to be issued for the purpose of acquiring and improving certain real property located generally at the Northwest corner of 291 and 150 Highways in the City (the “Project Site,” as more fully described on **Exhibit A** to the Lease (defined below)), including the construction and improvement of a luxury apartment complex (the “Project Improvements”). The City will lease the Project Site and the Project Improvements (collectively, the “Project”) to M150 Echelon Land Development, LLC, a Missouri limited liability company (the “Company”), under the terms of a Lease Agreement dated as of March 1, 2017 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Lease”), between the City and the Company, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution, the statutes of the State of Missouri, including particularly the Act, the charter of the City and pursuant to proceedings duly had by the Council of the City.

**THE BONDS** are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of March 1, 2017 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Indenture”), between the City and BOKF, N.A., Kansas City, Missouri, as trustee (the “Trustee”). *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Trustee and the Owners, and the terms upon which the Bonds are issued and secured.

**THE BONDS** are subject to redemption and payment prior to maturity as provided in the Indenture.

**THE BONDS**, including interest thereon, are special obligations of the City and are payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease and not from any other fund or source of the City, and are secured by a pledge and assignment of the Project and of such rents, revenues and receipts, including all rentals and other amounts to be received by the City under and pursuant to the Lease, all as provided in the Indenture. The Bonds do not constitute a general obligation of the City or the State of Missouri, and neither the City nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the City and deposited in a special fund created by the City and designated the “City of Lee’s Summit, Missouri, Bond Fund – M150 Echelon Land Development, LLC.”

**THE OWNER** of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding

may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

**THIS BOND** is transferable, as provided in the Indenture, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee by the Owner hereof in Person or by such Person's duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer reasonably satisfactory to the Trustee duly executed by the Owner or such Person's duly authorized attorney, and thereupon a new fully registered Bond or Bonds, in the same aggregate principal amounts, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City, the Trustee and any Paying Agent may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

**THE BONDS** are issuable in the form of one fully-registered Bond in the maximum principal amount of \$36,000,000.

**THIS BOND** shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

**IT IS HEREBY CERTIFIED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Missouri.

*[remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the City of Lee's Summit, Missouri has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon, and has caused this Bond to be dated the date set forth above.

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds  
of the issue described in the  
within-mentioned Resolution.

Registration Date: \_\_\_\_\_

**BOKF, N.A.,**  
as Trustee

By \_\_\_\_\_  
Authorized Signatory

**CITY OF LEE'S SUMMIT, MISSOURI**

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

ATTEST: \_\_\_\_\_ (Seal)

\_\_\_\_\_  
City Clerk



**TABLE OF CUMULATIVE OUTSTANDING PRINCIPAL AMOUNT**

**CITY OF LEE'S SUMMIT, MISSOURI  
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND  
(RESIDENCES AT ECHELON PROJECT)  
SERIES 2017**

**Bond No. 1**

<b>Date</b>	<b>Principal Amount Advanced</b>	<b>Principal Amount Redeemed</b>	<b>Cumulative Outstanding Principal Amount</b>	<b>Notation Made By</b>

**EXHIBIT B**  
**PILOT SCHEDULE**

<b><u>YEAR</u></b>	<b><u>AMOUNT</u></b>
2017	\$20,421
2018	20,421
2019	20,421
2020	241,299
2021	241,299
2022	241,299
2023	247,331
2024	247,331
2025	247,331
2026	247,331
2027	247,331
2028	253,514
2029	253,514

## **EXHIBIT C**

### **LEGAL DESCRIPTION OF PROJECT SITE**

[\*\*insert platted legal description\*\*]

## **NOTICE TO TAXING JURISDICTIONS**

On behalf of the City of Lee's Summit, Missouri (the "City"), please find enclosed a copy of the proposed Second Amended and Restated Plan for an Industrial Development Project and Cost-Benefit Analysis for the Residences at Echelon (the "Second Amended and Restated Plan").

The City Council will consider an ordinance to approve the Second Amended and Restated Plan during the City Council's meeting on December 3, 2019, at 6:00 p.m. in the City Council Chambers at the Lee's Summit City Hall, 220 SE Green Street, Lee's Summit, Missouri.

The City invites you to submit comments to the Council on the proposed Second Amended and Restated Plan. All comments will be fairly and duly considered by the City.

A copy of the Second Amended and Restated Plan will be on file in the office of the City Clerk and will be available for public inspection during normal business hours.

Dated: November 13, 2019

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

## **Taxing Jurisdictions -- Distribution List**

Lee's Summit R-7 School District  
Superintendent  
301 NE Tudor Road  
Lee's Summit, MO 64086

Mid Continent Public Library  
Director  
15616 E. Highway 24  
Independence, MO 64050-2057

Jackson County Board of Disabled Services  
Executive Director  
8511 Hillcrest Road, Suite 300  
Kansas City, MO 64138

Jackson County  
County Executive  
415 E. 12th Street  
Kansas City, MO 64106

Jackson County Health Department  
Director  
313 S. Liberty Street  
Independence, MO 64050

Jackson County Assessment Department  
Director  
415 E. 12th Street, 1M  
Kansas City, MO 64106

Department of Economic Development  
Development Finance  
Missouri Department of Economic Development  
301 West High  
Post Office Box 118 – Room 770  
Jefferson City MO 65102

Missouri Department of Economic Development  
Director  
P O Box 118 – Room 770  
301 West High Street  
Jefferson City MO 65102

Metropolitan Community College  
Chancellor  
3200 Broadway  
Kansas City, MO 64111

Jackson County Community Mental Health  
Executive Director  
1627 Main Street, Suite 500  
Kansas City, MO 64108

City of Lee's Summit  
Director of Finance  
220 SE Green Street  
Lee's Summit, MO 64063

Jackson County Collections Department  
Director  
415 E. 12th Street, 1st Floor  
Kansas City, MO 64106

Missouri Department of Revenue  
County Tax Section  
State Blind Pension Fund  
Post Office Box 453, 301 West High Street  
Jefferson City MO 65101

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**CITY OF LEE'S SUMMIT, MISSOURI**

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

**FOR  
THE RESIDENCES AT ECHELON**

NOVEMBER 13, 2019

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# **CITY OF LEE'S SUMMIT, MISSOURI**

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## **SECOND AMENDED AND RESTATED PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT AND COST-BENEFIT ANALYSIS FOR RESIDENCES AT ECHELON**

### **I. PURPOSE OF THIS SECOND AMENDED AND RESTATED PLAN**

On November 23, 2016, the City mailed a Plan for an Industrial Development Project and Cost-Benefit Analysis (the "Original Plan") to the taxing districts for a proposal to authorize the issuance by the City of its taxable industrial development revenue bonds in the aggregate principal amount of not to exceed \$27,000,000 (the "Bonds"), to finance costs of an industrial development project (the "Project") for M150 Echelon Land Development LLC, a Missouri limited liability company (the "Company") as more fully described and defined herein. The Original Plan was amended on December 22, 2016 (the "First Amended Plan") to provide for an increase in the payments in lieu of taxes to be paid to the taxing districts. The Bonds were issued on March 31, 2017 pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, as amended and Sections 100.010 to 100.200 of the Revised Statutes of Missouri, as amended (collectively, the "Act"). The Project is under construction but is taking longer than expected due to certain unanticipated delays. This Second Amended and Restated Plan provides for a later termination date at the request of the Company, effectively extending the life of the Original Plan by one year by extending the construction period, provides for an updated schedule of payments in lieu of taxes (the "PILOTs"), and provides for additional bond capacity of \$9,000,000, for a total bond capacity not to exceed \$36,000,000. The City Council of the City of Lee's Summit, Missouri (the "City") will consider an ordinance approving this Second Amended Plan (defined below).

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

### **II. GENERAL DESCRIPTION OF CHAPTER 100 FINANCINGS**

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

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

Concurrently with the closing of the Bonds, the Company conveyed to the City title to the property included in the Project (the municipality must be the legal owner of the property while the bonds are

outstanding for the property to be eligible for tax abatement, as further described below). At the same time, the City leased the property, including the Project, back to the Company pursuant to a lease agreement. The lease agreement requires the Company, acting on behalf of the City, to use the Bond proceeds to pay the costs or reimburse the costs of purchasing, constructing and installing the Project, as applicable.

Under the lease agreement, the Company: (1) unconditionally agreed to make payments sufficient to pay the principal of and interest on the Bonds as they become due; (2) agreed, at its own expense, to maintain the Project, to pay all taxes and assessments with respect to the Project, and to maintain adequate insurance; (3) has the right, at its own expense, to make certain additions, modifications or improvements to the Project; (4) may assign its interests under the lease agreement or sublease the Project while remaining responsible for payments under the lease agreement; (5) agreed to maintain its corporate existence during the term of the Bond issue; and (6) agreed to indemnify the City for any liability the City might incur as a result of its participation in the transaction.

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

The company has agreed to make “payments in lieu of taxes” with respect to the Project, which agreement will be amended to reflect the payments in lieu of taxes shown below on Page 3. The payments in lieu of taxes are payable by December 31 of each year, and are distributed to the municipality and to each political subdivision within the boundaries of the Project in the same manner and in the same proportion as property taxes would otherwise be distributed under Missouri law.

### **III. DESCRIPTION OF THE PARTIES**

***The Company.*** The Company is a limited liability company organized and existing under the laws of the State of Missouri.

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

### **IV. REQUIREMENTS OF THE ACT**

***Description of the Project.*** The Project being financed by the Bonds consists of (1) the design and construction of the Residences at Echelon, a 243-unit luxury apartment complex and (2) associated site work and infrastructure. The Project being financed by the Bonds will be constructed on approximately 12.59 acres at the Northwest corner of 291 and 150 Highways, which is referred to as the “Project Site.”

***Estimate of the Costs of the Project.*** The Project is expected to cost approximately \$36,000,000 and to be constructed during the years 2017, 2018, 2019, and 2020.

***Source of Funds to be Expended for the Project.*** The sources of funds to be expended for the Project will be the proceeds of the Bonds in a principal amount not to exceed \$27,000,000, which have



been issued by the City and purchased by the Company (the “Bondholder”) and, if needed, other available funds of the Company. If this Second Amended Plan is approved by the City Council, the City intends to authorize the additional bond capacity of \$9,000,000, for a total bond capacity not to exceed \$36,000,000. The Bonds are payable solely from the revenues derived by the City from the lease or other disposition of the Project (as further described below). The Bonds will not be an indebtedness or general obligation, debt or liability of the City or the State of Missouri.

***Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City.*** The City will continue to hold title to the Project Site under the Chapter 100 transaction. The City will continue to lease the Project to the Company for lease payments equal to the principal and interest payments on the Bonds. Under the terms of the lease agreement with the City, the Company has the option to purchase the Project at any time and will have the obligation to purchase the Project at the termination of the lease. The lease between the City and the Company will terminate in 2029, unless terminated sooner pursuant to the terms of the lease.

***Affected Taxing Districts.*** The Lee’s Summit R-7 School District is the school district affected by the Project. Jackson County, Missouri is the county affected by the Project. Metropolitan Community College is the community college district affected by the Project. The City is the city affected by the Project. No emergency services districts are affected by the Project. The Cost-Benefit Analysis attached hereto identifies all other taxing districts affected by the Project.

***Assessed Valuation.*** The most recent equalized assessed valuation of the Project Site is \$199,262 (due to ownership by the City, the Project Site currently has no assessed valuation). The estimated total equalized assessed valuation of the Project Site after construction of the Project is \$3,720,142. This valuation was calculated based upon an assumed appraised value of \$19,579,697 for the Project Site and the completed Project, multiplied by the assessment rate of 19%.

***Payments in Lieu of Taxes.*** The City issued the Bonds in 2017 and, if this Second Amended Plan is approved by the City Council, the City intends to provide tax abatement to the Company for the Project for a period of ten years beginning in 2020. During years 2017, 2018, and 2019 the Company will pay a payment in lieu of taxes as set forth below. For all the years that the Project Site is subject to tax abatement as provided herein, the Company will make a fixed PILOT payment in December of each year in accordance with the following schedule:

2017-19	\$ 20,421
2020-22	\$ 241,299
2023-27	\$ 247,331
2028-29	\$ 253,514

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

***Cost-Benefit Analysis and Discussion of Exhibits.*** In compliance with Section 100.050.2(3) of the Revised Statutes of Missouri, this Second Amended Plan has been prepared to show the costs and benefits to the City and to other taxing jurisdictions affected by the tax abatements and exemptions of the Project. The following is a summary of the exhibits attached to this Second Amended Plan that show the direct tax impact the Project is expected to have on each taxing jurisdiction. This Second Amended Plan does not attempt to quantify the overall economic impact of the Project.

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

*Summary of Cost-Benefit Analysis.* **Exhibit 2** presents a summary for each affected taxing district of (1) the total estimated tax revenues that would be generated if the Project did not occur, (2) the total estimated tax revenues that would be generated if the Project occurred but no abatement was granted, (3) the total estimated value of the payments in lieu of taxes (“PILOT Amounts”) to be made by the Company for the proposed abatement period, and (4) the projected tax abatement based on this Second Amended Plan.

*Real Property.* **Exhibit 3** provides the projected tax revenues which would be paid on the Project Site without tax abatement and without the Project. **Exhibit 4** provides the projected tax revenues which would be paid on the completed Project without tax abatement. **Exhibit 5** provides the projected value of PILOT Amounts to be paid by the Company. **Exhibit 6** provides the anticipated tax abatement that results from differences between the anticipated tax revenues and the agreed-upon payments in lieu of taxes, which differences were caused by updated tax liability assumptions intended to reflect the real property reassessments occurring in Jackson County for tax year 2019.

## **V. ASSUMPTIONS AND BASIS OF SECOND AMENDED PLAN**

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

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

\* \* \*

## ATTACHMENT A

### SUMMARY OF KEY ASSUMPTIONS

1. The cost of designing and constructing the Project is estimated to be approximately \$36,000,000.

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

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

4. During the entire term of the Bonds through 2029, the Company will make payments in lieu of taxes in accordance with that portion of Section IV above in the Second Amended Plan entitled "Payments in Lieu of Taxes."

5. Real property taxes are calculated using the following formula:

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

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

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

7. The tax rates used in this Second Amended Plan reflect the rates in effect for the tax year 2019. The tax rates were held constant through the 2029 tax year.

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**City of Lee's Summit, Missouri  
(The Residences at Echelon)**

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

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This information is provided based on the factual information and assumptions provided to Gilmore & Bell, P.C. by a party to or a representative of a party to the proposed transaction. This information is intended to provide factual information only and is provided in conjunction with our legal representation. It is not intended as financial advice or a financial recommendation to any party. Gilmore & Bell, P.C. is not a financial advisor or a “municipal advisor” as defined in the Securities Exchange Act of 1934, as amended.

**Exhibit 1**  
**Project Assumptions**

♦ 2017 assessed value of project site		\$ 199,262
♦ Projected assessed value as a percentage of appraised value		19.0%
♦ Investment in the new project	2017-2020	\$36,000,000
♦ Projected appraised value (2020)		\$19,579,697
♦ Projected assessed value (2020)		\$ 3,720,142

- ♦ Fixed PILOT as described below:

<b>Year(s)</b>	<b>Amount</b>
2017-2019	\$20,421
2020-2022	\$241,299
2023-2027	\$247,331
2028-2029	\$253,514

**Exhibit 2**  
**Summary of Cost Benefit Analysis**

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<b>Tax Distribution</b>	<b>Tax Rate</b>	<b>Projected Tax Revenues on Project Site Without Project</b>	<b>Projected Tax Revenues on Project without Abatement</b>	<b>Projected PILOT Amounts</b>	<b>Projected Tax Abatement</b>
Board of Disabled Services	0.0620	\$ 1,698	\$ 24,715	\$ 19,372	\$ 5,343
City - Lees Summit	1.3936	38,161	555,540	435,441	120,100
Jackson County	0.6110	16,731	243,567	190,911	52,656
Lees Summit R-VII	5.3280	145,899	2,123,937	1,664,773	459,164
Mental Health	0.1008	2,760	40,183	31,496	8,687
Metro Junior College	0.2047	5,605	81,601	63,960	17,641
Mid-Continent Library	0.3633	9,948	144,825	113,516	31,309
State Blind Pension	0.0300	822	11,959	9,374	2,585
	8.0934	\$ 221,625	\$ 3,226,328	\$ 2,528,843	\$ 697,485

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

Assessed Value of Project Site Without Project	\$199,262	\$199,262	\$203,247	\$203,247	\$207,312	\$207,312	\$211,458	\$211,458	\$215,688	\$215,688	\$220,001	\$220,001	\$224,401		
Taxing Jurisdiction	Tax Rate per \$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Board of Disabled Services	0.0620	\$ 124	\$ 124	\$ 126	\$ 126	\$ 129	\$ 129	\$ 131	\$ 131	\$ 134	\$ 134	\$ 136	\$ 136	\$ 139	\$ 1,698
City - Lees Summit	1.3936	2,777	2,777	2,832	2,832	2,889	2,889	2,947	2,947	3,006	3,006	3,066	3,066	3,127	38,161
Jackson County	0.6110	1,217	1,217	1,242	1,242	1,267	1,267	1,292	1,292	1,318	1,318	1,344	1,344	1,371	16,731
Lees Summit R-VII	5.3280	10,617	10,617	10,829	10,829	11,046	11,046	11,267	11,267	11,492	11,492	11,722	11,722	11,956	145,899
Mental Health	0.1008	201	201	205	205	209	209	213	213	217	217	222	222	226	2,760
Metro Junior College	0.2047	408	408	416	416	424	424	433	433	442	442	450	450	459	5,605
Mid-Continent Library	0.3633	724	724	738	738	753	753	768	768	784	784	799	799	815	9,948
State Blind Pension	0.0300	60	60	61	61	62	62	63	63	65	65	66	66	67	822
	8.0934	\$ 16,127	\$ 16,127	\$ 16,450	\$ 16,450	\$ 16,779	\$ 16,779	\$ 17,114	\$ 17,114	\$ 17,456	\$ 17,456	\$ 17,806	\$ 17,806	\$ 18,162	\$221,625



**Exhibit 4**  
**Projected Tax Revenues on Project (No Abatement)**

Projected Tax Revenues		\$20,421	\$20,421	\$20,421	\$301,086	\$307,108	\$307,108	\$313,250	\$313,250	\$319,515	\$319,515	\$325,905	\$325,905	\$332,423	
Taxing Jurisdiction	Tax Rate per \$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Board of Disabled Services	0.0620	\$ 156	\$ 156	\$ 156	\$ 2,306	\$ 2,353	\$ 2,353	\$ 2,400	\$ 2,400	\$ 2,448	\$ 2,448	\$ 2,497	\$ 2,497	\$ 2,547	\$ 24,715
City - Lees Summit	1.3936	3,516	3,516	3,516	51,844	52,881	52,881	53,938	53,938	55,017	55,017	56,118	56,118	57,240	555,540
Jackson County	0.6110	1,542	1,542	1,542	22,730	23,185	23,185	23,648	23,648	24,121	24,121	24,604	24,604	25,096	243,567
Lees Summit R-VII	5.3280	13,443	13,443	13,443	198,209	202,173	202,173	206,217	206,217	210,341	210,341	214,548	214,548	218,839	2,123,937
Mental Health	0.1008	254	254	254	3,750	3,825	3,825	3,901	3,901	3,979	3,979	4,059	4,059	4,140	40,183
Metro Junior College	0.2047	516	516	516	7,615	7,767	7,767	7,923	7,923	8,081	8,081	8,243	8,243	8,408	81,601
Mid-Continent Library	0.3633	917	917	917	13,515	13,786	13,786	14,061	14,061	14,343	14,343	14,629	14,629	14,922	144,825
State Blind Pension	0.0300	76	76	76	1,116	1,138	1,138	1,161	1,161	1,184	1,184	1,208	1,208	1,232	11,959
	8.0934	\$20,421	\$20,421	\$20,421	\$301,086	\$307,108	\$307,108	\$313,250	\$313,250	\$319,515	\$319,515	\$325,905	\$325,905	\$332,423	\$3,226,328

**Exhibit 5**  
**Projected PILOT Amounts**

PILOT Payment		\$20,421	\$20,421	\$20,421	\$241,299	\$241,299	\$241,299	\$247,331	\$247,331	\$247,331	\$247,331	\$247,331	\$253,514	\$253,514	
Taxing Jurisdiction	Tax Rate per \$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Board of Disabled Services	0.0620	\$ 156	\$ 156	\$ 156	\$ 1,848	\$ 1,848	\$ 1,848	\$ 1,895	\$ 1,895	\$ 1,895	\$ 1,895	\$ 1,895	\$ 1,942	\$ 1,942	\$ 19,372
City - Lees Summit	1.3936	3,516	3,516	3,516	41,549	41,549	41,549	42,588	42,588	42,588	42,588	42,588	43,652	43,652	435,441
Jackson County	0.6110	1,542	1,542	1,542	18,217	18,217	18,217	18,672	18,672	18,672	18,672	18,672	19,139	19,139	190,911
Lees Summit R-VII	5.3280	13,443	13,443	13,443	158,851	158,851	158,851	162,822	162,822	162,822	162,822	162,822	166,892	166,892	1,664,773
Mental Health	0.1008	254	254	254	3,005	3,005	3,005	3,080	3,080	3,080	3,080	3,080	3,157	3,157	31,496
Metro Junior College	0.2047	516	516	516	6,103	6,103	6,103	6,256	6,256	6,256	6,256	6,256	6,412	6,412	63,960
Mid-Continent Library	0.3633	917	917	917	10,832	10,832	10,832	11,102	11,102	11,102	11,102	11,102	11,380	11,380	113,516
State Blind Pension	0.0300	76	76	76	894	894	894	917	917	917	917	917	940	940	9,374
	8.0934	\$ 20,421	\$ 20,421	\$ 20,421	\$ 241,299	\$ 241,299	\$ 241,299	\$ 247,331	\$ 247,331	\$ 247,331	\$ 247,331	\$ 247,331	\$ 253,514	\$ 253,514	\$ 2,528,843

**Exhibit 6**  
**Projected Tax Abatement**

Taxing Jurisdiction	Tax Rate per \$100	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Total
Board of Disabled Services	0.0620	\$ -	\$ -	\$ -	\$ 458	\$ 504	\$ 504	\$ 505	\$ 505	\$ 553	\$ 553	\$ 602	\$ 555	\$ 604	\$ 5,343
City - Lees Summit	1.3936	-	-	-	10,295	11,332	11,332	11,351	11,351	12,429	12,429	13,530	12,465	13,587	120,100
Jackson County	0.6110	-	-	-	4,514	4,968	4,968	4,976	4,976	5,449	5,449	5,932	5,465	5,957	52,656
Lees Summit R-VII	5.3280	-	-	-	39,359	43,323	43,323	43,395	43,395	47,520	47,520	51,726	47,656	51,947	459,164
Mental Health	0.1008	-	-	-	745	820	820	821	821	899	899	979	902	983	8,687
Metro Junior College	0.2047	-	-	-	1,512	1,664	1,664	1,667	1,667	1,826	1,826	1,987	1,831	1,996	17,641
Mid-Continent Library	0.3633	-	-	-	2,684	2,954	2,954	2,959	2,959	3,240	3,240	3,527	3,250	3,542	31,309
State Blind Pension	0.0300	-	-	-	222	244	244	244	244	268	268	291	268	292	2,585
	8.0934	\$ -	\$ -	\$ -	\$ 59,787	\$ 65,809	\$ 65,809	\$ 65,919	\$ 65,919	\$ 72,184	\$ 72,184	\$ 78,574	\$ 72,391	\$ 78,909	\$ 697,485

## Packet Information

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**File #:** BILL NO. 19-265, **Version:** 1

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An Ordinance amending Chapter 19 Parks and Recreation of the Code of Ordinances of the City of Lee's Summit dealing generally with removing references to the Beautification Commission and Tree Board, incorporating new definitions and modifying existing definitions, and amending language related to curfew in parks and as well as language regarding the prohibition of animals at the municipal pool. (CEDC 11/13/19)

Issue/Request:

An Ordinance amending Chapter 19 Parks and Recreation of the Code of Ordinances of the City of Lee's Summit dealing generally with removing references to the Beautification Commission and Tree Board, incorporating new definitions and modifying existing definitions, and amending language related to curfew in parks and as well as language regarding the prohibition of animals at the municipal pool.

Key Issues:

- Change in responsibility of Beautification Commission and Tree Board prompted changes to Parks and Recreation chapter of the Code of Ordinances
- Parks and Recreation Board took the opportunity to review the entire chapter and identified the following areas in need of modification or update.
  - o Removal of sections related to Beautification Commission and Tree Board
  - o Addition of language to address the use of e-bikes in the park system
  - o Updates to language for compliance with Americans with Disabilities Act law and the Parks Department's Other Power Driven Mobility Device (OPDMD) Policy
  - o Addition of language to address curfew in the event of YSA activities
  - o Addition of language to address special events at Summit Waves (end of year Pooch Paddle)

Proposed City Council Motion:

FIRST MOTION: I move for a second reading of an Ordinance amending Chapter 19 Parks and Recreation of the Code of Ordinances of the City of Lee's Summit dealing generally with removing references to the Beautification Commission and Tree Board, incorporating new definitions and modifying existing definitions, and amending language related to curfew in parks and as well as language regarding the prohibition of animals at the municipal pool.

SECOND MOTION: I move for adoption of an Ordinance amending Chapter 19 Parks and Recreation of the Code of Ordinances of the City of Lee's Summit dealing generally with removing references to the Beautification Commission and Tree Board, incorporating new definitions and modifying existing definitions, and amending language related to curfew in parks and as well as language regarding the prohibition of animals at the municipal pool.

Background:

During the FY 2020 budget process, the City of Lee's Summit determined to re-align responsibilities associated with the



Beautification Commission, removing the activities from the Parks and Recreation Department and placing the Commission under Cultural Arts in the Administration Department. This change made it necessary to remove the provisions regarding the Beautification Commission and the Tree Board, which is under the governance of the Beautification Commission, from the Parks and Recreation chapter of the Code of Ordinances.

The Parks and Recreation Department took the opportunity to review the remainder of the Chapter in light of the need for these revisions. Several items were identified as in need of update by an Ad Hoc Committee of the Park Board. The Ad Hoc Committee focused significantly on the current provisions regarding self propelled vehicles in parks, because, as the Ordinance is currently written, e-bikes are technically not allowed within the Parks system. However, the Committee acknowledged their increased presence and the benefits they provide to recreation and patrons, and felt it was important to modify the current Ordinance to accomodate their use within reason. Additionally, the Ad Hoc Committee discussed the importance of updating the Ordinance to ensure it was compliant with federal ADA laws and the Parks Department's Other Power Driven Mobility Device (OPDMD) Policy, which governs the use of motorized vehicles for individuals with disabilities.

The Ad Hoc Committee created a set of recommendations based on the discussions, which were presented to the full Park Board at its' July 24, 2019 meeting.

Following is a summary of the proposed changes:

- Deletion of all sections related to Beautification Commission and Tree Board
- Incorporation of a new definition of Self-Propelled Vehicle to address the increased use of e-bikes within LSPR's parks and trails system, as well as a definition of "operate" to allow for certain devices to be in the parks system as long as their operability is limited.
- Updates to the provision regarding the use of Self-Propelled Vehicles to conform to the new definition and to address LSPR's OPDMD policy and requirements under the Americans with Disabilities Act.
- Addition of language to the curfew in parks section to identify that written agreements with entities such as youth sports associations may be an exception, with prior authorization.
- Addition of language to the prohibition of animals at the municipal pool to provide the ability for limited events to be authorized and not in violation of the law, such as the annual Pooch Paddle.

After considering the proposed revisions, the Park Board voted unanimously to recommend to the City Council the revisions be adopted and incorporated into the Code of Ordinances. A track changes version of the Parks and Recreation chapter of the Code of Ordinances has been attached to this packet to identify all proposed changes.

To address the provisions dealing with the Beautification Commission, which have been removed from the Parks and Recreation Chapter, a new Division is proposed in this Ordinance to be placed in Chapter 2 - Administration, Article V. Boards and Commissions. The provisions relating to trees are expected to be addressed at the next scheduled Public Works Committee meeting.

Impact/Analysis:

No budgetary impact.

Jackie McCormick Heanue, Superintendent of Legal Services and Human Resources

Staff recommends approval of an Ordinance amending Chapter 19 Parks and Recreation of the Code of Ordinances of the City of Lee's Summit dealing generally with removing references to the Beautification Commission and Tree Board, incorporating new definitions and modifying existing definitions, and amending language related to curfew in parks and as well as language regarding the prohibition of animals at the municipal pool.

The Community and Economic Development Committee voted unanimously 3-0 (Councilmember Faith absent) to recommend to City Council approval of an Ordinance amending Chapter 19 Parks and Recreation of the Code of Ordinances of the City of Lee's Summit dealing generally with removing references to the Beautification Commission and Tree Board, incorporating new definitions and modifying existing definitions, and amending language related to curfew in parks and as well as language regarding the prohibition of animals at the municipal pool.

## BILL NO. 19-265

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AN ORDINANCE AMENDING CHAPTER 19 PARKS AND RECREATION OF THE CODE OF ORDINANCES OF THE CITY OF LEE'S SUMMIT DEALING GENERALLY WITH REMOVING REFERENCES TO THE BEAUTIFICATION COMMISSION AND TREE BOARD, INCORPORATING NEW DEFINITIONS AND MODIFYING EXISTING DEFINITIONS, AND AMENDING LANGUAGE RELATED TO CURFEW IN PARKS AND AS WELL AS LANGUAGE REGARDING THE PROHIBITION OF ANIMALS AT THE MUNICIPAL POOL.

WHEREAS, the City of Lee's Summit, Missouri, recently realigned roles and responsibilities related to the oversight of the Tree Board and the Beautification Commission, re-assigning the responsibilities from the Parks and Recreation Department to the Cultural Arts Division of the Administration Department; and,

WHEREAS, Chapter 19 – Parks and Recreation, of the Code of Ordinances of the City of Lee's Summit, Missouri currently contains sections which are directly related to the Tree Board and the Beautification Commission; and,

WHEREAS, due to the realignment of roles and responsibilities, it is necessary to revise the Code of Ordinances to appropriately reflect the assigned roles related to public trees; and,

WHEREAS, several other provisions of Chapter 19 – Parks and Recreation, of the Code of Ordinances of the City of Lee's Summit are in need of update for various reasons, including compliance with Federal and State law and to ensure consistency and accuracy in enforcement of regulations pertaining to parks; and,

WHEREAS, the Parks and Recreation Board of the City of Lee's Summit has proposed recommended changes to Chapter 19 – Parks and Recreation, of the Code of Ordinances of the City of Lee's Summit to address these needs; and,

WHEREAS, the City Council wishes to accept the recommendation of the Parks and Recreation Board and adopt the same for incorporation into the Code of Ordinances of the City of Lee's Summit.

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

SECTION 1. That Section 19-1. Definitions of Article I. In General, in Chapter 19. Parks and Recreation, of the Code of Ordinances of the City of Lee's Summit, Missouri be and the same is hereby amended by incorporating the following language to read as follows:

***Operate shall mean to utilize, control, or cause the functioning of the engine, motor, or other automatic means of a self-propelled vehicle, but does not include solely using manual or physical intervention to maneuver or otherwise control the device.***

***Self-Propelled Vehicle shall mean any device capable of being propelled solely by its' own engine, motor or other automatic means without the physical intervention of the user.***

SECTION 2. That Section 19-81. Curfew in parks, of Article III. Regulations for Use of Municipal Recreation Facilities, in Chapter 19. Parks and Recreation of the Code of Ordinances of the City of

## BILL NO. 19-265

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Lee's Summit, Missouri be and the same is hereby amended by incorporating the following language, in ***bold italics***, to read as follows:

Sec. 19-81. Curfew in parks.

It shall be unlawful for any person to be or remain upon any public park in the City between the hours of 11:00 p.m. and 5:00 a.m. unless such person is a member of a group, association or organization using such park facilities for a particular purpose, provided a representative of the group, association or organization has first obtained a permit from ***or otherwise has a written agreement with*** the Parks and Recreation Department for such purposes. The Parks and Recreation Department shall grant such permit ***or enter into such agreement*** if it appears that the group, association or organization will not interfere with the general use of the park by the individual members of the public and if the group, association or organization meets all other conditions and regulations for use of such public park as enacted by the Parks and Recreation Board.

SECTION 3. That Section 19-82. Use of self-propelled vehicles in public parks or on City property, of Article III. Regulations for Use of Municipal Recreation Facilities, in Chapter 19. Parks and Recreation of the Code of Ordinances of the City of Lee's Summit, Missouri be and the same is hereby amended as follows, in ***bold italics***:

Sec. 19-82 Use of ***Self-Propelled Vehicles*** in public parks or on City property.

***Except as required by relevant provisions of Federal and/or state law, including, but not limited to the Americans with Disabilities Act,*** it shall be unlawful for any person to operate ~~motorscooters, motorbikes, motorcycles or~~ any ~~other~~ ***Self-Propelled Vehicle*** within any public park of the City except upon regular driveways or parkways set aside for vehicular traffic or upon areas in such parks or public places designated specifically for ~~motorscooter, motorbike, motorcycle, or~~ ***Self-Propelled Vehicle*** use.

SECTION 4. That Section 19-102. Animals prohibited, of Article III. Regulations for Use of Municipal Recreation Facilities, in Chapter 19. Parks and Recreation of the Code of Ordinances of the City of Lee's Summit, Missouri be and the same is hereby amended by incorporating the following language, in ***bold italics***, to read as follows:

Sec. 19-102 Animals prohibited.

***Except as authorized in writing by the Administrator of Parks and Recreation,*** it shall be unlawful at all times for any person to place in the waters of the municipal swimming pool any dogs or other animals of any kind or cause or to suffer any dogs or any animals of any kind to enter or be therein.

SECTION 5. That Sections 19-200 through 19-222 of Article IV. Beautification Commission, in Chapter 19. Parks and Recreation of the Code of Ordinances of the City of Lee's Summit, Missouri be and the same are hereby repealed.

SECTION 6. That a new Division 3 be established under Chapter 2. Administration, Article V. Boards and Commissions which shall read as follows:



## **BILL NO. 19-265**

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### ***Division 3. Beautification Commission.***

#### ***Sec. 2-281. - Creation and establishment.***

***The Beautification Commission shall coordinate and promote projects for the beautification of the City.***

#### ***Sec. 2-282. - Composition; qualifications of members.***

***The Beautification Commission shall consist of nine (9) members, citizens and residents of this City, who shall be appointed by the Mayor with the advice and consent of a majority of the Council.***

#### ***Sec. 2-283. - Term of office.***

***The terms of the nine (9) members shall be for three (3) years commencing from the date of appointment and until their successors are duly appointed and qualified.***

#### ***Sec. 2-284. - Compensation.***

***Members of the Commission shall serve without compensation.***

#### ***Sec. 2-285. - Duties and responsibilities.***

***It shall be the responsibility of the Commission to study, investigate, counsel and develop and/or report periodically to the Council projects which may add to the beauty and character of the City of Lee's Summit. In developing its recommendations, the Commission shall seek input from the public and members of the community in a manner deemed by the Commission to provide an opportunity for input by the public and community. The Commission, when requested by the City Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.***

#### ***Sec. 2-286. - Operation.***

***The Commission shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.***

SECTION 7. That this ordinance shall be in full force and effect from and after the date of its passage, adoption, and approval by the Mayor.

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

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Mayor William A. Baird

ATTEST:

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City Clerk Trisha Fowler Arcuri

**BILL NO. 19-265**

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

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *Brian W. Head*

## Packet Information

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**File #:** BILL NO. 19-266, **Version:** 1

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An Ordinance approving the Second Amendment to the Cooperative Agreement among the City of Lee's Summit, Missouri, The New Longview Transportation Development District and M-III Longview, LLC.

Issue/Request:

An Ordinance to approve an amendment to the TDD Cooperative Agreement to update the provisions relating the payment of operating costs and distribution of sales tax revenues to account for the new revenue sharing arrangements between the TDD and Hawthorn Bank, and to allow for an extension of the TDD sales tax and adjustment of the TDD boundaries to reflect the planned commercial areas of Longview.

Key Issues:

This Ordinance will approve an amendment to the Cooperative Agreement for the reasons stated above.

Proposed City Council Motion:

I move for second reading of an Ordinance Approving The Second Amendment to the Cooperative Agreement among the City of Lee's Summit, Missouri, The New Longview Transportation Development District and M-III Longview, LLC.

Background:

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

- (1) half of the revenues are captured in the Special Allocation Fund of the two Longview TIF Plans and then used for the historic preservation purposes of those TIF Plans, and
- (2) repay a loan incurred by the former developer of the Longview area (Gale Communities, Inc.) which was used to fund road improvements.

The sales tax is set to expire on December 31, 2025. The City Council passed Resolution 19-03 on February 5, 2019 which supported an extension of the sales tax for an additional 23 years, with a new expiration date of December 31, 2048.

Impact/Analysis:

This request presents no direct impact to City revenues. This Second Amendment will allow the TDD to fund operating costs under the new arrangements between the TDD, the Developer and Hawthorn Bank, and allow for the extension of the TDD sales tax and adjustment of the TDD boundaries to reflect the actual and expected commercial areas in Longview.

David Bushek, Chief Counsel of Economic Development & Planning  
Corey Walker, M-III Longview, LLC  
Brian Engel, Rouse Frets Law Firm

Staff recommends approval of the ordinance.



## **BILL NO. 19-266**

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AN ORDINANCE APPROVING THE SECOND AMENDMENT TO THE COOPERATIVE AGREEMENT AMONG THE CITY OF LEE'S SUMMIT, MISSOURI, THE NEW LONGVIEW TRANSPORTATION DEVELOPMENT DISTRICT AND M-III LONGVIEW, LLC.

WHEREAS, the New Longview Transportation Development District (the "District") was formed on July 31, 2003 through an order entered by the Jackson County Circuit Court, and imposes a 1% sales tax throughout the boundaries of the Longview commercial area; and,

WHEREAS, the District, the City, and Gale Communities, Inc. ("Original Developer") entered into the Cooperative Agreement dated October 27, 2003, as amended by the 1<sup>st</sup> Amendment to the Lee's Summit, Missouri New Longview Transportation Development District Cooperative Agreement dated March 3, 2010 (collectively, the "Cooperative Agreement"); and,

WHEREAS, the Original Developer assigned all of its rights, duties, interests and obligations under the Cooperative Agreement, and other related agreements, to the Developer pursuant to the Agreement for Assignment, Waiver and Release (the "Assignment") dated December 1, 2016 among the Original Developer, the Developer, the District, and the City; provided, however, that the Original Developer's assignment is subject and subordinate to any rights of Hawthorn Bank (the "Bank") to the Show Horse Arena Reimbursement and the Uncaptured TDD Revenues (as such terms are defined in the Assignment); and,

WHEREAS, M-III Longview, LLC ("Developer") is an owner of property within the District and is the successor in interest to all of the rights and obligations as the "Developer" under the Cooperative Agreement, subject to the certain rights of lenders of the Original Developer pursuant to separate agreements; and,

WHEREAS, the Developer has undertaken work for adjustments to the TDD boundaries to more accurately track with platted lots and tracts that have been developed or are planned to be developed in the future; and,

WHEREAS, the Developer, the Original Developer, and the Bank executed a TDD Revenue Sharing and CID Cooperation Agreement dated November 14, 2018 (the "Revenue Sharing Agreement") to provide for an extension of the TDD Sales Tax and memorialize how the revenues that would be generated by the TDD Sales Tax during such extension period (on and after January 1, 2026) would be disbursed among the parties; and,

WHEREAS, the parties desire to amend the Cooperative Agreement for the primary purpose of updating provisions pertaining to the payment of Operating Costs and distribution of District Sales Tax Revenues.

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

SECTION 1. The Second Amendment to the Cooperative Agreement (the "Second Amendment") which is attached hereto as Exhibit A and incorporated herein by reference, is hereby approved and the City Manager is authorized and directed to execute the Second Amendment in substantial compliance with the attached Agreement.

## **BILL NO. 19-266**

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SECTION 2. City officers and agents of the City are each hereby authorized and directed to take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION 3. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 4. This Ordinance shall be in full force and effect from and after its passage, adoption, and approval by the Mayor.

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

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

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

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *Brian W. Head*

EXHIBIT A

SECOND AMENDMENT TO COOPERATIVE AGREEMENT

[ATTACHED]

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**SECOND AMENDMENT TO COOPERATIVE AGREEMENT**

**among the**

**CITY OF LEE'S SUMMIT, MISSOURI,**

**the**

**LEE'S SUMMIT, MISSOURI NEW LONGVIEW  
TRANSPORTATION DEVELOPMENT DISTRICT,**

**and**

**M-III LONGVIEW, LLC**

**dated as of**

**December 10, 2019**

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## **SECOND AMENDMENT TO COOPERATIVE AGREEMENT**

**THIS SECOND AMENDMENT TO COOPERATIVE AGREEMENT** (“**Amendment**”), entered into as of this 3<sup>rd</sup> day of December 10, 2019, by and among the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri (the “**City**”), the **LEE’S SUMMIT, MISSOURI NEW LONGVIEW TRANSPORTATION DEVELOPMENT DISTRICT**, a transportation development district and political subdivision of the State of Missouri (“**District**” or “**TDD**”), and **M-III LONGVIEW, LLC**, a Delaware limited liability company (the “**Developer**”) (the City, the District and the Developer being sometimes collectively referred to herein as the “**parties**”, and individually as a “**party**”, as the context so requires).

### **WITNESSETH:**

**WHEREAS**, the Lee’s Summit, Missouri New Longview Transportation Development District (the “**District**”) was declared organized by the Circuit Court of Jackson County, Missouri (the “**Court**”) by the Final Order and Judgment Certifying Creation of the Lee’s Summit, Missouri New Longview Transportation Development District dated July 31, 2003, pursuant to the Missouri Transportation Development District Act, Sections 238.200 to 238.800 of the Revised Statutes of Missouri (the “**Act**”);

**WHEREAS**, pursuant to the Act, the qualified voters of the District approved the imposition of a sales tax (the “**Sales Tax**”) of one percent (1.0%) on taxable retail sales within the District by unanimous verified petition for an original term of twenty (20) years, for the purpose of paying the cost of the formation and operation of the District and the financing, acquisition, design and construction of the following projects: (1) the construction of Longview Boulevard; (2) single lane improvements to the southern half of 3<sup>rd</sup> Street, from the eastern roundabout on 3<sup>rd</sup> Street to the eastern border of the Property; (3) the construction of two (2) east-west arterial roads, from the Longview College entrances on Longview Road, easterly to the two (2) roundabout intersections with Longview Boulevard; and (4) improvements to Longview Road from the intersection of View High Road and 3<sup>rd</sup> Street to the southernmost roundabout on Longview Road (collectively, the “**District Project**”);

**WHEREAS**, the District, the City, and Gale Communities, Inc., a Missouri corporation (“**Original Developer**”) entered into the Cooperative Agreement dated October 27, 2003, as amended by the 1<sup>st</sup> Amendment to the Lee’s Summit, Missouri New Longview Transportation Development District Cooperative Agreement dated March 3, 2010 (collectively, the “**Cooperative Agreement**”);

**WHEREAS**, on December 18, 2003, the District issued The Lee’s Summit, Missouri New Longview Transportation Development District Revenue Bonds, Series 2003, in the principal amount of \$5,435,000 to fund the District Project, which bonds have been paid in full;

**WHEREAS**, the Original Developer assigned all of its rights, duties, interests and obligations under the Cooperative Agreement, and other related agreements, to the Developer pursuant to the Agreement for Assignment, Waiver and Release (the “**Assignment**”) dated December 1, 2016 among the Original Developer, the Developer, the District, and the City; provided, however, that the Original Developer’s assignment is subject and subordinate to any rights of Hawthorn Bank (the “**Bank**”) to the Show Horse Arena Reimbursement and the Uncaptured TDD Revenues (as such terms are defined in the Assignment);

**WHEREAS**, the Developer is an owner of property within the District and is the successor in interest to all of the rights and obligations as the “**Developer**” under the Cooperative Agreement, subject to the certain rights of lenders of the Original Developer pursuant to separate agreements;

**WHEREAS**, the Developer has undertaken work for adjustments to the TDD boundaries to more accurately track with platted lots and tracts that have been developed or are planned to be developed in the future;

**WHEREAS**, the Developer, the Original Developer, and the Bank executed a TDD Revenue Sharing and CID Cooperation Agreement dated November 14, 2018 (the “Revenue Sharing Agreement”) to provide for an extension of the TDD Sales Tax and memorialize how the revenues that would be generated by the TDD Sales Tax during such extension period (on and after January 1, 2026) would be disbursed among the parties;

**WHEREAS**, on December 4, 2019, the District’s Board of Directors adopted Resolution No. 2019-05 authorizing and directing the District to enter into this Amendment; and

**WHEREAS**, the parties desire to amend the Cooperative Agreement as set forth in this Amendment for the primary purpose of updating provisions pertaining to the payment of Operating Costs and distribution of District Sales Tax Revenues.

**NOW, THEREFORE**, for and in consideration of the premises, and the mutual covenants herein contained, the parties agree as follows:

1. Certain definitions in Section 1.02 of the Cooperative Agreement are hereby amended to read as follows:

H. Developer: M-III Longview LLC, a Delaware limited liability company, and its successors and assigns.

R. Operating Costs: Actual, reasonable overhead expenses, including, but not limited to, legal, accounting, insurance, survey, and other professional consultant fees, that are necessary for the administration and operation of the District under the TDD Act, in accordance with this Agreement and the District’s annual budget.

U. Redevelopment Area: collectively, the Redevelopment Area for the Second Amended and Restated Longview Farm Tax Increment Financing Plan approved by Ordinance No. 7778 dated December 17, 2015, as amended from time to time, and the Redevelopment Area for the New Longview Tax Increment Financing Plan approved by Ordinance No. 7779 dated December 17, 2015, as amended from time to time.

U1. Restructuring Costs: the costs incurred by the District to undertake the work associated with an extension of the duration of the TDD Sales Tax and to adjust the boundaries of the TDD area, consisting of professional fees for survey work, mapping, legal work and other related professional costs;

Y. Special Allocation Fund: the funds created pursuant to the TIF Act for the TIF Plans in which the City deposits Economic Activity Taxes and Payments in Lieu of Taxes pursuant to the TIF Plans.

CC. TIF Contract: the Tax Increment Financing Contract dated December 1, 2016, between the City and the Developer, as amended from time to time, pertaining to the Longview Farm Tax Increment Financing Plan and the New Longview Tax Increment Financing Plan.

DD. TIF Plans: collectively, the Second Amended and Restated Longview Farm Tax Increment Financing Plan approved by Ordinance No. 7778 dated December 17, 2015, as amended from time to time,

and the New Longview Tax Increment Financing Plan approved by Ordinance No. 7779 dated December 17, 2015, as amended from time to time.

2. Section 2.01 of the Cooperative Agreement is hereby amended to read as follows:

**Section 2.01 Collection of the District Sales Tax.**

A. The District Sales Tax shall be collected and enforced by the Missouri Department of Revenue as provided in the TDD Act. The District, in cooperation with the City, shall direct the Missouri Department of Revenue to deposit monthly District Sales Tax Revenues in an account managed by the City (the "City Account"). The City Account shall be used for the collection and disbursement of District Sales Tax Revenues only and the City shall not commingle other City funds in the City Account.

B. In connection with the monthly deposit of District Sales Tax Revenues by the Missouri Department of Revenue into the City Account and the City's distribution of District Sales Tax Revenues as provided in Section 2.04 below, the District, by this Agreement, authorizes the City to perform all functions incident to the administration, enforcement and operation of the District Sales Tax.

C. In order to seek to maximize District Sales Tax Revenues and operational efficiencies, the District and the City agree to cooperate with each other in the performance of functions incident to the administration, enforcement and operation of the District Sales Tax. The District official charged with formulating a budget for the District shall request that the District's Board of Directors appropriate the District Sales Tax Revenues in accordance with the budget and this Agreement. The parties acknowledge that the boundaries of the Second Amended and Restated Longview Tax Increment Financing Plan, as amended, and the New Longview Tax Increment Financing Plan, as amended, are neither coterminous with each other nor with the boundaries of the District and they further acknowledge that, in accordance Section 99.845, RSMo, the District has consented to the capture of the District Sales Tax under the TIF Plans to the extent that the District Sales Tax Revenues are generated within the Redevelopment Area of either of the TIF Plans in effect, and such consent was provided by the District on April 26, 2016.

3. Section 2.04 of the Cooperative Agreement is hereby amended to read as follows:

**Section 2.04. Distribution of the District Sales Tax.**

Beginning in the first month following the effective date of the District Sales Tax and continuing each month thereafter until the expiration or repeal of the District Sales Tax, the City on behalf of the District shall, not later than the fifteenth (15th) day of each month, distribute the District Sales Tax Revenues received in the preceding month in the following order of priority:

A. Pursuant to the TIF Act and the TIF Plans, one-half (1/2) of the District Sales Tax which is generated within a Redevelopment Project Area for either of the TIF Plans will be captured as Economic Activity Taxes and deposited by the City in the appropriate Special Allocation Fund.

B. Pay the City an administration fee equal to 0.5% of District Sales Tax Revenues;

C. Distribute the remaining District Sales Tax Revenues on a monthly basis in the following order of priority and amounts:

- i. Pay the Operating Costs of the District in accordance with this Agreement and the District's annual budget.

- ii. Until the commencement of the TDD Extension Term (as defined in the Revenue Sharing Agreement), pay the remaining District Sales Tax Revenues as follows:
  - a. 50% of the revenues shall be used to pay the Restructuring Costs, until all Restructuring Costs have been paid in full; and
  - b. 50% of the revenues shall be paid to the Bank, provided that after the Restructuring Costs have been paid in full the Bank shall receive 100% of the remaining District revenues until the TDD Extension Term begins.
- iii. After commencement of the TDD Extension Term, payments shall be made to Developer and the Bank as provided in the Revenue Sharing Agreement. Payments to Developer shall be to provide reimbursement for funds advanced by Developer for payment of the Costs of Formation, the Improvement Costs, or the Operating Costs, with interest accruing at the prime rate established by Commerce Bank, plus one percent (1%) from the date that such costs are certified for payment in accordance with this Agreement.
- iv. After all of the District Sales Tax Revenues payable to the Bank under this Agreement and the Revenue Sharing Agreement have been fully paid (or if the Bank earlier releases the District from the assignment and payment of Sales Tax Revenues in writing), then the City shall distribute on a monthly basis to the District for deposit in an account managed by the District (the "District Account") Sales Tax Revenues remaining after the City distributes funds as provided in 2.04.A and B. above. The District Account shall be used for the deposit and disbursement of District Sales Tax Revenues and the District, upon receipt of funds from the City, shall on a monthly basis distribute District Sales Tax Revenues in the District Account for the payment of eligible District costs as provided in this Agreement and the TDD Act. Payments to Developer shall be to provide reimbursement for funds advanced by Developer for payment of the Costs of Formation, the Improvement Costs, or the Operating Costs, with interest accruing at the prime rate established by Commerce Bank, plus one percent (1%) from the date that such costs are certified for payment in accordance with this Agreement.
- v. Any surplus District Sales Tax Revenues may be retained in the District Account for use as permitted under this Agreement and the TDD Act.

4. Section 2.06 of the Cooperative Agreement is hereby amended to read as follows:

**Section 2.06    Records of the District; Notification to the State.**

A. Any District records pertaining to the District Sales Tax or the administration and operation of the District shall be provided to the City upon written request of the City, as permitted by law. Any City records pertaining to the District Sales Tax or the administration, enforcement and operation of the District Sales Tax shall be provided to the District upon written request of the District, as permitted by law. The District and the City agree to cooperate with each other to provide to each other such information and documentation pertaining to the District Sales Tax as reasonably necessary to enable the District to satisfy budgeting and financial reporting requirements under the TDD Act and applicable state law.

B. The District shall notify the Missouri Department of Revenue of any new retail businesses opening within the District and the City shall assist the District by providing information requested by the



Missouri Department of Revenue necessary to register a retail business for collection of the District Sales Tax by the state.

5. The Cooperative Agreement is amended by adding a new Section 2.08 as follows:

**Section 2.08 Pledge of District Sales Tax Revenues and Collateral Assignment of Agreement to Lender.**

A. For so long as the obligations to the Bank remain outstanding, the Developer shall not, without the prior written consent of the Bank, pledge the Developer's right to receive any District Sales Tax Revenues under this Agreement to a lender for the District Projects.

B. After the obligations to the Bank have been paid in full, the Developer shall have the right, without the consent of the City, to pledge its right to receive any District Sales Tax Revenues for District Projects costs incurred under this Agreement to a lender for the District Projects. Upon the Developer's request and pursuant to a mutually acceptable written agreement between such lender and the City, the City will send any such revenues to such lender directly until the Developer directs otherwise. The Developer shall also have the right, without the consent of the City, to collaterally assign its rights and obligations under the Agreement to such lender, provided that the lender assumes by contract all obligations and duties of the Developer under this Agreement in the event of a transfer to lender.

6. Section 5.02.D. of the Cooperative Agreement is hereby amended to read as follows:

D. Operating Costs. The Developer may advance funds to pay Operating Costs of the District in any fiscal year, in accordance with this Agreement and the District's annual budget. Operating Costs, to the extent advanced by the Developer, shall be reimbursed to the Developer by the District from District Sales Tax Revenues in accordance with Section 2.04. In no event shall the District incur more than fifty thousand dollars (\$50,000) in any fiscal year for the Operating Costs of the District, without the City's consent, which consent shall not be unreasonably withheld, so long as the District demonstrates that the expenditures serve a legitimate District purpose. This annual limit shall not apply to the Restructuring Costs.

7. Section 5.03.B. of the Cooperative Agreement is hereby amended to read as follows:

B. Payment of Operating Costs. District Sales Tax Revenues may be used to fund Operating Costs, in accordance with this Agreement and the District's budget. The actual expenditures of the District for Operating Costs shall not exceed fifty thousand dollars (\$50,000) in any fiscal year, without the City's consent, which consent shall not be unreasonably withheld, so long as the District demonstrates that the expenditures serve a legitimate District purpose. This annual limit shall not apply to the Restructuring Costs.

8. The second to last sentence in Section 6.01 of the Cooperative Agreement is amended to read as follows:

In addition, the District shall furnish annual audited or unaudited financial statements to the City for each fiscal year no later than June 30<sup>th</sup> following the end of such fiscal year.

9. Article VII of the Cooperative Agreement is hereby amended by adding the new Section 7.05 as follows:

**Section 7.05 Excusable Delays.** No party shall be deemed to be in default of this Agreement because of Excusable Delays. Excusable Delays shall extend the time of performance for the period of such Excusable Delay. For the purposes of this Agreement, “Excusable Delays” means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any Federal or State regulatory body, unforeseen site conditions, material litigation by parties other than the parties and not caused by the parties’ failure to perform, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable party using reasonable diligence to overcome which prevents such party from performing its specific duties or obligation hereunder in a timely manner.

10. Article X of the Cooperative Agreement is hereby amended to read as follows:

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

**Section 10.1. Effective Date and Term.** This Agreement shall become effective on the date this Agreement has been fully executed by the parties (“Effective Date”). This Agreement shall remain in effect for as long as the District is legally in existence.

**Section 10.2. Modification.** The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement among the City, the District and the Developer. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

**Section 10.3. Jointly Drafted.** The parties agree that this Agreement has been jointly drafted and shall not be construed more strongly against another party.

**Section 10.4. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

**Section 10.5. Validity and Severability.** It is the intention of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

**Section 10.6. Execution of Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**Section 10.7. City and District Approvals.** Unless specifically provided to the contrary herein, all approvals of the City hereunder may be given by the City Manager or his or her designee without the necessity of any action by the City Council. The City Manager may seek the advice and consent of the City Council before granting any approval. Unless specifically provided to the contrary herein, all approvals of the District hereunder may be given by the Chairman of the District or his or her designee without the

necessity of any action by the District's Board of Directors. The Chairman of the District may seek the advice and consent of the District's Board of Directors before granting any approval.

**Section 10.8. Relationship.** In the performance of this Agreement, the Developer shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making the Developer a partner, joint venturer with, or agent of, the City. The City and the Developer agree that neither party will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the City and the Developer.

**Section 10.9. Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

**Section 10.10. Limit on Liability.** The parties agree that:

A. No official, director, officer, agent, employee, representative, attorney or consultant of the City shall be personally or otherwise in any way liable to the Developer or the District in the event of any default, breach or failure of performance by the City under this Agreement or for any amount which may become due to the Developer or the District or with respect to any agreement, indemnity, or other obligation under this Agreement.

B. No member or shareholder of the Developer or the District and no official, director, officer, agent, employee, shareholder, representative, attorney or consultant of the Developer or the District shall be personally or otherwise in any way liable to the City or any third-party in the event of any default, breach or failure of performance by the Developer or the District under this Agreement or for any amount which may become due to the City with respect to any agreement, indemnity or other obligation under this Agreement.

**Section 10.11. Headings.** Headings of articles and sections are inserted only for convenience and are in no way to be construed as a limitation or expansion on the scope of the particular articles, sections or subsections to which they refer. Words in the singular shall include the plural, and vice versa, where appropriate.

**Section 10.12. Notices.** Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally or by a reputable overnight delivery service to all parties listed below. Mailed notices shall be deemed effective on the third day after mailing and all other notices shall be effective when delivered.

To the City:

City of Lee's Summit, Missouri  
220 SE Green  
Lee's Summit, Missouri 64063  
Attn: City Manager

With a copy to:

City of Lee's Summit, Missouri  
220 SE Green  
Lee's Summit, Missouri 64063  
Attn: City Attorney

To the District: New Longview Community Improvement District  
c/o Platform Ventures, LLC  
4220 Shawnee Mission Pkwy  
Suite 200B  
Fairway, KS 66205

To the Developer: M-III Longview, LLC  
c/o Platform Ventures, LLC  
4220 Shawnee Mission Pkwy  
Suite 200B  
Fairway, KS 66205

With a copy to: Brian Engel, Esq.  
Rouse Frets White Goss Gentile Rhodes, P.C.  
4510 Bellevue Ave., Suite 300  
Kansas City, MO 64111

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

**Section 10.13. Waiver.** The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

**Section 10.14. Tax Implications.** The Developer and the District acknowledge and represent that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents have provided to the Developer or the District any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer and the District are relying solely upon their own tax advisors in this regard.

**Section 10.15. Exhibits.** All exhibits which are attached or referred to in this Agreement are specifically incorporated herein by reference and form an integral part hereof.

**Section 10.16. Agreement to Control.** In the event of any conflict between the terms of this Agreement and any other agreements between the City and the Developer or the District, the provisions of this Agreement shall control and supersede the conflict.

**Section 10.17. Recordation of Memorandum of Agreement.** The parties agree to execute and deliver a Memorandum of this Agreement in proper form for recording and/or indexing in the appropriate land or governmental records. Such Memorandum shall be recorded by the City.

**Section 10.18. Estoppel.** Upon the Developer's request, the City shall deliver a written instrument to the Developer or any other person, firm or corporation specified by the Developer, duly executed and acknowledged, certifying that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modifications; whether or not the Developer has observed and performed all of the terms, covenants



and conditions on the part of the Developer to be observed and performed, and if not, specifying the same; and such other matters as reasonably requested by the Developer.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year first above written.

**CITY OF LEE’S SUMMIT, MISSOURI**

By: \_\_\_\_\_  
William A. Baird  
Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Trisha Fowler Arcuri  
City Clerk

**STATE OF MISSOURI**       )  
  ) **SS.**  
**COUNTY OF JACKSON**     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me appeared William A. Baird, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said William A. Baird acknowledged said instrument to be the free act and deed of said City.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

[SEAL]

**DISTRICT:**

**THE LEE'S SUMMIT, MISSOURI NEW  
LONGVIEW TRANSPORTATION  
DEVELOPMENT DISTRICT**

By: \_\_\_\_\_  
Corey Walker, Chairman

ATTEST:

\_\_\_\_\_  
\*[Becky Ziegler]\*, Secretary

**CERTIFICATE OF ACKNOWLEDGEMENT**

STATE OF MISSOURI            )  
  ) ss  
COUNTY OF JACKSON        )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public in and for said state, personally appeared Corey Walker, who is the Chairman of The Lee's Summit, Missouri New Longview Transportation Development District, known to me to be the person who executed the within Cooperative Agreement on behalf of The Lee's Summit, Missouri New Longview Transportation Development District and acknowledged to me that he executed the same for the purposes therein stated.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**DEVELOPER:**

**M-III LONGVIEW, LLC**

a Delaware limited liability company

By: Platform Investments, LLC, its manager

By: Platform Ventures, LLC, its manager

By: \_\_\_\_\_  
Corey Walker, Senior Vice President

**CERTIFICATE OF ACKNOWLEDGEMENT**

STATE OF KANSAS                    )  
  ) ss  
COUNTY OF JOHNSON            )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, a Notary Public in and for said state, personally appeared Corey Walker, the Senior Vice President of Platform Ventures, LLC, a Delaware limited liability company, known to me to be the person who executed the within Cooperative Agreement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My Commission Expires:

\_\_\_\_\_  
Notary Public



Exhibit "A"  
Transportation Development District Right-of-Way Descriptions

Tract "A"

All that part of the Northwest Quarter of Section 10, Township 47 North, Range 32 West, in Jackson County, Missouri, described as follows:

Commencing at the Southeast Corner of the Northwest Quarter of said Section 10; thence North 03° 20' 54" East, along the East line of the Northwest Quarter of said Section 10, a distance of 30.00 feet to the Point of Beginning; thence continuing North 03° 20' 54" East, along the East line of the Northwest Quarter of said Section 10, a distance of 60.00 feet; thence North 87° 11' 08" West, along a line that is 90.00 feet North of and parallel with the South line of the Northwest Quarter of said Section 10, a distance of 1,198.38 feet; thence North 02° 48' 52" East a distance of 10.00 feet; thence North 87° 11' 08" West, along a line that is 100.00 feet North of and parallel with the South line of the Northwest Quarter of said Section 10, a distance of 160.00 feet; thence North 42° 11' 08" West a distance of 63.64 feet; thence North 02° 48' 52" East a distance of 325.71 feet; thence North 87° 11' 08" West, parallel with the South line of the Northwest Quarter of said Section 10, a distance of 10.00 feet; thence North 02° 48' 52" East a distance of 356.87 feet; thence Northwesterly, along a curve to the left that is tangent to the last described course, having a central angle of 34° 02' 19", a radius of 380.00 feet, an arc distance of 225.75 feet; thence North 31° 13' 27" West a distance of 120.04 feet; thence North 13° 46' 33" East a distance of 77.78 feet; thence North 30° 50' 11" West a distance of 30.00 feet; thence North 58° 46' 33" East a distance of 62.63 feet; thence North 02° 43' 41" East a distance of 317.76 feet; thence South 87° 13' 07" East a distance of 111.00 feet; thence North 02° 47' 45" East a distance of 278.03 feet; thence North 87° 12' 15" West a distance of 50.00 feet; thence North 31° 13' 27" West a distance of 407.80 feet; thence North 58° 46' 33" East a distance of 185.87 feet; thence North 02° 47' 45" East a distance of 125.96 feet; thence South 87° 12' 15" East a distance of 641.17 feet; thence North 02° 49' 30" East a distance of 156.15 feet; thence North 87° 11' 23" West, along a line that is 50.00 feet South of and parallel with the North line of the Northwest Quarter of said Section 10, a distance of 1,736.98 feet to a point that is 30.00 feet East of the West line of the Northwest Quarter of said Section 10; thence South 03° 15' 08" West, along a line that is 30.00 feet East of and parallel with the West line of the Northwest Quarter of said Section 10, a distance of 805.04 feet; thence South 86° 44' 52" East, perpendicular to the West line of the Northwest Quarter of said Section 10, a distance of 15.29 feet; thence Northeasterly, along a curve to the left that is tangent with the last described course, having a central angle of 34° 28' 35", a radius of 440.00 feet, an arc distance of 264.76 feet; thence North 58° 46' 33" East a distance of 28.85 feet; thence South 31° 13' 27" East a distance of 465.06 feet; thence North 58° 46' 33" East a distance of 75.00 feet; thence South 31° 13' 27" East a distance of 425.31 feet; thence South 13° 46' 33" West a distance of 56.57 feet; thence South 58° 46' 33" West a distance of 28.75 feet; thence Southwesterly, along a curve to the right that is tangent to the last described course, having a central angle of 34° 01' 52", a radius of 265.00 feet, an arc distance of 157.40 feet; thence North 87° 11' 35" West a distance of 180.45 feet; thence Northwesterly, along a curve to the right that is tangent to the last described course,

Exhibit "A"  
Transportation Development District Right-of-Way Descriptions

having a central angle of  $27^{\circ} 10' 18''$ , a radius of 286.00 feet, an arc distance of 135.63 feet; thence North  $60^{\circ} 01' 17''$  West a distance of 0.20 feet; thence Northwesterly, along a curve to the left that is tangent to the last described course, having a central angle of  $26^{\circ} 43' 35''$ , a radius of 314.00 feet, an arc distance of 146.47 feet; thence North  $86^{\circ} 44' 52''$  West a distance of 204.31 feet; thence North  $41^{\circ} 44' 52''$  West a distance of 21.21 feet; thence South  $03^{\circ} 15' 08''$  West, along a line that is 30.00 feet East of and parallel with the West line of the Northwest Quarter of said Section 10, a distance of 100.00 feet; thence North  $48^{\circ} 15' 08''$  East a distance of 21.21 feet; thence South  $86^{\circ} 44' 52''$  East a distance of 204.31 feet; thence Southeasterly, along a curve to the right that is tangent to the last described course, having a central angle of  $26^{\circ} 43' 35''$ , a radius of 244.00 feet, an arc distance of 113.82 feet; thence South  $60^{\circ} 01' 17''$  East a distance of 0.20 feet; thence Southeasterly, along a curve to the left that is tangent to the last described course, having a central angle of  $27^{\circ} 10' 18''$ , a radius of 356.00 feet, an arc distance of 168.83 feet; thence South  $87^{\circ} 11' 35''$  East a distance of 39.57 feet; thence Southwesterly, along a curve to the left that is non-tangent to the last described course, having a initial tangent bearing of South  $16^{\circ} 49' 09''$  West, a central angle of  $14^{\circ} 01' 58''$ , a radius of 268.32 feet, an arc distance of 65.72; thence South  $02^{\circ} 47' 11''$  West a distance of 427.40 feet; thence South  $87^{\circ} 11' 08''$  East a distance of 123.41 feet; thence South  $02^{\circ} 47' 11''$  West a distance of 96.20 feet; thence South  $87^{\circ} 12' 49''$  East a distance of 113.56 feet; thence Southeasterly, along a curve to the right that is tangent to the last described course, having a central angle of  $33^{\circ} 03' 12''$ , a radius of 135.00 feet, an arc distance of 77.88 feet; thence Southeasterly, Easterly, and Northeasterly, along a curve to the left that is tangent to the exit of the last described curve, having a central angle of  $71^{\circ} 17' 06''$ , a radius of 75.00 feet, an arc distance of 93.31 feet; thence Northeasterly, along a curve to the right that is tangent to the exit of the last described curve, having a central angle of  $38^{\circ} 13' 54''$ , a radius of 135.00 feet, an arc distance of 90.08 feet; thence South  $87^{\circ} 11' 08''$  East a distance of 48.66 feet; thence South  $02^{\circ} 48' 52''$  West a distance of 322.22 feet; thence South  $47^{\circ} 48' 51''$  West a distance of 70.71 feet; thence North  $87^{\circ} 11' 08''$  West, parallel with the South line of the Northwest Quarter of said Section 10, a distance of 165.00 feet; thence South  $02^{\circ} 48' 15''$  West a distance of 20.00 feet; thence South  $87^{\circ} 11' 08''$  East, along a line that is 30.00 feet North of and parallel with the South line of the Northwest Quarter of said Section 10, a distance of 1,777.82 feet to the Point of Beginning. Containing 44.67 acres, more or less.

Exhibit "A"  
Transportation Development District Right-of-Way Descriptions

Tract "B"

All that part of the Northwest Quarter of Section 10, Township 47 North, Range 32 West, in Jackson County, Missouri, described as follows:

Commencing at the Southwest Corner of the Northwest Quarter of said Section 10; thence South  $87^{\circ} 11' 08''$  East, along the South line of the Northwest Quarter of said Section 10, a distance of 30.00 feet; thence North  $03^{\circ} 15' 08''$  East, along a line that is 30.00 feet East of and parallel with the West line of the Northwest Quarter of said Section 10, a distance of 30.00 feet to the Point of Beginning; thence continuing North  $03^{\circ} 15' 08''$  East a distance of 15.00 feet; thence South  $41^{\circ} 58' 00''$  East a distance of 21.13 feet to a point that is 30.00 feet North of the South line and 45.00 feet East of the West line of the Northwest Quarter of said Section 10; thence North  $87^{\circ} 11' 08''$  West, along a line that is 30.00 feet North of and parallel with the South line of the Northwest Quarter of said Section 10, a distance of 15.00 feet to the Point of Beginning. Containing 113 square feet, more or less.

Tract "C"

All of that part of the Southwest Quarter of Section 10, Township 47 North, Range 32 West, in Jackson County, Missouri, described as follows:

Commencing at the Northwest Corner of the Southwest Quarter of said Section 10; thence South  $87^{\circ} 11' 08''$  East, along the North line of said Southwest Quarter section, a distance of 35.70 feet; thence South  $02^{\circ} 48' 52''$  West, perpendicular to the North line of said Southwest Quarter section, a distance of 30.00 feet to the Point of Beginning; thence South  $03^{\circ} 14' 12''$  West a distance of 15.00 feet; thence South  $87^{\circ} 11' 08''$  East, along a line that is 45.00 feet South of and parallel with the North line of said Southwest Quarter section, a distance of 1,421.13 feet; thence North  $02^{\circ} 48' 52''$  East, perpendicular to the North line of said Southwest Quarter section, a distance of 15.00 feet; thence North  $87^{\circ} 11' 08''$  West, along a line that is 30.00 feet South of and parallel with the North line of said Southwest Quarter section, a distance of 1,421.02 feet to the Point of Beginning. Containing 21,316 square feet or 0.49 acres, more or less.

Exhibit "A"  
Transportation Development District Right-of-Way Descriptions

Tract "D"

All of that part of the Southwest Quarter of Section 10, Township 47 North, Range 32 West, in Jackson County, Missouri, described as follows:

Commencing at the Northwest Corner of the Southwest Quarter of said Section 10; thence South  $03^{\circ} 14' 52''$  West, along the West line of the Southwest Quarter of said Section 10, a distance of 30.00 feet to the Point of Beginning; thence continuing South  $03^{\circ} 14' 52''$  West, along the West line of the Southwest Quarter of said Section 10, a distance of 1,105.32 feet; thence Northeasterly and Northerly along a curve to the left that is non-tangent to the last described course, having a initial tangent bearing of North  $35^{\circ} 26' 13''$  East, a central angle of  $32^{\circ} 12' 01''$ , a radius of 235.00 feet, an arc distance of 132.07 feet; thence North  $03^{\circ} 14' 12''$  East a distance of 980.35 feet; thence North  $87^{\circ} 11' 08''$  West, along a line that is 30.00 feet South of and parallel with the North line of the Southwest Quarter of said Section 10, a distance of 35.93 feet to the Point of Beginning. Containing 38,377 square feet or 0.88 acres, more or less.



Exhibit "A"  
Transportation Development District Right-of-Way Descriptions

Tract "E"

All that part of the Southeast Quarter of Section 9, Township 47 North, Range 32 West, in Jackson County, Missouri, described as follows:

Commencing at the Northeast Corner of the Southeast Quarter of said Section 9; thence South 03° 14' 52" West, along the East line of the Southeast Quarter of said Section 9, a distance of 30.00 feet to the Point of Beginning; thence continuing South 03° 14' 52" West, along the East line of the Southeast Quarter of said Section 9, a distance of 1,105.32 feet; thence Southwesterly along a curve to the right that is non-tangent to the last described course, having a initial tangent bearing of South 35° 26' 13" West, a central angle of 00° 35' 36", a radius of 235.00 feet, an arc distance of 2.43 feet; thence South 36° 01' 49" West a distance of 178.86 feet; thence South 38° 58' 13" West a distance of 40.25 feet; thence South 62° 38' 30" East a distance of 133.27 feet to a point on the East line of the Southeast Quarter of said Section 9; thence South 03° 14' 52" West, along the East line of the Southeast Quarter of said Section 9, a distance of 899.96 feet; thence South 14° 25' 29" West a distance of 118.49 feet; thence South 87° 56' 50" West a distance of 229.27 feet; thence North 04° 00' 43" West a distance of 449.80 feet; thence North 86° 45' 08" West a distance of 343.94 feet to a point on the East line of a tract of land condemned by the United States of America; thence North 17° 13' 45" East, along the East line of said government land, a distance of 209.97 feet; thence South 86° 45' 08" East, departing from the East line of said government land, a distance of 250.61 feet; thence North-Northeasterly along a curve to the right that is non-tangent to the last described course, having a initial tangent bearing of North 06° 41' 50" East, a central angle of 01° 43' 47", a radius of 6,299.00 feet, an arc distance of 190.17 feet; thence Northeasterly along a curve to the right that is tangent with the exit of the last described curve, having a central angle of 29° 13' 35", a radius of 310.05 feet, an arc distance of 158.15 feet; thence North 37° 39' 12" East a distance of 395.13 feet; thence Northeasterly and Northerly along a curve to the left that is tangent to the last described course, having a central angle of 32° 47' 37", a radius of 165.00 feet, an arc distance of 94.44 feet; thence North 03° 14' 12" East a distance of 979.52 feet to a point on the East line of said government land; thence South 87° 43' 11" East, along the East line of said government land, a distance 34.08 feet to the Point of Beginning. Containing 10.07 acres, more or less.

# **COOPERATIVE AGREEMENT**

---

**AMONG**

**GALE COMMUNITIES, INC.,**

**THE CITY OF LEE'S SUMMIT, MISSOURI,**

**and**

**THE LEE'S SUMMIT, MISSOURI NEW LONGVIEW  
TRANSPORTATION DEVELOPMENT DISTRICT**

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**October 27, 2003**

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## COOPERATIVE AGREEMENT

This Cooperative Agreement (the "Agreement") is entered into on the 27th day of October, 2003, by **GALE COMMUNITIES, INC.** (the "Developer"), a Missouri corporation, **THE CITY OF LEE'S SUMMIT, MISSOURI** (the "City"), a Missouri constitutional charter city and political subdivision, and **THE LEE'S SUMMIT, MISSOURI NEW LONGVIEW TRANSPORTATION DEVELOPMENT DISTRICT** (the "District"), a Missouri transportation development district and political subdivision, which is the last date that any of the three (3) parties hereto execute this Agreement.

### RECITALS

A. By Ordinance No. 5630, adopted by the City Council on October 16, 2003, the City approved the First Amended and Ratified Longview Farm Tax Increment Financing Plan ("TIF Plan"), established a Redevelopment Area and declared the Redevelopment Area as a Conservation Area, and selected the Developer to implement the Redevelopment Plan. The purpose of the TIF Plan is to devote Economic Activity Taxes and Payments in Lieu of Taxes to the rehabilitation and preservation of certain historic structures in the Redevelopment Area.

B. By Ordinance No. 5632, adopted by the City Council on October 16, 2003, the City approved the First Amended and Restated Tax Increment Financing Contract ("TIF Contract") between the Developer and the City and authorized the City Administrator to enter into this Contract with Developer for the implementation of the Projects as described in the TIF Plan.

C. On October 28, 2003, the Developer and the City entered into the TIF Contract, agreeing to the terms and conditions pursuant to which the Developer's obligations to construct the District Projects and the Redevelopment Project would be carried out.



D. Pursuant to the TIF Plan and the TIF Contract, the City and the Developer agreed that the District would contract for the design and construction of the District Projects and issue bonds or incur other obligations to pay the cost of the design and construction of the District Projects and related expenses, all in accordance with the terms of this Cooperative Agreement.

E. The District was formed on July 31, 2003, by virtue of an order entered by the Circuit Court of Jackson County, Missouri. The stated purpose of the District is to undertake the District Projects.

F. The District shall impose a District Sales Tax at the rate of up to one percent (1%) on retail sales in accordance with the TDD Act. The District Sales Tax shall be imposed and collected within the boundaries of the District, which overlaps portions of the Redevelopment Area.

G. Following the imposition of the District Sales Tax, the District will issue revenue bonds, the proceeds of which will be made available, in accordance with this Agreement, to cause the District Projects to be constructed, including reimbursement to the Developer for funds the Developer has previously expended to pay Reimbursement Agreement Costs.

H. The District is authorized in accordance with the provisions of the TDD Act to perform all functions incident to the administration, collection, enforcement, and operation of the District Sales Tax.

I. The District is authorized in accordance with the provisions of the TDD Act to contract with the City as a political subdivision and a local transportation authority to assist in operating and financing the District Projects.

J. The Developer and the District desire to contract with the City for the City to perform the functions of administering, collecting and enforcing the District Sales Tax.

## AGREEMENT

### ARTICLE I

#### RULES OF INTERPRETATION AND DEFINITIONS

##### **Section 1.01 Rules of Interpretation.**

A. All exhibits attached to and referenced in this Agreement are expressly incorporated into this Agreement by such reference.

B. Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

(1) The terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided, that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement other than in accordance with Section 10.04 of this Agreement.

(2) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, section, subsection and exhibit references are to this Agreement unless otherwise specified. Whenever an item or items are listed after the word "including", such listing is not intended to be a listing that excludes items not listed.

(3) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, partnerships, joint

ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

(4) The table of contents, captions and headings of each part, section or subsection in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**Section 1.02 Definition of Words and Terms.**

In addition to the words and terms defined elsewhere in this Agreement, the following capitalized words and terms, as used in this Agreement, shall have the meanings described below.

A. Administrative Fee. That amount of the District Sales Tax Revenue that the City shall receive as compensation for performing the duties of collecting the District Sales Tax, pursuant to Section 2.02 of this Agreement.

B. City: The City of Lee's Summit, Missouri.

C. City Council: The governing body of the City.

D. City Payment: Shall have the meaning set forth in Section 5.06.C.

E. Code: The Internal Revenue Code.

F. Cooperative Agreement or Agreement: This cooperative agreement.

G. Costs of Formation: Actual, reasonable costs and expenses approved by the City, which are incurred by the District or the Developer, to obtain circuit court approval of formation of the District and the imposition of the District Sales Tax, including but not limited to attorneys' and other professional service fees and expenses of filing and defending the petition and to call and hold the election for the District Sales Tax, including all publication and incidental costs related to any of the aforementioned activities.

H. Developer: Gale Communities, Inc., a Missouri corporation, and its successors and assigns.

I. District: The Lee's Summit, Missouri New Longview Transportation Development District, a Missouri transportation development district and political subdivision of the State of Missouri.

J. District Projects: Those projects listed in the First Amended Petition for Formation of the Lee's Summit, Missouri New Longview Transportation Development District, a copy of which is attached hereto as Exhibit A, and which are set forth as follows: (1) the construction of Longview Boulevard, including the relocation of the two Longview Arches ("Longview Boulevard Project"); (2) single lane improvements to the southern half of 3rd Street, from the planned future eastern roundabout on 3rd Street to the eastern border of the Property ("3rd Street Project"); (3) the construction of two (2) east-west arterial roads, from the Longview College entrances on Longview Road, easterly to the two (2) roundabout intersections with Longview Boulevard ("College Roads Project"); and (4) improvements to Longview Road from the intersection of View High Road and 3rd Street to the southernmost roundabout on Longview Road ("Longview Road Project").

K. District Sales Tax: The sales tax levied by the District on retail sales within its boundaries pursuant to the TDD Act in the amount of one percent (1%).

L. District Sales Tax Revenues: Monies actually collected, pursuant to this Agreement and the TDD Act, from the imposition of the District Sales Tax.

M. Economic Activity Taxes: Economic Activity Taxes, as defined by the TIF Act and captured by the TIF Plan.

N. Enforcement Funds: The funds defined in Section 2.03.B of this Agreement.



O. Event of Default: Any event specified in Section 7.01 of this Agreement.

P. Improvement Costs: All actual and reasonable costs and expenses approved by the City, which approval shall not be unreasonably withheld, which are incurred with respect to construction of the District Projects, including the actual and reasonable cost of labor and materials payable to contractors, builders, suppliers, vendors and materialmen in connection with the construction contracts awarded in connection with the District Projects, plus all actual and reasonable costs to plan, finance, develop, design and acquire the District Projects, including but not limited to the following:

- (1) actual and reasonable costs of issuance and capitalized interest, if any, for any bonds issued by the District to finance the District Projects;
- (2) actual and reasonable fees and expenses of architects, appraisers, attorneys, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of construction, financing, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of architects, appraisers, surveyors and engineers in relation to the construction of the District Projects and all actual and reasonable costs for the oversight of the completion of the District Projects including overhead expenses of the District for administration, supervision and inspection incurred in connection with the District Projects; and
- (3) all other items of expense not elsewhere specified in this definition which may be necessary or incidental to the review, approval, acquisition, construction, improvement and financing of the District Projects and which may lawfully be paid or incurred by the District under the TDD Act.

Q. MoDOT: The Missouri Department of Transportation and/or the Missouri Highways and Transportation Commission.

R. Operating Costs: Actual, reasonable overhead expenses approved by the City, which approval shall not be unreasonably withheld, which are necessary for the administration of the District, in accordance with the District's annual budget.

S. Payments in Lieu of Taxes: Incremental taxes paid on account of real estate tax assessments as provided and defined in the TIF Act and the TIF Plan.

T. Public Works Department: The Public Works Department of the City.

U. Redevelopment Area: The Redevelopment Area established under the TIF Plan.

V. Redevelopment Projects: The redevelopment projects to be constructed by the Developer pursuant to the TIF Plan and the TIF Contract.

W. Reimbursement Agreement: That agreement between the District and the Developer, attached hereto as Exhibit C, pursuant to which the District agrees to reimburse the Developer actual and reasonable costs for expenditures made on behalf of the District, including Costs of Formation, Improvements Costs and Operating Costs.

X. Reimbursement Agreement Costs: Actual and reasonable costs for expenditures made by the Developer on behalf of the District, including Costs of Formation, Improvement Costs and Operating Costs, and which may be reimbursed pursuant to the terms of this Agreement and the Reimbursement Agreement.

Y. Special Allocation Fund: The fund created pursuant to the TIF Act for the TIF Plan into which the City deposits Economic Activity Taxes and Payments in Lieu of Taxes pursuant to the TIF Plan.

Z. TDD Act: The Missouri Transportation Development District Act, Section 238.200, *et. seq.*, of the Revised Statutes of Missouri, as amended.

AA. TDD Interest Payment: Shall have the meaning set forth in Section 5.06.C.

BB. TIF Act: The Real Property Tax Increment Allocation Redevelopment Act, Section 99.800, *et. seq.*, of the Revised Statutes of Missouri, as amended.

CC. TIF Contract: Defined above in the RECITALS, paragraph A.

DD. TIF Plan: Defined above in the RECITALS, paragraph B.

EE. TIF Revenue: Economic Activity Taxes and Payments in Lieu of Taxes.

FF. Trust Indenture: A Trust Indenture between the District and the Trustee, executed in connection with the issuance of TDD debt obligations.

GG. Trustee: The Trustee, and its successor or successors and their respective assigns, as defined in a Trust Indenture.

## ARTICLE II

### COLLECTION OF FUNDS

#### Section 2.01 Collection of District Sales Tax.

The City agrees to perform for the District, all functions incident to the administration, collection, and enforcement of the District Sales Tax, pursuant to the TDD Act and this Agreement. The Developer will cause the District to enact a resolution in substantial compliance with the resolution attached to this Agreement as Exhibit B. The District Sales Tax shall be collected and reported upon such forms and under the administrative rules and regulations prescribed by the District, attached hereto as Exhibit B. The District Sales Tax Revenues shall be deposited by the City in accordance with Exhibit B. Neither the District nor the City shall amend the forms, or the administrative rules and regulations prescribed in Exhibit B, without the other party's consent, which consent shall not be unreasonably withheld.

**Section 2.02 Administrative Fee for Collection of District Sales Tax.**

The City shall receive an Administrative Fee for collecting and administering the District Sales Tax in the amount of one percent (1%) of the total District Sales Tax Revenues. In the event that the one percent (1%) Administrative Fee does not fully reimburse the City for actual costs and expenses incurred in fulfilling its obligations associated with collection of the District Sales Tax Revenue pursuant to this Agreement, then the City shall receive reimbursement for such actual costs; provided, however, that the right to recover such actual costs and expenses in excess of the Administrative Fee shall be subordinate to the payment of debt service on bonds, if any, issued by the District to finance the District Projects. Prior to the City performing any of the obligations in this Agreement associated with collection of the District Sales Tax, the City shall receive from the Developer five thousand and no/100 dollars (\$5,000.00) for the purpose of initiating the accounting system associated with collecting and administering the District Sales Tax ("Account Initiation Payment"). The Account Initiation Payment may be reimbursed to the Developer as an Improvement Cost under this Agreement.

**Section 2.03 Enforcement of the District Sales Tax.**

A. The District authorizes the City, to the extent permitted by law, to take all actions necessary for collection and enforcement of the District Sales Tax. The City may, in its own name or in the name of the District, prosecute or defend an action, lawsuit or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure the payment of the District Sales Tax. The District hereby agrees to cooperate fully with the City and to take all action necessary to effect the substitution of the City for the District in any such action, lawsuit or proceeding if the City shall so request. The cost and expense of such actions, shall be paid from the Enforcement Funds.



B. In addition to the cost of administering the District Sales Tax, the City shall be entitled to retain and maintain from District Sales Tax Revenues twenty five thousand and no/100 dollars (\$25,000.00) to fund litigation, prosecution or defense of enforcement and collection of the District Sales Tax, which shall be maintained by the City in an account as the Enforcement Funds, with earnings thereon deposited to the credit of the Enforcement Funds account. The City may use the Enforcement Funds to pay actual, reasonable costs and expenses associated with enforcing collection of the District Sales Tax, including but not limited to auditing services, collection agency services and attorneys fees. The City may deduct sufficient funds from the District Sales Tax Revenues each month to maintain a balance of twenty five thousand and no/100 dollars (\$25,000.00) in Enforcement Funds as provided in Section 2.04.C.

**Section 2.04 Distribution of the District Sales Tax.**

Beginning in the first month following the effective date of the District Sales Tax and continuing each month thereafter until the expiration or repeal of the District Sales Tax, the City shall, not later than the fifteenth (15th) day of each month, distribute the District Sales Tax Revenues received in the preceding month in the following order of priority:

A. The City shall deduct one percent (1%) of the total District Sales Tax collected each month, for its Administrative Fee.

B. Pursuant to the TIF Act and the TIF Plan, as amended, one-half (1/2) of the District Sales Tax which is generated within the Redevelopment Area will be captured as Economic Activity Taxes and deposited by the City into the Special Allocation Fund.

C. The City shall deduct sufficient funds, if any, to maintain a balance of twenty five thousand and no/100 dollars (\$25,000.00) in Enforcement Funds.

D. If any of the City Payment, as defined in Section 5.06.A, is used by the District to pay for TDD Interest Payments and/or for the relocation of the Longview Arches, as authorized by Section 5.06.C, then the City shall retain sufficient funds to repay the City for this portion of the City Payment until the City has been reimbursed in full for these items, with interest as provided in Section 5.06.C.

E. After the City has been reimbursed in full for any portion of the City Payment used by the District for TDD Interest Payments and/or relocation of the Longview Arches (with interest as provided in Section 5.06.C), as set forth in subparagraph D of this Section, the City shall transfer the remaining District Sales Tax to the Trustee for distribution in accordance with the Trust Indenture.

**Section 2.05 District Sales Tax Refund.**

At all times while the provisions of the TIF Act requires that one half (1/2) of the District Sales Tax Revenues be captured as Economic Activity Taxes, and while any bonds issued by the District remain outstanding, any District Sales Tax Revenues deposited into the Special Allocation Fund shall be paid by the City to the Trustee for distribution in accordance with the Trust Indenture within thirty (30) days after such District Sales Taxes Revenues have been deposited into the Special Allocation Fund or, at the option and discretion of the City, to the extent permitted by applicable law and according to the distribution of District Sales Tax Revenue in accordance with Section 2.04, the City may document the District Sales Taxes Revenues otherwise payable to the Special Allocation Fund and pay such funds directly to the Trustee for distribution in accordance with the Trust Indenture. District Sales Tax Revenues paid from the Special Allocation Fund to the Trustee, or paid directly to the Trustee, shall be

held and used pursuant to the Trust Indenture, the TIF Plan, the TIF Contract and this Agreement to undertake the District Projects.

**Section 2.06 Records of the District Sales Tax.**

The City shall keep accurate records of the District Sales Tax due and collected and copies of such records shall be provided to the District on a monthly basis. Any City records pertaining to the District Sales Tax shall be provided to the District upon written request of the District, as permitted by law.

**Section 2.07 Repeal of the District Sales Tax.**

The District shall notify the City at least thirty (30) days in advance of the satisfaction in full of all outstanding obligations of the District. Upon full satisfaction of all obligations of the District, including, but not limited to the repayment of all TDD Bonds, the District shall immediately implement the procedures in the TDD Act for repeal of the District Sales Tax and abolishment of the District; provided, however, the District shall not implement the procedures for repeal or modification of the District Sales Tax and abolishment of the District if 1) any District Sales Tax Revenue is due to the City for outstanding Administrative Fees or Enforcement Funds, or if the City is due repayment of any of the City Payment in accordance with Sections 2.04 and 5.06, 2) any of the District Projects are not yet finally complete; 3) any of the Improvement Costs have not been fully paid; or 4) if the District, with the prior written consent of the City, has approved another project pursuant to the TDD Act. The City's obligation to perform for the District all functions incident to the administration, collection, enforcement and operation of the District Sales Tax shall terminate concurrent with the repeal of the District Sales Tax. Upon repeal of the District Sales Tax, the City shall:

A. Retain the City's administrative fee and any Enforcement Funds to which it is entitled in accordance with this Agreement.

B. Retain any remaining District Sales Tax until such time as the District is abolished and the District has provided for the transfer of any funds remaining in a manner permitted by the TDD Act.

### **ARTICLE III**

#### **DESIGN AND CONSTRUCTION OF DISTRICT PROJECTS**

##### **Section 3.01   Selection of Engineering Firm.**

The District shall select an engineering firm, which shall be reasonably approved by the Public Works Department, to design the District Projects, or portions of the District Projects which are approved by the City for separate design contracts. The scope of services to be performed by such engineering firm selected and the contract for services between the District and the engineering firm shall be reasonably approved by the Public Works Department.

##### **Section 3.02   Timing of Design.**

Once an engineering firm is selected, and the scope of services defined, in accordance with Section 3.01, the District may authorize the engineering firm to begin design of all, or a portion of, the District Projects, as approved by the Public Works Department.

##### **Section 3.03   Approval of Preliminary Plans and Specifications.**

Once completed, the District shall submit preliminary plans and specifications for the District Projects to the Public Works Department for approval. The Public Works Department shall within thirty (30) days after receiving the preliminary plans and specifications approve such preliminary plans and specifications or provide written comments concerning required changes. If the Public Works Department provides written comments concerning required changes, the District shall then cause the preliminary plans and specifications to be changed in accordance

with the Public Works Department's comments and resubmit the preliminary plans and specifications in accordance with this section or finalize the plans and specifications as approved. Review and approval of the plans and specifications for the District Projects shall not constitute acceptance of maintenance and ownership obligations of the District Projects by the City except as set forth in Sections 3.07 and 4.01 of this Agreement.

**Section 3.04 Approval Prior to Construction.**

Construction of all, or a portion of, the District Projects shall not commence until an appropriate construction permit is issued by the City.

**Section 3.05 Construction of District Projects.**

Following approval of plans and specifications for all or a portion of the District Projects, the District will solicit bids for construction of all, or the applicable portion, of the District Projects. All bids received will be submitted to the Public Works Department for review and comment. Selection of the lowest and best bid and the awarding of the contract to construct all or any portion of the District Projects by the District shall be subject to the reasonable approval of the Public Works Department.

**Section 3.06 Completion of Construction.**

Upon completion of all or any portion of the District Projects, the District shall deliver to the City and to the Developer a completion certificate signed by a representative of the engineering firm selected pursuant to Section 3.01, certifying that (1) the District Projects have been completed in accordance with the final plans and specifications as approved by the Public Works Department in accordance with this Agreement, and (2) all sums due to the contractor have been paid. The District shall provide, prior to construction, such payment and performance bonds as required by the City's Design and Construction Manual, and the District shall, following



completion of construction, obtain from the contractor and assign to the City (with the consent of the contractor) such warranties and guarantees as City shall normally obtain in its public improvement road projects.

**Section 3.07 Acceptance of District Projects.**

Following receipt of a completion certificate and prior to accepting all or any portion of the District Projects following construction, the District shall obtain the approval of the Public Works Department. The parties acknowledge that certain elements of the District Projects would not be included if the City were paying for and constructing the District Projects. Approval of the plans and specifications by the Public Works Department shall constitute acceptance of responsibility for maintenance by the City only of those elements of the District Projects that are set forth in category 1 of Exhibit E. City approval of those elements of the District Projects listed in category 2 of Exhibit E shall not constitute acceptance of responsibility for maintenance of those District Project elements. The Developer and/or the District shall cause to be formed one or more property owners' associations for perpetual ownership, maintenance and operation of those elements of the District Projects for which the City does not accept maintenance or ownership obligations under this Agreement, and the Developer and/or District shall receive City approval of such property owners' association(s) prior to acceptance of the applicable District Project by the Public Works Department pursuant to this Section.

**ARTICLE IV**

**OWNERSHIP AND MAINTENANCE OF DISTRICT PROJECTS**

**Section 4.01 Title to the Project.**

Title to the District Projects shall be vested in the name of the District until the Improvement Costs of the District Projects have been paid in full and any District bonds issued to fund construction of District Projects repaid and the City is repaid the City payments. The District

shall not assign, transfer, lease or otherwise dispose of its interest in the District Projects without first obtaining the prior written consent of the City, except for the assignment to the Trustee of any District bonds issued to finance construction of all or part of the District Projects. When all bonds and all other outstanding obligations, notes, liabilities or other debts of the District incurred in connection with the District Projects have been paid or retired and the City is repaid the City Payments, all right, title and interest of the District in those elements of the District Projects listed in category 1 of Exhibit E shall be transferred to the City in the manner provided in the TDD Act and this Agreement shall terminate. At such time, the District agrees to execute and deliver to the City and the City agrees to accept such deeds, assignments and other instruments as are necessary to transfer all right, title and interest of the District in those elements of the District Projects listed in category 1 of Exhibit E. The parties acknowledge that certain elements of the District Projects (those listed in category 2 of Exhibit E) would not be included if the City were paying for and constructing the District Projects, and the City shall not accept ownership of those elements of the District Projects that are set forth in category 2 of Exhibit E. Perpetual ownership and maintenance of those elements of the District Projects not owned by the City shall be in the name of the property owners' association established pursuant to Section 3.07 of this Agreement.

#### **Section 4.02 Maintenance of District Projects.**

In consideration of the administration and financing of the construction of the District Projects by the District, the City shall at all times be responsible for maintenance of those elements of the District Projects listed in category 1 of Exhibit E, as set forth in Section 3.07 of this Agreement, following approval by the Public Works of construction and assignment or confirmation of all required warranties and guarantees, and the District shall have no obligation with respect thereto.

**Section 4.03 Insurance Requirements.**

A. The District agrees that it will require each contractor to maintain insurance in a form and amount approved by the City, and that the City shall be named as an additional insured under each such policy so maintained. Each contractor shall, on request, be required to provide the District or its assignees a complete copy of each policy or a certificate thereof which shows that such policies are in full force and effect and that the City is named as an additional insured thereunder.

B. The District shall maintain throughout the term of this Agreement a policy of insurance to cover the exceptions for sovereign and governmental immunity set forth in Section 537.600 of the Revised Statutes of Missouri in the maximum amounts set forth in Section 537.610 of the Revised Statutes of Missouri. The District shall provide a certificate of such policy to the City, evidencing that the City is named as an additional insured party.

**ARTICLE V**  
**FINANCING DISTRICT PROJECTS**

**Section 5.01 District Sales Tax.**

The District shall impose the District Sales Tax within the boundaries of the District, which shall be applied first in amounts to provide, together with other available funds of the District (including City Payments) for the retirement of District debt obligations, or as otherwise provided in the indenture of trust entered into by the District with respect to bonds issued by the District to fund the District Projects. Once all District debt obligations are retired, the proceeds of the District Sales Tax shall be applied first to the reimbursement of amounts payable to the City for the City Payments, and thereafter to the reimbursement of Developer and other Improvement Costs.

**Section 5.02 Reimbursement of Prior Expenditures.**

A. Costs of Formation. The Developer has incurred Costs of Formation. Upon issuance of bonds or the assumption of other debt obligations by the District, a portion of the proceeds shall be used in accordance with Section 5.05 of this Agreement, for the purpose of reimbursing the Developer for the Costs of Formation. This reimbursement request shall be subject to prior approval by the City in accordance with Section 5.02.F of this Agreement.

B. Construction Costs. To the extent that the Developer has incurred costs for construction of a portion of the District Projects, and such costs are approved by the City in accordance with this Agreement, then upon the issuance of bonds or the assumption of other debt obligations by the District, a portion of the proceeds of the bonds shall be used, in accordance with Section 5.05 of this Agreement, for the purpose of reimbursing to the Developer the Improvement Costs which have been approved and contracted in accordance with the terms of Article III of this Agreement. This reimbursement request shall be subject to prior approval by the City in accordance with Section 5.02.F of this Agreement. The parties acknowledge that the first annual appropriation of funds by the City in the amount of two hundred fifty one thousand and no/100 (\$251,000.00) has occurred and are available for payment in accordance with the terms of this Agreement and the trust indenture.

C. Reimbursement Agreement Costs. The Developer has incurred or may incur Reimbursement Agreement Costs on behalf of the District. The Developer may be reimbursed from District Sales Tax Revenues, paid to the District in accordance with the Trust Indenture, for Reimbursement Agreement Costs in accordance with the terms of this Agreement and the terms of the Reimbursement Agreement attached hereto as Exhibit C. The Reimbursement Agreement shall not be amended without the consent of the City. This reimbursement request shall be subject to prior approval by the City in accordance with Section 5.02.F of this Agreement.

D. Operating Costs. The Developer may advance funds to pay Operating Costs of the District in its first fiscal year and each subsequent fiscal year, in accordance with the District's annual budget, until there are sufficient District Sales Tax Revenues paid by the Trustee to the District, pursuant to the Trust Indenture, to fund the District's annual budget. In no event shall the District incur more than fifty thousand and no/100 dollars (\$50,000.00) in any fiscal year for Operating Costs of the District, without the prior consent of the City, which consent shall not be unreasonably withheld, if the District demonstrates that the expenditures serve a legitimate District purpose. Operating Costs, to the extent advanced by the Developer, shall be reimbursed to the Developer by the District, from District Sales Tax Revenues paid by the Trustee to the District, pursuant to the Trust Indenture. This reimbursement request shall be subject to prior approval by the City in accordance with Section 5.02.F of this Agreement.

E. Right-of-way Land Costs. The Developer has incurred certain land costs that are associated with land that will be dedicated to right-of-way for the Longview Boulevard portion of the District Projects. By prior agreement of the Developer and the City pursuant to the TIF Contract, subject to the availability of funds and upon proper documentation submitted to the City using the procedure set forth in Section 5.02.F, the District may reimburse the Developer for fifty percent (50%) of the land acquisition costs associated with three (3) acres of land, not to exceed a total cost of fifty five thousand five hundred and no/100 dollars (\$55,500.00).

F. Reimbursement Procedure. Expenditures to be reimbursed pursuant to this Section 5.02 shall be submitted in writing by the District or the Developer to the City's Finance Director for City approval prior to reimbursement. The Finance Director shall review, verify and confirm the information included in the written request for reimbursement. The Finance Director may request additional documentation of reimbursement requests, within thirty (30) days of receipt of



written request for reimbursement. If the City determines that the request accurately reflects reasonable reimbursable prior expenses, City shall approve the request. If the City has not requested additional documentation within thirty (30) days of receipt of a written request for reimbursement and the City has not approved or denied the written request for reimbursement within ninety (90) days of receipt of a written request for reimbursement, the request for reimbursement shall be deemed approved.

**Section 5.03 Annual Budget and Payment of Operating Costs as Incurred.**

A. Annual Budget. The budget for the District's first fiscal year shall be prepared by the District and submitted to the City Finance Director within thirty (30) days after execution of this Agreement. For each subsequent fiscal year of the District, the District shall, no earlier than one hundred eighty (180) days and no later than ninety (90) days prior to the first day of each fiscal year, submit a proposed budget for the upcoming fiscal year to the City Finance Director. Each budget for the District shall generally be prepared in accordance with all applicable state statutes including Section 67.010 RSMo, as amended. The Finance Director may review and comment to the District on its proposed budget. The District shall adopt a budget for its first fiscal year within sixty (60) days after execution of this Agreement and shall adopt an annual budget no later than thirty (30) days prior to the first day of each fiscal year.

B. Payment of Operating Costs. The proposed and actual expenditures of the District for Operating Costs shall not exceed fifty thousand dollars (\$50,000) in any fiscal year, without the City's consent, which consent shall not be unreasonably withheld, so long as the District demonstrates that the expenditures serve a legitimate District purpose. District Sales Tax Revenues, paid by the Trustee to the District, pursuant to the Trust Indenture, may be used to fund Operating Costs, in accordance with the District's annual budget, upon approval by the City

of such Operating Costs, which approval will not be unreasonably withheld. Operating Costs shall be submitted in writing by the District to the City's Finance Department for City approval prior to payment. The Finance Director shall review, verify and confirm the information included in the written request for approval. The Finance Director may request additional documentation of Operating Costs, within thirty (30) days of receipt of written request for approval. If the City determines that the request accurately reflects reasonable reimbursable expenses, City shall approve the request. If the City has not requested additional documentation within thirty (30) days of receipt of a written request for approval and the City has not approved or denied the written request for approval within ninety (90) days of receipt of a written request for approval, the request for approval shall be deemed approved. The City's approval prior to payment is not required for de minimis expenditures of \$500 or less, where there is no intent to avoid the terms of this Agreement by dividing one expenditure into several de minimis expenditures. The City may give its approval in writing at the beginning of the fiscal year to the expenditure of funds, for individual Operating Costs that are: 1) budgeted as a line item in the District's annual budget; 2) are regularly occurring Operating Costs as determined by the Finance Director; 3) are documented, to the satisfaction of the City, as reasonable expenditures based on quotes or prior, similar expenditures by the District; and 4) are within the amount budgeted for that line item. In the event that specific budget approval has been given by the City, additional written approvals by the City are not required.

C. New Projects. Upon satisfaction in full of all outstanding obligations of the District, the District may use District Sales Tax Revenue, as such revenues are available, to pay Improvement Costs for new District projects which have been determined by the City Council to be necessary and approved and contracted in accordance with the terms of Article III of this

Agreement. The District shall not undertake new District projects without the prior approval of the City Council. Payments due to the City pursuant to the priority established in Section 2.04 for Administrative Fees, Enforcement Funds and repayments to the City for any portion of the City Payment used in accordance with Section 5.06 shall take priority over any costs associated with new District projects.

**Section 5.04 Issuance of Bonds – District Responsibilities.**

A. Issuance of Bonds. At such time as the District is able to attract buyers for bonds issued by the District to finance the reimbursement of previously-paid Improvement Costs for District Projects and/or the construction of new District Projects in accordance with contracts approved under the provisions of Article III of this Agreement, and at such time as the Conditions Precedent set forth in subparagraph B of this Section 5.04, the District will issue revenue bonds for the purpose of funding all, or an appropriate portion of, the Improvement Costs. The bonds shall be the obligation and responsibility of the District and the City shall have no responsibility for the bonds. The bonds shall not be a debt or general obligation of the City, as that term is used and defined in the Constitution and Statutes of the State of Missouri, of either the District or the City. The terms and conditions of the bonds, including interest rate, costs of issuance and other costs, shall be subject to approval by the City, which approval shall not be unreasonably withheld.

B. Conditions Precedent. In accordance with Section 5.c(1) and 10.a of the TIF Contract, the District shall not issue any bonds until each of the events listed herein has occurred.

- (1) Binding commitments to Developer, evidenced by documentation from financial institutions or other entities reasonably satisfactory to the City, for the use of Private Funds to construct portions of the Phase 2 retail development which are reasonably

satisfactory to the City, including 15,000 square feet of new construction devoted to retail sales. Such documentation shall at all times remain the property of the Developer and shall be returned to the Developer upon completion of the City's review required by this Contract.

(2) To the extent that development Phases or TIF Projects have been commenced, satisfactory guarantees to complete the Historic Project Improvements, as defined in the TIF Contract, have been provided by the Developer and approved by the City in accordance with the TIF Contract.

(3) To the extent that development Phases or TIF Projects have been commenced, Developer shall have committed to investing all of the applicable Private Funds for the Private Project Improvements for the applicable Project, as set forth in the TIF Contract.

C. Required Collateral. Developer shall provide any required security or collateral that is necessary to market any bonds issued by the District, in addition to the agreements contained in the TIF Contract and this Agreement. No fees and costs associated with obtaining or providing such collateral or security shall be paid or reimbursed from the proceeds of any District bonds.

#### **Section 5.05 Use of Bond Proceeds.**

A. The net proceeds of the sale of any District bonds shall be paid over to the Trustee for the account of the District to pay all costs of issuance, to fund the project fund, the debt service reserve fund, and a capitalized interest fund, if any, and any other funds or accounts as authorized by the City and the District.

B. Funds deposited in the project fund shall be disbursed by the Trustee upon receipt by the Trustee of a request from the District at least two (2) business days prior to the date on which

such funds are required to pay Improvement Costs which have been approved for payment by the District and the City.

C. Until such funds are requested by the District, the Trustee shall invest and reinvest money in the project fund in permissible investments under the Trust Indenture. Any earnings on such investments shall be deposited in the project fund and may be disbursed by the Trustee to pay or reimburse Improvement Costs upon receipt of a request in accordance with this Agreement.

D. Upon the receipt of a completion certificate, if applicable, pursuant to Section 3.06 of this Agreement, for District Projects funded with the proceeds of the series of bonds issued by the District, and verification that Improvement Costs related to a series of District bonds have been paid, the District shall deliver to the Trustee a certificate in writing, stating that the applicable Improvement Costs have been paid in full. Upon receipt of such certificate by the Trustee, and written acceptance by the City of the certifications in such certificate, any money then held by the Trustee in the project fund shall be transferred by the Trustee to the debt service fund to be used for the payment of principal of and redemption premium, if any, on the bonds through the payment or redemption thereof at the earliest permissible date under the Trust Indenture.

**Section 5.06 City Payment to TDD.**

A. In order to facilitate repayment of the Longview Boulevard TDD Project, the City agrees to include in future years' fiscal budgets for the City, for consideration by the City Council, all such funds as are detailed on Exhibit D ("City Payment"). The City Payment does not constitute a general obligation or other indebtedness of the City. The ability of the City to make the City Payment as contemplated in this Contract is limited to those City funds which are



specifically budgeted and appropriated annually by the City Council for such purpose. The City is obligated only to pay such City Payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current Fiscal Year. The Developer and District acknowledge that the City is not legally or morally obligated to appropriate funds for repayment of the TDD Obligations.

B. The Capital Improvements Ten Year Road Plan ("Ten Year Road Plan") establishes the City's priorities with respect to the road projects, including the Longview Boulevard Project, that are intended to be funded by the City's excise tax imposed pursuant to Chapter 28, Division 6 of the City Code ("Excise Tax") and the one-half (1/2) cent Capital Improvement Sales Tax. If, at any time in establishing and revising annual budgeting priorities for the Ten Year Road Plan, there is a negative cash flow balance in excise tax and capital improvement sales tax revenues from any previous year, the City may issue certificates of participation or another form of debt instrument, or make appropriations from other sources, in its discretion, to make any City Payment, but the City shall have no obligation to do so. The City Payment will be used as provided below in paragraph C of this Section.

C. The City Payment may be used for those construction costs set forth in **Exhibit F** ("Longview Boulevard Project Construction Costs") and the total City Payment shall not exceed \$5.9 million for the Longview Boulevard Project Construction Costs. Any portion of the City Payment used by the District to pay interest expenses for bonds issued by the District ("TDD Interest Payments") or for relocation of the Longview Arches shall be reimbursed by the District to the City, and shall include interest at a rate equal to the lesser of the actual cost of borrowing to Developer or the District or the then current prime rate as published by the Wall Street Journal plus one percent (1%) calculated from the first date that such funds could have been returned to

the City but are instead used by the District to pay for either TDD Interest Payments or relocation of the Longview Arches. Such repayment from the District to the City shall be pledged as the first and primary use of the District Sales Tax, which shall maintain priority above all other Improvement Costs, but shall be subordinate to the payment of the debt service on the Bonds. The District shall pay interest on any funds repaid to the City at a rate equal to the lesser of the actual cost of borrowing to Developer or the then current prime rate as published by the Wall Street Journal plus one percent (1%). The District shall issue a note or other evidence of indebtedness acceptable to the City to evidence such repayment obligation provided that, at all times, such note or other evidence of indebtedness shall be subordinate to the bonds.

**Section 5.07 Developer Loans to the District.**

In the event that there are insufficient funds available to the District at any given point to fund the District Projects, Developer may loan funds to the District. Any such funds loaned to the District by the Developer shall be reimbursed by the District to the Developer upon terms mutually agreeable to Developer and District. The District shall issue a note or other evidence of indebtedness acceptable to the Developer to evidence such repayment obligation. The District shall pay interest on any funds loaned by the Developer at a rate equal to the actual cost of borrowing to Developer. Any such repayment from the District to the Developer shall be secondary and subordinate to any repayments to the City as required in Section 5.06.C above. In lieu of loaning funds directly to the District, Developer may provide some form of credit enhancement to the future District revenues sufficient to allow the District to issue additional District bonds to be paid from future District revenues.

**ARTICLE VI**  
**SPECIAL COVENANTS**

**Section 6.01 Records of the District.**

The District shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to its business affairs in accordance with generally accepted accounting principles consistently applied, and will furnish to the City, the original purchasers of any bonds, the Trustee, the trustee of any subsequently issued bonds, and to any requesting owner or owners of ten percent (10%) or more in aggregate principal amount of the bonds then outstanding, such information as they may reasonably request concerning the District, including such statistical and other operating information requested on a periodic basis, in order to enable such parties to determine whether the covenants, terms and provisions of this Agreement have been met. In addition, the District shall furnish annual audited financial statements to the City for each fiscal year no later than June 30th following the end of such fiscal year. For that purpose, all pertinent books, documents and vouchers relating to its business, affairs and properties shall at all times during regular business hours be open to the inspection of such accountant or other agent (who may make copies of all or any part thereof provided that the confidentiality of all records shall be maintained pursuant to such confidentiality agreements as reasonably required) as shall from time to time be designated and compensated by the inspecting party.

**Section 6.02 Records of the City.**

The City shall keep and maintain adequate records pertaining to disbursements for reimbursement or payment of the costs of public improvements and/or debt service on bonds. Such records shall be available for inspection by the District and the Trustee of any outstanding bonds upon reasonable notice.

**Section 6.03 Tax Covenants.**

A. The parties covenant and agree that they will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any District bonds under Section 103 of the Code. The parties covenant and agree that they will use or cause to be used the proceeds of any bonds as soon as practicable and with all reasonable dispatch for the purpose for which the bonds are issued, and that they will not directly or indirectly use or permit the use of any proceeds of any bonds, or take or omit to take any action, that would cause the bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code. To that end, the parties will comply with all requirements of Section 148 of the Code to the extent applicable to any bonds. In the event that at any time the District is of the opinion that for purposes of this section it is necessary to restrict or limit the yield on the investment of any money held by any bond Trustee under any Trust Indenture, the District will take such action as may be necessary to limit such yield. The parties further covenant to adopt such resolutions and to take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions in order to preserve the exclusion from federal gross income of the interest on any bonds to the extent any such actions can be taken by the parties to this Agreement.

B. Without limiting the generality of the foregoing, the District shall pay from time to time all amounts, if any, required to be rebated to the United States pursuant to Section 148(f) of the Code. This covenant shall survive payment in full or defeasance of the bonds.

C. The District covenants that it will: (i) not permit its income to inure to the benefit of any private person; (ii) use the original and investment proceeds of any District bonds solely to pay Improvement Costs, fund reserve funds and to pay costs related to the issuance of such

bonds; and (iii) after all the bonds have been paid, convey all of its right, title and interest in and to the District Projects to the City.

## **ARTICLE VII**

### **EVENTS OF DEFAULT**

#### **Section 7.01 Events of Default.**

If any one or more of the following events shall occur and be continuing, such event or events shall constitute an Event of Default under this Agreement:

A. Failure by the City to make a payment, and the continuance of such failure for ten (10) days following written notice to City from the District of such failure, or failure by the District to make a payment, in a timely manner as required by this Agreement; or

B. Failure by the City, the Developer or the District in the performance of any other covenant, agreement or obligation imposed or created by this Agreement, and the continuance of such default for sixty (60) days after the non-defaulting party or the Trustee of any outstanding bonds has given written notice to the defaulting party specifying such default.

#### **Section 7.02 Remedies on Default.**

Subject to any restrictions contained in the Indenture for any outstanding District bonds against acceleration of the maturity of any such bonds, if any Event of Default has occurred and is continuing, then any non-defaulting party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting party and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Agreement.

#### **Section 7.03 Rights and Remedies Cumulative.**

The rights and remedies reserved by either party under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted



by the exercise thereof on one or more occasions. The District, the Developer and the City shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 7.04 Waiver of Breach.**

No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting party may nevertheless accept from the defaulting party, any payment or payments without in any way waiving the non-defaulting party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting party.

**ARTICLE VIII**  
**ASSIGNMENTS**

**Section 8.01 Assignment of District's Rights.**

Under the Trust Indenture governing the issuance of any District bonds, the District will, as security for the bonds, pledge, assign, transfer and grant a security interest in certain of its rights under this Agreement to the Trustee or the trustee of any subsequently issued bonds. The City agrees that this Agreement and all of the rights, interests, powers, privileges and benefits accruing to or vested in the District under this Agreement may be assigned by the District to any bond Trustee or Trustees as security for bonds and may be exercised, protected and enforced for or on behalf of the owners of the bonds in conformity with this Agreement or the applicable indenture, except that the City Payment, as set forth in Section 5.06 and Exhibit D does not

constitute a general obligation or other indebtedness of the City, and the ability of the City to make any of the City Payment is limited to those funds which are specifically budgeted and appropriated annually by the City Council for such purpose. Any bond Trustee on behalf of bondholders is hereby given the right to enforce, as assignee of the District, the performance of the obligations of the City and the City hereby consents to the same and agrees that any bond Trustee may enforce the rights of the District as provided in this Agreement. This Agreement recognizes that any such Trustee will be a third-party beneficiary of this Agreement.

## **ARTICLE IX**

### **REPRESENTATIONS**

#### **Section 9.01 Representations by the District.**

The District represents that:

A. The District is a transportation development district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the TDD Act.

B. The District has authority to enter into this Agreement and to carry out its obligations under this Agreement. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

C. The District has taken all necessary action to approve the District Projects. No further action or approvals by the District are necessary in connection with the construction or financing of the District Projects, except with respect to the approval of certain matters relating to the issuance of any bonds and approvals to be granted by the City pursuant to this Agreement and relevant provisions of the City Code and the City's Design & Construction Manual that shall be applied by the City to development in the Redevelopment Area and the District Projects.

D. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the District is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the District or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreements to which the District is a party.

E. There is no litigation or proceeding pending or threatened against the District affecting the right of the District to execute or deliver this Agreement or the ability of the District to comply with its obligations under this Agreement or which would materially adversely affect its financial condition.

**Section 9.02 Representations by the City.**

The City represents that:

A. The City is duly organized and existing under the Constitution and laws of the State of Missouri, as a constitutional charter city.

B. The City has authority to enter into this Agreement and to carry out its obligations under this Agreement, and the Mayor of the City has been duly authorized to execute and deliver this Agreement.

C. The City has taken all necessary action for the approval of the TIF Plan and the TIF Contract.

D. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the City or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

E. There is no litigation or proceeding pending or threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

**Section 9.03 Representations by the Developer.**

The Developer represents that:

A. The Developer is duly organized and existing under the laws of the State of Missouri, as a corporation.

B. The Developer has authority to enter into this Agreement and to carry out its obligations under this Agreement, and its authorized representative has been duly authorized to execute and deliver this Agreement.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the Developer will not conflict with or result in a breach of any

of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the Developer is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the Developer or any of its property, or result in the creation of imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Developer under the terms of any instrument or agreement to which the Developer is a party.

D. There is no litigation or proceeding pending or threatened against the Developer affecting the right of the Developer to execute or deliver this Agreement or the ability of the Developer to comply with its obligations under this Agreement.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

#### **Section 10.01 Notices.**

All notices and other communications required or desired to be given under this Agreement shall be in writing and shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid, addressed as follows:

To the City:           City of Lee's Summit, Missouri  
                              Attn: City Administrator  
                              207 SW Market  
                              P. O. Box 1600  
                              Lee's Summit, Missouri 64063

With a copy to:       City of Lee's Summit, Missouri  
                              Attn: City Attorney  
                              207 SW Market  
                              P. O. Box 1600  
                              Lee's Summit, Missouri 64063

To the Developer:     G. David Gale, President  
                              Gale Communities  
                              3620 S.W. Ward Road



Lee's Summit, MO 64082

With a copy to: Spencer Thomson, Esq.  
Blackwell Sanders Peper Martin, LLP  
2300 Main Street, Suite 1000  
Kansas City, MO 64108

To the District: The Lee's Summit, Missouri New Longview Transportation  
Development District  
c/o Joseph Perry, Executive Director  
Gale Communities  
3620 S.W. Ward Road  
Lee's Summit, MO 64082

With a copy to: John Crossley, Esq.  
Blackwell Sanders Peper Martin, LLP  
2300 Main Street, Suite 1000  
Kansas City, MO 64108

All notices given by first class, certified or registered mail shall be deemed duly given as of the date they are mailed. A duplicate copy of each notice or other communication given by any party to this Agreement shall also be given to the other parties and to any bond Trustee or Trustees. The City, the District and the Developer may from time to time designate, by notice given to the other parties, another address to which subsequent notices or other communications shall be sent.

**Section 10.02 Recording of Agreement.**

This Agreement shall be recorded in the Office of the Recorder of Deeds of Jackson County, Missouri, at Independence by the District. Upon termination of this Agreement, a notice of termination shall be recorded in the Office of the Recorder of Deeds for Jackson County, Missouri, at Independence by the District.

**Section 10.03 Immunity of Officers, Employees and Members of City and District.**

No recourse shall be had for the payment of the principal of or premium or interest on any bonds or for any claim based thereon or upon any representation, obligation, covenant or agreement in

this Agreement contained against any past, present or future officer, member, employee, director or agent of the City or the District, or, respectively, of any successor public or private corporation thereto, as such, either directly or through the City or the District, or respectively, any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

**Section 10.04 Amendments.**

A. Prior to the issuance of any bonds by the District, this Agreement may be amended from time to time by the mutual agreement of the City, the Developer and the District.

B. After the issuance of any bonds by the District, this Agreement may be amended by the parties hereto without notice to or the consent of the owners of the Bonds, for the purpose of curing any ambiguity or formal defect or omission in this Agreement or in connection with any other change which, in the judgment of the Trustee, does not materially and adversely affect the security for the owners of the Bonds. No other amendments, changes or modifications of this Agreement shall be made without the giving of notice to and the obtaining of the written approval or consent of the owners of the bonds or bond Trustee as required by any indenture.

**Section 10.05 Survival.**

In the event any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

**Section 10.06 Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

**Section 10.07 Effective Date.**

This Agreement shall be in effect from and after its execution by all of the parties and shall remain in effect until the District Projects which are approved pursuant to Article III of the Agreement are completed and any District bonds are paid, or their payment has been provided for under the indenture, and the District is terminated pursuant to the TDD Act.

**Section 10.08 Execution in Counterparts.**

This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 10.09 Approved by City.**

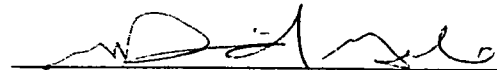
Unless specifically provided to the contrary herein, all approvals of City hereunder may be given by the City Administrator or his designee without the necessity of any action by the City Council of the City.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or officials.

Executed by the Developer the 22<sup>nd</sup> day of October, 2003.

GALE COMMUNITIES, INC.

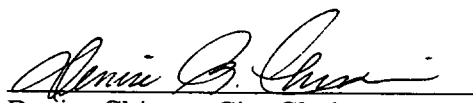
  
G. David Gale, President

Executed by the City the 27<sup>th</sup> day of October, 2003.

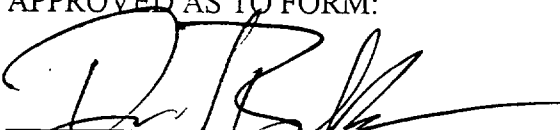
CITY OF LEE'S SUMMIT, MISSOURI

  
Karen Messerli, Mayor

ATTESTED:

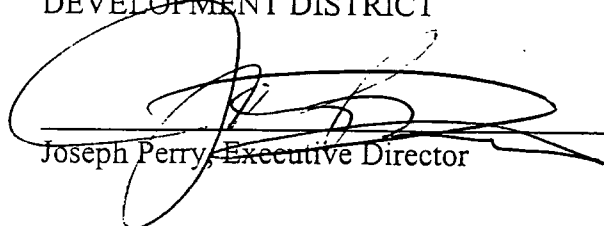
  
Denise Chisum, City Clerk

APPROVED AS TO FORM:

  
David Bushek, Deputy City Attorney

Executed by the District the 22<sup>nd</sup> day of October, 2003.

THE LEE'S SUMMIT, MISSOURI NEW  
LONGVIEW TRANSPORTATION  
DEVELOPMENT DISTRICT

  
Joseph Perry, Executive Director

Notary for Gale Communities, Inc.

STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF JACKSON    )

On this 22<sup>nd</sup> day of October, 2003 before me, the undersigned, a notary public in and for the county and state aforesaid, came G. David Gale, who is the President of Gale Communities, Inc., a Missouri corporation, and who is personally known to me to be the same person who executed this Cooperative Agreement and he duly acknowledged the execution of this Cooperative Agreement for and on behalf of said corporation, and acknowledged this Cooperative Agreement to be the free act and deed of said corporation.

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

My Commission Expires:

My Commission Expires Feb. 28, 2004

Lourdes Weise  
Notary Public

Lourdes Weise  
(Printed Name)



Notary for City of Lee's Summit

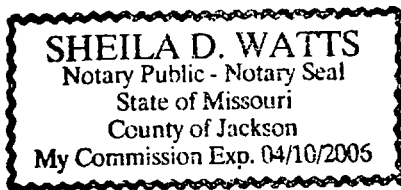
STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF JACKSON    )

On the 27<sup>th</sup> day of October, 2003; before me, the undersigned Notary Public in and for the county and state aforesaid, personally appeared Karen R. Messerli, to me personally known, who being by me duly sworn did say that they are the Mayor and City Clerk, respectively, of the City of Lee's Summit, Missouri, a Missouri constitutional charter city and political subdivision existing under and by virtue of the laws of the State of Missouri, and that the seal affixed to this Cooperative Agreement is the seal of said City and that said Cooperative Agreement was signed and sealed on behalf of the said City by authority of its City Council, and said Karen Messerli and Denise Chisum acknowledged said Cooperative Agreement to be the free act and deed of said City.

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

My Commission Expires:

4-10-2006



Sheila D. Watts  
Notary Public

Sheila D. Watts  
Printed Name

Notary for the Lee's Summit, Missouri New Longview Transportation Development District

STATE OF MISSOURI       )  
  ) ss.  
COUNTY OF JACKSON     )

On this 23<sup>rd</sup> day of October, 2003, before me, the undersigned, a notary public in and for the county and state aforesaid, came Joseph Perry, President of the Board of Directors of the Lee's Summit, Missouri New Longview Transportation Development District, a Missouri transportation development district and political subdivision, and who is personally known to me to be the same person who executed this Cooperative Agreement, and he duly acknowledged that he, as such Executive Director being authorized so to do, executed this Cooperative Agreement for and on behalf of said transportation development district for the purposes therein contained, and acknowledged this Cooperative Agreement to be the free act and deed of said transportation development district.

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

My Commission Expires:

My Commission Expires Feb. 28, 2004

Louroe's Weise

Notary Public

LOUROES Weise  
(Printed Name)

END OF DOCUMENT

**EXHIBIT A**

**First Amended Petition for Formation of the Transportation Development District**

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE

In the Matter of:

THE LEE'S SUMMIT, MISSOURI NEW  
LONGVIEW TRANSPORTATION  
DEVELOPMENT DISTRICT,

GALE COMMUNITIES, INC.

Petitioner,

vs.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION,

CITY OF LEE'S SUMMIT, MISSOURI,

JACKSON COUNTY, MISSOURI,

CITY OF KANSAS CITY, MISSOURI,

SERVE: Galen Beaufort, City Attorney  
Law Department of Kansas City,  
Missouri  
City Hall, 28<sup>th</sup> Floor  
414 East 12<sup>th</sup> Street  
Kansas City, MO 64106

Respondents.

Case No. 03CV208759

Division 17

03 APR 2003 2:51  
JACSON COUNTY MO-1

FIRST AMENDED PETITION FOR THE FORMATION  
OF THE LEE'S SUMMIT, MISSOURI NEW  
LONGVIEW TRANSPORTATION DEVELOPMENT DISTRICT

COME NOWS Petitioner, and pursuant to the Missouri Transportation Development District Act (the "Act"), Sections 238.200 to 238.275 of the Revised Statutes of Missouri ("RSMo."), petitions the Court for the purpose of forming The Lee's Summit, Missouri New Longview Transportation Development District (the "District"), and pursuant to Missouri

Supreme Court Rule 55.33(a), Petitioner files this First Amended Petition as a matter of course as, upon information and belief, no responsive pleading has been served by any named Respondents. Petitioner states as follows:

1. Petitioner Gale Communities, Inc., is a Missouri corporation with its principal place of business located at 3620 S.W. Ward Road, Lee's Summit, Missouri 64082.

2. Gale Communities, Inc. is the owner of record of all of the real property in the proposed District, and there are no persons eligible to vote who reside within the District, therefore, Gale Communities, Inc. is the only "qualified voter" in the District, as that term is defined in the Act.

3. Respondent Missouri Highways and Transportation Commission ("Commission") is the constitutional authority responsible for constructing and maintaining the Missouri highway system and is a necessary party under Section 238.207.4(2) of the Act.

4. Respondent City of Lee's Summit, Missouri, is the Missouri constitutional charter city in which the proposed District will be located, and is a necessary party under Section 238.207.4(2) of the Act.

5. Respondent Jackson County, Missouri, is the county in which the proposed District will be located, and is a necessary party under Section 238.207.4(2) of the Act.

6. Respondent City of Kansas City, Missouri, is the Missouri constitutional charter city in which the proposed district will be located, and is a necessary party under Section 238.207.4(2) of the Act.

7. The property to be included in the proposed District (the "Property") is described on Exhibit A and shown on the map at Exhibit B, copies of which are attached hereto and incorporated herein by reference.



8. Petitioners propose projects be undertaken by the District that consist of: (1) the construction of Longview Boulevard; (2) single lane improvements to the southern half of 3<sup>rd</sup> Street, from the eastern roundabout on 3<sup>rd</sup> Street to the eastern border of the Property; (3) the construction of two (2) east-west arterial roads, from the Longview College entrances on Longview Road, easterly to the two (2) roundabout intersections with Longview Boulevard; and (4) improvements to Longview Road from the intersection of View High Road and 3<sup>rd</sup> Street to the southernmost roundabout on Longview Road. To the extent funding is available hereunder, an additional project may be undertaken that shall consist of the planning and construction of a multi-level parking facility that shall serve retailers doing business within the District.

9. The Projects, as well as any additional projects which may be undertaken within the District subject to available funding, will benefit all of the retailers that will be doing business within the District and all of the real property located within the District by providing for necessary road infrastructure to service all such businesses and allow access and parking to serve said real property.

10. The name of the proposed District will be The Lee's Summit, Missouri New Longview Transportation Development District.

11. The board of directors of the District will be composed of five (5) members.

12. The terms of office of the initial board members of the District will be staggered, the two members receiving the highest number of votes will have an initial three-year term, the two members receiving the next highest number of votes will have an initial two-year term, and the member receiving the fewest votes will have an initial one-year term. After the initial terms, all board members will be elected for three-year terms.

13. The proposed project will be funded with bonds issued by the District and sales tax pursuant to Sections 238.240 and 238.242, RSMo.

14. The bonds issued by the District to fund the project will be paid using the following sources of revenue: (i) sales taxes collected at the rate of one percent (1%) on all transactions subject to a sales tax imposed in the District pursuant to Section 238.235, RSMo., for a period not to exceed 20 years; and (ii) funds to be appropriated in the future by the City of Lee's Summit, Missouri specifically for use in repayment of the bonds issued by the District.

15. The proposed District shall not be an undue burden on any owner of property within the District and is not unjust or unreasonable.

WHEREFORE, Petitioners request that the Court enter a judgment and decree:

- (a) finding and certifying that the Petition is not legally defective and that the Respondents have been duly served with process in this action;
- (b) finding and certifying the proposed District and method of funding are neither illegal nor unconstitutional;
- (c) finding and certifying The Lee's Summit, Missouri New Longview Transportation Development District is properly, duly and lawfully organized;
- (d) finding and certifying the proposed funding method and mechanism is neither illegal nor unconstitutional and is certified pursuant to Section 238.210.2, RSMo.;
- (e) finding and certifying that the proposed District is not an undue burden on any owner of real property within the District and is not unjust or unreasonable;
- (f) ordering the Circuit Clerk of Jackson County to call a meeting of owners of real property within the District, pursuant to Section 238.220.2, RSMo., to elect the initial directors of the District and a chairman and secretary of the meeting to conduct the election;

(g) ordering the Circuit Clerk of Jackson County to give notice of the first meeting of the directors of The Lee's Summit, Missouri New Longview Transportation Development District, pursuant to Section 238.222.2, RSMo.;

(h) ordering the Jackson County Board of Election Commissioners, upon the request of the Board of Directors of the District as approved by a majority of such Board, to cause the question of whether a one percent (1%) sales tax may be imposed by the District, for a period of up to 20 years, to appear on the ballot at a mail-in election for the qualified voters within the District;

(i) finding that there are no registered voters residing within the District and the owners of real property located within the District are the "qualified voters" pursuant to the Act;

(j) finding that the proposed Project is a proper project under the Act; and,

(k) making any additional findings and orders which the Court deems necessary and proper.

Respectfully submitted,

BLACKWELL SANDERS PEPER MARTIN LLP



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Steven Martin Aaron

MO#41653

Spencer R. Thomson

MO#41957

John C. Crossley

MO#48652

2300 Main, Suite 1000

Kansas City, Missouri 64108

Telephone: (816) 983-8000

Telecopier: (816) 983-8080

ATTORNEY FOR GALE COMMUNITIES, INC.

EXHIBIT A

## Boundary Description

## Tract "A"

All that part of the Northwest Quarter of Section 10, Township 47 North, Range 32 West, in Jackson County, Missouri, described as follows:

Commencing at the Southeast Corner of the Northwest Quarter of said Section 10; thence North  $03^{\circ} 20' 54''$  East, along the East line of the Northwest Quarter of said Section 10, a distance of 30.00 feet to the Point of Beginning; thence continuing North  $03^{\circ} 20' 54''$  East, along the East line of the Northwest Quarter of said Section 10, a distance of 60.00 feet; thence North  $87^{\circ} 11' 08''$  West, along a line that is 90.00 feet North of and parallel with the South line of the Northwest Quarter of said Section 10, a distance of 1,198.38 feet; thence North  $02^{\circ} 48' 52''$  East a distance of 10.00 feet; thence North  $87^{\circ} 11' 08''$  West, along a line that is 100.00 feet North of and parallel with the South line of the Northwest Quarter of said Section 10, a distance of 160.00 feet; thence North  $42^{\circ} 11' 08''$  West a distance of 63.64 feet; thence North  $02^{\circ} 48' 52''$  East a distance of 325.71 feet; thence North  $87^{\circ} 11' 08''$  West, parallel with the South line of the Northwest Quarter of said Section 10, a distance of 10.00 feet; thence North  $02^{\circ} 48' 52''$  East a distance of 356.87 feet; thence Northwesterly, along a curve to the left that is tangent to the last described course, having a central angle of  $34^{\circ} 02' 19''$ , a radius of 380.00 feet, an arc distance of 225.75 feet; thence North  $31^{\circ} 13' 27''$  West a distance of 120.04 feet; thence North  $13^{\circ} 46' 33''$  East a distance of 77.78 feet; thence North  $30^{\circ} 50' 11''$  West a distance of 30.00 feet; thence North  $58^{\circ} 46' 33''$  East a distance of 62.63 feet; thence North  $02^{\circ} 43' 41''$  East a distance of 317.76 feet; thence South  $37^{\circ} 13' 07''$  East a distance of 111.00 feet; thence North  $02^{\circ} 47' 45''$  East a distance of 278.03 feet; thence North  $87^{\circ} 12' 15''$  West a distance of 50.00 feet; thence North  $31^{\circ} 13' 27''$  West a distance of 407.80 feet; thence North  $58^{\circ} 46' 33''$  East a distance of 185.87 feet; thence North  $02^{\circ} 47' 45''$  East a distance of 125.96 feet; thence South  $87^{\circ} 12' 15''$  East a distance of 641.17 feet; thence North  $02^{\circ} 49' 30''$  East a distance of 156.15 feet; thence North  $87^{\circ} 11' 23''$  West, along a line that is 50.00 feet South of and parallel with the North line of the Northwest Quarter of said Section 10, a distance of 1,736.98 feet to a point that is 30.00 feet East of the West line of the Northwest Quarter of said Section 10; thence South  $03^{\circ} 15' 08''$  West, along a line that is 30.00 feet East of and parallel with the West line of the Northwest Quarter of said Section 10, a distance of 805.04 feet; thence South  $86^{\circ} 44' 52''$  East, perpendicular to the West line of the Northwest Quarter of said Section 10, a distance of 15.29 feet; thence Northeasterly, along a curve to the left that is tangent with the last described course, having a central angle of  $34^{\circ} 28' 35''$ , a radius of 440.00 feet, an arc distance of 264.76 feet; thence North  $58^{\circ} 46' 33''$  East a distance of 28.85 feet; thence South  $31^{\circ} 13' 27''$  East a distance of 465.06 feet; thence North  $58^{\circ} 46' 33''$  East a distance of 75.00 feet; thence South  $31^{\circ} 13' 27''$  East a distance of 425.31 feet; thence South  $13^{\circ} 46' 33''$  West a distance of 56.57 feet; thence South  $58^{\circ} 46' 33''$  West a distance of 28.75 feet; thence Southwesterly, along a curve to the right that is tangent to the last described course, having a central angle of  $34^{\circ} 01' 52''$ , a radius of 265.00 feet, an arc distance of 157.40 feet; thence North  $87^{\circ} 11' 35''$  West a distance of 180.45 feet; thence Northwesterly, along a curve to the right that is tangent to the last described course, having a central angle of  $27^{\circ} 10' 18''$ , a radius of 286.00 feet, an arc distance of 135.63 feet;

thence North  $60^{\circ} 01' 17''$  West a distance of 0.20 feet; thence Northwesterly, along a curve to the left that is tangent to the last described course, having a central angle of  $26^{\circ} 43' 35''$ , a radius of 314.00 feet, an arc distance of 146.47 feet; thence North  $86^{\circ} 44' 52''$  West a distance of 204.31 feet; thence North  $41^{\circ} 44' 52''$  West a distance of 21.21 feet; thence South  $03^{\circ} 15' 08''$  West, along a line that is 30.00 feet East of and parallel with the West line of the Northwest Quarter of said Section 10, a distance of 100.00 feet; thence North  $48^{\circ} 15' 08''$  East a distance of 21.21 feet; thence South  $86^{\circ} 44' 52''$  East a distance of 204.31 feet; thence Southeasterly, along a curve to the right that is tangent to the last described course, having a central angle of  $26^{\circ} 43' 35''$ , a radius of 244.00 feet, an arc distance of 113.82 feet; thence South  $60^{\circ} 01' 17''$  East a distance of 0.20 feet; thence Southeasterly, along a curve to the left that is tangent to the last described course, having a central angle of  $27^{\circ} 10' 18''$ , a radius of 356.00 feet, an arc distance of 168.83 feet; thence South  $87^{\circ} 11' 35''$  East a distance of 39.57 feet; thence Southwesterly, along a curve to the left that is non-tangent to the last described course, having a initial tangent bearing of South  $16^{\circ} 49' 09''$  West, a central angle of  $14^{\circ} 01' 58''$ , a radius of 268.32 feet, an arc distance of 65.72; thence South  $02^{\circ} 47' 11''$  West a distance of 427.40 feet; thence South  $87^{\circ} 11' 08''$  East a distance of 123.41 feet; thence South  $02^{\circ} 47' 11''$  West a distance of 96.20 feet; thence South  $87^{\circ} 12' 49''$  East a distance of 113.56 feet; thence Southeasterly, along a curve to the right that is tangent to the last described course, having a central angle of  $33^{\circ} 03' 12''$ , a radius of 135.00 feet, an arc distance of 77.88 feet; thence Southeasterly, Easterly, and Northeasterly, along a curve to the left that is tangent to the exit of the last described curve, having a central angle of  $71^{\circ} 17' 06''$ , a radius of 75.00 feet, an arc distance of 93.31 feet; thence Northeasterly, along a curve to the right that is tangent to the exit of the last described curve, having a central angle of  $38^{\circ} 13' 54''$ , a radius of 135.00 feet, an arc distance of 90.08 feet; thence South  $87^{\circ} 11' 08''$  East a distance of 48.66 feet; thence South  $02^{\circ} 48' 52''$  West a distance of 322.22 feet; thence South  $47^{\circ} 48' 51''$  West a distance of 70.71 feet; thence North  $87^{\circ} 11' 08''$  West, parallel with the South line of the Northwest Quarter of said Section 10, a distance of 165.00 feet; thence South  $02^{\circ} 48' 15''$  West a distance of 20.00 feet; thence South  $87^{\circ} 11' 08''$  East, along a line that is 30.00 feet North of and parallel with the South line of the Northwest Quarter of said Section 10, a distance of 1,777.82 feet to the Point of Beginning. Containing 44.67 acres, more or less.

#### Tract "B"

All that part of the Northwest Quarter of Section 10, Township 47 North, Range 32 West, in Jackson County, Missouri, described as follows:

Commencing at the Southwest Corner of the Northwest Quarter of said Section 10; thence South  $87^{\circ} 11' 08''$  East, along the South line of the Northwest Quarter of said Section 10, a distance of 30.00 feet; thence North  $03^{\circ} 15' 08''$  East, along a line that is 30.00 feet East of and parallel with the West line of the Northwest Quarter of said Section 10, a distance of 30.00 feet to the Point of Beginning; thence continuing North  $03^{\circ} 15' 08''$  East a distance of 15.00 feet; thence South  $41^{\circ} 58' 00''$  East a distance of 21.13 feet to a point that is 30.00 feet North of the South line and 45.00 feet East of the West line of the Northwest Quarter of said Section 10; thence North  $87^{\circ} 11' 08''$  West, along a line that is 30.00 feet North of and parallel with the South line of the Northwest Quarter of said Section 10, a distance of 15.00 feet to the Point of Beginning. Containing 113 square feet, more or less.



## Tract "C"

All of that part of the Southwest Quarter of Section 10, Township 47 North, Range 32 West, in Jackson County, Missouri, described as follows:

Commencing at the Northwest Corner of the Southwest Quarter of said Section 10; thence South  $87^{\circ} 11' 08''$  East, along the North line of said Southwest Quarter section, a distance of 876.73 feet; thence South  $02^{\circ} 48' 52''$  West, perpendicular to the North line of said Southwest Quarter section, a distance of 30.00 feet to the Point of Beginning; thence continuing South  $02^{\circ} 48' 52''$  West a distance of 15.00 feet; thence South  $87^{\circ} 11' 08''$  East, along a line that is 45.00 feet South of and parallel with the North line of said Southwest Quarter section, a distance of 580.00 feet; thence North  $02^{\circ} 48' 52''$  East, perpendicular to the North line of said Southwest Quarter section, a distance of 15.00 feet; thence North  $87^{\circ} 11' 08''$  West, along a line that is 30.00 feet South of and parallel with the North line of said Southwest Quarter section, a distance of 580.00 feet to the Point of Beginning. Containing 8,700 square feet or 0.20 acres, more or less.

## Tract "D"

All of that part of the Southwest Quarter of Section 10, Township 47 North, Range 32 West, in Jackson County, Missouri, described as follows:

Commencing at the Northwest Corner of the Southwest Quarter of said Section 10; thence South  $03^{\circ} 14' 52''$  West, along the West line of the Southwest Quarter of said Section 10, a distance of 30.00 feet to the Point of Beginning; thence continuing South  $03^{\circ} 14' 52''$  West, along the West line of the Southwest Quarter of said Section 10, a distance of 1,105.32 feet; thence Northeasterly and Northerly along a curve to the left that is non-tangent to the last described course, having a initial tangent bearing of North  $35^{\circ} 26' 13''$  East, a central angle of  $32^{\circ} 12' 01''$ , a radius of 235.00 feet, an arc distance of 132.07 feet; thence North  $03^{\circ} 14' 12''$  East a distance of 980.35 feet; thence North  $87^{\circ} 11' 08''$  West, along a line that is 30.00 feet South of and parallel with the North line of the Southwest Quarter of said Section 10, a distance of 35.93 feet to the Point of Beginning. Containing 38,377 square feet or 0.88 acres, more or less.

## Tract "E"

All that part of the Southeast Quarter of Section 9, Township 47 North, Range 32 West, in Jackson County, Missouri, described as follows:

Commencing at the Northeast Corner of the Southeast Quarter of said Section 9; thence South  $03^{\circ} 14' 52''$  West, along the East line of the Southeast Quarter of said Section 9, a distance of 30.00 feet to the Point of Beginning; thence continuing South  $03^{\circ} 14' 52''$  West, along the East line of the Southeast Quarter of said Section 9, a distance of 1,105.32 feet; thence Southwesterly along a curve to the right that is non-tangent to the last described course, having a initial tangent bearing of South  $35^{\circ} 26' 13''$  West, a central angle of  $00^{\circ} 35' 36''$ , a radius of 235.00 feet, an arc distance of 2.43 feet; thence South  $36^{\circ} 01' 49''$  West a distance of 178.86 feet; thence South  $38^{\circ} 58' 13''$  West a distance of 40.25 feet; thence South  $62^{\circ} 38' 30''$  East a distance of 133.27 feet to a point on the East line of the Southeast Quarter of said Section 9; thence South  $03^{\circ} 14' 52''$  West,

along the East line of the Southeast Quarter of said Section 9, a distance of 899.96 feet; thence South  $14^{\circ} 25' 29''$  West a distance of 118.49 feet; thence South  $87^{\circ} 56' 50''$  West a distance of 229.27 feet; thence North  $04^{\circ} 00' 43''$  West a distance of 449.80 feet; thence North  $86^{\circ} 45' 08''$  West a distance of 343.94 feet to a point on the East line of a tract of land condemned by the United States of America; thence North  $17^{\circ} 13' 45''$  East, along the East line of said government land, a distance of 209.97 feet; thence South  $86^{\circ} 45' 08''$  East, departing from the East line of said government land, a distance of 250.61 feet; thence North-Northeasterly along a curve to the right that is non-tangent to the last described course, having a initial tangent bearing of North  $06^{\circ} 41' 50''$  East, a central angle of  $01^{\circ} 43' 47''$ , a radius of 6,299.00 feet, an arc distance of 190.17 feet; thence Northeasterly along a curve to the right that is tangent with the exit of the last described curve, having a central angle of  $29^{\circ} 13' 35''$ , a radius of 310.05 feet, an arc distance of 158.15 feet; thence North  $37^{\circ} 39' 12''$  East a distance of 395.13 feet; thence Northeasterly and Northerly along a curve to the left that is tangent to the last described course, having a central angle of  $32^{\circ} 47' 37''$ , a radius of 165.00 feet, an arc distance of 94.44 feet; thence North  $03^{\circ} 14' 12''$  East a distance of 979.52 feet to a point on the East line of said government land; thence South  $87^{\circ} 43' 11''$  East, along the East line of said government land, a distance 34.08 feet to the Point of Beginning. Containing 10.07 acres, more or less.

# Exhibit "B"

## Transportation Development District (TDD) Right-of-Way

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

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

View High Drive

Longview Road

3rd Street

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

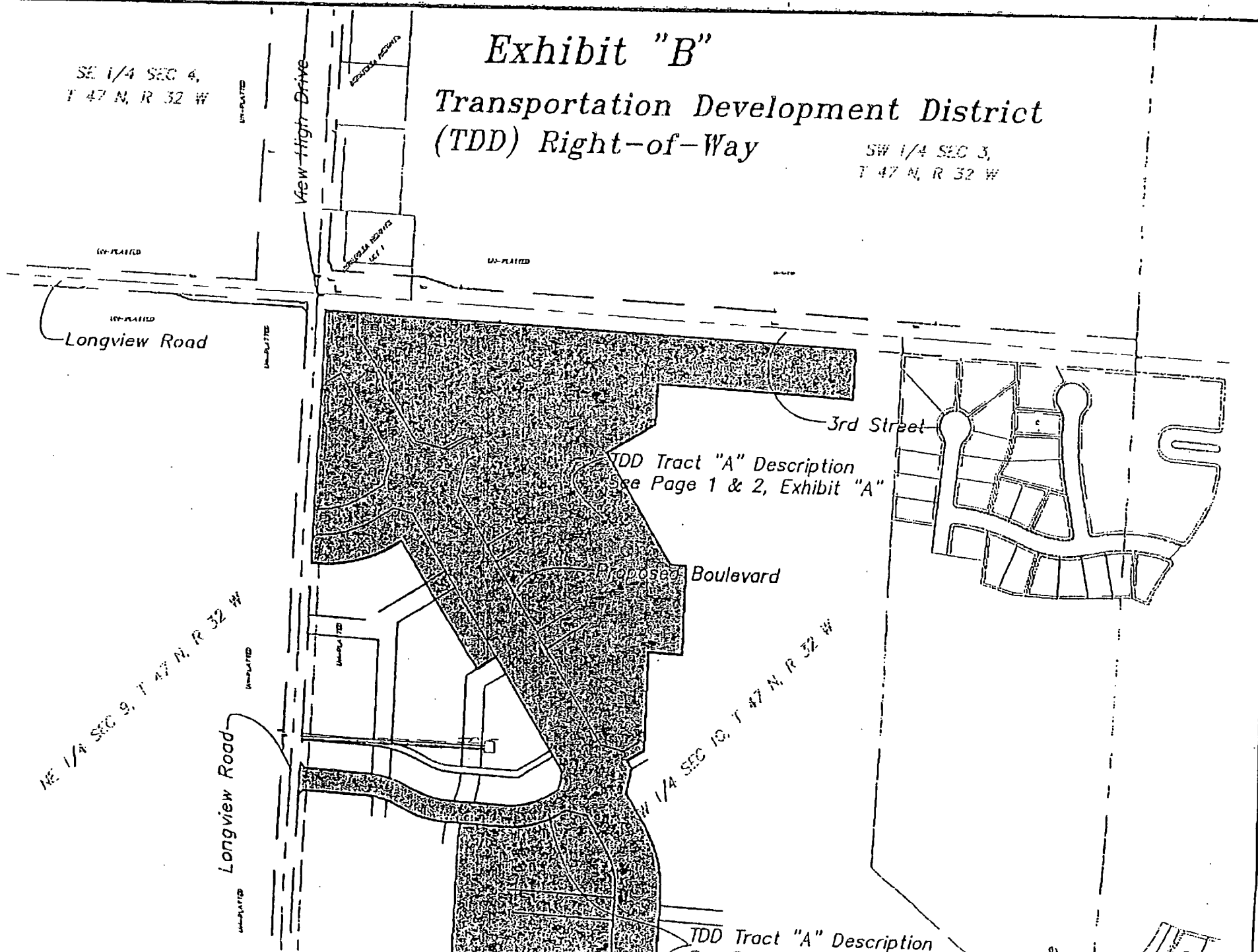
Proposed Boulevard

NE 1/4 SEC 9, T 47 N, R 32 W

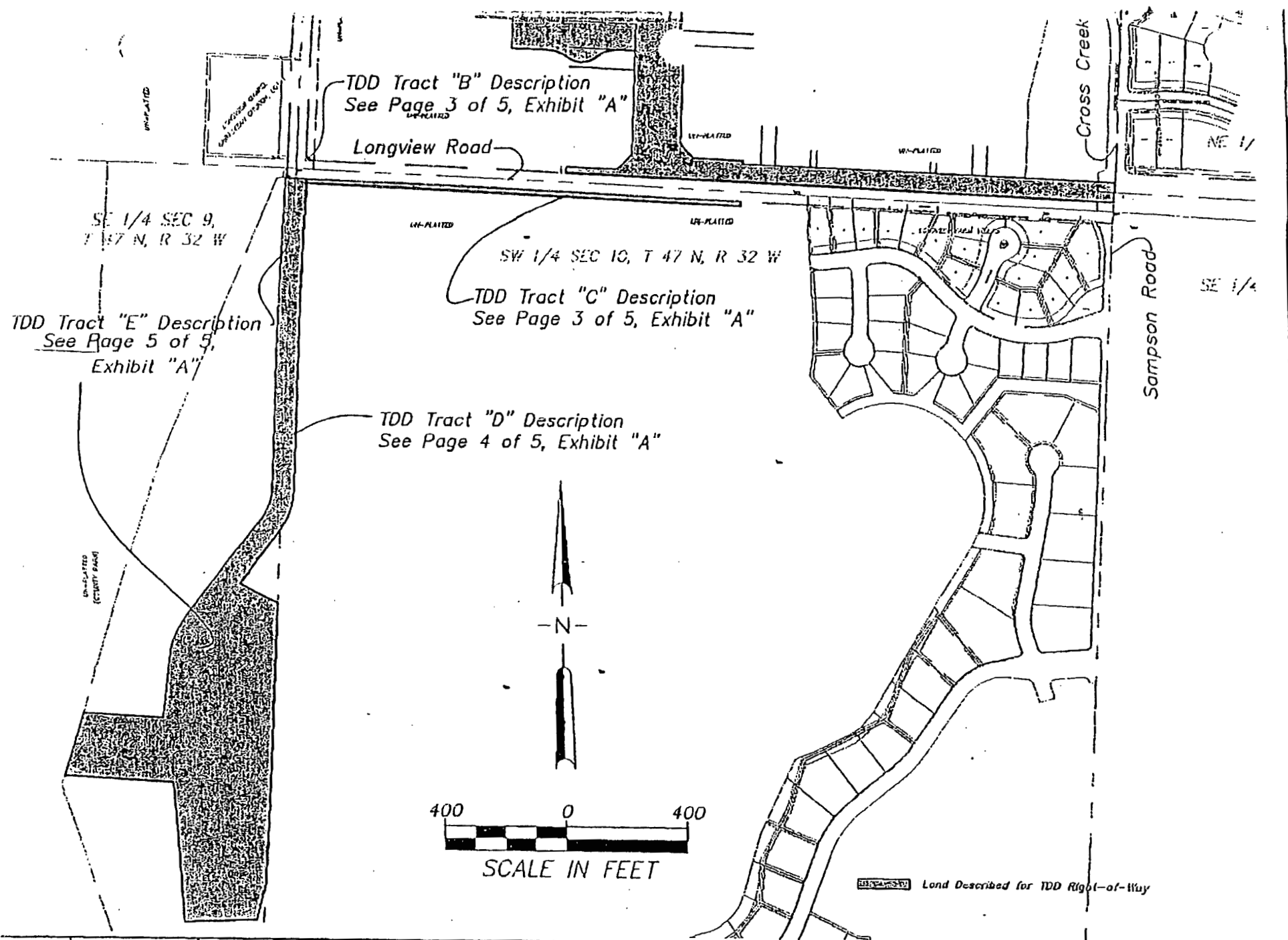
Longview Road

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

TDD Tract "A" Description



145.000 7.12



***Cole Communities  
New Longview Development  
TDD Right-of-Way  
Exhibit "B"***

# Affinis

7401 West 126th Street, Suite 110  
Overland Park, Kansas 66213  
Phone: 613-238-1100

1-800-877-527-5458  
Fax: 913-232-1111  
www.ullis.co.uk

Project	Notes	Grass	Grass	App
2/21/2000	Revised Article F, G, and H	ATU	AGL	AGL
2/22/2000	Revised All Article	ATU	AGL	AGL
3/15/2000	Revised Draft C	ATU	AGL	AGL
4/27/2000	Revised Draft C, H, and G	ATU	AGL	AGL
5/23/2000	Revised Draft C	ATU	AGL	AGL
6/20/2000	Completed Draft C	ATU	AGL	AGL

## EXHIBIT B

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LEE'S SUMMIT, MISSOURI NEW LONGVIEW TRANSPORTATION DEVELOPMENT DISTRICT IMPOSING A ONE-CENT SALES TAX WITHIN THE DISTRICT AND AUTHORIZING THE CITY OF LEE'S SUMMIT TO PERFORM ALL FUNCTIONS INCIDENT TO THE ADMINISTRATION, COLLECTION, ENFORCEMENT, AND OPERATION OF THE DISTRICT SALES TAX AND PRESCRIBING THE FORMS AND ADMINISTRATIVE RULES AND REGULATIONS FOR REPORTING AND COLLECTING THE DISTRICT SALES TAX.**

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

WHEREAS, in accordance with the provisions of Chapter 238, RSMo, (the "TDD Act"), the District has imposed or will impose a one cent sales tax (the "District Sales Tax"); and

WHEREAS, the District desires to prescribe the forms and administrative rules and regulations for reporting and collecting the District Sales Tax; and

WHEREAS, the District desires to appoint the City of Lee's Summit, Missouri, a Missouri constitutional charter city and political subdivision (the "City"), as its authorized representative to perform all functions incident to the administration, collection, enforcement, and operation of the District Sales Tax.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LEE'S SUMMIT, MISSOURI NEW LONGVIEW TRANSPORTATION DEVELOPMENT DISTRICT, AS FOLLOWS:

1. There is imposed, effective \_\_\_\_\_, 2003, on all sellers a tax for the privilege of engaging in the business of selling tangible personal property or rendering taxable services at retail, to the extent and in the manner provided in section 144.010 to 144.525, RSMo, and the rules and regulations of the director of revenue issued pursuant thereto, a District Sales Tax in the Lee's Summit, Missouri New Longview Transportation Development District area, except that the tax shall be reported and returned to the Lee's Summit, Missouri New Longview Transportation Development District or its authorized representative.



2. The District Sales Tax is imposed on all retail sales made in the District which are subject to taxation pursuant to the provisions of sections 144.010 to 144.525, RSMo, except the District Sales Tax shall not apply to the sale or use of motor vehicles, trailers, boats or outboard motors nor to all sales of electricity or electrical current, water and gas, natural or artificial, nor to sales of service to telephone subscribers, either local or long distance.
3. Every retailer within the District shall add the District Sales Tax imposed to the retailer's sale price, and when so added such tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price.
4. All applicable provisions contained in sections 144.010 to 144.525, RSMo, governing the state sales tax, sections 32.085 and 32.087, RSMo, the uniform confidentiality provisions, shall apply to the collection of the District Sales Tax, except as modified, to the extent permitted by law, by this Resolution.
5. All exemptions granted to agencies of government, organizations, persons and to the sale of certain articles and items of tangible personal property and taxable services pursuant to the provisions of section 144.010 to 144.525, RSMo, are hereby made applicable to the imposition and collection of the District Sales Tax.
6. All discounts allowed to the retailer pursuant to the provisions of the state sales tax laws for the collection of and for payment of taxes pursuant to such laws are hereby allowed and made applicable to any District Sales Tax collection pursuant to the provisions of this Resolution.
7. The penalties provided in section 32.057, RSMo, and sections 144.010 to 144.525, RSMo, for violation of those sections are hereby made applicable to violations of this Resolution.
8. For the purpose of the District Sales Tax imposed by this resolution, all retail sales, except retail sales of motor vehicles, shall be deemed to be consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or the retailer's agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. In the event a retailer has more than one place of business in this state which participates in the sale, the sale shall be deemed to be consummated at the place of business of the retailer where the initial order for the tangible personal property is taken, even though the order must be forwarded elsewhere for acceptance, approval of credit, shipment or billing. A sale by a retailer's employee shall be deemed to be consummated at the place of business from which the employee works.
9. All District Sales Tax collected by the District, or its authorized representative, shall be deposited in a special fund to be expended for the purposes authorized in Chapter 238, RSMo and the Order. The District, or its authorized representative, shall keep accurate records of the amount of money which was collected pursuant to this section, and the records shall be open to the inspection of officers of the District and the general public.

10. Every retailer within the District shall, within ten (10) days of being subject to the District Sales Tax, complete a "Business Registration Form," attached to this Resolution as Exhibit 1. No bond shall be required of the retailer, so long as the retailer possesses a valid Missouri Sales Tax License.
11. Every retailer within the District shall file with the District or its authorized representative, a "District Sales Tax Return," attached to this Resolution as Exhibit 2, on or before the date that state sales tax is due for the retailer.
12. The District Sales Tax shall be paid to the District or its authorized representative, on or before the date that state sales tax is due for the retailer.
13. The District, or its authorized representative shall, at all reasonable times during business hours, have the authority to make an examination and inspection of the books and records of the retailer as may be necessary to determine the correctness of the reports required by this Resolution.
14. The City is hereby designated as the District's authorized representative to perform all functions incident to the administration, collection, and enforcement of the District Sales Tax, pursuant to the terms of the Cooperative Agreement among the District, the City and Gale Communities, Inc.
15. These provisions of this resolution shall be the minimum requirements for administration, collection, enforcement and operation of the District Sales Tax, unless by amendment to the Revised Statutes of Missouri, subsequent to the passage of this resolution, a higher standard is required.

PASSED by the Board of Directors of the Lee's Summit, Missouri New Longview Transportation Development District on \_\_\_\_\_, 2003.

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Joseph Perry, Executive Director

**EXHIBIT 1**

**BUSINESS REGISTRATION FORM  
LEE'S SUMMIT, MISSOURI NEW LONGVIEW TRANSPORTATION DEVELOPMENT  
DISTRICT**

This form must be filed with the Lee's Summit, Missouri New Longview Transportation Development District, or its authorized representative, within ten (10) days of a retailer being subject to the Lee's Summit, Missouri New Longview Transportation District Sales Tax. No bond is required so long as the retailer possesses a valid Missouri Sales Tax License.

Missouri Integrated Tax System Account Number: \_\_\_\_\_

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

Business Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Telephone Number: \_\_\_\_\_

Type of Business Entity: \_\_\_\_\_

Name of Owner: \_\_\_\_\_

Address of Owner: \_\_\_\_\_

Type of Business: (Circle one or specify.)

1) Retail      2) Food Service      3) Entertainment      4) Other: \_\_\_\_\_

When will the business pay state sales tax? (Circle one.)

1) Quarter monthly      2) Quarterly      3) Monthly      4) Annually

**If you have any questions regarding business registration in the Lee's Summit, Missouri New Longview Transportation Development District, please call the City of Lee's Summit Finance Department at 816-969-7327.**

**EXHIBIT 2**

LEE'S SUMMIT, MISSOURI NEW LONGVIEW  
TRANSPORTATION DEVELOPMENT DISTRICT  
207 SW MARKET, P.O. BOX 1600  
LEE'S SUMMIT, MO 64063

FORM  
**NLTDD-1**

(REV. 11-2002)

MISSOURI TAX ACCOUNT NUMBER:

**DO NOT WRITE IN SHADED AREAS**

**SALES TAX RETURN**



OWNER'S NAME		REPORTING PERIOD		ADDRESS CORRECTION MAILING ADDRESS BUSINESS LOCATION	
BUSINESS NAME		FEDERAL EIN		BUSINESS PHONE NUMBER:	
MAILING ADDRESS		TELEPHONE NUMBER ( )		DUE DATE:	
CITY	STATE	ZIP			

**IMPORTANT: THIS RETURN MUST BE FILED FOR THE REPORTING PERIOD INDICATED EVEN THOUGH YOU HAVE NO GROSS RECEIPTS/TAX TO REPORT.**

BUSINESS LOCATION	CODE	GROSS RECEIPTS	ADJUSTMENTS (INDICATE + OR -)	TAXABLE SALES	RATE (1%)	AMOUNT OF TAX
					1%	
					1%	
					1%	
PAGE 1 TOTALS						
PAGE _ TOTALS						
TOTALS (ALL PAGES)						1.

Detailed instructions for completing the Sales Tax Return are identical to those of the State of Missouri. A copy of your Missouri State Sales Tax Return for the same period must be attached to this form.

**FINAL RETURN:** If this is your final return, enter the close date below and check the reason for closing your account. The Sales Tax law requires any person selling or discontinuing business to make a final sales tax return within fifteen (15) days of the sale or closing

Date Business Closed: \_\_\_\_\_

Out of Business      Sold Business      Leased Business

**SIGN AND DATE RETURN:** This form must be signed and dated by the taxpayer or by the taxpayer's authorized agent. Mail to: NEW LONGVIEW TDD, c/o City of Lee's Summit, Finance Department, 207 SW Market, Lee's Summit, MO 64063

I have direct control, supervision or responsibility for filing this return and payment of the tax due. Under penalties of perjury, I declare that this is a true, accurate and complete return.

**I ATTEST THAT I HAVE NO GROSS RECEIPTS TO REPORT FOR LOCATIONS LEFT BLANK.**

SUBTRACT: 2% TIMELY PAYMENT  
ALLOWANCE (if Applicable) .....

TOTAL SALES TAX DUE .....

ADD: INTEREST FOR LATE PAYMENT (See  
Line 4 of Instructions)

ADD: ADDITIONS TO TAX .....

SUBTRACT: APPROVED CREDIT .....

PAY THIS AMOUNT .....

(U.S. Funds Only) ..... ►

SIGNATURE OF TAXPAYER

OR AGENT

DATED SIGNED

TITLE

TAX PERIOD (MMDDYY) THRU (MMDDYY)

## INSTRUCTIONS FOR COMPLETING THE SALES TAX RETURN

Taxpayers who have questions or problems which are not covered in these instructions may obtain assistance by writing to:

City of Lee's Summit  
Conrad E. Lamb,  
207 SW Market, P.O. Box 1600  
Lee's Summit, MO 64063  
Conrad.lamb@lees-summit.mo.us  
Phone voice 816-969-7331 fax 816-969-7771

**IMPORTANT:** A return must be filed for each reporting period even though you have no tax to report. If typing your return information, please use a **minimum** of 10 point type.

**BUSINESS IDENTIFICATION:** Please enter your MISSOURI TAX ID NUMBER, ownership name, mailing address, reporting period and telephone number at the top of the return. Preprinted forms, or forms in electronic format on diskette, are available. If this information is not preprinted, it should be entered in the spaces provided.

**ADDRESS CORRECTION:** Check the appropriate box if the business address has changed since your prior return. If mailing address is checked, enter the correct information in the BUSINESS I.D. area. If business location is checked, enter the correct address for the location(s) being corrected under the BUSINESS LOCATION column.

**BUSINESS LOCATION:** Enter each business location in the District for which you are registered to report sales tax in this column.

**CODE:** District use only.

**GROSS RECEIPTS:** Enter gross receipts from all sales of tangible personal property and taxable services made during the reporting period for each business location. If none, enter "zero" (0).

**ADJUSTMENTS:** Make any qualifying adjustments for each location for which you are reporting. Indicate "plus" or "minus" for each adjustment. Refer to detailed instructions for adjustments authorized under the Missouri Sales Tax Law.

**TAXABLE SALES:** Enter the amount of taxable sales for each business location.

**GROSS RECEIPTS (+) OR (-) ADJUSTMENTS = TAXABLE SALES.**

**RATE:** The rate percentage is one percent (1%) in all cases.

**AMOUNT OF TAX:** Multiply your taxable sales for each location by the applicable tax rate percent for that location and enter AMOUNT OF TAX.

**TOTALS FROM ADDITIONAL PAGES:** If applicable, compute totals from additional pages indicated and enter in appropriate column.

**TOTALS:** Compute the total for each column.

**Line 1 – TOTAL ALL PAGES:** Enter the totals for all pages here.

**Line 2 – TIMELY PAYMENT ALLOWANCE:** If you file your return and payment on time, enter two percent (2%) of the amount shown on Line 1. If not paid by the due date or Line 1 is not greater than "zero", enter "0" or leave blank.

Example: Line 1 is \$480  
 $\$480 \times 2\% = \$9.60$   
\$9.60 is the timely payment allowance

**Line 3 – TOTAL SALES TAX DUE:** Enter total sales tax due. (Line 1 "minus" Line 2.)

**Line 4 – INTEREST FOR LATE PAYMENT:** If tax is not paid by the due date, (A) multiply Line 3 by the daily interest rate. Then (B) multiply this amount by number of days late. See example and chart below.

**Note:** Number of days late is counted from due date to postmark date. For example, if the due date is March 20 and the post mark date is April 9, the payment is 20 days late.

Example: line 2 is \$480  
(A)  $\$480 \times .0002740 = .13152$   
(B)  $.13152 \times 20 \text{ days late} = 2.63$   
\$2.63 is the interest for late payment

Year	Annual Percentage Rate	Number of Days	Daily Interest Rate
2001	10%	365	.0002740

**Line 5 – ADDITIONS TO TAX:** For *failure to pay* sales tax on or before the due date, 5% of Line 3. For *failure to file* a sales tax return on or before the date, 5% of Line 3 for each month late up to a maximum of 25% (5 months late in filing = 25%)

**Note:** If additions to tax for *failure to file* applies, do not pay additions to tax for *failure to pay*.

For example, if a return due March 20 is filed any time between March 21 – April 20, the rate would be 5%; if filed any time between April 21 – May 20, the rate would be 10%; and so on, up to a maximum of 25%.

Example: Return is due March 20, but is filed (postmarked) April 10  
Line 3 is \$480  
 $\$480 \times 5\% = \$24$   
\$24 is the addition to tax

Example: Return is due March 20, but is filed (postmarked) April 21  
Line 3 is \$480  
 $\$480 \times 10\% = \$48$   
\$48 is the addition to tax

**Line 6 – APPROVED CREDIT:** Enter on Line 6, any sales tax credit for which the District issued you an approved credit. You must attach a copy of your approved credit to your return.

**Line 7 – PAY THIS AMOUNT:** Enter the total amount due and payable. (Line 3 "plus" Line 4 "plus" Line 5 "minus" Line 6.) Send a check for the total amount. Make check, draft, or money order payable to City of Lee's Summit NEW LONGVIEW TDD (U.S. funds only). Do not send cash or stamps.



## EXHIBIT C

### REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the LEE'S SUMMIT, MISSOURI NEW LONGVIEW TRANSPORTATION DEVELOPMENT DISTRICT (the "District"), a political subdivision of the State of Missouri, and Gale Communities, Inc., a Missouri corporation ("Developer").

#### RECITALS

- A. By Ordinance No. \_\_\_\_, adopted by the Lee's Summit City Council ("City Council") on October 16, 2003, the City of Lee's Summit ("City") approved the First Amended and Ratified Longview Farm Tax Increment Financing Plan ("TIF Plan"), established a Redevelopment Area and declared the Redevelopment Area as a Conservation Area, and selected the Developer to implement the Redevelopment Plan. The purpose of the TIF Plan is to devote Economic Activity Taxes and Payments in Lieu of Taxes to the rehabilitation and preservation of certain historic structures in the Redevelopment Area.
- B. By Ordinance No. \_\_\_\_, adopted by the City Council on October 16, 2003, the City approved the First Amended and Restated Tax Increment Financing Contract ("TIF Contract") between the Developer and the City and authorized the City Administrator to enter into this Contract with Developer for the implementation of the Projects as described in the TIF Plan.
- C. On \_\_\_\_\_, 2003, the Developer and the City entered into the TIF Contract, agreeing to the terms and conditions pursuant to which the Developer's obligations to construct the District Projects and the Redevelopment Project would be carried out. Pursuant to the TIF Contract, the City and Developer agreed that the District would be created for the purpose of providing tax revenues to fund the construction and implementation of the TDD Projects, as that term is defined in the TIF Contract, through the issuance of bonds and assumption of other debt obligations and the imposition of a transportation development district sales tax at a rate of one percent (1%) (the "TDD Sales Tax").
- D. Pursuant to the TIF Contract, Developer has advanced funds for the establishment, maintenance and operation of the District, and will continue to advance such funds until such time as revenues available to the District are sufficient to provide funding for such costs.
- E. Pursuant to a Cooperative Agreement among the District, the City and Developer ("Cooperative Agreement"), the City has agreed to act as collector of the TDD Sales Tax on behalf of the District.
- F. The District and Developer desire to provide for reimbursement to Developer of costs and expenses actually paid and incurred by Developer which were not otherwise

reimbursed to the Developer from the proceeds of the District's Series 2003 Revenue Bonds for "Costs of Formation", as defined in the Cooperative Agreement, other costs incurred in connection with the establishment, maintenance and operation of the District and "Operating Costs" as defined in the Cooperative Agreement (collectively the "Reimbursement Agreement Costs").

## AGREEMENT

THEREFORE, in consideration of mutual promises and covenants, and for good and valuable consideration, receipt of which is hereby acknowledged, the District and Developer agree as follows:

1. Developer agrees to submit to the District a true, complete and accurate statement of the Reimbursement Agreement Costs.

2. The District shall review all statements of the Reimbursement Agreement Costs. Based upon such reasonable review, the District shall determine and approve for reimbursement all reasonable and necessary Reimbursement Agreement Costs actually paid or incurred by Developer which were not otherwise reimbursed to the Developer from the proceeds of the District's Series 2003 Revenue Bonds. This Reimbursement Agreement is subject to all applicable provisions of the TIF Contract and the Cooperative Agreement, and prior to the District's approval of the Reimbursement Agreement Costs, the City shall have approved such costs pursuant to the terms of the TIF Contract and the Cooperative Agreement.

3. All Reimbursement Agreement Costs approved for payment by the District shall accrue compounded interest at a rate equal to the lesser of the actual cost of borrowing to Developer or the then current prime rate as published by the Wall Street Journal plus one percent (1%) per year from the date of payment by Developer, until reimbursed pursuant to this Agreement.

4. Subject to quarterly appropriation, the District shall pay to Developer, from funds distributed to the District under the terms of the Cooperative Agreement and under the terms of the Indenture (as defined in the Cooperative Agreement), such amounts as are available to the District for reimbursement of the Reimbursement Agreement Costs.

5. Payments by the District to the Developer as authorized by this Reimbursement Agreement shall be secondary and subordinate to any repayments to the City as required by the TIF Contract and the Cooperative Agreement.

6. This Agreement shall be and remain in effect until the earlier of (a) payment in full of all approved Reimbursement Agreement Costs, plus accrued interest, or (b) termination of the TDD Sales Tax.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

8. This Agreement shall be binding upon, and shall inure to the benefit of, the District and Developer, and their respective successors and assigns.

9. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute by one and the same instrument.

In witness whereof, the parties have set their hands as of the date first above written.

LEE'S SUMMIT, MISSOURI NEW  
LONGVIEW TRANSPORTATION  
DEVELOPMENT DISTRICT

\_\_\_\_\_  
Joseph Perry, Executive Director

(SEAL)

GALE COMMUNITIES, INC.

\_\_\_\_\_  
G. David Gale, President

**EXHIBIT D**  
**Schedule of City Annual Payments to District**

Fiscal Year 2004 -- funds available July 1, 2003	\$251,000
Fiscal Year 2005 -- funds available July 1, 2004	\$983,000
Fiscal Year 2006 -- funds available July 1, 2005	\$2,346,000
Fiscal Year 2007 -- funds available July 1, 2006	\$1,920,000
Fiscal Year 2008 -- funds available July 1, 2007	<u>\$400,000</u>
Total: \$5,900,000	

**Exhibit E**  
**City Ownership and Maintenance Responsibilities**  
**Lee's Summit, Missouri New Longview Transportation Development District**

**1. City Maintenance and Ownership**

City will accept maintenance and ownership responsibility pursuant to Article IV of this Agreement for the following elements of the District Projects:

- Street pavement
- Curbs
- Gutters and storm sewers
- Directional and other signs required by City ordinances, Missouri state law or other governmental authority governing directional signage on public right-of-ways
- Leases associated with light poles that meet applicable City standards and policies (including wood poles, mercury vapor lights, lighting only at arterial intersections), with prior approval of the Public Works Department
- Additional project elements that are specifically approved for maintenance and ownership by the Public Works Department

**2. District Maintenance and Property Owner Association Ownership**

The City will not accept maintenance or ownership responsibility at any time for the following elements of the District Projects. The District and/or property owners associations shall at all times own these elements of the District Projects:

- Light poles and associated costs, including electricity
- Landscaping and irrigation systems
- Fountains, statues, art and other similar decorative or ornamental structures or items
- Fences
- Decorative, ornamental or other types of walls that are not required for road drainage or any construction aspect of the road system
- Decorative, ornamental or other types of signs that are not required by City ordinances, Missouri state law or other governmental authority governing directional signage on public right-of-ways
- All other elements of the District Projects that are not listed in category #1 above



## **EXHIBIT F**

### **Construction Costs included in City Payment to District for Longview Boulevard Project**

#### Intersection of 3<sup>rd</sup> & View High

- Signalized intersection with slip-lanes onto and off of Longview Road.
- Relocate North Longview Farm arch pursuant to the methods in the Longview Farm Arches Relocation Study, December 1999.<sup>1</sup>

#### 3rd Street, from signalized intersection at View High east to planned future roundabout

- Six (6) lane divided arterial at the intersection with View High, transitioning to three (3) lanes approximately 900 feet east, where 3rd Street intersects with the north/south road (point of future proposed roundabout on 3rd Street).
- City Payment does not include any portion of 3rd Street east of the proposed future roundabout on 3rd Street.

#### Longview Boulevard, View High to Longview Road

- 4-lane divided arterial with two (2) 2-lane roundabouts at intersections with designated east-west roads.<sup>2</sup>
- Left-turn lanes on Longview Boulevard at all full-access intersections.
- Sidewalks on both sides of the arterial.

#### Intersection of Longview Blvd & Longview Road

- 2-lane roundabout.

#### Longview Road, Longview Blvd to Sampson Road

- 4-lane divided arterial with sidewalks on both sides.<sup>2</sup>
- Left-turn lanes on Longview Road at all full-access intersections.
- Relocate East Longview Farm arch pursuant to the methods in the Longview Farm Arches Relocation Study, December 1999.<sup>1</sup>

#### Improvements described above include the following general Construction Costs:

- Engineering and planning costs attributable to Longview Boulevard construction, not to exceed twelve percent (12%) of the total road construction budget for Longview Boulevard.<sup>3</sup>
- Curb and gutter pursuant to City standards.
- Pavement marking and traffic signs that serve the arterial boulevard system.
- Utility relocation from private utility easements; but utility relocations from existing public right-of-way are excluded.
- Landscaping pursuant to City standards.
- Other construction costs as approved by the City.

#### General Standards applicable to Improvements:

- Vertical and horizontal alignments will be in accordance with AASHTO criteria for selected design speeds.
- All thru and turn lanes will be 12-ft wide, unless a different width is approved by the City.
- Roundabout lane widths will be as approved by City based on standard roundabout practices.
- At intersections of proposed streets, improvements extend only to curb returns of side streets.

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<sup>1</sup> Special contractual provisions apply to these costs. The City will be reimbursed by the TDD for these costs with TDD sales tax or other revenue, as set forth in the text of the Agreement.

<sup>2</sup> Side-lanes for Longview Boulevard and associated costs (including curb and gutter and traffic control signs and devices serving side-lanes) are not included in City Payment to TDD.

<sup>3</sup> The parties agree that engineering and planning costs already incurred by Developer as of September 2003, which are reimbursable through the City Payment, total \$257,962.

## Packet Information

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**File #:** BILL NO. 19-267, **Version:** 1

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An Ordinance approving the Cooperative Agreement among the City of Lee's Summit, Missouri, the New Longview Community Improvement District and M-III Longview, LLC.

Issue/Request:

An Ordinance approving the Cooperative Agreement for the New Longview Community Improvement District to provide for implementation of the District.

Key Issues:

Implementation of the CID which has already been approved by the City Council.

Proposed City Council Motion:

I move for second reading of an Ordinance Approving the Cooperative Agreement among the City Of Lee's Summit, Missouri, the New Longview Community Improvement District and M-III Longview, LLC.

Background:

Developer M-III Longview, LLC ("Developer"), along with several other property owners in the Longview area, filed a Petition for the formation of a new CID in the Longview area which was approved by Ordinance No. 8557 on February 19, 2019. The City Council had previously approved two TIF plans (2003 and 2015) and a transportation development district (2003) in the Longview area.

The CID will impose a new 1% sales tax on the commercial retail businesses in the Longview area. The CID is planned to fund the following public improvements and associated soft costs in the combined total of about \$5.5M over the life of the CID:

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

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

The cooperative agreement contains the following safeguards and protections for the City:

- The City Finance Department will receive the CID revenues from the Department of Revenue and disburse the revenues pursuant to the terms of the agreement. The City will receive a portion of the

CID revenues as reimbursement for this for this administrative work.

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

The CID Sales Tax will go into effect on January 1, 2020. The CID sales tax will be in addition to the other sales taxes already in effect in the Longview area, which includes local sales taxes imposed by the City, County, Zoo District and the Longview TDD.

Impact/Analysis:

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

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

Timeline:

The CID has been formed and the CID sales tax will go into effect on January 1, 2020.

David Bushek, Chief Counsel of Economic Development & Planning

Staff recommends approval of the ordinance.

## **BILL NO. 19-267**

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AN ORDINANCE APPROVING THE COOPERATIVE AGREEMENT AMONG THE CITY OF LEE'S SUMMIT, MISSOURI, THE NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT AND M-III LONGVIEW, LLC.

WHEREAS, the New Longview Community Improvement District (the "District") was formed on February 19, 2019, by the adoption of Ordinance No. 8557 in accordance with the Missouri Community Improvement District Act, Section 67.1401, *et. seq.*, of the Revised Statutes of Missouri, as amended; and,

WHEREAS, the City Council desires to approve an agreement to provide for the implementation of the District.

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

SECTION 1. The New Longview CID Cooperative Agreement which is attached hereto as Exhibit A and incorporated herein by reference (the "Agreement"), is hereby approved and the City Manager is authorized and directed to execute the Agreement in substantial compliance with the attached Agreement.

SECTION 2. City officers and agents of the City are each hereby authorized and directed to take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION 3. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 4. This Ordinance shall be in full force and effect from and after its passage, adoption, and approval by the Mayor.

PASSED by the City Council of the City of Lee's Summit, Missouri, this \_\_\_\_day of December, 2019.

ATTEST:

\_\_\_\_\_  
Mayor *William A. Baird*

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED by the Mayor of said city this \_\_\_\_ day of December, 2019.

ATTEST:

\_\_\_\_\_  
Mayor *William A. Baird*

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *Brian W. Head*

EXHIBIT A

COOPERATIVE AGREEMENT

[*ATTACHED*]



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**COOPERATIVE AGREEMENT**

**among the**

**CITY OF LEE'S SUMMIT, MISSOURI,**

**the**

**NEW LONGVIEW  
COMMUNITY IMPROVEMENT DISTRICT,**

**and**

**M-III LONGVIEW, LLC**

**and**

**FASCINATION AT NEW LONGVIEW OWNERS ASSOCIATION, INC.**

**dated as of**

**December 10, 2019**

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<b>Exhibit A</b>	Legal Description of CID Area
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## COOPERATIVE AGREEMENT

**THIS COOPERATIVE AGREEMENT** (“**Agreement**”), entered into as of this 10<sup>th</sup> day of December, 2019, by and among the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri (the “**City**”), the **NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri (“**District**” or “**CID**”), **M-III LONGVIEW, LLC**, a Delaware limited liability company (the “**Developer**”), and **FASCINATION AT NEW LONGVIEW OWNERS ASSOCIATION, INC.**, a Missouri non-profit corporation (the “**Owners Association**”), (the City, the District, the Developer, and the Owners Association being sometimes collectively referred to herein as the “**Parties**”, and individually as a “**Party**”, as the context so requires).

### WITNESSETH:

**WHEREAS**, the City Council of the City of Lee’s Summit, Missouri (the “**City Council**”), did on February 19, 2019, pass Ordinance No. 8557, which approved the formation of the District and the Petition to Establish the New Longview Community Improvement District (the “**Petition**”), and also approved this Agreement and authorized the City Manager to execute this Agreement; and

**WHEREAS**, on December 4, 2019, the CID Board of Directors adopted Resolution No. 2019-\_\_\_\_ authorizing and directing the District to enter into this Agreement; and

**WHEREAS**, the qualified voters within the District approved imposition of the District Sales Tax pursuant to the CID Act, as evidenced by the certified election results of the Jackson County Election Board dated July 24, 2019, and the District is authorized to enter into this Agreement for the administration of the District Revenues; and

**WHEREAS**, M-III Longview LLC is the current owner of the majority of the real estate which is located within the District boundaries, and certain property in the CID area will be improved by Developer in accordance with the land-use approvals granted by the City which will be funded with CID revenues; and

**WHEREAS**, the Parties desire to set forth through this Agreement their respective duties and obligations with respect to the administration, enforcement, and operation of the District Sales Tax, the use of the District Revenues, and this Agreement.

**NOW, THEREFORE**, for and in consideration of the premises, and the mutual covenants herein contained, the Parties agree as follows:

## ARTICLE 1

### DEFINITIONS, RECITALS AND EXHIBITS

**Section 1.1. Recitals and Exhibits.** The representations, covenants and recitations set forth in the foregoing recitals and the exhibits attached to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section, and the appropriate exhibits are incorporated into each Section of this Agreement that makes reference to an exhibit.

**Section 1.2. Definitions.** Words and terms defined elsewhere in this Agreement shall have the meanings assigned therein. Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

“**Action**” shall have the meaning set forth in **Section 7.4**.

“**Activity Plaza**” means the property generally located at the southeast corner of the intersection of Longview Boulevard and Fascination Drive, which is Tract A of the Fascination at New Longview final plat as shown on the attached **Exhibit B** and depicted in more detail on **Exhibit C**, which will be improved with hardscape and landscape improvements and outdoor public gathering features and improvements, which will be funded, owned and maintained in accordance with this Agreement.

“**Affiliate**” means any person, entity or group of persons or entities which controls a party, which a party controls or which is under common control with a party. As used herein, the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract, by vote of the District Board of Directors, or otherwise.

“**Annual Board of Directors Report**” means the Annual Board of Directors Report in substantially similar form to **Exhibit F**, filed with the City by the Developer pursuant to **Section 5.6(E)**.

“**Applicable Laws and Requirements**” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, policy, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by any Governmental Authorities.

“**Application for Reimbursement**” means the Application for Reimbursement in substantially similar form to **Exhibit E**, filed with the City by the Developer pursuant to **Section 6.3**.

“**CID Act**” means the Missouri Community Improvement District Act, Sections 67.1401, *et seq.*, RSMo, as amended.

“**CID Area**” means the property within the CID boundaries.

“**CID Board of Directors**” means the governing body of the District.

“**CID Budget**” means the budget for the CID as set forth in **Exhibit D**.

“**CID Obligations**” means bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by the District pursuant to the CID Act, subject to the restrictions in **Section 6.4**.

“**CID Petition**” means the petition to establish the District, approved by the City Council on February 19, 2019, by Ordinance No. 8557.

“**CID Project**” means, collectively, all of the work undertaken by or at the direction of Developer within the CID Area in accordance with the CID Petition and funded with or reimbursed by District revenues, including all of the CID Public Improvements.



**“CID Public Improvements”** means the following terms and any land and features associated with such items:

- (1) the Activity Plaza;
- (2) the Parking Structure;
- (3) the Public Landscape;
- (4) the Streetscape Improvements;
- (5) all utilities, surface parking, sidewalks, pedestrian paths and other public improvements funded with District Revenues within the CID Area that are not included in the items listed immediately above.

**“City Council”** means the City Council of the City.

**“City Indemnified Parties”** shall have the meaning set forth in **Section 7.2**.

**“City Manager”** means the City Manager of the City.

**“Costs of Formation”** means those costs and expenses which are eligible to be paid under the CID Act and which are or have been incurred by or at the direction of the City, Developer, and the District and their staff, legal counsel, surveyors, engineers and other consultants in the process of preparing for the District, petitioning the City for formation of the District, considering the CID Petition, holding public meetings and hearings and forming the District, negotiating and approving this Agreement, and holding the first meeting of the District, including all activities through the conclusion of the first District meeting.

**“County Assessor”** shall mean the County Assessor of Jackson County, Missouri.

**“District Revenues”** means the monies actually collected, pursuant to this Agreement and the CID Act, from the imposition of the District Sales Tax.

**“District Sales Tax”** means the district-wide sales and use tax levied by the District on the receipts from the sale at retail of all tangible personal property or taxable services at retail within the District boundaries pursuant to the CID Act in the maximum amount of one percent (1.0%), as established by resolution of the District and approved by the qualified voters of the District, in accordance with this Agreement.

**“Event of Default”** means any event specified in **Section 8.1** of this Agreement.

**“Excusable Delays”** means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any Federal or State regulatory body, unforeseen site conditions, material litigation by parties other than the Parties not caused by the Parties’ failure to perform, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable party using reasonable diligence to overcome which prevents such party from performing its specific duties or obligation hereunder in a timely manner.

**“Governmental Authorities”** or **“Governmental Authority”** means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence, that have jurisdiction over some or all of the CID Area and the CID Project, including the City.

**“Maintenance Costs”** shall have the meaning set forth in **Section 3.2.**

**“Maintenance Reserve Fund”** shall have the meaning set forth in **Section 3.2.**

**“Maximum Amount”** shall have the meaning set forth in **Section 6.1.**

**“Maximum Reimbursement Interest”** shall have the meaning set forth in **Section 6.3.**

**“Mayor”** means the Mayor of the City.

**“North Arch”** means the historic arch structure located on land owned by the Owners Association and generally located to the south of the intersection of Longview Boulevard and SW Longview Road, which is Tract A of the Tower Park Commercial Phase 1 final plat area on **Exhibit B.**

**“Operating Costs”** means the actual, reasonable expenses which are necessary for the operation of the District which shall include, but are not limited to, costs associated with notices, publications, meetings, supplies, equipment, photocopying, the engagement of general and special legal counsel engaged by the District and the City, respectively, financial auditing services performed for the District or the City on behalf of the District, and other consultants or services, and shall also include reasonable attorneys’ fees for the formation of the District.

**“Owners Association”** means the Fascination at New Longview Owners Association, Inc., which is incorporated as a non-profit corporation pursuant to Missouri law for the benefit of certain property in the CID Area.

**“Parking Structure”** means the structured parking facility to be built by Developer and funded with District revenues which will provide approximately 160 parking spaces.

**“Property Maintenance Code”** means Chapter 16 of the Lee’s Summit Code of Ordinances.

**“Public Landscape”** means the trees, plants and vegetation, and any associated planters, containers, irrigation systems and other related improvements, which are constructed for the CID Project and funded pursuant to the line item in the CID Budget as Landscape, including any land areas associated with such features.

**“Restrictions”** shall have the meaning set forth in **Section 3.2.**

**“Reimbursable Project Costs”** means those actual and reasonable costs and expenses of the CID Project which are set forth in the CID Budget.

**“RSMo”** means the Revised Statutes of Missouri, as amended.

**“Streetscape Improvements”** means the hardscape improvements, benches, planters, signage, monuments and other features and improvements which are constructed in public rights-of-way, or adjacent to such areas, for the CID Project and funded pursuant to the line item in the CID Budget as Streetscape, including and right-of-way or other land areas associated with such features.

## ARTICLE 2

### REPRESENTATIONS

#### **Section 2.1. Representations by the District.** The District represents that:

A. The District is a community improvement district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the CID Act.

B. The District has authority to enter into this Agreement and to carry out its obligations under this Agreement. By proper action of the CID Board of Directors, the District has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

C. The Reimbursable Project Costs are authorized in the CID Petition.

D. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the District is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the District or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreements to which the District is a party.

E. The District acknowledges that the construction of the CID Project is of significant value to the District, the property within the District and the general public. The District finds and determines that the CID Project will promote the economic welfare and the development of the City and the State of Missouri through: (i) the creation of temporary and permanent jobs; (ii) stimulating additional development in the area near the CID; (iii) increasing local and state tax revenues and (iv) creating public interest and increased pedestrian and shopping traffic in the CID area. Further, the District finds that the CID conforms to the purposes of the CID Act.

F. There is no litigation or proceeding pending or threatened against the District affecting the right of the District to execute or deliver this Agreement or the ability of the District to comply with its obligations under this Agreement or which would materially adversely affect its financial condition.

#### **Section 2.2. Representations by the City.** The City represents that:

A. The City is duly organized and existing under the laws of the State of Missouri as a constitutional charter city.

B. The City has authority to enter into this Agreement and to carry out its obligations under this Agreement, and the Mayor is duly authorized to execute and deliver this Agreement.

C. The City acknowledges that the construction of the CID Project is of significant value to the District, the property within the District and the general public. The City finds and determines that the CID Project will promote the economic welfare and the development of the City and the State of Missouri through: (i) the creation of temporary and permanent jobs; (ii) stimulating additional development in the area near the CID; (iii) increasing local and state tax revenues and (iv) creating public interest and increased

pedestrian and shopping traffic in the CID area. Further, the City finds that the CID conforms to the purposes of the CID Act.

D. There is no litigation or proceeding pending or threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

**Section 2.3. Representations by the Developer.** The Developer represents that:

A. The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. No litigation, proceedings or investigations are pending or, to the knowledge of the Developer, threatened against the Developer, any member of the Developer or the CID Project which litigation, proceedings or investigations would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, the terms and provisions of this Agreement.

D. The Developer acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Developer therefore covenants, and will provide an affidavit from any general contractor directly employed by Developer to construct the CID Project attesting that it is not knowingly in violation of subsection 1 of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work related to this Agreement, and that its employees are lawfully eligible to work in the United States.

**Section 2.4. Representations by the Owners Association.** The Owners Association represents that:

A. The Owners Association has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Owners Association herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Owners Association, enforceable in accordance with its terms.

B. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. No litigation, proceedings or investigations are pending or, to the knowledge of the Owners Association, threatened against the Owners Association, any member of the Owners Association which litigation, proceedings or investigations would in any manner challenge or adversely affect the existence or powers of the Owners Association to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Owners Association, the terms and provisions of this Agreement.

## **ARTICLE 3**

### **CID PROJECT**

#### **Section 3.1. CID Project.**

A. Developer, or its successors and assigns, will undertake the CID Project in accordance with all Applicable Laws and Requirements and the CID Petition. The District is not authorized to make, and the Developer will not receive reimbursement for, any improvements or services other than those listed in the CID Budget attached hereto as **Exhibit D**, subject to **Article 6**. Neither the City nor the District shall not have any obligation to design and construct any portions of the CID Project.

B. Developer and the District shall comply with all laws regarding the payment of prevailing wages to contractors or subcontractors of the Developer. Developer and the District shall indemnify the City for any damage resulting to the City from failure of either the Developer, or any contractor or subcontractor of the Developer, or the District to pay prevailing wages pursuant to all Applicable Laws and Requirements; provided that any indemnification obligation of the District shall be limited to the extent permitted by law.

#### **Section 3.2. Ownership and Maintenance of CID Public Improvements and the CID Project.**

A. Maintenance of Private Development and the CID Project. So long as this Agreement is in effect, Developer and its successor(s) in interest with respect to all private development undertaken by Developer or its successor(s) in interest, and the District with respect to the CID Project, shall maintain or cause to be maintained the buildings, improvements and structures within the CID Area which it each respectively owns in a good state of repair and in conformity with Applicable Laws and Requirements.

B. Ownership of the CID Public Improvements. Except for CID Public Improvements expressly dedicated to and accepted by the City upon completion in accordance with City codes and procedures, Ownership of the CID Public Improvements shall be pursuant to one of the following arrangements:

1. Fee title to the CID Public Improvements shall be vested in the name of the District; or

2. The District shall lease the Public Improvements from a private party for the life of the District using a form of lease approved by the City Attorney's office; or

3. A public access easement shall be granted to the CID and the public for the life of the District pursuant to a form of easement agreement approved by the City Attorney's office; provided, however, that the Developer, the Owners Association, or other affiliated entity shall grant to the CID a public access easement for the Activity Plaza contemporaneously with the execution

of this Agreement and the Developer, the Owners Association, or other affiliated entity shall grant to the CID one or more additional public access easements, in substantially the form of the public access easement approved by the City Attorney's office for the Activity Plaza, for other CID Public Improvements as such improvements are in the engineering design phase but prior to commencement of construction of any future CID Public Improvement.

No reimbursement to Developer for the CID Public Improvements shall occur until the District has provided proof to the City and Developer that one of the above-referenced ownership structures has been satisfied. One of the ownership structures recited above shall be in effect while the District is in existence. Upon termination of the District, title to the CID Public Improvements shall be transferred in accordance with **Section 5.5**.

C. Maintenance of the CID Public Improvements. Except for CID Public Improvements expressly dedicated to and accepted by the City upon completion in accordance with City codes and procedures, the following provisions shall apply to the ownership, maintenance and upkeep of the CID Public Improvements:

1. Developer, on behalf of the Owners Association, shall have the primary obligation to maintain or cause to be maintained the CID Public Improvements in a good state of repair and in conformity with Applicable Laws and Requirements and in accordance with the City's Property Maintenance Code. The Developer shall further provide for all liability insurance and payment of taxes (if applicable) associated with the CID Public Improvements.

2. The Owners Association shall have the joint obligation with Developer to maintain or cause to be maintained the CID Public Improvements within the Restrictions Property (as defined below) in a good state of repair and in conformity with Applicable Laws and Requirements. The Owners Association's annual budget shall include a line item for the funding of maintenance of CID Public Improvements within the Restrictions Property and the Owners Association shall each year provide a copy of such budget to the City Attorney's office.

3. If the Developer and the Owners Association fail to maintain the CID Public Improvements as required by this Agreement, then the District shall have the joint obligation with the Developer and the Owners Association to maintain the CID Public Improvements as provided in this Agreement.

In such event, the District's annual budget shall include a line item for the funding of an annual fiscal year reserve fund in the amount described in the engineering letter to be attached at the appropriate time as **Exhibit G** (the "**Maintenance Reserve Fund**"). The annual funding of the Maintenance Fund shall be based on the completion of the improvements as described in **Exhibit G**. The Maintenance Reserve Fund shall be an account that is established and maintained by the City on behalf of the District pursuant to the City's sales tax administration duties as provided in this Agreement. The City, as the co-administrator of the District Sales Tax, shall deposit appropriate amounts in the Maintenance Reserve Fund in the order of priority set forth in **Section 5.3** to fund up the Maintenance Reserve Fund on an annual basis. The moneys accumulated in the Maintenance Reserve Fund shall be used exclusively to fund the costs of the maintenance, upkeep, and repair of the CID Public Improvements (the "**Maintenance Costs**"). Interest earned on funds that are accumulated in the Maintenance Reserve Fund shall be deposited in the Maintenance Reserve Fund and expended in accordance with this Section for Maintenance Costs.

4. Developer has caused the Declaration of Easements, Covenants, Assessments and Restrictions of Fascination at New Longview (the "**Restrictions**") to be recorded with the land



records of Jackson County as Instrument No. 2018E0047118, which provides for the maintenance of those CID Public Improvements located within the property subject to the Restrictions as legally defined in Exhibit A attached to the Restrictions (“**Restrictions Property**”) in accordance with this subsection. A copy of the Restrictions is attached as **Exhibit I**. Pursuant to the Restrictions, the Developer has created the Owners Association. The Restrictions:

- a. Provide for assessments which may be imposed on all developable lots on the Restrictions Property to cover the maintenance costs for the CID Public Improvements, if necessary, but subject to the Developer’s and the District’s obligation to maintain such CID Public Improvements pursuant to the reserves established hereunder;
- b. Provide that the Restrictions shall be perpetually in effect;
- c. Provide that property owners in the Restrictions Property are subject to the imposition of common area maintenance charges and assessments related to the maintenance of the Activity Plaza, the Parking Structure, and other CID Public Improvements ; and
- d. Provide that each lot owner and any successive buyer or transferee shall be obligated under the Restrictions.

5. If the Developer, the Owners Association, and the District fail to maintain the CID Public Improvements, then the City shall have the right to maintain or provide for the maintenance of the CID Public Improvements, the right to incur Maintenance Costs and the right to request reimbursement from the Maintenance Reserve Fund pursuant to this Agreement. The right of the City to provide for such maintenance and incur Maintenance Costs shall not obligate the City to undertake such maintenance.

6. All requests for payment from the Maintenance Reserve Fund for Maintenance Costs shall be processed in accordance with Section 6.3 pursuant to an Application for Reimbursement. All Applications for Reimbursement that are approved for Maintenance Costs shall be paid solely from the Maintenance Reserve Fund. Any payments for Maintenance Costs that are incurred by any Party as allowed by this Agreement shall be paid exclusively from funds that are available in the Maintenance Reserve Account.

7. Funds in the Maintenance Reserve Fund shall not be expended on the North Arch maintenance.

**Section 3.3. Changes.** Developer shall promptly notify the City in writing of any changes in the location of the principal place of business of Developer and of any other material adverse change in fact or circumstance directly affecting the CID Project.

**Section 3.4. Use Limitations.** Developer covenants that the uses within the District boundaries shall at all times be in accordance with Applicable Laws and Requirements, including the zoning and subdivision approvals granted by the City, and all conditions thereof, for the CID Area.

**Section 3.5. North Arch.** During the effective period of the District, the Developer, the Owners Association, and District will cooperate and make good faith efforts to keep ownership of the North Arch structure, and the real property on which it is located, in fee ownership of the Owners Association. District Revenues shall be appropriated by the District to keep the North Arch in a good state of repair and

shall provide for the regular maintenance of the North Arch in accordance with the terms and conditions of the Historic Preservation Easement for the North Arch which is attached as **Exhibit H**.

## **ARTICLE 4**

### **TRANSFER OF PROPERTY IN THE CID AREA**

**Section 4.1. Sale to Third Party.** If Developer proposes to sell, assign, transfer, convey and/or otherwise dispose of any property within the District boundaries, Developer shall insert in any document transferring any interest in real property within the CID, or shall cause any transferee to insert language reasonably similar to the following in such document, and shall have such document signed by the transferee indicating acknowledgment and agreement to the following provision:

**Community Improvement District:** Grantee acknowledges and consents that the Property is a part of the New Longview Community Improvement District (“District”) created by ordinance of the City of Lee’s Summit, Missouri (“City”), and that the District imposes a sales tax on eligible retail sales conducted within the District that will be applied toward the costs of the CID Project that provide a generalized benefit to all property within the District. Grantee shall, or shall cause any applicable tenant of Grantee, to forward to the City copies of its State of Missouri sales tax returns for the Property when and as they are filed with the Missouri Department of Revenue. Grantee hereby acknowledges and agrees that the City and the District are third party beneficiaries of the obligations in this paragraph and shall have a separate and independent right to enforce these reporting requirements.

**Section 4.2. Lease to Third Party.** Developer shall cause all leases of property in the District entered into after the date of this Agreement to contain a provision that is in substantial compliance with the following:

**Community Improvement District:** Tenant acknowledges and consents that the Leased Premises are a part of the New Longview Community Improvement District (“District”) created by ordinance of the City of Lee’s Summit, Missouri (“City”), that the District imposes a sales tax on Tenant’s eligible retail sales that will be applied toward the costs of the CID Project that will provide a generalized benefit to the Development. Tenant shall forward to the City copies of Tenant’s State of Missouri sales tax returns for its property located in the District when and as they are filed with the Missouri Department of Revenue. Tenant hereby acknowledges and agrees that the City and the District are third party beneficiaries of the obligations in this paragraph and shall have a separate and independent right to enforce these reporting requirements.

### **Section 4.3. Consent by Developer, Tenants and Transferees.**

A. The Developer shall ensure that any documents transferring its interest in property located within the District shall make the obligations set forth in this Article a covenant running with the land that shall be enforceable against any purchaser, lessee or other transferee or possessor as if such purchaser, lessee or possessor were originally a party to and bound by this Agreement, which obligations shall only terminate upon the end of the term of the District.

B. Failure of the Developer to require that such restrictions be placed in any such lease/sales contract shall in no way modify, lessen or diminish the obligations and restrictions set forth herein relating to the District's and the City's rights of enforcement and remedies under this Agreement, or otherwise form the basis of a default on the part of the Developer hereunder.

## ARTICLE 5

### DISTRICT SALES TAX

**Section 5.1. Imposition, Collection and Administration of the District Sales Tax.** The CID Board of Directors adopted Resolution No. 2019:03 dated May 14, 2019 that imposes the District Sales Tax within the District boundaries (subject to qualified voter approval). The qualified voters within the District approved the District Sales Tax, as evidenced by the certified election results issued by the Jackson County Election Board dated July 24, 2019. The District has notified the Missouri Department of Revenue of the District Sales Tax, which will become effective on January 1, 2020, for a period of thirty (30) years from such date, or such other period to coincide with the termination of the District in accordance with the CID Act. The District Sales Tax shall be collected by the Missouri Department of Revenue as provided in the CID Act. The District, in cooperation with the City, shall direct the Missouri Department of Revenue to deposit monthly District Revenues in an account managed by the City (the "**City Account**"). The City Account shall be used for the collection and disbursement of District Revenues only and the City shall not commingle other City funds in the City Account.

In connection with the monthly deposit of District Revenues by the Missouri Department of Revenue into the City Account and the City's distribution of District Revenues as provided in Section 5.3 A.-C. below, the District, by this Agreement, authorizes the City to perform all functions incident to the administration, enforcement and operation of the District Sales Tax. In connection with the monthly deposit of District Revenues by the City into the District Account (as defined below) and the District's distribution of District Revenues as provided in Section 5.3 C.i.-iii., the District reserves for itself authority to perform all functions incident to the administration, enforcement and operation of the District Sales Tax. In order to seek to maximize District Revenues and operational efficiencies, the District and the City agree to cooperate with each other in the performance of functions incident to the administration, enforcement and operation of the District Sales Tax. The District official charged with formulating a budget for the District shall request that the CID Board of Directors appropriate the District Revenues in accordance with the budget, the CID Petition, and this Agreement. The Parties acknowledge that, in accordance with the Petition and Section 99.845, RSMo, the District has not consented to the capture of any portion of the District Sales Tax under any tax increment financing plan currently in effect within the CID Area and that no portion of the District Sales Tax shall be subject to capture under any future tax increment financing plan within the CID Area unless the District consents as provided in Section 99.845, RSMo.

**Section 5.2. Costs of Formation and Operating Costs.** The City and Developer have incurred Costs of Formation which are reimbursable pursuant to the CID Act, this Agreement, and the Reimbursement Agreement between the District and the Developer dated May 14, 2019 ("**Reimbursement Agreement**"). The City shall submit invoices to Developer for all Costs of Formation that have been incurred by the City, and such invoices will be paid by Developer to the City within thirty (30) days after receipt of such invoices. All payments to the City by Developer for the Costs of Formation incurred by the City, along with Costs of Formation incurred by Developer, may be reimbursed to Developer in the order of priority set forth in **Section 5.3** for reimbursement of the Costs of Formation. The Operating Costs of the District which are advanced by Developer on behalf of the District shall be reimbursed to Developer with District Revenues in the order of priority set forth in **Section 5.3** for payment and reimbursement of Operating Costs.

**Section 5.3. Distribution of the District Revenues.** Beginning in the first month following the effective date of the District Sales Tax and continuing each month thereafter until the expiration or repeal of the District Sales Tax, the City on behalf of the District shall, not later than the fifteenth (15th) day of each month, distribute the District Revenues received in the preceding month in the following order of priority:

A. Pay the City an administration fee equal to 1.0% of District Revenues.

B. Deposit funds in the Maintenance Reserve Account until the Maintenance Reserve Account is fully funded for such fiscal year as required by **Section 3.2**, if applicable.

C. Transfer remaining District Revenues to the District for deposit in an account managed by the District (the “**District Account**”). The District Account shall be used for the deposit and disbursement of District Revenues only and the District shall distribute District Revenues in the District Account in the following order of priority:

- i. Pay the Operating Costs of the District.
- ii. Reimburse Developer for funds advanced by Developer for payment of Operating Costs, and interest thereon.
- iii. Make reimbursement payments to Developer for payment of the Costs of Formation, as such Costs of Formation have been approved by the City in accordance with this Agreement.
- iv. Payment of debt service or the CID Obligations authorized pursuant to **Section 6.4**, if any.
- v. Reimburse Developer for any Reimbursable Project Costs that are set forth in an approved Application for Reimbursement pursuant to **Section 6.3**, at such time as reimbursement is authorized pursuant to **Section 6.1**.

**Section 5.4. Records of the District.** Any District records pertaining to the District Sales Tax or the administration and operation of the District shall be provided to the City upon written request of the City, as permitted by law. Any City records pertaining to the District Sales Tax or the administration, enforcement and operation of the District Sales Tax shall be provided to the District upon written request of the District, as permitted by law. The District and the City agree to cooperate with each other to provide to each other such information and documentation pertaining to the District Sales Tax as reasonably necessary to enable the District to satisfy budgeting and financial reporting requirements under the CID Act and applicable state law.

**Section 5.5. Abolishment of District.** After Developer has been reimbursed for all Reimbursable Project Costs, the District shall continue to stay in existence as long the District continues to operate and maintain the CID Public Improvements, for up to the maximum time period authorized in the Petition. The District may be terminated earlier than the maximum time period specified in the Petition if the District proceeds as authorized by the CID Act. Upon termination, the District shall implement the procedures in the CID Act for repeal of the District Sales Tax and abolishment of the District. Upon repeal of the District Sales Tax, the District shall:

- A. Pay all outstanding amounts set forth in **Section 5.3**.

B. Retain any remaining District Revenues until such time as the District is abolished and the District has provided for the transfer of any funds remaining in a manner permitted by the CID Act.

Upon termination of the District, title to the CID Public Improvements shall be abandoned by the CID and transferred to the Developer or Developer's successors in interest to the CID Project, to the Owners Association, or to another private party which shall assume ownership and maintenance responsibility of the CID Public Improvements.

#### **Section 5.6. CID Board of Directors and Insurance.**

A. The CID Board of Directors shall consist of five members, at least one of which will be a representative of the City.

B. All members of the CID Board of Directors shall meet all qualifications of the CID Act and the Missouri Constitution.

C. Successor members of the CID Board of Directors shall be appointed by the Mayor with the consent of the City Council as provided in the CID Petition and in compliance with Section 67.1451.5, RSMo. In the event of a vacancy on the CID Board of Directors, interim members will be elected by the remaining existing members of the CID Board of Directors in compliance with Section 67.1451.5, RSMo.

D. City representatives may be appointed to a majority of the positions on the Board of Directors in accordance with the CID Act in the event that the District ceases to operate in accordance with the Petition, this Agreement, the CID Act or any Applicable Laws and Requirements.

E. The District will maintain reasonable levels of directors' and officers' liability insurance throughout its existence. The cost of such liability insurance shall be an Operating Cost of the District.

F. The District shall, no later than fifteen (15) days after the start of each fiscal year, submit the names of the current CID Board of Directors to the City Council. All reports shall be made by the Developer to the City in an Annual Board of Directors Report in substantially the same form as **Exhibit F**.

**Section 5.7. Pledge of District Revenues and Collateral Assignment of Agreement to Lender.** Developer shall have the right, without the consent of the City, to pledge its right to receive any District Revenues for Reimbursable Project Costs under this Agreement to a lender for the CID Project. Upon Developer's request, the City will send any such revenues to such lender directly until Developer directs otherwise. Developer shall also have the right, without the consent of the City, to collaterally assign its rights and obligations under the Agreement to such lender, provided that the lender assumes by contract all obligations and duties of Developer under this Agreement in the event of a transfer to lender.

**Section 5.8. Notification of Sales Tax.** The District notified the Missouri Department of Revenue of the approval of the District Sales Tax by letter dated August 1, 2019, which notice included a list of existing retail businesses currently operating within the District. The District shall notify the Missouri Department of Revenue of any new retail businesses opening within the District and the City shall assist the District by providing information requested by the Missouri Department of Revenue necessary to register a retail business for collection of the District Sales Tax by the state.

## ARTICLE 6

### REIMBURSEMENTS TO DEVELOPER

#### **Section 6.1. Requirements of and Limitations on Reimbursement to Developer.**

A. Developer, or its successors and assigns, will develop and construct the CID Project in accordance with the CID Petition. The Developer shall receive reimbursement for Reimbursable Project Costs, any Operating Costs funded by Developer, any Costs of Formation funded by Developer, and the Maximum Reimbursement Interest in accordance with **Section 6.3**.

B. The District shall reimburse the Developer for Reimbursable Project Costs approved by the City pursuant to **Section 6.3**, and subject to the limitations set forth in this Section. Reimbursable Project Costs shall be reimbursed from available District Revenues and from no other source of funds. The City shall review and certify Reimbursable Project Costs in accordance with the procedures for review of reimbursement requests as set forth in **Section 6.3**.

C. The maximum amount of District Revenues used to reimburse Developer for Reimbursable Project Costs shall be \$5,480,000, plus any Operating Costs advanced by Developer and the Maximum Reimbursement Interest (the “**Maximum Amount**”).

**Section 6.2. District’s Obligation to Reimburse Developer.** The Parties agree that reimbursement of Reimbursable Project Costs will occur on a “pay as you go” basis as District Revenues are collected by the District in accordance with this Agreement. The District will only reimburse the Developer for Reimbursable Project Costs which may lawfully be paid or incurred by the District under the CID Act, which become reimbursable under the conditions and restrictions in **Section 6.1**, and which are approved pursuant to **Section 6.3**.

#### **Section 6.3. Reimbursement Application Process.**

A. The District appoints the City as its agent to administer the reimbursement application process. All requests for reimbursement of Reimbursable Project Costs shall be made by the Developer to the City in an Application for Reimbursement in substantially the form as **Exhibit E**. Each Application for Reimbursement shall include itemized invoices, receipts or other information, if any, reasonably requested by the City to confirm that each cost identified in the Application for Reimbursement has been incurred and qualifies for reimbursement pursuant to the CID Act and this Agreement.

B. Applications for reimbursement of Maintenance Costs from the Maintenance Reserve Fund may be made by any Party and shall follow the process set forth in paragraph D of this Section for the City to review and approve such reimbursement.

C. The District will not reimburse the Developer or any other party for any cost that is not eligible for reimbursement under the Reimbursement Agreement, the CID Act, the CID Petition or the terms and conditions of this Agreement. The Parties agree that the individual items which are scheduled to be reimbursed according to the CID Budget (the “**Reimbursable Line Items**”), to the extent actually incurred by Developer for the CID Project and certified by the City, up to the Maximum Amount, constitute Reimbursable Project Costs which are eligible for reimbursement in accordance with the CID Act and this Agreement. Developer may, in the aggregate, shift up to 10% of each Reimbursable Line Item for the CID Project to another Reimbursable Line Item for the CID Project without consent from the City, provided that the total amount of reimbursement for the CID Project shall not exceed the Maximum Amount and upon providing written notice to the City of the amounts shifted between Reimbursable Line Items through



Application for Reimbursement. Shifts between line items in an amount greater than 10% may be approved by the Finance Director following a request for same by Developer through an Application for Reimbursement. The Finance Director may seek the advice and consent of the City Council for such approval. In the event the Finance Director denies said request Developer shall have thirty (30) days to appeal to the City Council for a final determination on the Application for Reimbursement.

D. The Developer may submit an Application for Reimbursement to the Finance Director not more often than once each calendar month. The City shall either accept or reject each Application for Reimbursement within thirty (30) days after the submission thereof. If the City determines that any cost identified as a Reimbursable Project Cost is not eligible for reimbursement under the CID Act, the CID Petition or this Agreement, the City shall so notify the Developer in writing within said 30-day period, identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to identify and substitute other costs for reimbursement with a supplemental application for payment, subject to the limitations of this Agreement. The City may also request such additional information from the Developer as may be required to process the requested reimbursement, and the time limits set forth in this paragraph shall be extended by the duration of time necessary for the Developer to respond to such request by the City. The City's identification of any ineligible costs shall not delay the City's approval of the remaining costs on the Application for Reimbursement that the City determines to be eligible. Notwithstanding anything in this paragraph to the Contrary, the Developer, the Owners Association, and the District may submit an Application for Reimbursement to the Finance Director for reimbursement of Maintenance Costs from the Maintenance Reserve Fund.

E. After the City approves an Application for Reimbursement, interest shall accrue at the prime rate established by Commerce Bank, plus one percent (1%) from the date the City approves an Application for Reimbursement of Reimbursable Project Costs until such costs are actually reimbursed with District Revenues (the "**Maximum Reimbursement Interest**"), which shall fluctuate from time to time, not to exceed the highest interest rate allowed by applicable law.

**Section 6.4. Issuance of CID Obligations.** The District may authorize the issuance of CID Obligations upon written approval of the City and subject to the following restrictions:

A. The final maturity date of the CID Obligations shall be no more than twenty (20) years from the date of issuance or the expiration of the term of the District, whichever is sooner; provided the term of the District is thirty (30) years pursuant to the Petition.

B. The maximum principal amount of the CID Obligations shall not exceed an amount calculated by a financial advisor to the District which is incorporates a projected amortization schedule based upon the development that is either open for business in the CID Area or for which the Developer has executed binding leases in the CID Area, along with the costs of issuance for such obligations. The City Finance Director and the City's financial advisor shall have the right to review such projections and all terms and conditions of the proposed bond issuance prior to the City providing written approval as required by this Section.

C. Reimbursement of interest on CID Obligations shall be limited to the Maximum Reimbursement Interest, unless otherwise approved by the City in writing.

## ARTICLE 7

### RELEASE AND INDEMNIFICATION

**Section 7.1. Survival of Termination.** The indemnification and covenants contained in this Article shall survive expiration or earlier termination of this Agreement.

**Section 7.2. Developer Indemnity.** The Developer hereby agrees that, anything to the contrary herein notwithstanding, it will defend, indemnify and hold harmless the City, its governing body members, employees and agents (collectively, the “**City Indemnified Parties**”) against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys’ fees and court costs) to the extent resulting from, arising out of, or in any way connected with (i) the Developer’s failure to comply with any provision of this Agreement, (ii) the gross negligence or intentional misconduct of the Developer, an Affiliate of the Developer, or their respective officers, employees and agents in connection with this Agreement and the CID Project (iii) the presence of hazardous wastes, hazardous materials or other environmental contaminants on any property within the District or the CID Area, or (iv) otherwise arising out of the construction of the CID Project or the administration of this Agreement; provided in no event shall the Developer indemnify the City or the City Indemnified Parties from any negligence or willful misconduct caused by the City or the City Indemnified Parties. If the validity or construction of the CID Act and/or any other ordinance of the City adopted in connection with this Agreement or the CID Petition are contested in court, the Developer shall defend, hold harmless and indemnify the City from and against all claims, demands and/or liabilities of any kind whatsoever including, without limitation, any claim for attorney fees and court costs, and the Developer shall pay any monetary judgment and all court costs rendered against the City, if any. Any costs, fees, and expenses paid by Developer under this **Section 7.2** shall be Reimbursable Project Costs; provided that, if the event or circumstances giving rise to the claim against the City is due to the failure of the Developer or its contractors to comply with applicable Legal Requirements related to the construction of the CID Project or otherwise caused by the Developer’s gross negligence or intentional misconduct, no such costs, fees, and expenses paid by Developer under this **Section 7.2** shall be reimbursable. Notwithstanding anything to the contrary contained herein, the Developer indemnity set forth in this **Section 7.2** shall not be applicable to events which occur after Developer no longer owns any portion of the CID Project.

**Section 7.3. District and City Indemnity.** The District hereby agrees, to the extent permitted by law, that it will defend, indemnify and hold harmless the City Indemnified Parties and the Developer, its officers, employees and agents against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys’ fees and court costs) to the extent resulting from, arising out of, or in any way connected with (i) the District’s failure to comply with any provision of this Agreement, or (ii) the negligence or intentional misconduct of the District or its officers, employees and agents. The City hereby agrees, to the extent permitted by law, that it will defend, indemnify and hold harmless the District, and its officers, employees and agents, against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys’ fees and court costs) to the extent resulting from, arising out of, or in any way connected with (i) the City’s failure to comply with any provision of this Agreement, or (ii) the negligence or intentional misconduct of the City or its officers, employees and agents.

**Section 7.4. Notification.**

A. If any suit, action, investigation, claim or proceeding (collectively, an “**Action**”) is threatened, initiated or made as a result of which the Developer or the District may become obligated to

one or more of the City Indemnified Parties hereunder, any one of the applicable City Indemnified Parties shall give prompt notice to the Developer and the District of the occurrence of such event. After receipt of such notice, the Developer or the District, as applicable, at their cost, shall defend, contest and otherwise protect the City Indemnified Parties against the Action utilizing counsel of the Developer's choice. The City Indemnified Parties shall cooperate in good faith with the Developer and its counsel in the defense of an Action. The Developer shall provide to the City regular periodic reports on the status of such Action. If the indemnifying party fails to timely defend, contest or otherwise protect any of the City Indemnified Parties against such Action, the City Indemnified Parties shall have the right to do so and to hire the counsel of their choice, and, if such defense is undertaken by the City Indemnified Parties after notice to the Developer and the District asserting the failure of the Developer, or the District, as applicable, to timely defend, contest or otherwise protect against such Action, the cost of such defense shall be at the expense of the Developer or the District, as applicable.

B. If an Action is threatened, initiated or made as a result of which the City may become obligated to the District, the District shall give prompt notice to the City of the occurrence of such event. After receipt of such notice, the City, at its cost, shall defend, contest and otherwise protect the District against the Action utilizing counsel of the City's choice. The District shall cooperate in good faith with the City and its counsel in the defense of an Action. The City shall provide to the District regular periodic reports on the status of such Action. If the indemnifying party fails to timely defend, contest or otherwise protect the District against such Action, the District shall have the right to do so and to hire the counsel of its choice, and, if such defense is undertaken by the District after notice to the City asserting the failure of the City to timely defend, contest or otherwise protect against such Action, the cost of such defense shall be at the expense of the City.

**Section 7.5. Settlements.** All proposed settlements to any Action shall be subject to the mutual approval of the Developer or the District, as applicable, and the applicable City Indemnified Parties or the City, as applicable. Neither the Developer nor the District, as applicable, nor the City Indemnified Parties nor the City, as applicable, will unreasonably withhold their consent to a proposed settlement.

**Section 7.6. Invalidity of Proceedings.** Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer or the District for damages or otherwise if all or any part of the CID Act, the ordinance approving the CID Petition, and/or any other ordinance of the City adopted in connection with this Agreement, the CID Project, or the CID Petition is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction. If, as a result of a final judgment, the revenue mechanisms and/or the reimbursements to the Developer contemplated by this Agreement cannot be implemented, the City and the District agree, subject to any necessary future legislative approvals by the City Council or CID Board of Directors, as applicable, to make good faith efforts to take all actions necessary to remedy any deficiencies and effectuate the intent of this Agreement.

## **ARTICLE 8**

### **DEFAULTS AND REMEDIES**

**Section 8.1. Default and Remedies.** An "Event of Default" shall occur upon the failure by any Party in the performance of any covenant, agreement or obligation imposed or created by this Agreement and the continuance of such failure for thirty (30) days after the other Party has given written notice to such Party specifying such failure.

If any Event of Default has occurred and is continuing, then any non-defaulting party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting party and its officers, agents and employees, and require and compel duties and obligations required by the provisions of this Agreement (except that in no event shall the City enjoin the Developer to undergo any construction).

**Section 8.2. Rights and Remedies Cumulative.** The rights and remedies maintained by any Party under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. Any Party shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and any Party hereby waives the right to raise such defense in any proceeding in equity.

**Section 8.3. Waiver of Breach.** No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting Party may nevertheless accept from the defaulting party, any payment or payments without in any way waiving the non-defaulting party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting party.

**Section 8.4. Excusable Delays.** No Party shall be deemed to be in default of this Agreement because of Excusable Delays. Excusable Delays shall extend the time of performance for the period of such Excusable Delay.

## ARTICLE 9

### MISCELLANEOUS

**Section 9.1. Effective Date and Term.** This Agreement shall become effective on the date this Agreement has been fully executed by the Parties ("**Effective Date**"). This Agreement shall remain in effect for as long as the District is legally in existence.

**Section 9.2. Modification.** The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement among the City, the District and the Developer. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

**Section 9.3. Jointly Drafted.** The Parties agree that this Agreement has been jointly drafted and shall not be construed more strongly against another Party.

**Section 9.4. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

**Section 9.5. Validity and Severability.** It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the

invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

**Section 9.6. Execution of Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**Section 9.7. City and District Approvals.** Unless specifically provided to the contrary herein, all approvals of the City hereunder may be given by the City Manager or his or her designee without the necessity of any action by the City Council. The City Manager may seek the advice and consent of the City Council before granting any approval. Unless specifically provided to the contrary herein, all approvals of the District hereunder may be given by the Chairman of the District or his or her designee without the necessity of any action by the CID Board of Directors. The Chairman of the District may seek the advice and consent of the CID Board of Directors before granting any approval.

**Section 9.8. Relationship.** In the performance of this Agreement, the Developer shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making the Developer a partner, joint venturer with, or agent of, the City. The City and the Developer agree that neither party will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the City and the Developer.

**Section 9.9. Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the Parties with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the Parties.

**Section 9.10. Limit on Liability.** The Parties agree that:

A. No official, director, officer, agent, employee, representative, attorney or consultant of the City shall be personally or otherwise in any way liable to the Developer or the District in the event of any default, breach or failure of performance by the City under this Agreement or for any amount which may become due to the Developer or the District or with respect to any agreement, indemnity, or other obligation under this Agreement.

B. No member or shareholder of the Developer or the District and no official, director, officer, agent, employee, shareholder, representative, attorney or consultant of the Developer or the District shall be personally or otherwise in any way liable to the City or any third-party in the event of any default, breach or failure of performance by the Developer or the District under this Agreement or for any amount which may become due to the City with respect to any agreement, indemnity or other obligation under this Agreement.

**Section 9.11. Headings.** Headings of articles and sections are inserted only for convenience and are in no way to be construed as a limitation or expansion on the scope of the particular articles, sections or subsections to which they refer. Words in the singular shall include the plural, and vice versa, where appropriate.

**Section 9.12. Notices.** Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally or by a

reputable overnight delivery service to all parties listed below. Mailed notices shall be deemed effective on the third day after mailing and all other notices shall be effective when delivered.

To the City:	City of Lee's Summit, Missouri 220 SE Green Lee's Summit, Missouri 64063 Attn: City Manager
With a copy to:	City of Lee's Summit, Missouri 220 SE Green Lee's Summit, Missouri 64063 Attn: City Attorney
To the District:	New Longview Community Improvement District c/o Platform Ventures, LLC 4220 Shawnee Mission Pkwy Suite 200B Fairway, KS 66205
To the Developer:	M-III Longview, LLC c/o Platform Ventures, LLC 4220 Shawnee Mission Pkwy Suite 200B Fairway, KS 66205
With a copy to:	Brian Engel, Esq. Rouse Frets White Goss Gentile Rhodes, P.C. 4510 Belleview Ave., Suite 300 Kansas City, MO 64111

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

**Section 9.13. Waiver.** The failure of either Party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either Party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party.

**Section 9.14. Tax Implications.** The Developer and the District acknowledge and represent that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents have provided to the Developer or the District any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer and the District are relying solely upon their own tax advisors in this regard.

**Section 9.15. Exhibits.** All exhibits which are attached or referred to in this Agreement are specifically incorporated herein by reference and form an integral part hereof.



**Section 9.16. Agreement to Control.** In the event of any conflict between the terms of this Agreement and any other agreements between the City and the Developer or the District, the provisions of this Agreement shall control and supersede the conflict.

**Section 9.17. Recordation of Memorandum of Agreement.** The Parties agree to execute and deliver a Memorandum of this Agreement in proper form for recording and/or indexing in the appropriate land or governmental records. Such Memorandum shall be recorded by the City.

**Section 9.18. Estoppel.** Upon Developer's request, the City shall deliver a written instrument to Developer or any other person, firm or corporation specified by Developer, duly executed and acknowledged, certifying that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modifications; whether or not Developer has observed and performed all of the terms, covenants and conditions on the part of Developer to be observed and performed, and if not, specifying the same; and such other matters as reasonably requested by Developer.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year first above written.

**CITY OF LEE'S SUMMIT, MISSOURI**

By: \_\_\_\_\_  
William A. Baird  
Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Trisha Fowler Arcuri  
City Clerk

**STATE OF MISSOURI**       )  
  ) **SS.**  
**COUNTY OF JACKSON**     )

On this \_\_\_\_\_ day of December, 2019, before me appeared William A. Baird, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the **CITY OF LEE'S SUMMIT, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said William A. Baird acknowledged said instrument to be the free act and deed of said City.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

[SEAL]

**DISTRICT:**

**NEW LONGVIEW COMMUNITY  
IMPROVEMENT DISTRICT**

By: \_\_\_\_\_  
Mike Jenkins, Chairman

ATTEST:

\_\_\_\_\_  
Becky Ziegler, Secretary

**CERTIFICATE OF ACKNOWLEDGEMENT**

STATE OF MISSOURI        )  
                                      ) ss  
COUNTY OF JACKSON     )

On this \_\_\_\_ day of December, 2019, before me, a Notary Public in and for said state, personally appeared Mike Jenkins, who is the Chairman of the New Longview Community Improvement District, known to me to be the person who executed the within Cooperative Agreement on behalf of the New Longview Community Improvement District and acknowledged to me that he executed the same for the purposes therein stated.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My Commission Expires:

\_\_\_\_\_  
Notary Public

**DEVELOPER:**

**M-III LONGVIEW, LLC**

a Delaware limited liability company

By: Platform Investments, LLC, its manager

By: Platform Ventures, LLC, its manager

By: \_\_\_\_\_  
Corey Walker, Senior Vice President

**CERTIFICATE OF ACKNOWLEDGEMENT**

STATE OF KANSAS                    )  
  ) ss  
COUNTY OF JOHNSON            )

On this \_\_\_\_ day of December, 2019, before me, a Notary Public in and for said state, personally appeared Corey Walker, the Senior Vice President of Platform Ventures, LLC, a Delaware limited liability company, known to me to be the person who executed the within Cooperative Agreement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My Commission Expires:

\_\_\_\_\_  
Notary Public

OWNERS ASSOCIATION:

**FASCINATION AT NEW LONGVIEW  
OWNERS ASSOCIATION, INC.**  
a Missouri non-profit corporation

By: \_\_\_\_\_  
Corey Walker, President

**CERTIFICATE OF ACKNOWLEDGEMENT**

STATE OF KANSAS                    )  
  ) ss  
COUNTY OF JOHNSON            )

On this \_\_\_\_ day of December, 2019, before me, a Notary Public in and for said state, personally appeared Corey Walker, the President of Fascination at New Longview Owners Association, Inc., a Missouri non-profit corporation, known to me to be the person who executed the within Cooperative Agreement on behalf of said non-profit corporation and acknowledged to me that he executed the same for the purposes therein stated.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

My Commission Expires:

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF CID AREA**

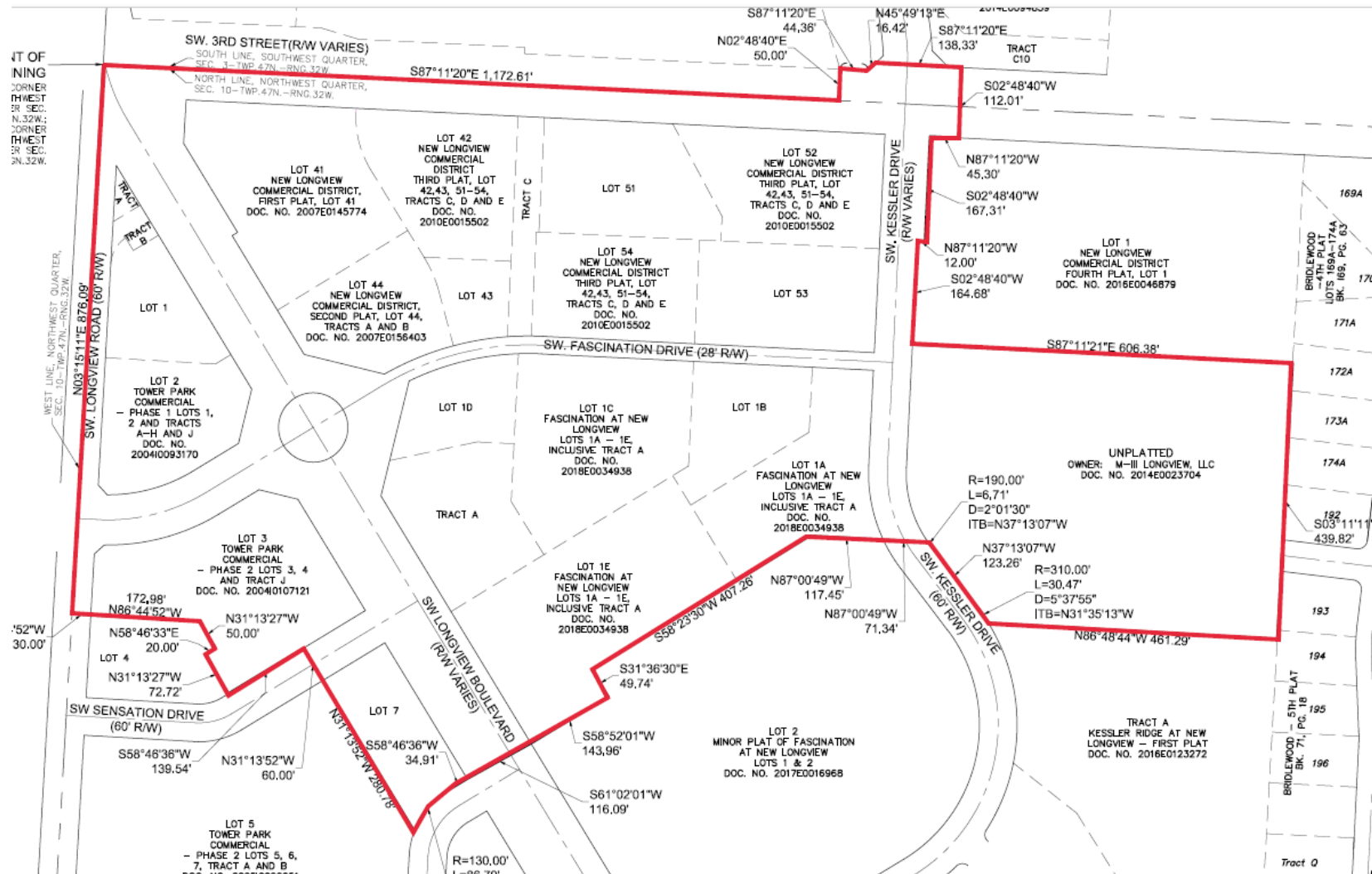
A tract of land in the Southwest Quarter of Section 3 and the Northwest Quarter of Section 10, Township 47 North, Range 32 West of the 5th Principal Meridian in Lee's Summit, Jackson County, Missouri, being bounded and described as follows: Beginning at the Southwest corner of said Southwest Quarter point also being the Northwest corner of said Northwest Quarter; thence North 03°15'11" East on the West line of said Southwest Quarter, 75.00 feet; thence leaving said West line, South 87°11'23" East, 43.00 feet to a point on the North right-of-way line of Southwest 3rd Street, as now established, point also the Southwest corner of LOT 1, BERBIGLIA HEIGHTS, a subdivision of land recorded in Book 34 on Page 112 in the Jackson County Recorder of Deeds Office; thence continuing South 87°11'23" East on said North right-of-way line, 300.41 feet; thence South 73°09'12" East on said line, 61.83 feet; thence South 87°11'17" East on said line, 265.02 feet; thence South 02°48'37" West on said line, 10.00 feet; thence South 87°11'20" East on said line, 503.61 feet to the Southwest corner of Tract B10, WINTERSET VALLEY 10th PLAT, a subdivision of land recorded on Document Number 2014E0094859 in the Jackson County Recorder of Deeds Office; thence continuing South 87°11'20" East on the South line of said Winterset Valley 10th Plat, 44.36 feet; thence North 45°49'13" East on said South line of Winterset Valley 10th Plat, 16.42 feet; thence South 87°11'20" East on said South line of Winterset Valley 10th Plat, 138.33 feet; thence leaving said South line, South 02°48'40" West, 112.01 feet to a point on the South right-of-way line of said Southwest 3rd Street, point also being on the North line of Lot 1, NEW LONGVIEW COMMERCIAL DISTRICT FOURTH PLAT, LOT 1, a subdivision of land recorded on Document Number 2016E0046879 in said Jackson County Recorder of Deeds Office; thence North 87°11'20" West on said North line, 45.30 feet to the Northwest corner of said Lot 1 point also being on the Easterly right-of-way line of Southwest Kessler Drive, as now established; thence South 02°48'40" West on the West line of said Lot 1 and said Easterly right-of-way line, 167.31 feet; thence North 87°11'20" West on the West line of said Lot 1 and said Easterly right-of-way line, 12.00 feet; thence South 02°48'40" West on the West line of said Lot 1 and said Easterly right-of-way line, 164.68 feet to the Southwest corner of said Lot 1; thence leaving said Easterly right-of-way line, South 87°11'21" East on the South line of said Lot 1, 606.38 feet to a point on the Westerly line of BRIDLEWOOD 4th PLAT, a subdivision of land recorded in Book 169 on Page 63 of said Jackson County Recorder of Deeds Office; thence South 03°11'11" West on the West line of said Bridlewood 4th Plat and the West line of BRIDLEWOOD 5th PLAT, a subdivision of land recorded in Book 71 on Page 18 in said Jackson County Recorder of Deeds Office, 439.82 feet to the Northeast corner of Tract A, KESSLER RIDGE AT NEW LONGVIEW - FIRST PLAT, a subdivision of land Recorded on Document Number 2016E0123272 in said Jackson County Recorder of Deeds Office; thence North 86°48'44" West on the North line of said Tract A, 461.29 feet to the Northwest corner of said Tract A, point also being on the Easterly right-of-way line of said Southwest Kessler Drive; thence Northwesterly on said Easterly right-of-way line, with a curve to the left having an initial tangent bearing of North 31°35'13" West with a radius of 310.00 feet, a central angle of 05°37'55" and an arc distance of 30.47 feet; thence North 37°13'07" West on said Easterly right-of-way line, 123.26 feet; thence Northwesterly on said Easterly right-of-way line with a curve to the right being tangent to the last described course with a radius of 190.00 feet, a central angle of 02°01'30" and an arc distance of 6.71 feet; thence leaving said Easterly right-of-way line, North 87°00'49" West, 71.34 feet to a point on the Westerly right-of-way line of said Southwest Kessler Drive point also being the Southeast corner of Lot 1A, FASCINATION AT NEW LONGVIEW LOTS 1A-1E, INCLUSIVE TRACT A, a subdivision of land Recorded on Document Number 2018E0034938 in said Jackson County Recorder of Deeds Office; thence continuing North 87°00'49" West, on the South line of said Lot 1A, 117.45 feet; thence South 58°23'30" West on the South line of said Fascination at New Longview Lots 1A-1E, Inclusive Tract A, 407.26 feet; thence South 31°36'30" East on said South line, 49.74 feet; thence South 58°52'01" West on said South line, 143.96 feet to the Southwest corner of Lot 1E of said Fascination at New Longview Lots 1A-1E, Inclusive Tract A point also on the Easterly right-of-way line of Southwest Longview Boulevard as now established; thence leaving said Easterly right-of-way line, South 61°02'01" West, 116.09 feet to the Southeast corner of Lot 7, TOWER PARK COMMERCIAL - PHASE 2 LOTS 5, 6, 7 AND TRACTS A and B, a subdivision of land Recorded on Document Number 2005I0090051 of said Jackson County Recorders of Deeds Office point also on the Westerly right-of-way line of said Southwest Longview



Boulevard; thence South 58°46'36" West on the South line of said Lot 7, 34.91 feet; thence Southwesterly on the South line of Lot 7 with a curve to the left being tangent to the last described course with a radius of 130.00 feet, a central angle of 38°14'59" and an arc distance of 86.79 feet to the Southwest corner of said Lot 7; thence North 31°13'52" West on the West line of said Lot 7, 280.78 feet to the Northwest corner of said Lot 7 point also being on the Southerly right-of-way line of Southwest Sensation Drive, as now established; thence continuing North 31°13'52" West, 60.00 feet to a point on the Northerly right-of-way line of said Southwest Sensation Drive, point also on the Southerly line of Lot 3, TOWER PARK COMMERCIAL - PHASE 2 LOTS 3, 4 AND TRACT J, a subdivision of land recorded on Document Number 2004I0107121 in said Jackson County Recorder of Deeds Office; thence South 58°46'36" West on the South line of said Lot 3 and the said Northerly right-of-way line, 139.54 feet; thence North 31°13'27" West on said South line, 72.72 feet; thence North 58°46'33" East on said South line, 20.00 feet; thence North 31°13'27" West on said South line, 50.00 feet; thence North 86°44'52" West on said South line, 172.98 feet to the Southwest corner of said Lot 3, point also being on the Easterly right-of-way line of Southwest Longview Road, as now established, thence continuing North 86°44'52" West, 30.00 feet to a point on the West line of said Northwest Quarter; thence North 03°15'11" East on said West line, 876.09 feet to the Point of Beginning. Containing 1,541,727 square feet or 35.39 acres, more or less.

# EXHIBIT B

## DEPICTION OF CID AREA

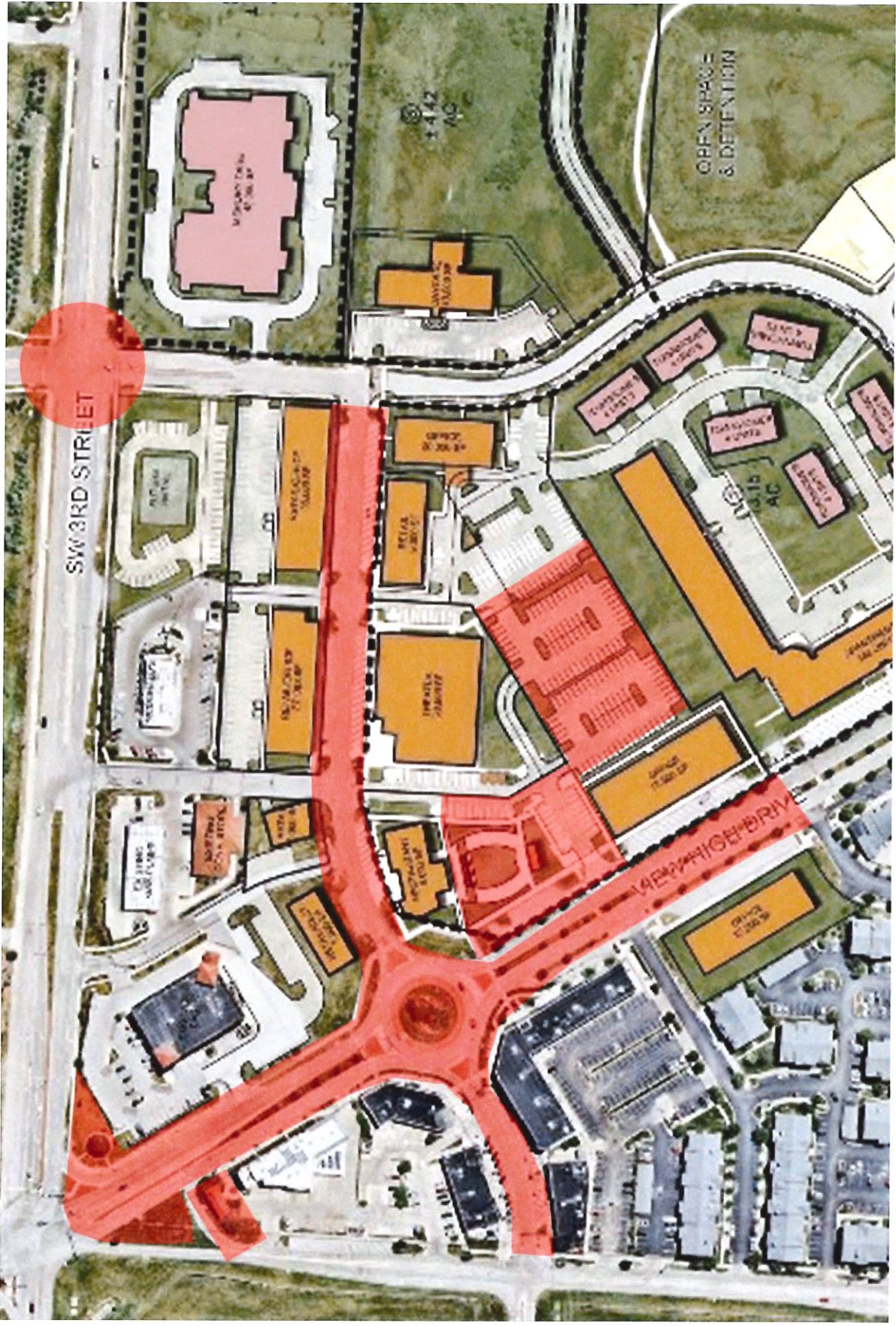


**EXHIBIT C**

**MAP OF ACTIVITY PLAZA AND STREETScape IMPROVEMENTS**



# Proposed Improvements



**EXHIBIT D**

**CID BUDGET**

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

## EXHIBIT E

### FORM OF APPLICATION FOR REIMBURSEMENT

#### APPLICATION FOR REIMBURSEMENT

TO: City of Lee's Summit, Missouri  
Attention: Mayor

Re: New Longview Community Improvement District

*Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Cooperative Agreement dated as of December 10, 2019 (the "Agreement") among the City of Lee's Summit, Missouri (the "City"), the New Longview Community Improvement District and M-III Longview, LLC (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:*

1. Each item listed on *Schedule 1* hereto is a Reimbursable Project Cost and was incurred in connection with the construction of CID Project.
2. These Reimbursable Project Costs have been paid by the Developer and are reimbursable under the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the District Revenues and no part thereof has been included in any other Application previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the work for which this application relates have been issued and are in full force and effect.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. If any cost item to be reimbursed under this application is deemed not to constitute a Reimbursable Project Cost within the meaning of the Agreement, the Developer shall have the right to substitute other eligible costs for payment hereunder.
8. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes an Event of Default under the Agreement.
9. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



**M-III LONGVIEW, LLC**

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

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

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

Approved for Payment this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

**CITY OF LEE'S SUMMIT, MISSOURI**

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

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

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

**EXHIBIT F**

**ANNUAL BOARD OF DIRECTORS REPORT**

TO: City of Lee's Summit, Missouri  
Attention: Mayor

Re: New Longview Community Improvement District

*Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Cooperative Agreement dated as of December 10, 2019 (the "**Agreement**") among the City of Lee's Summit, Missouri (the "**City**"), the New Longview Community Improvement District and New Longview Partners, LLC (the "**Developer**"). In connection with said Agreement, the undersigned hereby states and certifies that:*

1. For fiscal year \_\_\_\_\_, the current Directors for the New Longview Community Improvement District Board of Directors are:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_ (City Representative)

2. This Annual Board of Directors Report is filed no later than fifteen (15) days following the start of the fiscal year, pursuant to **Section 5.6(E)** of the New Longview Community Improvement District Cooperative Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NEW LONGVIEW COMMUNITY  
IMPROVEMENT DISTRICT**

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

**EXHIBIT G**  
**ENGINEERING LETTER FOR MAINTENANCE FUND**

*[To Be Attached in Future, As Needed]*

**EXHIBIT H**  
**HISTORIC PRESERVATION EASEMENT FOR THE NORTH ARCH**

*[Attached]*



**ELECTRONICALLY RECORDED  
JACKSON COUNTY, MISSOURI**

**11/06/2018 03:15:14 PM**

EASE FEE: \$ 84.00 22 Pages

**INSTRUMENT NUMBER:**

**2018E0096524**

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*(Space above reserved for Recorder of Deeds certification)*

1. Title of Document: **Historic Preservation Easement – North Arch**
  2. Date of Document: <sup>Nov</sup>~~October~~ 2, 2018
  3. Grantor(s): **M-III Longview LLC**
  4. Grantee(s): **City of Lee's Summit, Missouri, a municipal corporation**
  5. Statutory Mailing Address(s):  
  
**Grantee's Address: City of Lee's Summit, Missouri  
Development Services Department  
220 SE Green Street  
Lee's Summit, MO 64063**
  6. Legal Description: **See Attached Exhibit A**
  7. Reference Book and Page(s): **N/A**
-

## HISTORIC PRESERVATION EASEMENT – NORTH ARCH

THIS HISTORIC PRESERVATION EASEMENT (“Easement”) is made this <sup>November</sup>~~October~~ 2<sup>nd</sup> day of 2018, by **M-III LONGVIEW LLC** (“Grantor”), and the **CITY OF LEE’S SUMMIT, MISSOURI**, a municipal corporation (“Grantee”).

### RECITALS OF CONSIDERATION

A. Grantor is the owner in fee simple of a parcel of land located in the City of Lee’s Summit, Jackson County, Missouri, in an area commonly known as “Fascination at New Longview,” and formerly known as “Longview Farms,” such parcel of land being legally described on Exhibit A attached hereto (together with all improvements on the land, the “Property”), the location of which is depicted in Exhibit B. The structure commonly known as the North Arch (the “Structure”) is located on the Property and is the subject matter of this Easement.

B. Grantor has agreed to preserve certain elements of the “Façade,” in accordance with the terms hereof. The term “Façade” means the exterior features of the Structure, as shown on Exhibit C attached hereto, together with the structural portions of the Structure that support such exterior features.

C. Grantor and Grantee desire to ensure that certain significant exterior features of the Façade are preserved to the reasonable extent possible for benefit of future generations through the grant of this Easement.

NOW THEREFORE, in consideration of the foregoing and for other good and sufficient consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to Grantee, and Grantee hereby accepts, this Easement on the following terms and conditions:

### Article I

#### BACKGROUND AND DEFINITIONS

##### A. Property Subject to Easement

The property subject to this Easement is comprised of the Façade.

##### B. Purpose

Subject to the terms hereof, this Easement is granted in perpetuity to preserve the Façade. This Easement, to be of the nature and character hereinafter further expressed, shall constitute a binding servitude upon the property of the Grantor subject to the terms contained herein, and to that end Grantor covenants on behalf of itself, its successors and assigns, with Grantee, its successors and assigns, such covenants being deemed to run as a binding servitude, in perpetuity, with the land, to do upon the Property each of the following covenants and stipulations, which contribute to the public purpose of which the tax increment financing funds (“TIF Funds”) have



been or will be expended in that they aid significantly in the preservation of the Façade and help maintain and assure the present and future historic integrity of the Structure.

In furtherance of this purpose, after the Effective Date the Façade shall not be altered, restored, renovated or extended except in a way that would, in the reasonable opinion of Grantee, be in keeping with the historic character of the Structure. Alterations, renovations or improvements to the Façade shall be architecturally compatible with the original function and appearance of the Structure in Grantee's reasonable opinion. Except as otherwise may be specifically set forth herein, in no event may any exterior construction to, or alteration, renovation or redecoration of, the Façade be undertaken without the prior written approval of Grantee as hereinafter provided.

### **C. Baseline Data**

In order to document the present condition of the Façade, to permit Grantor and Grantee to monitor the future condition of the Façade, and to assure compliance with the terms hereof, Grantee has prepared an inventory of the condition of the Façade existing on the Effective Date which is attached hereto as Exhibit C (the "Baseline Data"), which inventory shall include, without limitation, photographs of the Façade and plans, drawings, and specifications related thereto. The identity and condition of each element of the Façade and all related exterior architectural features shall be detailed in the Baseline Data.

In the event Grantor alters, restores or modifies the Façade in accordance with the terms of this Easement, Grantor and Grantee will, together, periodically update the photographs and other documentation in the Baseline Data to reflect the upgraded condition of the Façade. Once the Façade has been restored to a good and sound state of repair, Grantee shall prepare a revised inventory of the Façade's condition to identify and document the condition of each element of the Façade depicted in the original Baseline Data. Once such revised Baseline Data has been completed, such revised Baseline Data shall be accepted by Grantor and Grantee as an accurate depiction of the condition of the Façade as restored.

## **Article II**

### **RESTRICTIONS, COVENANTS AND AGREEMENTS.**

Grantor covenants on behalf of itself, its successors and assigns to do, or refrain from doing, each of the following acts.

#### **A. Maintenance**

Grantor shall maintain the Façade in a good and sound state of repair, as depicted in the Baseline Data, in order to preserve the original architectural character and integrity of the Façade, as the same may be revised from time to time.

#### **B. Long-Term Maintenance Plan**

Grantor is the Declarant of Fascination at New Longview. Grantor intends Fascination at New Longview Owners Association, Inc. (the "Association") to be the successor owner of the

Property. Grantor intends to use funds generated by the Association or provided by a future community improvement district or other special tax district to satisfy its maintenance obligations under Section C of this Article. A failure on the part of a future community improvement district or special tax district to provide such funding does not relieve the then-current owner of the Property of such obligations. All maintenance must comply with Section C of this Article.

**C. Façade and Viewshed Alterations Prohibited Without Grantee's Prior Written Approval**

Exterior changes, alterations, additions and improvements to the Façade as would not, in the reasonable opinion of Grantee, adversely affect the structural soundness, or fundamentally alter the historic character, of the Façade may be made thereto by Grantor upon prior written consent of Grantee, which consent shall be granted or withheld in accordance with the terms of this Easement. The view and visibility of the Façade and the Structure from public rights-of-way, including streets, sidewalks, pedestrian areas, parks and any other public areas where the public is generally allowed to gather or traverse (the "Viewshed Areas"), shall not be blocked or obstructed by the placement or construction, whether temporary or permanent, if any other structure or object within the boundaries of the Property and any other adjacent areas or properties under ownership or control of Grantor, or any affiliated or related persons or entities of Grantor, without the prior written approval of the Grantee. Structures and objects which are prohibited from the Viewshed Areas include, but are not limited to, buildings, structures (whether temporary or permanent), trees, plants, vegetation, poles, flags, banners, awnings, wires, tents, utility boxes and related structures, signage, bill boards, advertising, vehicles, trailers, automobiles (except for parking as allowed pursuant to the City Code), whether fixed to the Structure or standing independently of the Structure. Temporary gatherings, festivals and related events which are allowed by permission of the City pursuant to the City Code or a City-issued permit shall not be treated as prohibited Viewshed Area obstructions pursuant to this paragraph.

**D. Commercial or Industrial Activities**

No industrial or commercial activities shall be conducted on the Property except to the extent permissible under then applicable land use regulations or as set forth in that certain Tax Increment Financing Contract by and between Grantor and Grantee dated as of December 1, 2016, as may be amended or modified.

**E. Signage**

No commercial signs, billboards or advertising shall be displayed on the Façade other than those approved by Grantee in its reasonable discretion. Notwithstanding the foregoing, Grantor and Grantee may mutually elect to affix at the Property such historical and interpretative signs as Grantor shall elect provided the historical or structural integrity of the Façade is not materially affected thereby.

**F. Payment of Taxes**

Grantor shall pay before delinquent all general taxes, special assessments, water charges, sewer service charges and any and all other charges which, if unpaid, would become a lien on the Property. The obligation to pay shall not apply during (i) any period Grantor has (a) timely objected to the amount or validity of the charge, (b) diligently prosecuted the appeal of such assessment or charge, and (c) effectively stayed any enforcement action relating to any such lien against the Property, and (ii) any grace period following the conclusion of such appeal.

**G. Reference on Conveyance**

Grantor agrees (i) to insert a reference to the existence of this Easement in any deed or other legal instrument by which it transfers title to the Property or any interest therein (including a leasehold interest) and (ii) to notify Grantee of any such conveyance or other transfer of interest (providing the name, address and contact information for such transferee) at least ten (10) days prior to the date of any such conveyance or transfer. The failure to include such reference in the legal instrument shall authorize the City to void such transaction upon such declaration by the City Council.

**Article III**

**GRANTOR'S RESERVED RIGHTS**

Grantor reserves for itself, its successors and assigns, all rights as fee owner of the Property, including, without limitation, the right to use and enjoy the Property in any way and for any purpose not prohibited by this Easement or otherwise prohibited by law. Without limiting the generality of the foregoing, Grantor reserves the right to make alterations to any interior features of the Structure without prior consultation with Grantee, except as required by applicable City Code provisions, provided that any such interior alteration shall not materially impair the historical or structural integrity of the Façade or the structural integrity of the Structure.

**Article IV**

**EASEMENT ADMINISTRATION**

**A. Evidence of Compliance**

Grantee acknowledges that the intended uses of the Property are compatible with the purposes of this Easement. For any sale, leasing, refinancing, mortgaging or other business purpose, Grantee shall, within ten (10) business days of request, furnish Grantor or its designee with a statement that (i) provides to the best of Grantee's knowledge, information and belief after reasonable inquiry, Grantor is in full compliance with its obligations under this instrument or (ii) that details any noncompliance with its obligations under this Easement.

**B. Grantee Marker**

Grantee is authorized to maintain one plaque or marker, not to exceed twelve (12) inches by twenty-four (24) inches, at a location mutually agreeable to Grantor and Grantee to afford public notice of (i) the history of the Property, (ii) Grantee's ownership of the right to enforce the terms of this Easement, and (iii) Grantee's name, address and phone number.

**C. Inspection**

Upon prior reasonable written notice to Grantor, its successors and assigns, Grantee shall be entitled to enter upon the Property for the purpose of inspecting the Façade to ensure there are no violations under the terms of this Easement. Any such inspection will be conducted in a manner that will not unreasonably interfere with the uses being made of the Property and Grantor's quiet enjoyment of the same at the time of such entry. Grantee's right to enter upon the Property is solely for the purpose of inspecting the Façade and making determinations regarding enforcement of this Easement. In the absence of evidence of a violation of the terms of this Easement, such inspection will not take place more often than annually.

**D. Initial Work**

Grantee acknowledges that Grantor intends to repair, renovate and alter the Structure ("Grantor's Initial Work") to preserve the physical integrity of the Structure and prevent further deterioration and consents to such work, subject to the terms of this Easement. Grantor hereby agrees that Grantor's Initial Work shall be performed in accordance with plans and specifications submitted by Grantor and approved by Grantee (as may be amended from time to time, "Grantor's Plans"); the approval of which shall be subject to the terms of this Easement.

**E. Requests for Changes and Review of Proposed Work**

Grantor shall notify Grantee promptly of any proposed work to the Façade requiring Grantee's prior approval pursuant to the terms of this Easement. Depending upon the nature of the proposed work, Grantee may request Grantor to furnish a written narrative, a sketch plan, or more detailed plans to enable Grantee to confer further with Grantor. Grantee shall notify Grantor within ten (10) business days following receipt of the initial requested information whether Grantee has sufficient information to complete its review of the proposed work and, if Grantee has sufficient information, whether the proposed work appears permissible and any areas of particular concern. At that time, Grantee shall also (i) furnish Grantor with a description of any additional information Grantee will reasonably require to approve the proposed work, if possible, or (ii) schedule a meeting with Grantor and its professional advisors to discuss and refine the scope of the proposed work to render it eligible for conceptual approval.

Once the scope of the proposed work is identified and Grantee has granted conceptual approval, Grantor shall submit to Grantee a set of plans and a work schedule in sufficient reasonable detail to enable Grantee to review the proposed work. Within twenty (20) business days of receipt of such plans ("Approval Period"), Grantee shall notify Grantor in writing whether it approves such plans, approves such plans with conditions, or disapproves such plans. If Grantee disapproves the plans or approves such plans with conditions, as the case may be, Grantee will identify with specificity its objections to the proposed plans. If the proposed plans

cannot be modified to make them acceptable, Grantee shall furnish Grantor with a written statement of the reasons for denying approval.

**F. Standards for Review**

In exercising its review authority hereunder concerning the Façade, Grantee shall look to the Baseline Data, the original designs for the Façade prepared by architect Henry Hoit and landscape architect George Kessler, Grantee's own reasonable general guidelines for review of alterations to historic resources located in Lee's Summit, Missouri, and Grantor's purpose in creating this instrument. Grantee agrees that any review of proposed changes shall take into account Grantor's budgetary constraints, code compliance, federal, state and local laws, this Easement and the TIF Plan, while maintaining those features of the Façade that make them unique.

All authority vested in the Grantee under this Easement shall be exercised by the City Director of Planning and Development, or his/her designee. If Grantor does not receive an approval of the plans for work for which Grantor has sought Grantee's consent as required under the terms of the Easement within the time period set forth herein, then the plans shall not be deemed approved, and Grantee and Grantor shall meet and negotiate in good faith to reach agreement on changes, modifications and additions to the plans for the work necessary to allow Grantee to approve such work within ten (10) days following the expiration of the Approval Period. If Grantee and Grantor are unable to reach agreement on the changes, modifications and additions to the plans for the work to enable Grantee to approve such work, then Grantor shall have the right to request that the City Council of Lee's Summit, Missouri schedule a hearing to consider the matter and to determine in its reasonable discretion whether Grantee's determination not to approve such work is reasonable. The City Council shall use the same standards as set forth in this Section during its review of the request.

**G. Enforcement Rights of Grantee**

In the event of a violation of any term, condition, covenant, or restriction contained in this Easement, upon prior reasonable written notice to Grantor, Grantee may institute a suit for one or more of the following: to compel the restoration of the Façade to the condition existing prior to the violation; or to enjoin by temporary or permanent injunction such violation. Grantee's failure to act shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this Easement in the future. If any legal action is undertaken by Grantee to enforce this Easement or to enjoin a violation, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with such action.

**H. Notice**

All notices required by this Easement must be in writing. Notices may be given either by hand delivery, mail service or electronic mail. Mailed postal notice must be contained in an accurately addressed, sealed envelope, marked for delivery by first class registered or certified mail, with sufficient prepaid postage affixed and with return receipt requested.

Mailed notice to Grantor shall be addressed to Grantor as follows:

M-III Longview LLC  
4220 Shawnee Mission Parkway, Suite 200 B  
Fairway, KS 66205

or to such other address as Grantor may designate by notice.

Mailed notice to Grantee shall be addressed to:

City of Lee's Summit, Missouri  
Development Services Department  
220 SE Green Street  
Lee's Summit, MO 64063

With a copy to:

David W. Bushek, Chief Counsel of Economic Development  
Law Department  
220 SE Green Street  
Lee's Summit, MO 64063

or to such other address as Grantee may designate by notice.

Notice shall be deemed given and received as of the date of its hand or express mail delivery, or three days following the date of its mailing.

#### **I. Assignment**

Neither Grantor nor Grantee may assign its interest in this Easement without the prior written consent of the other party, which consent may be granted in the other party's reasonable discretion. Subject to the terms and provisions of Article VIII, Paragraph B. below, Grantee may hire or contract for advice and guidance regarding the administration and enforcement ("Grantee's Consultant") of this Easement, at no cost to Grantor except as may be specifically provided herein, which shall not be deemed an assignment and shall not require prior approval of Grantee. Notwithstanding the foregoing, such other party may not enforce the terms of this Easement, such right of enforcement being personal to Grantee, except as may otherwise be provided in this Easement. Any costs incurred by Grantee in connection with any such hiring or contracting shall be at the cost of Grantee, except that if such advice is sought in connection with an alleged violation of this Easement, and a violation by Grantor is established as provided in Article IV, Paragraph G. above, then the reasonable, actual, verified costs incurred by Grantee in connection with any such hiring or contracting shall be reimbursed to Grantee by Grantor.



## **Article V**

### **CASUALTY DAMAGE OR DESTRUCTION; INSURANCE**

#### **A. Insurance**

##### **1. Property Insurance**

Grantor shall keep the Structure insured against loss from the perils commonly insured under fire and extended coverage insurance policy in an amount equal to one hundred percent (100%) of the full replacement cost of the Structure. Such insurance shall (i) be issued by a company or companies reasonably acceptable to Grantee and include an Ordinance or Law Endorsement.

##### **2. Issuance and Renewal of Insurance; Required Terms**

Upon Grantee's acceptance of this instrument, and at least ten (10) days prior to each anniversary date (or if the policy is in force for a term longer than one calendar year, within ten (10) days before expiration of the term of the policy), Grantor shall cause its insurance carrier to furnish to Grantee certificates of insurance policies required hereunder.

#### **B. Casualty Damage or Destruction**

If the Structure is damaged or destroyed by fire, flood, windstorm, tornado, earth movement, or other casualty, Grantor shall notify Grantee in writing within ten (10) days of the damage or destruction. Grantor's notice shall include a statement of any emergency work which has been completed or commenced. In the event of any damage or destruction, Grantor shall make no exterior repairs or reconstruction of any type to the Façade without Grantee's prior written approval, other than temporary emergency work reasonably required to stabilize the Façade to prevent further damage, or to protect public safety.

#### **C. Grantee Rights Upon Determination that Reconstruction or Restoration is Impracticable**

If Grantor determines that restoration or reconstruction of the Structure is impracticable within the limits of available insurance proceeds and other funds reasonably available to Grantor, including funds advanced by Grantee, if any, Grantor may demolish, raze or remove the Structure, or the damaged elements thereof.

#### **D. Review after Casualty Damage or Destruction**

Unless Grantor shall determine that the restoration or reconstruction of the Structure and the Façade is impracticable (in accordance with the provisions of Article V.C. above, Grantor shall establish a schedule for completing the restoration or reconstruction work for the Structure and the Façade in accordance with plans and specifications to be submitted to Grantee for review and approval as set forth in this Easement, and promptly following such approval by Grantee, Grantor shall proceed to restore or reconstruct the Structure and the Façade.

## **Article VI**

### **AMENDMENT, CONDEMNATION AND EXTINGUISHMENT**

#### **A. Amendment**

Grantor and Grantee recognize that circumstances could arise that might justify the modification of certain of the restrictions contained in this Easement. To this end, Grantee shall consider in good faith any amendments to this Easement requested by Grantor provided that they are not inconsistent with the basic purpose of this Easement to protect the Façade. This Easement may be amended in the same manner as other easements under the laws of the State of Missouri.

#### **B. Condemnation**

If all or any part of the Property is threatened to be taken under the power of eminent domain by public, corporate or other authority other than Grantee, or any agency, department or division thereof, or otherwise acquired by such authority through a purchase in lieu of such a condemnation, Grantor shall defend against the condemnation to recover the full value of the Property, together with all incidental and direct damages recoverable under applicable law. Grantor and Grantee shall first satisfy prior claims against the Property and any net expenses reasonably incurred by Grantor and Grantee in connection with the condemnation. Thereafter, Grantor and Grantee shall share the balance of the condemnation proceeds in accordance with their interests in the Property as may be reasonably determined by the parties, or by a court of competent jurisdiction. If Grantor fails to defend against the condemnation to recover the full value of the Property, Grantee shall have the right to institute such defense.

#### **C. Extinguishment**

Grantor and Grantee recognize that circumstances may arise which might make impossible the continued ownership or use of the Property in a manner consistent with the purposes of this Easement, in which event it might become desirable to extinguish this Easement. In the event the parties mutually determine that extinguishment is appropriate and desirable, they may mutually agree to such extinguishment by appropriate action which is in recordable form, or petition a court of competent jurisdiction to extinguish the easement by the parties.

## **Article VII**

### **MORTGAGEE SUBORDINATION AND RIGHTS OF MORTGAGE LENDERS**

#### **A. Subordination of Mortgages**

Grantor and Grantee agree that all mortgages and rights in the Property of all mortgagees are subject to and subordinate at all times to this Easement and the rights of Grantee to enforce this Easement. Grantor hereby warrants and represents that the Property is not currently subject to any mortgages or other liens or, to the extent any such mortgages or other liens exists, Grantor will deliver to Grantee, concurrently with the execution of this Easement, an instrument, acceptable in form and content to Grantee, pursuant to which the holder of any such mortgage or

lien has agreed that all of its rights, titles and interests in the Property are subordinate to this Easement.

**B. Rights of Mortgagees**

**(1) Proceeds on Condemnation or Casualty Loss**

Notwithstanding any mortgage lender's relative priority in relation to this Easement, if a mortgage grants to a mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain or the right to receive insurance proceeds as a result of any insured casualty occurring on the Property, the mortgagee shall have a prior claim to any such proceeds and shall be entitled to receive same in preference to Grantee until the mortgage has been paid off or discharged. This partial subordination of Grantee's relative priority in favor of a mortgage lender's competing claims to direct the application of condemnation or insurance proceeds shall only apply if the mortgage creating such mortgagee's right is recorded before the first discussion of the possibility of condemnation or eminent domain is published in the local news media, in the case of a condemnation, or before occurrence of the insured occurrence in the case of an insured loss.

**(2) Mortgage Obligations Under Easement**

Until a mortgagee or purchaser at foreclosure obtains ownership of the Property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under this Easement; provided, however, that if at any time such mortgagee or purchaser shall operate the Property during the period of its ownership, it shall be obligated to maintain the Property, including without limitation the Façade, in accordance with the terms of this Easement.

**(3) Extinguishment**

Nothing contained herein shall give any mortgagee the right to extinguish this instrument, whether by foreclosure, deed in lieu of foreclosure, or otherwise.

**Article VIII**

**THIRD PARTY RIGHTS NEGATED**

**A. Public Access Prohibited**

This Easement shall not be construed to include a grant to the public of any right to enter the Property for any purpose.

**B. No Third Party Enforcement Rights**

Grantor and Grantee understand that strangers to this Easement may, by virtue of the grant, claim standing to influence Grantee's administration of its rights hereunder. Grantor and Grantee agree, to the maximum extent permissible by law, to deny standing to any persons, nonprofit institutions, or governmental entities to intervene, whether by action at law or equity,

in Grantee's interpretation, administration, and enforcement of its rights, burdens and benefits under this Easement. Nothing contained herein is intended to create any beneficial interest in any party that is not a signatory to this Easement. Under no circumstances does Grantor intend to create, nor does it create, any rights in third parties to intervene in Grantee's exercise of the discretionary powers entrusted to Grantee hereunder.

Grantor and Grantee understand that Grantee has the right to appoint a neutral, unrelated person or entity as a "third party enforcer" to ensure that Grantor complies with the terms of this Easement.

## **Article IX**

### **DEFINITIONS AND MISCELLANEOUS**

#### **A. Use of Pronouns**

The terms "Grantor" and "Grantee", wherever used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and its successors and assigns and the above-named Grantee and its successors and assigns approved by Grantor.

#### **B. Severability**

If any provision of this Easement, or the applicability thereof to any person or circumstance, are found to be invalid, the remainder of the provisions of this Easement and the application of such provisions shall remain in full force and effect.

#### **C. Binding Effect**

The restrictions and covenants contained herein shall be deemed to run with the land in perpetuity as covenants at law and equitable servitudes, and extend to and be binding on Grantor and Grantee and their respective heirs, administrators, devisees, successors, and assigns in perpetuity.

#### **D. Non-Waiver**

The failure of Grantee to exercise any right or remedy granted under this instrument with respect to any particular violation shall not have the effect of waiving or limiting the exercise of such right or remedy with respect to the identical (or similar) type of violation at any subsequent time or the effect of waiving or limiting the exercise of any other right or remedy.

#### **E. Governing Law**

This Easement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Missouri.

**F. Recording and Effective Date**

Grantee shall do and perform at Grantor's expense all acts necessary to the prompt recording of this Easement in the land records of Jackson County, Missouri. Grantor and Grantee intend that the "Effective Date" of this Easement shall be the date this instrument is accepted by Grantee, even though such date is before the date this instrument is recorded among the land records of Jackson County, Missouri.

**G. Entire Agreement**

This Easement reflects the entire agreement of Grantor and Grantee. Any prior or contemporaneous correspondence, understandings, agreements and representations are null and void upon execution of this Easement unless the same are identified and incorporated herein by reference.

TO HAVE AND TO HOLD the said Easement, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said City of Lee's Summit, Missouri its successors and assigns, in fee simple.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Grantor and Grantee (who joins in this deed to evidence its acceptance of the burdens and undertakings imposed hereunder) have executed this Easement as of the day and year first above written.

GRANTOR:

M-III LONGVIEW LLC

By: Platform Investments, LLC, its manager

By: Platform Ventures, LLC, its manager

Witness:

Kate Lester

By: Corey Walker

Name: Corey Walker

Title: Senior Vice President

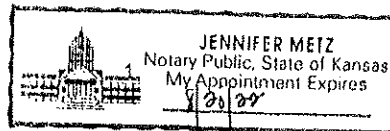
COUNTY OF JOHNSON     )  
STATE OF KANSAS        ), ss:

I hereby certify that on this 31<sup>st</sup> day of October, 2018, before me, the undersigned officer, a notary Public in and for the County and State aforesaid, personally appeared Corey Walker, as Senior Vice President of Platform Ventures, LLC, manager of Platform Investments, LLC, manager of M-III Longview LLC, known to me or satisfactorily proven to be the person whose name is subscribed to the within deed and acknowledged that he executed the same on behalf of said corporation for the purposes therein contained, and further acknowledged that said Easement is its free act and deed or said corporation.

In Witness Whereof, I have set my hand and official seal this 31<sup>st</sup> day of October, 2018.

Jennifer Metz  
Notary Public

My commission expires: 8/20/22



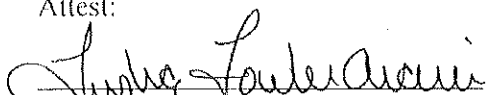



GRANTEE:

CITY OF LEE'S SUMMIT, MISSOURI

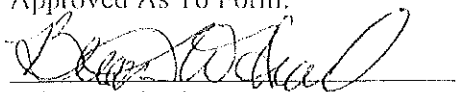
(Corporate Seal)

Attest:

  
Trisha Fowler Arcuri, City Clerk

  
William A. Baird, Mayor

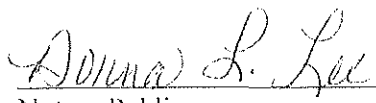
Approved As To Form:

  
Brian Head, City Attorney

COUNTY OF JACKSON     )  
STATE OF MISSOURI     ), ss:

BE IT REMEMBERED, that on this 2nd day of Nov, 2018, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came William A. Baird, the Mayor 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 set my hand and affixed my official seal, the day and year last above written.

  
Notary Public

My commission expires: 02/09/2021



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

**Exhibit A**

**LEGAL DESCRIPTION OF THE PROPERTY**

TOWER PARK COMMERCIAL PHASE 1 – TRACT B

## Exhibit B

### MAP SHOWING LOCATION OF PROPERTY

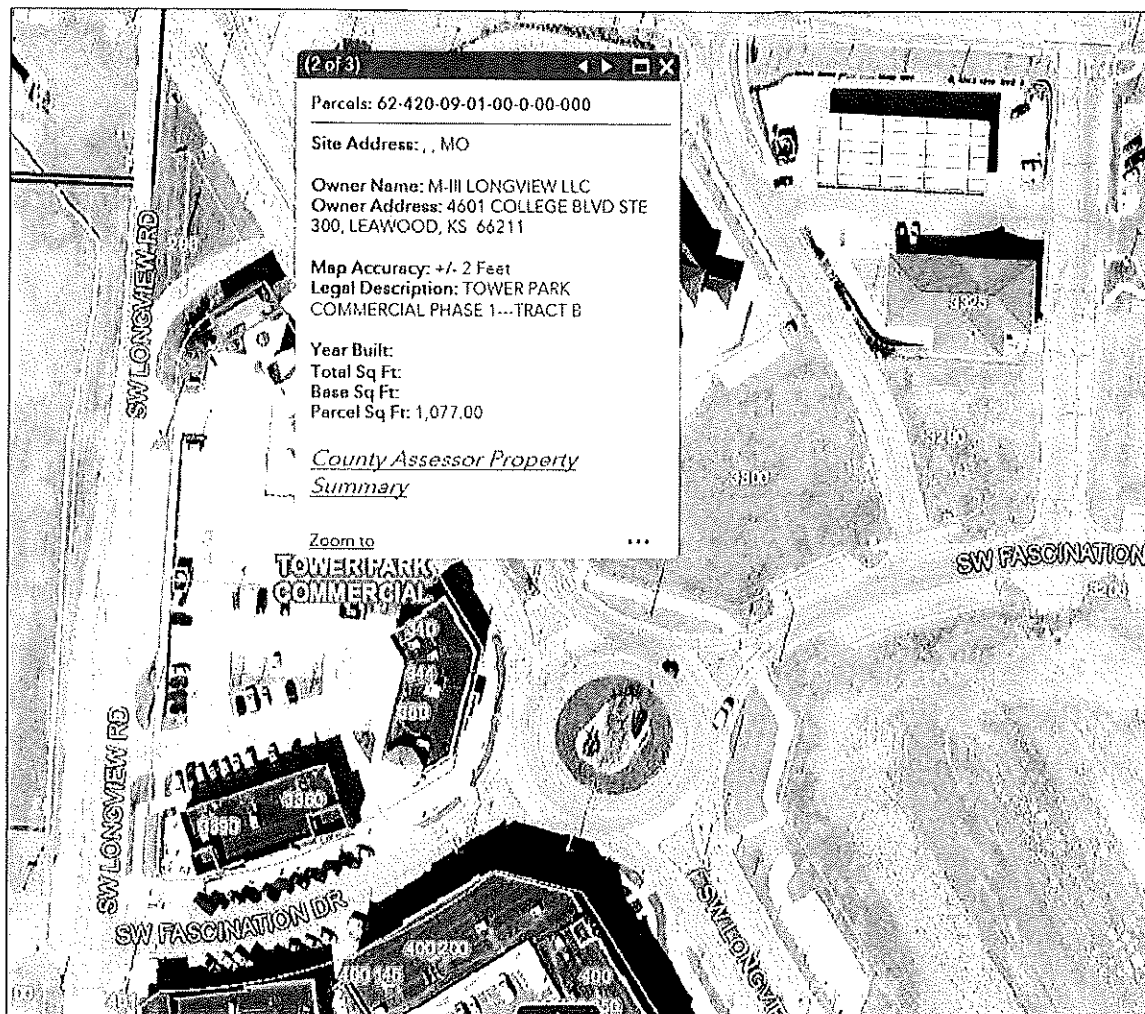
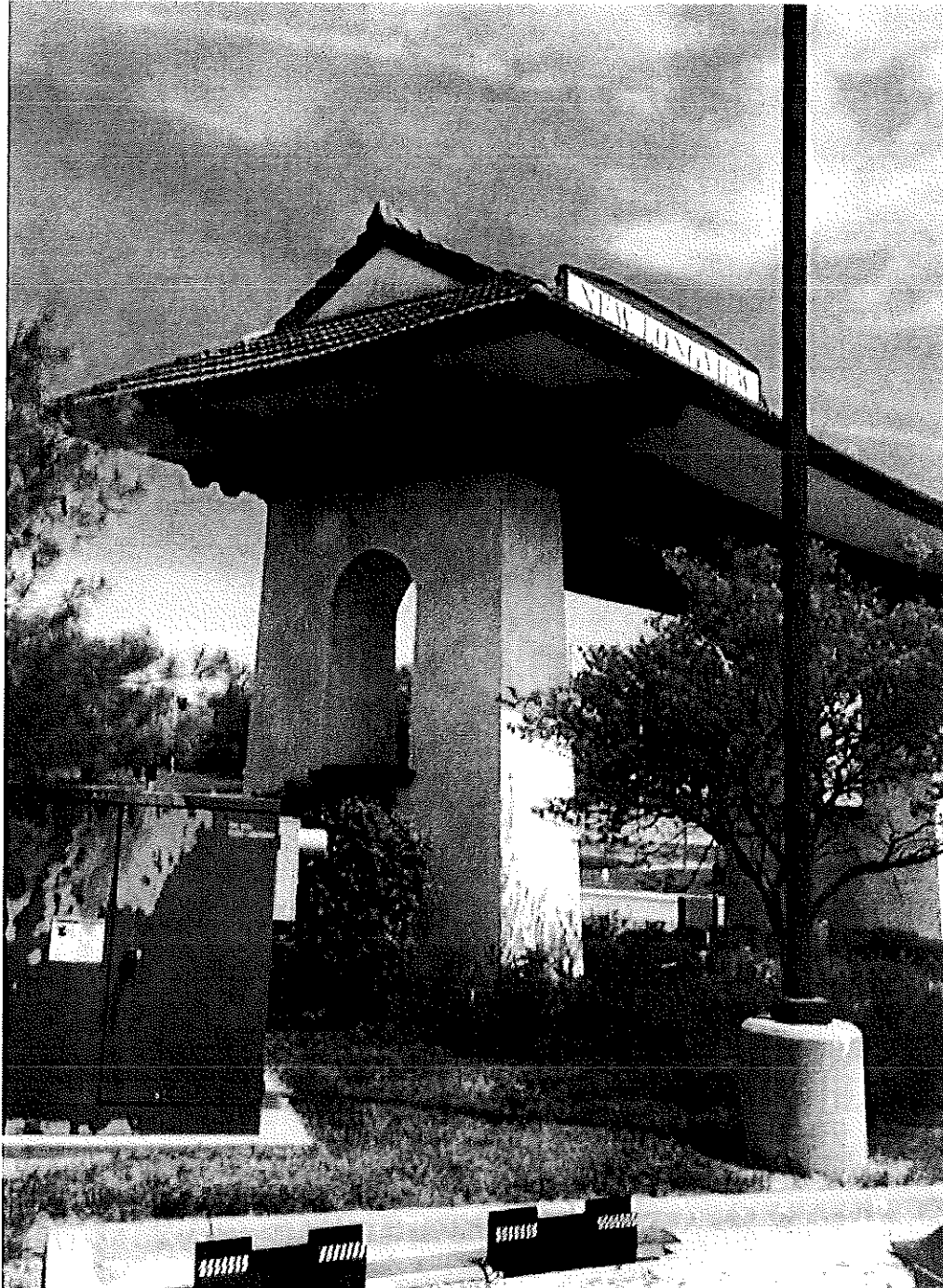


Exhibit C

BASELINE DATA













**EXHIBIT I**

**DECLARATION OF EASEMENTS, COVENANTS, ASSESSMENTS AND RESTRICTIONS OF  
FASCINATION AT NEW LONGVIEW**

*[Attached]*



ELECTRONICALLY RECORDED  
JACKSON COUNTY, MISSOURI  
05/30/2018 01:07:57 PM  
REST FEE: \$ 189.00 57 Pages

INSTRUMENT NUMBER:  
2018E0047118

**ASSURED QUALITY TITLE CO.**

AC111647

**DECLARATION OF EASEMENTS, COVENANTS,  
ASSESSMENTS AND RESTRICTIONS  
OF FASCINATION AT NEW LONGVIEW**

THIS DECLARATION OF EASEMENTS, COVENANTS, ASSESSMENTS AND RESTRICTIONS FOR FASCINATION AT NEW LONGVIEW (this "**Declaration**") is made and entered into as of this 29<sup>th</sup> day of May, 2018 by **M-III Longview LLC**, a Delaware limited liability company ("**Declarant**"), Grantor/Grantee, 4220 Shawnee Mission Pkwy., Suite 200B, Fairway, KS 66205.

**RECITALS**

A. Declarant is the owner of that certain real property located in the City of Lee's Summit, Jackson County, Missouri and legally described on **Exhibit A** attached hereto and by this reference made a part hereof (the "**Property**").

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B. Declarant desires to develop the Property into a mixed-use development collectively comprised of the "Retail Center," which is legally described on **Exhibit A-1** attached hereto and by this reference made a part hereof, and the "Outparcels," which are legally described on **Exhibit A-2** attached hereto and by this reference made a part hereof, each as generally depicted on the Site Plan attached hereto as **Exhibit B** and by this reference made a part hereof, to be named "Fascination at New Longview."

on Page 40

on Page 38

on Page 39

C. Declarant desires to create and impose certain easements, covenants, assessments and restrictions with respect to the Property for the reciprocal benefit of the Property and the present and future owners and occupants of the Property, or any part thereof, as herein provided.

NOW, THEREFORE, Declarant hereby declares that the Property and all parts thereof shall be held, transferred, sold, conveyed, mortgaged, leased, occupied and used subject to the terms, provisions, covenants, conditions, restrictions, assessments and easements set forth in this Declaration, and hereby further declares as follows:

1. **Definitions.** Capitalized terms used in this Declaration shall have the following definitions:

(a) **"Activity Plaza"** shall mean the area shown as the "Activity Plaza" on the Site Plan.

(b) **"Association"** means a Missouri not-for-profit corporation to be duly formed to serve as the Owners' association for the Property.

(c) **"Board"** means the Board of Directors of the Association.

(d) **"Building"** means any building or other enclosed structure located on a Parcel, including appurtenant canopies, loading docks, truck ramps and other outward extensions.

(e) **"Building Envelope Areas"** means the areas of the Property and each Parcel thereon on which Buildings are permitted to be located, as shown on the Parcel Site Plan, and such other areas of the Property as the Declarant shall from time to time designate as being Building Envelope Areas. The Declarant shall have the right, in its sole discretion and without the joinder of any other Owner, from time to time to reconfigure and designate in writing what are and are not Building Envelope Areas and to change Common Areas to Building Envelope Areas, and Building Envelope Areas to Common Areas, provided that areas occupied by then existing Buildings and areas already specifically approved by Declarant for a proposed Building may not be changed to Common Areas without the prior written consent of the applicable Owner.

(f) **"Business Day"** means a day or days which is/are neither a Saturday, Sunday, nor holiday observed by the United States Postal Service.

(g) **"CAM Paying Parcel"** or **"CAM Paying Outparcel"** (as the context requires) means any Parcel: (i) upon which any Building has been issued a certificate of occupancy (permanent or temporary) by the City, or (ii) upon which no Building has been issued a certificate of occupancy (permanent or temporary) by the City after the first six (6) months following conveyance by the Declarant to the first subsequent owner thereof.

(h) **"City"** means the City of Lee's Summit, Missouri.

(i) **"Common Areas"** means all portions of the Property, exclusive of Building Envelope Areas, including, without limitation, the Common Area Tracts, parking areas (including the Parking Garage, if constructed and available for the use of all Owners and their respective Permittees), private streets, driveways, curb cuts, access roads, drive aisles, sidewalks, landscaped areas, entry features, storm water detention and retention areas, drainage facilities, BMP's, parking lot and private street lighting, perimeter retaining walls, and other common use areas within the Property, whether or not shown on the Site Plan; provided, however, Declarant shall have the right, in its sole discretion and without the joinder of any other Owner, from time to time to designate in writing what are and are not Common Areas and to change Common Areas to Building Envelope Areas, and Building Envelope Areas to Common Areas, provided that areas occupied by then existing Buildings and areas already specifically approved by Declarant for a proposed Building

may not be changed to Common Areas without the prior written consent of the applicable Owner. Subject to Section 8 hereof, Common Areas shall include Building Envelope Areas on each Parcel prior to the commencement of construction of a Building on the Parcel.

(j) **"Common Area Tracts"** means all Common Areas that are separately platted as tracts and not intended for construction of a Building thereon. The Common Area Tracts are initially contemplated to include the Activity Plaza and Shared Access Drive. The Declarant shall have the right, in its sole discretion and without the joinder of any other Owner, from time to time to add Common Area Tracts or convert Common Area Tracts to Common Area or Building Area, provided that such areas as so converted shall then be subject to the provisions of this Declaration applicable thereto.

(k) **"Customer Parking Area"** means that part of the Common Area designated as "Customer Parking" as shown on the Site Plan, the location of which may be changed from time to time by Declarant in its reasonable discretion.

(l) **"Declarant"** means M-III Longview LLC, a Delaware limited liability company, or such person or entity as Declarant may expressly designate as being the successor Declarant by written notice to all Owners.

(m) **"Declaration"** means this Declaration of Easements, Covenants, Assessments and Restrictions for Fascination at New Longview and all Exhibits attached hereto, as amended or modified from time to time.

(n) **"Defaulting Owner"** shall have the meaning provided in Section 25 hereof.

(o) **"Design Criteria"** means Declarant's design criteria for the Property, which may be specified, revised or amended from time to time by Declarant in its reasonable discretion.

(p) **"Detention Area"** means any stormwater detention or retention areas within a Common Area Tract, as required by the City, and all pipes, ponds, structures, and plantings therein.

(q) **"Employee Parking Area"** means that area (if any) designated as "Employee Parking" as shown on the Site Plan, the location of which may be changed from time to time by Declarant in its reasonable discretion by notice to the Owners and Occupants.

(r) **"Governmental Authorities"** means any federal, state, county, city or local governmental or quasi-governmental authorities, entity or body (or any departmental agency thereof).

(s) **"Governmental Requirements"** means all applicable laws, statutes, ordinances, codes, rules, regulations, orders and applicable judicial decisions or decrees, as presently existing and as hereafter amended of any Governmental Authorities.

(t) **"No Build Area"** means those portions (if any) of the Parcels not within the area designated as the "Building Envelope Area" detailed on the Parcel Site Plan, which No Build Areas



have been designated by Declarant as the areas upon which no buildings or similar above-ground structures shall be constructed. Declarant may change the No Build Area on a Parcel with the consent of the Owner of the Parcel (which consent shall not be unreasonably conditioned, withheld or delayed) provided such change does not create a material obstruction, affect access to the Parcel or any other Parcel, or unreasonably modify the traffic pattern to, from or within the Property.

- (u) **"Non-Defaulting Party"** shall have the meaning provided in Section 25 hereof.
- (v) **"Occupant"** means any Person (including, without limitation, an Owner) from time to time entitled to the use and occupancy of any portion of a Building on the Property under an ownership right or under any lease, sublease, license, concession, or other similar agreement.
- (w) **"Offices"** means a space within a Building which provides services to consumers or customers, including but not limited to financial institutions, real estate brokerages, stock brokerage and title companies, travel and insurance agencies, and medical, dental and legal clinics as well as an office used for general office purposes.
- (x) **"Outside Sales Area"** means any area used by a Permittee for temporary or permanent sales, displays, customer service or seating and/or storage purposes, which areas are located outside of the structure of such Permittee's store or restaurant.
- (y) **"Outparcel(s)"** shall mean and refer to, individually and collectively, the Parcels shown as Lots 7, 43, 44, 52, 53 and 54 on the Site Plan and legally described on Exhibit A-2, and comprising a portion of the Property.
- (z) **"Outparcel CAM Expense"** shall have the meaning provided in Section 17 hereof.
- (aa) **"Owner"** means the record owner or owners of any Parcel, including Declarant, and any person or entity that shall subsequently own all or any portion of said Parcel.
- (bb) **"Parcel"** or **"Parcels"** means, as the context requires, any tract or parcel within the Property (including both the Outparcels and Retail Center), or lots as platted or subsequently platted or replatted, upon which a Building is or may be located.
- (cc) **"Parcel Site Plan"** means the detailed site plan of each Parcel depicting locations of buildings, parking lots, trees, landscaping, utilities, Building Envelope Area, No Build Areas, and other design features, which has been approved in writing by Declarant.
- (dd) **"Parking Areas"** shall include the Customer Parking Area, the Employee Parking Areas and all other parking lot areas on the Property, as shown on the Parcel Site Plans.
- (ee) **"Parking Garage"** shall mean any elevated parking structure (whether consisting of one or more levels above grade) constructed in the Retail Center. In the event any Parking Garage is open and available for use by all Owners and their Respective Permittees in the Retail Center, such Parking Garage shall constitute a Common Area and Parking Area for purposes of this Declaration, and the cost to maintain such Parking Garage as provided herein shall constitute

a Retail Center CAM Expense. In the event any Parking Garage is constructed solely for the use of the Owner of the Parcel on which such Parking Garage is constructed or for the use of less than all Owner's in the Retail Center, the cost to maintain the same shall be borne solely by such Owner or Owners entitled to use the Parking Garage and shall not constitute a Retail Center CAM Expense with respect to any Owner(s) not entitled to use the Parking Garage.

(ff) **"Perimeter Common Areas"** shall mean the Common Areas located within the areas shown as "Perimeter Common Areas" on the Site Plan (including any areas therein that are outside of the boundary of the Property, but required to be maintained by Declaration pursuant to an agreement with any governmental or other entity). The Declarant shall have the right, in its sole discretion and without the joinder of any other Owner, from time to time to reconfigure and designate in writing what are and are not Perimeter Common Areas, provided that such Perimeter Common Areas serve the Property or any portion thereof.

(gg) **"Permittees"** means all Occupants and the owners, officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of such Occupants insofar as their activities relate to the intended development, use and occupancy of the Property. Persons engaged in civic, public, charitable or political activities within the Property (except as part of their regular day-to-day activities as an Occupant) shall not be considered Permittees, and any person engaging in the activities set forth below shall not be considered Permittees:

- (i) Exhibiting any placard, sign or notice.
- (ii) Distributing any circular, handbill, placard or booklet.
- (iii) Soliciting memberships or contributions for private, civic, public charitable or political purposes.
- (iv) Parading, picketing or demonstrating.
- (v) Failing to follow Rules and Regulations established by the Declarant or the Association relating to the use and operation of the Retail Center.

(hh) **"Person"** means any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

(ii) **"Property"** means the real property described on Exhibits A attached hereto and incorporated by reference herein, collectively comprised of the Retail Center and Outparcels.

(jj) **"Proportionate Share"** shall have the meaning provided in Section 17 hereof.

(kk) **"Reconciliation"** shall have the meaning provided in Section 17 hereof.

(ll) **"Recording Office"** means the office of the Register of Deeds of Jackson County, Missouri or such other office where documents are to be recorded for purposes of giving official public notice with respect to real property located in Jackson County, Missouri.

(mm) **"Restaurant"** means any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off-site consumption; provided, however, notwithstanding anything contained herein to the contrary, neither a grocery store or similar operation, a health foods store, a convenience store, nor a concession operation for a movie theatre shall be deemed a Restaurant.

(nn) **"Retail Center"** shall mean and refer to the area shown as the "Retail Center" on the Site Plan and legally described on Exhibit A-1 and comprising a portion of the Property.

(oo) **"Retail Center CAM Expense"** shall have the meaning provided in Section 17 hereof.

(pp) **"Rules and Regulations"** shall have the meaning set forth in Section 35(g) hereof.

(qq) **"Shared Access Drive"** shall mean the common access drive shown as the "Shared Access Drive" on the Site Plan.

(rr) **"Site Plan"** means the Fascination at New Longview Site Plan attached hereto as Exhibit B. Declarant reserves the right, in its reasonable discretion, to modify the Site Plan from time to time with the prior written consent of each Owner of a Parcel which may be directly and adversely affected by such modification (such consent not to be unreasonably withheld, conditioned or delayed).

(ss) **"Turnover Date"** means the earlier of: (i) the date all of the Buildings to be constructed on all of the Parcels have received permanent certificates of occupancy, or (ii) the date the Declarant, in its discretion, declares as being the Turnover Date under this Declaration; *provided, however*, the Declarant shall have the right to declare the Turnover Date for certain (but not all) purposes under this Declaration at any time.

2. **Conversion of Building Envelope Areas to Common Areas.** Those portions of each Parcel designated by Declarant as Building Envelope Areas under the terms of this Declaration (excluding any vacant Parcel) which are not actually occupied by buildings or permanent improvements as from time to time are constructed by the Owner of such Parcel shall automatically convert to and become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein. The Declarant and the applicable Owner may designate those areas outside of the Building Envelope Area to be maintained as Common Areas hereunder and those areas to be maintained by an Owner by agreement in writing so long as such designation does not increase the amount of any CAM Expense allocated to another Owner.

3. **Grant of Easements.** Subject to the provisions of this Declaration, Declarant hereby grants and conveys the following easements:

(a) Outparcels. Declarant, for itself, and its successors and assigns, hereby grants the following easements for the benefit of the Outparcels and Common Area Tracts contiguous to any of the Outparcels, and the Owners and Permittees of each:

(i) Access. A perpetual, nonexclusive easement in, to, over and across the Common Areas on the Outparcels, including without limitation the Shared Access Drive, for the purpose of vehicular and pedestrian ingress and egress over established and designated roads, driveways, parking lot aisles, pedestrian walkways and circulation elements between the public streets and perimeter roads and access ways and each Outparcel and Common Area Tract located thereon.

(ii) Drainage. A perpetual, nonexclusive easement in, to, over and through the drainage patterns and systems as are established from time to time by Declarant within the Common Areas on the Outparcels, for reasonable surface drainage purposes. Declarant hereby declares, creates and establishes a perpetual, non-exclusive right-of-way and easement to dispose of storm water into each Detention Area, to and through the point of entry into right-of-way or drainage easements of the City or to any subsequent location, taking into consideration reasonable storm drainage capacities. Declarant shall have the right, at its sole cost and expense, to designate and change the location or nature of any Detention Area, so long as Declarant provides access to and drainage facilities of an equal capacity and such modification is approved by the applicable Governmental Authorities.

(iii) Retaining Wall. A perpetual, nonexclusive easement in, over and through the perimeter of the Outparcels for one or more retaining walls, as generally depicted on the Site Plan or Parcel Site Plan, for the construction, maintenance, repair and replacement of any retaining wall. Declarant shall have the right to change, or authorize a change in, the location of any retaining wall in connection with the construction of improvements on the Outparcels. All replacement, modification, relocation, repair and maintenance of such retaining wall shall be performed in such a manner as does not unreasonably interfere with the normal and usual operation of the affected Outparcel(s), its customers, employees and invitees, customer and employee parking or the operation of the Outparcels for their permitted use.

(iv) Utilities. Such perpetual, non-exclusive easements through, under, across and on the Common Areas on each Outparcel, as are reasonably necessary, without unreasonably interfering with the Owner's use of its Outparcel, to provide rights-of-way for utility services to each Owner's respective Outparcel and access to the gas, electrical, communications, water, storm and sanitary sewer lines and systems and other utilities for the benefit of each Owner's Outparcel, and right-of-way for lines connecting therewith, provided that the location of utilities and any change in the location of utilities are subject to the written approval of the Declarant. Declarant acknowledges that the location of some now or hereafter existing utility facilities and easements will be changed in connection with the construction of improvements on the Outparcels, subject to the requirements set forth below. Such utility easements shall include the right to replace, modify, relocate, repair and maintain such utility lines and facilities as may be reasonably necessary to enjoy the

benefit of the utility easements granted by this Declaration, but nothing contained in this sentence shall in any way modify or limit any party's obligations set forth in this Declaration. All replacement, modification, relocation, repair and maintenance of such utility lines shall be performed in such a manner as does not unreasonably interfere with the normal and usual operation of the affected party's tenants, customers, employees and invitees, customer and employee parking or the operation of each Outparcel for its permitted use. Any party making such replacements or repairs shall promptly restore all paving, landscaping and any other improvements disturbed thereby to its former condition as near as possible at its sole cost and expense. Nothing herein contained shall restrict or prevent Declarant from granting to any public utility, public body or other public authority, or to any third party, easements over or under any Outparcel then owned by Declarant, for public utility lines and facilities, water, storm and sanitary sewer lines and conduits and facilities therefor, or for drainage or slope purposes, or for other utility-related purposes so long as such easements do not adversely affect the parking area in, or the use of, any other Outparcel.

(b) Retail Center. Declarant, for itself, and its successors and assigns, hereby grants the following easements for the benefit of the Retail Center and Common Area Tracts therein or immediately contiguous thereto, and the Owners and Permittees of each:

(i) Parking. A perpetual, nonexclusive easement in, to, over and across the Parking Areas in the Retail Center for the purpose of parking vehicles of Permittees on the Parking Areas, without charge to Permittees for such parking; provided, however, that such easement shall be limited to purposes connected with or incidental to the use of the Parking Areas in the Retail Center for commercial, retail, restaurant, office and shopping purposes. Each Occupant shall cause its employees to park in the Employee Parking Area (as such area [if any] may be designated by Declarant from time to time). In the event that any such Occupant shall fail to cause an employee to park in the Employee Parking Area, such Occupant may be charged Twenty and No/100 Dollars (\$20.00) for each violation of this covenant. Declarant in its sole reasonable discretion may adjust the amount to be charged to reflect inflation and any change in circumstance by notice in writing to the Owners.

(ii) Access. A perpetual, nonexclusive easement in, to, over and across the Common Areas in the Retail Center for the purpose of vehicular and pedestrian ingress and egress over established and designated roads, driveways, parking lot aisles, pedestrian walkways and circulation elements between the public streets and perimeter roads and access ways and each Parcel and Common Area Tract in the Retail Center.

(iii) Drainage. A perpetual, nonexclusive easement in, to, over and through the drainage patterns and systems as are established from time to time by Declarant within the Common Areas in the Retail Center, for reasonable surface drainage purposes. Declarant hereby declares, creates and establishes a perpetual, non-exclusive right-of-way and easement to dispose of storm water into each Detention Area, to and through the point of entry into right-of-way or drainage easements of the City or to any subsequent location, taking into consideration reasonable storm drainage capacities. Declarant shall have the

right, at its sole cost and expense, to designate and change the location or nature of any Detention Area, so long as Declarant provides access to and drainage facilities of an equal capacity and such modification is approved by the applicable Governmental Authorities.

(iv) Retaining Wall. A perpetual, nonexclusive easement in, over and through the perimeter of the Retail Center for one or more retaining walls, as generally depicted on the Site Plan or Parcel Site Plan, for the construction, maintenance, repair and replacement of any retaining wall. Declarant shall have the right to change, or authorize a change in, the location of any retaining wall in connection with the construction of improvements on the Property. All replacement, modification, relocation, repair and maintenance of such retaining wall shall be performed in such a manner as does not unreasonably interfere with the normal and usual operation of the affected Parcel(s) in the Retail Center, its customers, employees and invitees, customer and employee parking or the operation of the Parcels for their permitted use.

(v) Utilities. Such perpetual, non-exclusive easements through, under, across and on the Common Areas on each Parcel in the Retail Center, as are reasonably necessary, without unreasonably interfering with the Owner's use of its Parcel, to provide rights-of-way for utility services to each Owner's respective Parcel and access to the gas, electrical, communications, water, storm and sanitary sewer lines and systems and other utilities for the benefit of each Owner's Parcel, and right-of-way for lines connecting therewith, provided that the location of utilities and any change in the location of utilities are subject to the written approval of the Declarant. Declarant acknowledges that the location of some now or hereafter existing utility facilities and easements will be changed in connection with the construction of improvements on the Retail Center and each Parcel therein, subject to the requirements set forth below. Such utility easements shall include the right to replace, modify, relocate, repair and maintain such utility lines and facilities as may be reasonably necessary to enjoy the benefit of the utility easements granted by this Declaration, but nothing contained in this sentence shall in any way modify or limit any party's obligations set forth in this Declaration. All replacement, modification, relocation, repair and maintenance of such utility lines shall be performed in such a manner as does not unreasonably interfere with the normal and usual operation of the affected party's tenants, customers, employees and invitees, customer and employee parking or the operation of each Parcel for its permitted use. Any party making such replacements or repairs shall promptly restore all paving, landscaping and any other improvements disturbed thereby to its former condition as near as possible at its sole cost and expense. Nothing herein contained shall restrict or prevent Declarant from granting to any public utility, public body or other public authority, or to any third party, easements over or under any Parcel then owned by Declarant, for public utility lines and facilities, water, storm and sanitary sewer lines and conduits and facilities therefor, or for drainage or slope purposes, or for other utility-related purposes so long as such easements do not adversely affect the parking area in, or the use of, any other Parcel in the Retail Center.

(c) Reservation. Declarant reserves to itself and the Association (upon the formation thereof) the non-exclusive right, privilege and easement to use and go upon the Common Areas on



the Property (including Common Areas on the Parcels) for the respective purposes for which the Common Areas are designed and to perform Declaration's (and the Association's) obligations under this Declaration, without payment of any fee or other charge being made and without the consent or approval of any Owner, Occupant or Permittee.

4. **Prohibition Against Owners Granting Certain Easements.** Without Declarant's express written consent, no Owner (other than Declarant) or Occupant shall grant an easement or easements of the type set forth in this Declaration for the benefit of any property other than the Parcels.

5. **Construction.**

(a) All construction activities performed or authorized by Declarant or by an Owner within the Property shall be performed in compliance with all Governmental Requirements and all Rules and Regulations. All construction shall utilize new materials and shall be performed in a good, safe, workmanlike manner and in accordance with the plans and specifications approved by Declarant.

(b) Any construction activities (including the staging thereof) performed or authorized by Declarant or an Owner shall not:

(i) Cause any unreasonable increase in the cost of constructing improvements upon another Owner's Parcel.

(ii) Unreasonably interfere with construction work being performed on any other part of the Property.

(iii) Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Property by any other Owner or its Permittees.

(iv) Cause any Building located on another Parcel to be in violation of any Governmental Requirements.

(c) Declarant may from time to time designate in the Rules and Regulations particular rules and regulations pertaining to construction (including, without limitation, construction entrances and staging areas) and each Owner and Occupant shall abide by such Rules and Regulations, provided Declarant provides reasonable written notice of such Rules and Regulations to all Owners and provided further that such Rules and Regulations are not discriminatory.

6. **Building Improvements.**

(a) Except as may be otherwise expressly agreed upon in writing by Declarant and the Owner of the Parcel with respect to items to be constructed by Declarant, at its expense, on a Parcel, each Owner, at its expense, shall construct and install all improvements to be constructed and installed on the Owner's Parcel, including, without limitation, Buildings, Parking Areas,

parking lot lighting, irrigation, landscaping, and water, electrical, and other utilities to service the Building(s) and Common Areas on the Parcel.

(b) Building(s) shall only be located within the Building Envelope Areas designated on the Parcel Site Plan and at such location as is approved by Declarant in writing. Each Owner of a Parcel within the Property (excepting Declarant) shall promptly commence construction of any Building on its Parcel after conveyance of such Parcel from Declarant to the Owner, and shall diligently complete such Building(s) within a reasonable time following commencement of construction.

(c) In the event that the Owner shall fail to commence on-site construction within one (1) year after the acquisition of the Parcel from Declarant, Declarant shall have the option exercisable at any time thereafter until the Owner actually commences on-site construction, to purchase the Parcel at the original purchase price of the Parcel sold by the Declarant. This option shall be exercised by Declarant by giving written notice to the Owner and the closing shall occur within thirty (30) days after the date thereof. Conveyance of the Parcel to Declarant shall be by special warranty deed, free and clear of all mortgages, mechanic's liens, judgment liens and similar monetary liens. Real property taxes and installments of special assessments shall be pro-rated (on a per diem basis) between buyer and seller as of the date of such closing.

(d) No improvements shall be constructed, erected, expanded, or altered on the Parcels until the plans and specifications for same (including site layout, exterior buildings materials and colors, irrigation, utility layout, and landscaping) have been first submitted to and approved in writing by Declarant. All buildings shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible with the other Buildings on the Property and shall in all respects be approved in writing by Declarant. No building walls or footings shall encroach from one Parcel onto another Parcel without prior written approval from Declarant and the Owner of the other Parcel. The design and construction of all Buildings and other improvements on the Property shall be first class quality. Each Parcel Owner agrees to cause its architect to work in good faith with Declarant and its designated architect so that the Buildings to be erected and constructed will have an overall cohesive and related architectural continuity and will be in harmony with the balance of the Property improvements.

(e) Preliminary civil engineering and architectural plans and specifications for all proposed improvements shall first be submitted to the Declarant in triplicate and shall include:

- (i) a statement regarding the proposed use of the improvements;
- (ii) a grading plan showing existing contour grades (in 1-foot contour intervals), finished spot grades, building finished floor elevations, and the location of all proposed and existing improvements. Existing and finished grades shall be shown at Parcel corners and at corners of proposed improvements. Lot drainage provisions, including any storm sewer locations, shall be indicated as well as cut and fill details if any changes are to occur in the finished lot contour at any exterior boundary of the Parcel. All grading and drainage

provisions shall fully comply with applicable Governmental Requirements as may be in effect from time to time;

(iii) a site plan showing the location of all existing and proposed improvements, including, without limitation, parking areas, parking lot lighting, trash receptacle locations, fire lanes, site ingress and egress, and the location of all delivery or pick-up doors, personnel doors, entry doors, exterior glass or windows, and any other openings in the buildings;

(iv) all exterior elevations, building materials and colors for proposed improvements;

(v) a detailed landscaping and irrigation plan; and

(vi) such other information as may be requested by the Declarant.

The Declarant may, in its reasonable discretion, permit plans and specifications to be submitted in scheduled phases and may, but shall not be required to, give conditional or partial approvals to plans and specifications; provided, however, that no permitted delay in the submission of plans or specifications and no conditional or partial approval shall in any way obligate the Declarant to any subsequent or additional approval, waiver or variance.

7. **Mechanic's Liens.** In the event any mechanic's lien is recorded against the Parcel of one Owner or any Common Area Tract as a result of services performed or materials furnished for the use of another Owner, such other Owner shall cause such lien to be discharged no later than fifteen (15) business days after the entry of a final judgment (after all appeals) for the foreclosure of such lien. Notwithstanding the foregoing, upon request of the Owner whose Parcel is subject to such lien, the Owner permitting or causing such lien to be recorded agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent the Owner permitting or causing such lien to be recorded from contesting the validity thereof in any manner such Owner chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Owner shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien of record. The Owner permitting or causing such lien shall defend, protect, indemnify and hold harmless the Declarant and each other Owner and its respective Parcel from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien.

8. **Undeveloped Parcels.** During such time and to the extent as any Parcel in the Property shall not be improved with a completed Building(s), completed parking surfaces, or other completed similar improvements, the Owner (including the Declarant) of such Parcel, at the Owner's sole cost and expense and not as a CAM Expense, shall maintain such Parcel (or portion

thereof) in a sightly condition, regularly mown, free of silt, brush, trash and other debris. The provisions of this Section shall apply notwithstanding the fact that such Parcel may constitute a "CAM Paying Parcel" pursuant to Section 1(g)(ii) above (in which event the Owner of such Parcel shall be required to pay the CAM Expense allocable to such Parcel as otherwise provided herein, in addition to performing the foregoing obligations).

9. **Buildings.** Each Owner shall maintain, or cause to be maintained, at its sole cost and expense (except as otherwise expressly provided in this Declaration), its Parcel, and the Buildings located on its Parcel, in a sightly, safe condition and state of repair in conformance with the standards of other first class retail centers in the Greater Kansas City metropolitan area and in compliance with all Governmental Requirements. Each Parcel shall be maintained and operated by each Owner and/or Occupant in accordance with this Declaration, including the Rules and Regulations. No Owner or Occupant shall place, permit or construct any buildings, fences, walls, barriers, partitions or other improvements on any No Build Area or any Parking Area that would (i) unreasonably interfere with access to any other Parcel, or (ii) interfere with the right of the Permittees to park on the Parking Areas, without the prior written approval of Declarant, or (iii) interfere with or prevent any Owner from exercising the easement rights granted hereunder.

10. **Payment of Utilities.** Except as otherwise provided herein, each Owner shall make arrangements for and pay for, or cause to be paid, all charges for all utility services whether public or private supplied to Building(s) and Common Areas on its respective Parcel, including, without limitation, water and electricity for irrigation for the lawn areas and landscaping in the Common Areas and electricity for the parking lot lights in the Common Areas.

11. **Maintenance:** Declarant and/or the Owner's of each Outparcel or Parcel in the Retail Center (as applicable) shall maintain and/or provide maintenance services with respect to the Buildings and Common Areas on the Outparcels and in the Retail Center, respectively, as follows:

(a) **Outparcels.**

(i) **By Declarant as an Outparcel CAM Expense:** Declarant shall provide the following maintenance and other services (collectively, the "**Outparcel CAM Services**") with respect to: (1) the Perimeter Common Areas bordering the Outparcels and any Common Area Tracts within or immediately contiguous any Outparcel(s), including without limitation, the Shared Access Drive, and (2) the Activity Plaza, as Outparcel CAM Expenses:

(1) Maintaining, mowing, irrigating, weeding and trimming all lawn and landscaped areas, including without limitation, the replacement of trees, shrubs and other landscaping;

(2) Controlling the use of and maintaining in good condition and repair, the irrigation systems for the Perimeter Common Areas bordering the Outparcels and within the Activity Plaza, including without limitation, the replacement of any

irrigation controller therein and the cost of all utilities for irrigation of such Perimeter Common Areas and the Activity Plaza; and

(3) Striping and maintaining the Shared Access Drive in a level, smooth and even covered condition with the type of surfacing materials originally installed or such substitutes as shall in all respects be equal in quality or durability, including any temporary repair of potholes, curb breakage, and damage to paving, and thereafter the permanent repair of the same;

(4) Causing the Perimeter Common Areas, Shared Access Drive and Activity Plaza to be kept reasonably clean and free of dirt, rubbish, debris, snow and ice; and

(5) With respect to the Activity Plaza, conducting special events including, without limitation, festivals, fairs, live concerts and other entertainment events.

At least thirty (30) days prior to the beginning of each calendar year, Declarant will provide the Owners of the Outparcels with a detailed estimated budget of the expenses expected to be incurred as Outparcel CAM Expenses under this Section for the upcoming calendar year.

(ii) By Owner (including Declarant as an Owner): Each Outparcel Owner shall, at its sole cost and expense, provide and/or perform the following maintenance services with respect to its respective Outparcel:

(1) operating, maintaining, and repairing, at its sole cost and expense, in a clean, sightly and safe condition, the following items (if any) located on its Outparcel: any exterior shipping/receiving dock area; any truck ramp or truck parking area; any recycling center or similarly designated area for the collection of items intended for recycling; and its Building lighting; and

(2) operating, maintaining, and repairing, at its sole cost and expense, in a clean, sightly and safe condition its respective Building, including the exterior and interior of such Building, all areas included in Building Envelope Areas, and all Common Areas on such Outparcel, all in that state of condition and repair generally found in first-class retail centers of similar size, including without limitation the following:

(A) Striping and maintaining Parking Areas in a level, smooth and even covered condition with the type of surfacing materials originally installed or such substitutes as shall in all respects be equal in quality or durability, including any temporary repair of potholes, curb breakage, and damage to paving, and thereafter the permanent repair of the same;

(B) Maintaining, mowing, irrigating, weeding, and trimming all lawn and landscaped areas in the Common Areas and Building Envelope Areas;

(C) Controlling the use of and maintaining in good condition and repair, the irrigation systems for the Common Areas and Building Envelope Areas.

(D) Providing security for the Common Areas on such Owner's Outparcel, if in the reasonable judgment of such Owner, security is desirable or necessary. Such Owner shall not be liable in any way to Declarant or any other Owner, Occupant, Permittee or any other party for any lack of, failure, interruption, or defect in any such security, whether furnished by such Owner or third parties;

(E) Causing all trash containers on or serving such Outparcel to be emptied on a sufficiently regular basis; and

(F) Causing the Common Areas and all sidewalks on such Outparcel to be kept reasonably clean and free of dirt, rubbish, debris, snow and ice.

(b) Retail Center:

(i) By Declarant as Retail Center Cam Expenses: Declarant shall provide the following maintenance and other services (the "**Retail Center CAM Services**") in the Retail Center (including any Common Area Tracts therein, including without limitation the Activity Plaza) as Retail Center CAM Expenses:

(1) Maintaining, mowing, weeding and trimming all lawn and landscaped areas in the Perimeter Common Areas bordering the Retail Center and in the Activity Plaza, including without limitation, the replacement of trees, shrubs and other landscaping in the Perimeter Common Areas bordering the Retail Center and in the Activity Plaza;

(2) Controlling the use of and maintaining in good condition and repair, the irrigation systems for the Perimeter Common Areas bordering the Retail Center and in the Activity Plaza, including without limitation, the replacement of any irrigation controller therein and the cost of all utilities for irrigation of the Perimeter Common Areas bordering the Retail Center and in the Activity Plaza;

(3) Striping and maintaining Parking Areas in a level, smooth and even covered condition with the type of surfacing materials originally installed or such substitutes as shall in all respects be equal in quality or durability, including any temporary repair of potholes, curb breakage, and damage to paving, and thereafter the permanent repair of the same;

(4) Maintaining, mowing, weeding, and trimming all lawn and landscaped areas in the Common Areas and Building Envelope Areas, *provided, however*, any replacement of trees, shrubs, and other landscaping in the Common Areas located on a Parcel (other than any Common Area Tract) or in any Building Envelope Areas, as may be necessary from time to time as determined by Declarant, shall be performed by and at the expense of the applicable Owner;

(5) Controlling the use of and maintaining in good condition and repair, the irrigation systems for the Common Areas and Building Envelope Areas, *provided, however*, the replacement of any irrigation controller for a Common Area (other than any Common Area Tract) or Building Envelope Area on a Parcel shall be performed by and at the expense of the applicable Owner and all utilities for irrigation of such Common Areas and Building Envelope Areas on the Parcel shall be paid for by the Owner of the Parcel.

(6) Providing security for the Common Areas, if in the reasonable judgment of the Declarant, security is desirable or necessary. Declarant shall not be liable in any way to any Owner, Occupant, Permittee or any other party for any lack of, failure, interruption, or defect in any such security, whether furnished by Declarant or third parties;

(7) Causing all trash containers on the Common Areas to be emptied on a sufficiently regular basis;

(8) Causing the Common Areas and all sidewalks to be kept reasonably clean and free of dirt, rubbish, debris, snow and ice; and

(9) With respect to the Activity Plaza, conducting special events including, without limitation, festivals, fairs, live concerts and other entertainment events.

At least thirty (30) days prior to the beginning of each calendar year, Declarant will provide the Owners with a detailed estimated budget of the expenses expected to be incurred as CAM Expenses under this Section for the upcoming calendar year.

(ii) By Owner (including Declarant as an Owner):

(1) Notwithstanding anything contained herein to the contrary, each Owner shall have the obligation to operate, maintain, and repair, at its sole cost and expense, in a clean, sightly and safe condition, the following items (if any) located on its Parcel: any exterior shipping/receiving dock area; any truck ramp or truck parking area; any recycling center or similarly designated area for the collection of items intended for recycling; and its Building lighting.



(2) Each Owner shall have the obligation to operate, maintain, and repair, at its sole cost and expense, in a clean, sightly and safe condition their respective Building, including the exterior and interior of such Building, all areas included in Building Envelope Areas (other than lawn and landscaping to be maintained by Declarant under Section 11(b)(i) above), and the maintenance and replacement of those items which are expressly provided in Section 11(b)(i) above as being the responsibility of the Owner, and any Common Areas that are the subject of an agreement between Declarant and the Owner or the Occupant that such Common Area is to be maintained by the Owner or Occupant, all in that state of condition and repair generally found in first-class retail centers of similar size. Each Owner, at its sole expense, shall have the right to maintain the lawn and landscaping in its Building Envelope Area to a higher standard than the standard established by the Declarant under Section 11(a) above.

(c) By Agreement: Notwithstanding the foregoing provisions of this Section, Declarant and the respective Owners and Occupants may by agreement divide responsibilities for sidewalks, drives, lighting, landscaping and sprinkler system maintenance in a manner that is most efficient for the benefit of the Owners and Occupants so long as such agreements do not increase any CAM Expenses charged to any other Owner or Occupant. Without limiting the foregoing, Declarant shall have the right, without the consent or joinder of any other party or Owner, to enter into an agreement with any Owner pursuant to which such Owner agrees to perform all or some component(s) of the Outparcel CAM Services or Retail Center CAM Services (as applicable) at such Owner's sole cost and expense, in which event the square footage of such Owner's Parcel shall be subtracted from the denominator when determining the Proportionate Share of the other Outparcel Owners or Owners of Parcels in the Retail Center with respect to the services to be performed by such Owner.

12. Use Restrictions and Obligations. No Owner shall use or permit the use of all or any portion of its Parcel (including any Outparcel and/or Parcel in the Retail Center) in violation of any of the foregoing:

(a) The uses of the Parcels shall be consistent with this Declaration and consistent with and complimentary to uses by the other Permittees of the Property as an upscale mixed use center.

(b) Any use of a Parcel not permitted by the terms of the applicable zoning classification is not allowed.

(c) Without limiting the generality of the foregoing, the following uses shall not be permitted: (i) any of the uses set forth on Exhibit D attached hereto and made a part hereof by this reference (the "**Existing Restrictions**"), or (ii) any "Future Restriction" (as defined in Section 13 below); or (iii) any restrictions set forth in any recorded document or agreement affecting the Parcels (as applicable) as of the date of this Declaration or prior to the sale of any Parcel by Declarant, including without limitation the following:

(i) That certain Restrictive Covenant dated March 18, 2009 between Gale Communities, Inc., a Missouri corporation and McDonald's Real Estate Company, a Delaware corporation, recorded in the recorder's office of Jackson County, Missouri on March 18, 2010 as Instrument Number 2010E0025708;

(ii) That certain Shopping Center Easement Agreement and Declaration of Covenants, Conditions and Restrictions of New Longview Commercial Park dated March 16, 2010 between Gale Communities, Inc., a Missouri corporation and McDonald's Real Estate Company, a Delaware corporation, recorded in the recorder's office of Jackson County, Missouri on March 18, 2010 as Instrument Number 2010E0025708; and

(iii) That certain Use and Plan Approval Agreement dated December 13, 2007 between Missouri CVS Pharmacy, L.L.C., a Missouri limited liability company and Gale Communities, Inc., a Missouri corporation, recorded in the recorder's office of Jackson County, Missouri on December 19, 2017 as Instrument Number 2007E0159631.

(d) No Occupant shall use, or permit the use of, Hazardous Materials on, about, under or in its Parcel or the balance of the Property, except for customary cleaning supplies used in reasonable quantities in the ordinary course of its usual business operations conducted thereon, and gasoline, diesel, and related products in the event an Occupant is a convenience store offering fuel products, and except for other Hazardous Materials that are used in an Occupant's medical-related practice, and any such use shall at all times be in compliance with all Environmental Laws. Each Occupant agrees to defend, protect, indemnify and hold harmless each other Occupant from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Occupant (except in compliance with all Environmental Laws), whether or not in the ordinary course of business. For the purpose of this Declaration, the term (i) "**Hazardous Materials**" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "**Environmental Laws**" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

(e) In the event that any Parcel Owner uses or permits all or any portion of its Parcel to be used for any use or purpose in violation of any provision of this Section 12 or Section 13 below, such Owner shall immediately cease the use of its premises for the prohibited use within two (2) days of written notice thereof. In the event such prohibited use is not ceased within such 2-day period, Declarant shall have all rights and remedies available to it at law or in equity, including but not limited to, injunctive relief. Declarant may, in its sole discretion and without the joinder of any other party or Owner, waive or modify the use restrictions and obligations, when in its reasonable determination, such waiver or modification, is not detrimental to the Property.

(f) The use of any Outside Sales Areas shall be subject to Declarant's prior written approval, which may be withheld by Declarant in its sole discretion, and shall be subject to the limitations set forth in this Declaration.

13. **Future Restrictions.** Declarant may from time to time restrict or grant exclusive use rights for Owners and Occupants in order to provide for a harmonious mix of uses and to attract compatible Owners and Occupants, provided that no such future restrictions or exclusive use rights ("**Future Restrictions**") shall adversely apply to any Parcel previously conveyed by the Declarant without the prior written consent of the Owner of the Parcel. As such Future Restrictions are approved by Declarant, Declarant shall amend **Exhibit E** to this Declaration and record such amendment with the Recording Office to place such Future Restrictions of record and shall provide a copy of such amendment to all Owners. Subject to the first sentence of this Section, all such Future Restrictions shall be binding on all Owners and Occupants as if set forth herein. Notwithstanding the foregoing, no Future Restriction shall in any event materially and substantially abrogate or impair the right of any Owner or Occupant to continue a specific use approved in writing by the Declarant without the written consent of the Owner or Occupant so affected, which such consent shall not be unreasonably withheld or delayed.

14. **Signs.** All signs erected on the Property shall be professionally fabricated and installed, shall be of a design suitable for first-class retail centers in the Greater Kansas City metropolitan area, and shall be subject to the prior written approval (not to be unreasonably withheld or delayed) of the Declarant in accordance with its Design Criteria and at all times in conformity with Governmental Requirements. All signs must be kept in good order and repair at all times by the Owner of the Parcel, including, without limitation, immediately repairing or replacing failed lighting components to keep the sign fully illuminated and replacing damaged sign panels.

15. **Rights to Deny Access.** Declarant shall have the right to eject from the Common Area any persons not authorized, empowered or privileged to use the Common Area pursuant to this Declaration. Nothing herein shall prevent Declarant from restricting access to those portions of the Common Area located on such party's Parcel for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by any person or the public at large; provided however, that prior to closing off any portion of the Common Areas, as herein provided, the party closing such Common Area shall give written notice of its intention to do so to all other Owner/Occupants, and shall coordinate such closing with said Owners/Occupants so that no unreasonable interference with the use or the operation of the Property by the other Owner/Occupants, their customers, employees and invitees shall occur.

16. **Reconfiguration of the Property.** Subject to a requirement that any reconfiguration will be conducted in a manner that minimizes any interference with access and parking for the Parcels:

(a) Declarant may redevelop and alter the configuration of the Property without the prior consent or approval of any Owner(s) (other than the Owner of any Parcel to be

reconfigured or altered) provided such reconfiguration does not unreasonably adversely affect any other Owner/Occupant.

(b) Declarant shall be permitted to reconfigure the Parking Areas; provided that any reconfiguration or reduction be in conformity with Governmental Requirements, and provided such reconfiguration does not unreasonably and adversely affect any Owner or Occupant.

(c) Declarant shall be permitted to modify the Building Envelope Areas and any No Build Area without the prior consent or approval of any Owner(s) (other than the Owner on whose property the Building Envelope Areas and No Build Area lies).

17. **Common Area Maintenance Charges.**

(a) Outparcels: Commencing on the date each Outparcel becomes a CAM Paying Outparcel, the Owner of such CAM Paying Outparcel shall pay Declarant its Proportionate Share of the cost of the Outparcel CAM Services (the "**Outparcel CAM Expense**") during each calendar year in equal monthly installments, on or before the first day of each month, based on the Annual Estimate and subject to an annual reconciliation as set forth in Section 17(d) below. Each Outparcel Owner's Proportionate Share of Outparcel CAM Expenses shall be payable as follows:

(i) For purposes of this Section 17(a), "**Proportionate Share**" for a CAM Paying Outparcel shall be a fraction, the numerator of which is the square footage of the applicable CAM Paying Outparcel, and the denominator of which is the total square footage of all of the then CAM Paying Outparcels.

(ii) For purposes of this Declaration, the Outparcel CAM Expense shall include all real estate taxes and assessments and insurance premiums payable with respect to any Common Area Tracts within or immediately contiguous to the Outparcels, including without limitation the Shared Access Drive.

(iii) Declarant shall endeavor to provide each Outparcel Owner, at least 30 days prior to January 1 of each year following the date such Owner's Outparcel becomes a CAM Paying Outparcel, a statement setting forth the estimated Outparcel CAM Expenses for such calendar year (the "**Annual Estimate**") together with a calculation of such Owner's Proportionate Share of such estimated CAM Expenses. Declarant may adjust such Annual Estimate from time to time during any calendar year based on its revised estimate of anticipated CAM Expenses. In the event Declarant fails to provide such Annual Estimate, then until receipt thereof, each Owner shall pay its Proportionate Share of the Outparcel CAM Expenses as provided herein based on the prior year's actual Outparcel CAM Expenses. Declarant may perform maintenance services as provided in this Declaration using its own personnel or retain a professional property management company to fulfill such functions, and pay such management company a fee that shall be no more than the reasonable and customary fee charged by professional commercial property managers of similar properties in the Greater Kansas City metropolitan area, and such manager's fee

shall be included in the Outparcel CAM Expense. Outparcel CAM Expense shall include personnel to provide and supervise the maintenance services (including wages, employment taxes unemployment taxes, fringe benefits and uniforms). If Declarant does not retain a professional property management company, Declarant shall be entitled to include in Outparcel CAM Expense an administrative fee that shall be ten percent (10%) of the other Outparcel CAM Expenses. Neither the Declarant nor any of its owners, managers, or agents shall be liable to any Owner or other party for failure to establish or maintain any reserves or if any such reserves are inadequate.

(b) Retail Center: Commencing on the date each Parcel in the Retail Center becomes a CAM Paying Parcel, the Owner of such CAM Paying Parcel shall pay Declarant its Proportionate Share of the cost of the Retail Center CAM Services (the "**Retail Center CAM Expense**") during each calendar year in equal monthly installments, on or before the first day of each month, based on the Annual Estimate and subject to an annual reconciliation as set forth in Section 17(d) below. The Proportionate Share of Retail Center CAM Expenses payable by the Owners of Parcels in the Retail Center during each calendar year shall be payable as follows:

(i) For purposes of this Section 17(b), "**Proportionate Share**" for a CAM Paying Parcel shall be a fraction, the numerator of which is the square footage of the CAM Paying Parcel, and the denominator of which is the total square footage of all of the then CAM Paying Parcels in the Retail Center.

(ii) For purposes of this Declaration, the Retail Center CAM Expense shall include all real estate taxes and assessments payable with respect to: (a) any Common Area Tracts within or immediately contiguous to the Outparcels, including without limitation the Activity Plaza, and (b) the Parking Garage (if constructed and available for the use of all Owners and their respective Permittees).

Declarant shall endeavor to provide each Parcel Owner in the Retail Center, at least 30 days prior to January 1 of each year following the date such Owner's Parcel becomes a CAM Paying Parcel, a statement setting forth the estimated Retail Center CAM Expenses for such calendar year (the "**Annual Estimate**") together with a calculation of such Owner's Proportionate Share of such estimated CAM Expenses. Declarant may adjust such Annual Estimate from time to time during any calendar year based on its revised estimate of anticipated CAM Expenses. In the event Declarant fails to provide such Annual Estimate, then until receipt thereof, each Owner shall pay its Proportionate Share of the appropriate CAM Expenses as provided herein based on the prior year's actual CAM Expenses. Retail Center CAM Expense shall include all expenses incurred by Declarant in maintaining, repairing, replacing, managing, insuring, and operating the Common Areas in the Retail Center and all services and obligations incidental to the operation of the Retail Center, plus a reasonable reserve for future major Retail Center CAM Expenses, such as, without limitation, Parking Areas and Detention Areas. Retail Center CAM Expense shall not include any expenses associated with leasing or selling Parcels of the Retail Center, any expenses incurred by Declarant to review, revise and approve building plans and related matters or to exercise any reconfiguration or other similar rights of Declarant set

forth in this Declaration, any casualty losses to the Common Areas covered by insurance or recovered in full from any Occupant or third party, or any expenses incurred for maintenance to any Building or any part of the Retail Center which is not part of the Common Areas except as otherwise expressly authorized herein. Declarant may perform such services using its own personnel or retain a professional property management company to fulfill such functions, and pay such management company a fee that shall be no more than the reasonable and customary fee charged by professional commercial property managers of similar properties in the Greater Kansas City metropolitan area, and such manager's fee shall be included in the Retail Center CAM Expense. Retail Center CAM Expense shall include personnel to provide and supervise the maintenance services (including wages, employment taxes unemployment taxes, fringe benefits and uniforms). If Declarant does not retain a professional property management company, Declarant shall be entitled to include in Retail Center CAM Expense an administrative fee that shall be ten percent (10%) of the other Retail Center CAM Expenses. Neither the Declarant nor any of its owners, managers, or agents shall be liable to any Owner or other party for failure to establish or maintain any reserves or if any such reserves are inadequate.

(c) The Owner of each CAM Paying Outparcel or CAM Paying Parcel in the Retail Center, as applicable, shall pay its Proportionate Share of Outparcel CAM Expense or Retail Center CAM Expense, as appropriate, during each calendar year as follows:

(i) Each Owner shall remit, or cause to be remitted, payment of its estimated Proportionate Share of Outparcel CAM Expense or Retail Center CAM Expenses (as applicable) to the Declarant monthly, on or before the first day of each calendar month, as otherwise provided herein. Any amounts not paid within fifteen (15) days shall constitute a lien on the applicable Parcel or Outparcel as provided in Section 25 below. In addition, the Declarant may impose the following for any amounts due and payable under this Declaration and not paid within such fifteen (15) day period (all of which shall constitute a part of the lien):

(ii) A late charge equal to 10% of the amount due;

(iii) Interest at the Prime Rate as published in The Wall Street Journal, plus three percent (3%) (300 basis points), from the end of the 15-day period until paid in full; and

(iv) Reasonable attorney's fees and court costs incurred in the event that an attorney is employed to collect any amount due under this Declaration.

(d) Within ninety (90) days after the end of each calendar year, Declarant shall provide each Owner of a CAM Paying Parcel or CAM Paying Outparcel with a statement ("**Reconciliation**") together with supporting invoices and other materials setting forth the actual Retail Center CAM Expense or Outparcel CAM Expense (as appropriate) paid by Declarant for the preceding calendar year, and the share of the aggregate thereof that is attributable to each Owner's Parcel or Outparcel. The Reconciliation shall separately identify all major cost categories. If the amount paid with respect to a Parcel or Outparcel for such calendar year shall have exceeded

the share allocable to such Parcel or Outparcel, Declarant shall refund by check the excess to the Owner owning such Parcel or Outparcel at the time the Reconciliation is delivered (or credit the overpayment to subsequent amounts to be paid by the Parcel or Outparcel Owner), or if the amount paid with respect to a Parcel or Outparcel for such calendar year shall be less than the share allocable to such Parcel or Outparcel, the Owner of such Parcel or Outparcel at the time such Reconciliation is delivered shall pay the balance of such Owner's share to Declarant, with such amount to be paid in each case within twenty (20) days after receipt of such Reconciliation. Declarant shall use reasonable efforts to provide the Reconciliation within ninety (90) days after the end of the calendar year, but the failure to do so shall not relieve an Owner from payment of any shortfall unless that same is not provided by the end of the calendar year following the year the expenses were incurred.

(e) Each Owner of a CAM Paying Parcel or CAM Paying Outparcel, at its initial expense, shall have the right, exercisable within 90 days of receipt of the Reconciliation, to cause an audit to be performed of the Retail Center CAM Expense or Outparcel CAM Expenses (as appropriate) and the Owner's Proportionate Share as submitted by the Declarant. In the event such audit reveals an underpayment by the Owner, the Declarant shall be entitled to bill the Owner for any deficiency and such payment shall be made as provided herein and the cost of the audit shall be at the auditing Owner's expense. In the event such audit reveals an overpayment by the Parcel or Outparcel Owner, the Declarant shall refund such overpayment within 30 days of receipt of the results of such audit and the cost of said audit shall be (i) at the Declarant's sole expense if the audit (after the Reconciliation has been made) reveals an overpayment of more than five percent (5%) of the total year's Retail Center CAM Expenses or Outparcel CAM Expenses (as appropriate), or (ii) at the auditing Owner's expense if the audit (after the Reconciliation has been made) reveals an overpayment of five percent (5%) or less of the total year's Retail Center CAM Expenses or Outparcel CAM Expense (as appropriate). All audits shall be performed by a certified public accountant or a firm of certified public accountants. No auditors may be compensated based on a contingent fee or bonus arrangement.

#### **18. Cross-Indemnification by Owners.**

(a) Subject to Section 17 hereof, each Owner hereby indemnifies and agrees to hold harmless the Declarant and each other Owner from and against any and all losses, judgments and damages (actual and punitive) incurred or suffered by such indemnified parties to the extent arising or resulting from a breach by the indemnifying Owner or its respective tenants, and such tenants' customers and employees of any of their obligations under this Declaration, including the reasonable costs and expenses incurred by the Declarant and indemnified Owner in pursuing any claim related to such breach, which indemnified costs include, but are not limited to, reasonable attorney's fees incurred by the Declarant and indemnified Owner.

(b) Each Owner hereby agrees to defend, indemnify, and hold harmless the Declarant and the other Owners from and against all claims, liabilities, actions, judgments, responsibilities and damage of every kind and nature to the extent arising from or relating to (i) the presence and or removal of Hazardous Materials located on or discharged from the indemnifying party's Parcel, unless Hazardous Materials were released or located on the respective Parcel by the Declarant or



by an Owner or Occupant of another Parcel or by an owner or occupant of a tract outside of the Property, and (ii) the failure of the improvements located on the respective Parcel to comply with any applicable Governmental Requirements, including, without limitation, the Americans with Disabilities Act.

19. Insurance.

(a) Declarant shall maintain comprehensive commercial general liability in an amount not less than One Million Dollars (\$1,000,000) per occurrence with a general aggregate limit not less than Two Million Dollars (\$2,000,000) and with an umbrella policy in an amount not less than Three Million Dollars (\$3,000,000) per occurrence in excess of the aforescribed liability coverages.

(b) Each Owner shall keep in force with an insurance company authorized to do business in the State of Missouri, and which has a Best's Insurance Guide Rating of AVIII or better (an "Authorized Carrier"), a broad-form policy of commercial general liability insurance, including property damage, with respect to its Parcel and the business operated by it and any other Occupant of its Parcel, in which the limits of coverage shall not be less than One Million Dollars (\$1,000,000) per occurrence with a general aggregate limit not less than Two Million Dollars (\$2,000,000) and with an umbrella policy in an amount not less than Three Million Dollars (\$3,000,000) per occurrence in excess of the aforescribed liability coverages. Such amounts may be adjusted from time to time in the reasonable judgment of Declarant, in which case Declarant shall notify the Owner/Occupants in writing and which adjustments shall not be discriminatory. Such policy shall also insure the performance by an Owner of the indemnity agreement set forth in Section 18 and the waiver of subrogation provided in Section 20. In addition, the policy shall also name Declarant and any other person designated by Declarant (such as a property manager) and in privity with it, as an additional insured.

(c) Each Owner shall keep the improvements located on its Parcel insured by an Authorized Carrier for one hundred percent (100%) of the full replacement value thereof against all catastrophes and casualties included in the classification "All Risks of Physical Loss" with endorsements for sprinkler leakage and loss or damage caused by earth movement and surface water or flood, if such endorsements are available in the geographic area where the Parcels are located. Each Owner shall provide and maintain adequate builder's risk insurance for any period of construction.

(d) Each Owner policy shall require not less than fifteen (15) days written notice to the additional insured(s) if the policies are cancelled, not renewed, coverage limits are reduced or any other material modification is proposed. Upon reasonable request from time to time made, Declarant shall be furnished a certificate of insurance from the other Owners complying with the foregoing requirements. Declarant shall have the right to require an increase in such coverages required above based on inflation, claims history, and changes in risk factors. If the Occupant is other than the Owner, the Occupant may provide such insurance consistent with the requirements of an Owner.

20. **Waiver of Subrogation.** Each Owner, including the Declarant ("**Releasing Owner**"), shall release and hereby releases and waives for itself, and each person claiming by, through or under it each other Owner ("**Released Owner**") from any loss or damage to all property of such Releasing Owner located on the Releasing Owner's Parcel, which loss or damage is of the type covered by the insurance required to be maintained by the Releasing Owner under this Declaration, irrespective either of any negligence on the part of the Released Owner which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self-insurance reserve. Each Owner agrees to cause, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release herein above given.

21. **Casualty.** In the event any of the Buildings in the Property are damaged by fire or other casualty (whether insured or not), the Owner upon whose Parcel such Building is located shall, subject to Governmental Requirements and/or insurance adjustment delays, promptly remove the debris resulting from such casualty and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the Building so damaged to a complete unit in the same or improved condition as existed prior to such casualty, such repair or restoration to be performed in accordance with all provisions of this Declaration, or (ii) erect another Building in such location, such construction to be performed in accordance with all provisions of this Declaration (including approval of all plans and specifications therefore), or (iii) subject to Declarant's written approval, which may be withheld in Declarant's sole discretion, demolish the damaged portion and/or the balance of such Building and restore the cleared area to either a hard surface condition or a landscaped condition. If the Owner fails to remove all debris resulting from such damage or destruction or take such action as is necessary to place the property in a safe condition within seventy-two (72) hours following such damage or destruction, or if such debris cannot be removed or property returned to a safe condition within such 72-hour period, to commence such removal or commence such other action as necessary to return the Parcel to a safe condition and to thereafter diligently pursue same until completion, Declarant shall have the right (but not obligation) to do so, upon prior written notice to the Owner, whereupon the Owner shall be liable to pay Declarant upon demand, the reasonable cost and expense incurred by Declarant. In the event that the Owner shall fail to commence to repair or restore the Building so damaged to a complete unit in the same condition as existed prior to such casualty or as may otherwise be approved by Declarant in writing within one (1) year of the fire or other casualty and substantially complete construction within twenty-four months thereafter, Declarant shall have the option at any time thereafter until the Owner shall commence to repair or restore the Building or thereafter if the Owner shall fail to complete the same within twenty-four months thereafter, to purchase the Parcel at the then "**Fair Market Value**". Fair Market Value shall be determined by an appraisal by a duly-licensed and experienced real estate appraiser. The Declarant's costs of the appraisal, anticipated real estate commissions, title insurance, normal buyer's closing costs (other than financing costs), prorated real estate taxes, and, if reconstruction has not commenced, the costs of demolition, removal of property and costs to ready the Parcel for sale shall all be deducted from the Fair Market Value. The option shall be exercised by Declarant by giving written notice to the Owner and the closing shall occur within thirty (30) days from the date thereof. Title to the Parcel

shall be conveyed to Declarant by special warranty deed, free and clear of all mortgages, mechanic's liens, judgment liens, and similar monetary liens.

22. **Condemnation.**

(a) **Owner's Right To Award.** Nothing herein shall be construed to give any Owner or Declarant any interest in any award or payment made to another Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof with respect to any part of the Parcels, the award attributable to the land and improvements of such portion of the Common Area shall be payable only to the Owner of the Common Area affected, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

(b) **Collateral Claims.** All other Owners may file collateral claims with the condemning authority for their losses which are separate and improvements taken from another Owner.

(c) **Tenant's Claim.** Nothing in this Section shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

(d) **Restoration of Common Areas.** The Owner of the portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area on the Owner's Parcel as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair without contribution from any other Owner.

(e) **Preservation of Easements.** Except to the extent they burden the land taken, no easement or license set forth in this Declaration shall expire or terminate based solely upon such taking, except for that portion of the easement or license taken.

23. **Real Estate Taxes.**

(a) Except as otherwise expressly provided in this Declaration, each Owner shall pay, or cause to be paid, when due, all real estate taxes and assessments upon their respective Parcel which shall be assessed, levied, imposed or become a lien thereon.

(b) Each Owner shall, within 30 days of a written request by the Declarant, provide proof of payment of all taxes and assessments then due and owing on such Owner's property.

(c) In the event an Owner shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) to be paid by such party to be excessive or illegal, such party shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Section shall require such Owner to pay any such real estate tax or assessment as long as the amount or validity thereof shall be contested in good faith, and in the opinion of counsel for the Declarant,

the Owner's Parcel shall not thereby be in danger of being forfeited. A recovery of tax assessed against an Owner's Parcel shall be the property of such Owner.

(d) In the event an Owner shall fail to pay real estate taxes and assessments upon its Parcel, and has not contested appropriately such taxes or assessments, Declarant or any other Owner, after written notice to the non-paying Owner, shall have the right to pay such taxes and assessments, together with interest and penalties thereon, and shall be entitled to reimbursement for any sums so paid from the non-paying Owner.

24. **Estoppel Certificate.** Declarant agrees that, within 15 days after written request of an Owner, Declarant will issue to such other party, to a prospective purchaser or to any actual or prospective mortgagee of such Owner, an estoppel certificate stating: (i) whether, to the knowledge of Declarant, any default exists under this Declaration by the requesting Owner beyond applicable notice and cure periods, and if there are known defaults, specifying the nature thereof; and (ii) whether, to Declarant's knowledge, this Declaration has been assigned, modified or amended in any way (or if it has, then stating the nature thereof).

25. **Defaults, Right to Enforce.**

(a) The failure to observe or perform any of the covenants, conditions or obligations of this Declaration within thirty (30) days after the issuance of a notice by the Declarant or another Owner (each a "**Non-Defaulting Party**") specifying the nature of the default claimed shall constitute a material default and breach of this Declaration by the non-performing Owner (the "**Defaulting Owner**").

(b) In addition to any other right given at law or in equity, any Non-Defaulting Party shall have the right, but not the obligation, following the expiration of any applicable cure period to cure such default by the payment of money or the performance of some other action for the account of and at the expense of and after written notice to, the Defaulting Owner; *provided, however*, that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Parcel of the Defaulting Owner (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Owner. Each Owner shall be responsible for the default of its Occupants. In the event any Non-Defaulting Party shall cure a default, the Defaulting Owner shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest as provided in Section 17(c) herein, within ten (10) days after receipt of written demand therefor, together with reasonable documentation supporting the expenditures made and showing such expenditures as paid in full.

(c) Costs, expenses and interest accruing and/or assessed pursuant to subsection (b), including all reasonable attorneys' fees, costs and expenses of collecting and enforcing the remedies provided herein shall constitute a lien against the Defaulting Owner's Parcel. Such lien

shall attach and take effect only upon recordation of a claim of lien in the Recording Office by the Non-Defaulting Party making such claim. The claim of lien shall conform to Missouri law and shall include the following:

- (i) The name of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Non-Defaulting Party;
- (iii) An identification of the Owner of the Parcel or interest therein against which the lien is claimed;
- (iv) A description of the Parcel against which the lien is claimed;
- (v) A description of the amount owed and (if applicable) work performed which has given rise to the claim of lien and a statement itemizing the amount thereof.

(d) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Owner hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Owner or Person of any of the terms, covenants or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to the Declarant or an Owner under this Declaration or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

(e) The rights to enforce this Declaration are reserved exclusively to the Declarant, the Owners and their successors and assigns.

26. **Relationship to City Ordinances.** The provisions of this Declaration shall be valid and enforceable even if such provisions are more restrictive than the City's ordinances or other applicable laws. The parties entitled to enforce this Declaration shall also have the right to enforce, in a private civil action under this Declaration, all City ordinances and other laws that are applicable to the Property, even if the City or other applicable governmental authority chooses not to enforce the same. All such City ordinances and other applicable laws that are in effect from time to time shall be automatically incorporated into this Declaration by this reference.

27. **Formation of Association.**

(a) Upon the Turnover Date (including the Turnover Date for any limited purposes as determined by Declarant as provided in this Declaration), Declarant shall cause the Association to

be duly formed, at which time all of the rights, powers, duties and obligations of the Declarant hereunder shall be transferred to and assumed by the Association.

(b) The Association shall have one class of membership which shall consist of the Owners of the Parcels and every such Owner shall be a member.

(c) Each member shall have one vote for each square foot of land contained within the Parcel for which the member is the Owner. When more than one person is an Owner of any particular Parcel, all such persons shall be members and the votes for such Parcel shall be exercised as they, among themselves, shall determine, but in no event shall more than the specified number of votes be cast with respect to such Parcel. During any period in which a member is in default in the payment of any assessment levied by the Association under this Declaration, the voting rights of such member shall be suspended until such assessment is paid in full.

(d) Subject to the foregoing, the Association shall be the sole judge of the qualifications of each Owner to vote and their rights to participate in its meetings and proceedings.

(e) The Board shall consist of five individual directors, who shall be elected by the members of the Association from among its membership. No Parcel may have more than one individual serving as a director at any time. Where the Owner of a Parcel is a trust or entity, the Owner may designate an individual who may serve as the Parcel's representative on the Board if elected.

28. **Powers of the Association.** In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Association, from and after its date of formation, shall have the power and authority to do and perform all such acts as are assigned to the Declarant under this Declaration as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in the Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Parcels; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Association or other parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Association shall be paid out of the general funds of the Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent any Owner from enforcing any building, use or other restrictions in its or his own name.

(b) To maintain the applicable portions of the Property as provided in this Declaration.

- (c) To own the Common Area Tracts.
- (d) To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Association. Where possible, all insurance maintained by the Association shall name the Owners as additional insureds.
- (e) To levy the assessments and related charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.
- (f) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Association, including, without limitation, keeping of books and records.
- (g) To do any other things necessary or desirable in the judgment of the Board to keep the Property neat in appearance and in good order.
- (h) To exercise any architectural, aesthetic or other control and authority given and assigned to the Association in this Declaration, or in any other deed, declaration or plat relating to all or any part of the Property.
- (i) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines and to provide means to enforce such rules, regulations and guidelines.
- (j) To borrow from lenders and to pledge or grant a security interest in future assessments and other assets of the Association to secure such loans.
- (k) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Association.

29. **Notices.** Any notice required or permitted to be given hereunder shall be given in writing and may be personally delivered (including recognized air courier service such as Federal Express or UPS) or mailed, United States Postal Service, registered or certified mail, postage prepaid, return receipt requested, at the following addresses or such other addresses as the Declarant or Owner of any Parcel for itself may designate in writing delivered or mailed as aforesaid for the purpose of receiving notices hereunder. Any notice to Declarant shall be to:

M-III Longview LLC  
Attn: Corey Walker  
4220 Shawnee Mission Parkway, Suite 200 B  
Fairway, KS 66205  
Phone: 816-285-3878  
E-mail: [corey.walker@platformv.com](mailto:corey.walker@platformv.com)

Any notice to an Owner (other than Declarant) shall be to the address of the Parcel.



Any notices addressed as aforesaid shall be deemed given (and received) by the Owner to whom it is addressed as follows:

- (a) If personally delivered, on the date that it is delivered;
- (b) If sent by courier service, on the next following Business Day after placed in the hands of an agent for the courier service or deposited in a pick-up box for such service; or
- (c) If mailed, three (3) Business Days after deposited with the United States Postal Service.

30. **Assignment of Declarant's Rights.** The Declarant shall have the right and authority, by written agreement made expressly for that purpose, to assign, convey and transfer to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Declarant, and upon such assignment the assignee shall then for all purposes be the Declarant hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties, and responsibilities of the Declarant hereunder.

31. **TIF/CID Districts.** Declarant and/or the City may implement a TIF/CID or other similar development financing tool which may entail a special real property tax assessment and/or an additional sales tax levy on goods and services sold or leased within the Property (or any part thereof). Each Owner hereby consents to such assessment or sales tax levy which may from time to time be implemented, agrees to fully and unconditionally cooperate with such implementation and agrees to issue such sales or other reports as are required by the relevant governmental entity.

32. **Extension of Property.** The Declarant shall have, and expressly reserves, the right, from time to time, to add to the existing Property and to the operation of the provisions of this Declaration other adjacent or nearby lands (without reference to any tract, street, park or right-of-way) by executing, acknowledging and recording in the Recording Office a written instrument subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof.

33. **Easements, Covenants and Restrictions to Run With the Land.** The mutual and reciprocal easements and covenants contained in this Declaration are hereby declared to be covenants running with the land and are for the benefit of and shall burden the Property and each Parcel constituting a part thereof, the current owners and tenants of each of said Parcels, their respective successors, assigns and grantees.

34. **Binding Effect.** This Declaration and benefits and obligations hereof shall be binding upon and inure to the benefit of, as the case may be, the parties hereto, their respective heirs, executors, administrators, successors, assigns, and grantees. Provided, however, upon conveyance of the entire fee simple ownership of a Parcel by an owner, the granting owner shall

be automatically and unconditionally released and discharged from any liability arising under this Declaration after the date the deed is recorded in the Recording Office.

35. **General Provisions.**

(a) **Construction.** The necessary grammatical changes required to make the provision of this Declaration apply in the plural sense where there is more than one owner and to either corporations, associations, partnership or individuals, males or females, shall in all instances be assumed as though fully expressed. The captions used in this Declaration are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

(b) **Severability and Governing Law.** The invalidity or unenforceability of any provision of this Declaration shall not affect or impair the validity of any other provision. The laws of the State of Missouri shall govern the interpretation, validity, performance and enforcement of this Declaration.

(c) **Non-waiver.** No failure or delay on the part of an Owner to enforce any provision of this Declaration shall constitute a waiver of such provision, nor shall any express waiver of any provision of this Declaration constitute a waiver of any other provision of this Declaration.

(d) **Authority and Capacity.** Each party executing this document represents and warrants that (a) it has the capacity to enter into this Declaration and that (b) the officer or agent executing this Declaration has the authority of such party to do so.

(e) **Non-Partnership.** Nothing in this Declaration shall be construed as to create a partnership, joint venture, or agency relationship between the parties to the Declaration or their successors or assigns. The parties to this Declaration are and shall remain independent contracting parties.

(f) **Non-Recourse.** It is expressly understood and agreed that notwithstanding anything in this Declaration to the contrary, and notwithstanding any applicable law to the contrary, the liability of Declarant hereunder (including any successor Declarant hereunder) and any recourse by any Owner of any Parcel against Declarant shall be limited solely and exclusively to the interest of Declarant in and to the Property owned by Declarant and Declarant's interest in and to the Property, and neither Declarant, nor any of its constituent owners, shareholders, officers, directors, employees, or agents shall have any personal liability therefor, and each Owner, on behalf of itself and all persons claiming by, through or under such Owner, hereby expressly waives and releases Declarant and such owners, shareholders, officers, directors, employees, and agents from any and all personal liability, except for claims caused by the gross negligence or willful act of Declarant. In no event shall Declarant be liable for punitive or exemplary damages, consequential damages or for loss of profits. The provisions of this subsection shall not prevent the issuance or enforcement of any injunction (mandatory or prohibited) against Declarant.

(g) Rules and Regulations. Declarant may establish and enforce reasonable rules and regulations applicable to the Common Areas and rules pertaining to construction. Declarant hereby initially adopts the Rules and Regulations in the form of Exhibit C attached hereto (the “**Rules and Regulations**”), and which may be revised from time to time by Declarant in its sole discretion, upon prior written notice to the Owners.

36. **Release or Modification of Restrictions.**

(a) Except as provided in subsection (b) below, the terms and provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (i) the Declarant if prior to the Turnover Date or the Association (acting through its Board) if after the Turnover Date, and (ii) the Owners (excluding the Declarant and its affiliates) of Parcels containing at least 70% of the total square footage of all Parcels (excluding Parcels owned by the Declarant and its affiliates).

(b) Anything set forth in this Section to the contrary notwithstanding, but only prior to the Turnover Date, the Declarant shall have the absolute, unilateral right, power and authority to amend, modify, supplement or terminate any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording with the Recording Office an appropriate instrument in writing for such purpose, (i) if a typographical or factual error or omission needs to be corrected in the opinion of the Declarant, (ii) if the City requires such action as a condition to approval by the City of Lee’s Summit of some matter relating to the development of the Property, provided that at least 20 days’ advance written notice of the required amendment shall be given to the Owners for their review and comment prior to the Declarant executing and recording the same, (iii) to revise Exhibit B, (iv) to update Exhibit C, (vi) to add any Future Restrictions on Exhibit E pursuant to Section 13, or (vii) provided that at least 20 days’ advance written notice of the proposed amendment shall be given to the Owners for their review and comment, where such amendment, modification or termination is not materially adverse to any Owner (or if the materially adversely affected Parcel(s) consent thereto in writing is obtained from such Owners). No such amendment by the Approving Party shall require the consent of any Owner (except as provided in clause (iii) above.

(c) If the rule against perpetuities or any rule regarding restraints on alienation or similar restriction is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the now-living children and grandchildren of the individuals signing this Declaration on behalf of the Declarant as of the date of such execution.

37. **Rights and Obligations of Lenders.** A breach of any of the easements, covenants or restrictions hereof with respect to any Parcel shall not defeat or render invalid the lien or charge of any such mortgage on such Parcel. Any property acquired through sale under foreclosure of any

mortgage effected by powers of sale, judicial proceedings, or otherwise, shall remain subject to all the charges and burdens affecting such Parcel by virtue of this Declaration.

*[Remainder of page left blank intentionally. Signature page follows.]*

IN WITNESS WHEREOF, this Declaration has been executed by Declarant as of the day and year first above written.

**DECLARANT:**

M-III Longview LLC,  
a Delaware limited liability company

By: Platform Investments, LLC  
its Manager

By: Platform Ventures, LLC  
its Manager

By: [Signature]  
Name: Corey Walker  
Title: SVP

STATE OF KANSAS )  
 ) ss.  
COUNTY OF JOHNSON )

This instrument was acknowledged before me, a Notary Public, on this 29<sup>th</sup> day of <sup>May</sup>~~April~~, 2018, by Corey Walker, as SVP of Platform Ventures, LLC, as manager of Platform Investments, LLC, as manager of M-III Longview LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Johnson County, Kansas the day and year last above written.

My Commission Expires:

8/20/18  
[SEAL]

[Signature]  
Notary Public in and for said County and State

Print Name: Jennifer Metz



**LENDER CONSENT AND SUBORDINATION**

The undersigned lender is the holder of that certain Deed of Trust, dated June 16, 2017, and recorded in the Recording Office as Instrument No. 2017E0054204 (the "**Deed of Trust**").

To the extent the Deed of Trust encumbers the property benefitted and burdened by this Declaration, the undersigned lender hereby consents to the Declaration and subordinates the lien of such Deed of Trust to the provisions of this Declaration with the same effect as if this Declaration had been recorded prior to the recording of the Deed of Trust.

OakStar Bank

By: [Signature]  
Name: Jeffery Smith  
Title: Vice President

STATE OF Missouri )  
 ) ss.  
COUNTY OF Henry )

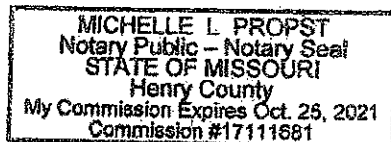
This instrument was acknowledged before me, a Notary Public, on this 2<sup>nd</sup> day of May, 2018, by Jeff Smith, as VP of OakStar Bank.

My Commission Expires:

10.25.21  
[SEAL]

Michelle L Propst  
Notary Public in and for said County and State

Print Name: Michelle L Propst



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

Lots 1A, 1B, 1C, 1D, 1E & Tract A, Final Plat of Fascination at New Longview,  
Lots 1A-1E & Tract A, a subdivision in Lee's Summit, Jackson County, Missouri.

Lot 44, New Longview Commercial District, Second Plat, Lot 44 and Tracts A and B, a subdivision  
in Lee's Summit, Jackson County, Missouri.

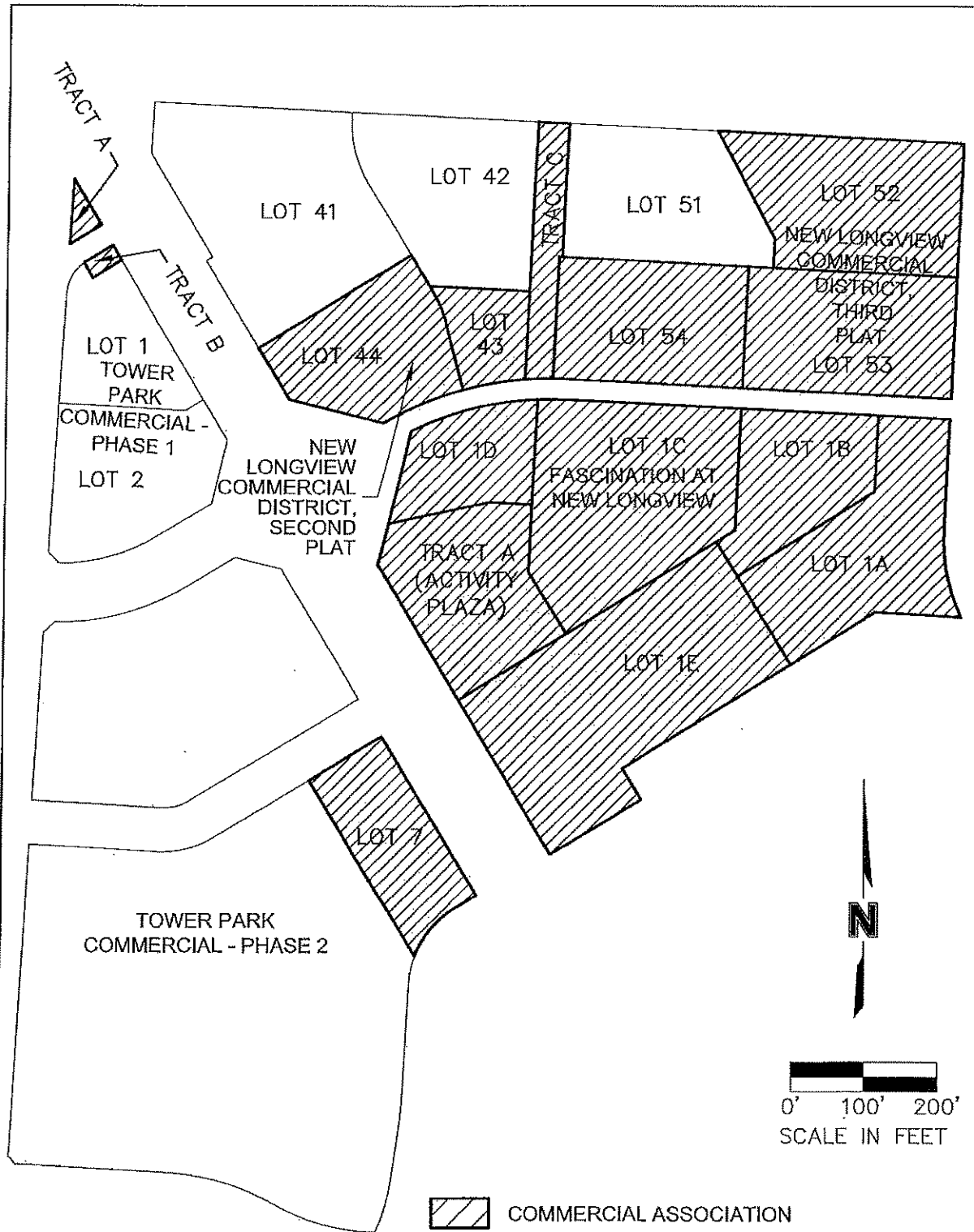
Lots 43, 52, 53, 54 and Tract C, New Longview Commercial District, Third Plat, Lots 42, 43, 51-  
54, Tracts C, D and E, a subdivision in Lee's Summit, Jackson County, Missouri.

Tract A and Tract B, Tower Park Commercial – Phase 1, Lots 1 and 2 and Tracts A thru H and J,  
a subdivision in Lee's Summit, Jackson County, Missouri.

Lot 7, Tower Park Commercial - Phase 2, Lots 5, 6, 7, Tracts A and B, a subdivision in Lee's  
Summit, Jackson County, Missouri.



DWG: F:\2018\1001-1500\018-1363\40-Design\Survey\SRVY\Sheets\CCR Exhibit A.dwg  
 DATE: May 15, 2018 1:42pm  
 USER: nrvlloughby



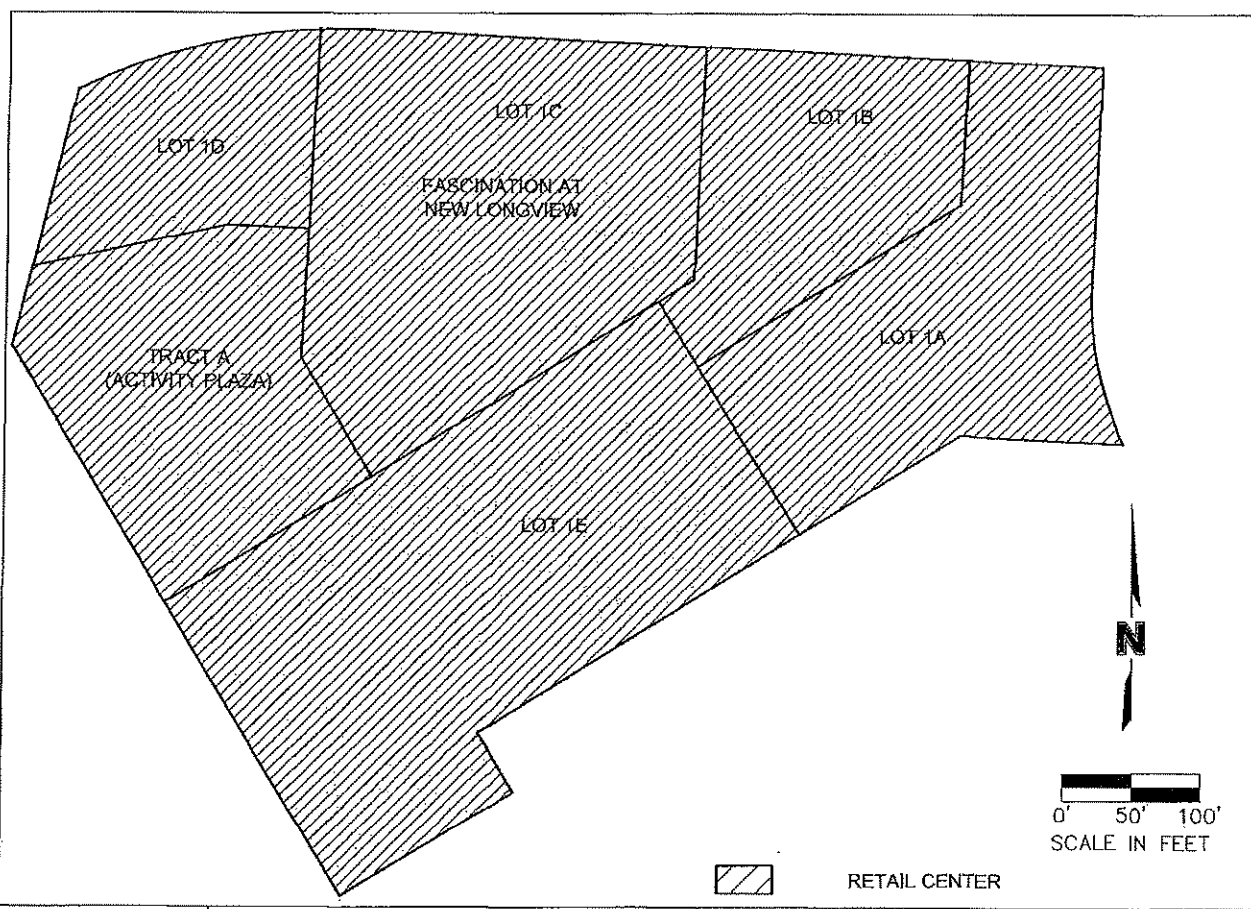
PROJECT NO: 018-1363	EXHIBIT A		SHEET
DRAWN BY: NRW	COMMERCIAL ASSOCIATION		1
DATE: 2018.05.16	M-H LONGVIEW, LLC		

1301 BURLINGTON, SUITE 100  
 NORTH KANSAS CITY, MO 64116  
 TEL 816.587.4320  
 FAX 816.587.1393  
[www.molssonassociates.com](http://www.molssonassociates.com)


**EXHIBIT A-1**  
**LEGAL DESCRIPTION OF THE RETAIL CENTER**

Lots 1A, 1B, 1C, 1D, 1E & Tract A, Final Plat of Fascination at New Longview,  
Lots 1A-1E & Tract A, a subdivision in Lee's Summit, Jackson County, Missouri.

F:\2018\101-1600\018-1363\40-Design\Survey\SRV1\Sheets\008 Exhibit A-1.dwg  
 DWG: May 16, 2018 11:44am  
 USER: melleoughby



RETAIL CENTER

PROJECT NO: 018-1363	EXHIBIT A-1		1301 BURLINGTON, SUITE 100 NORTH KANSAS CITY, MO 64116 TEL 816.587.4320 FAX 816.587.1383 <a href="http://www.olssonassociates.com">www.olssonassociates.com</a>	SHEET  1
DRAWN BY: NRW	RETAIL CENTER			
DATE: 2018.05.16	M-HI LONGVIEW, LLC			

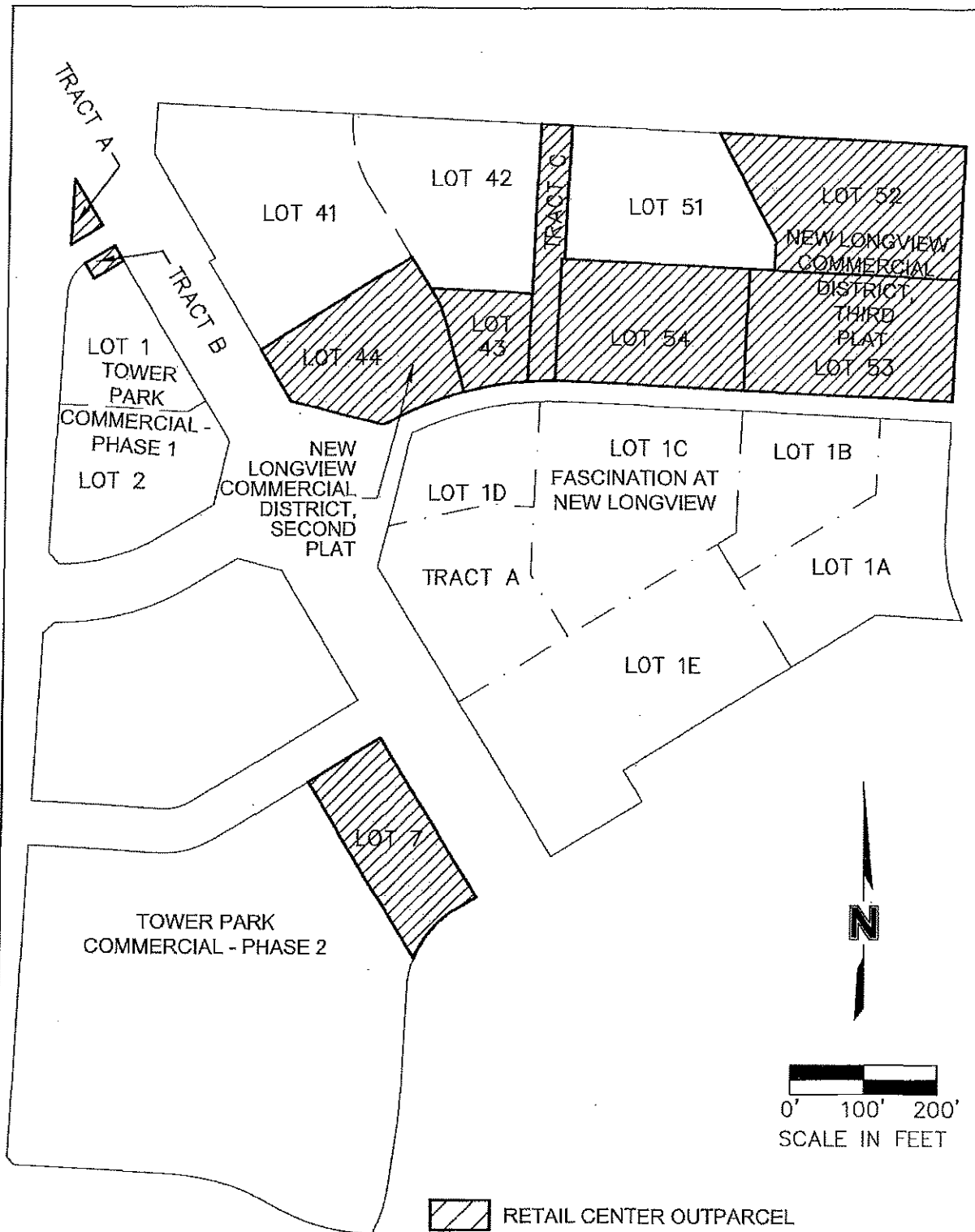
**EXHIBIT A-2**  
**LEGAL DESCRIPTION OF THE OUTPARCELS**

Lot 44, New Longview Commercial District, Second Plat, Lot 44 and Tracts A and B, a subdivision in Lee's Summit, Jackson County, Missouri.

Lots 43, 52, 53, 54 and Tract C, New Longview Commercial District, Third Plat, Lots 42, 43, 51-54, Tracts C, D and E, a subdivision in Lee's Summit, Jackson County, Missouri.

Tract A and Tract B, Tower Park Commercial – Phase 1, Lots 1 and 2 and Tracts A thru H and J, a subdivision in Lee's Summit, Jackson County, Missouri.

Lot 7, Tower Park Commercial - Phase 2, Lots 5, 6, 7, Tracts A and B, a subdivision in Lee's Summit, Jackson County, Missouri.



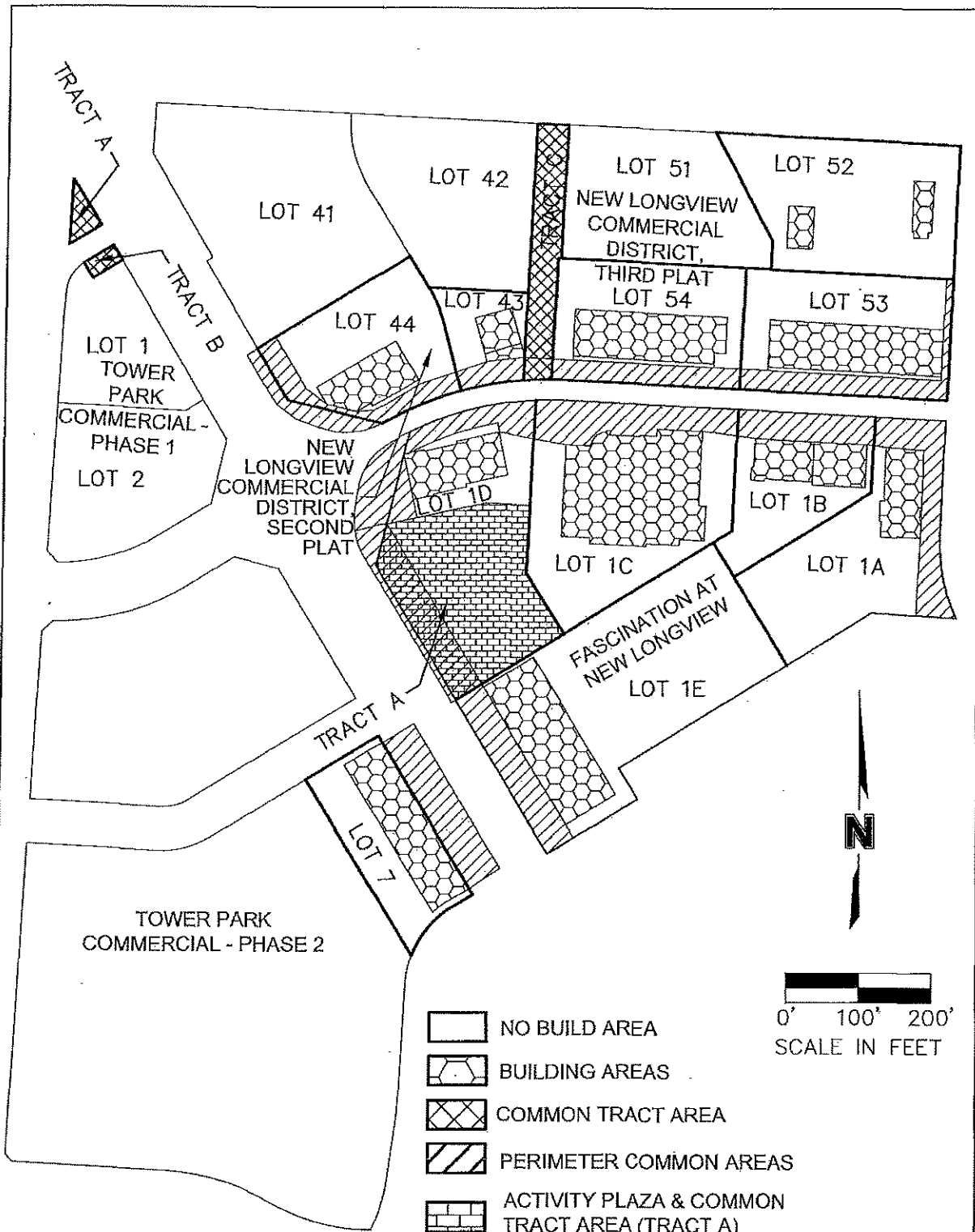
 RETAIL CENTER OUTPARCEL

F:\2018\1001-1500\018-1363\40-Design\Survey\SRVY\Sheets\Site Plan\Exhibit A-2.dwg  
 DWG: DATE: May 02, 2018 15:45am  
 USER: nwloughby

PROJECT NO: 018-1363	EXHIBIT A-2	 1301 BURLINGTON, SUITE 100 NORTH KANSAS CITY, MO 64116 TEL 816.587.4320 FAX 816.587.1393 www.olsonassociates.com	SHEET  1
DRAWN BY: NRW	RETAIL CENTER OUTPARCEL		
DATE: 2018.05.02	M-H LONGVIEW, LLC		

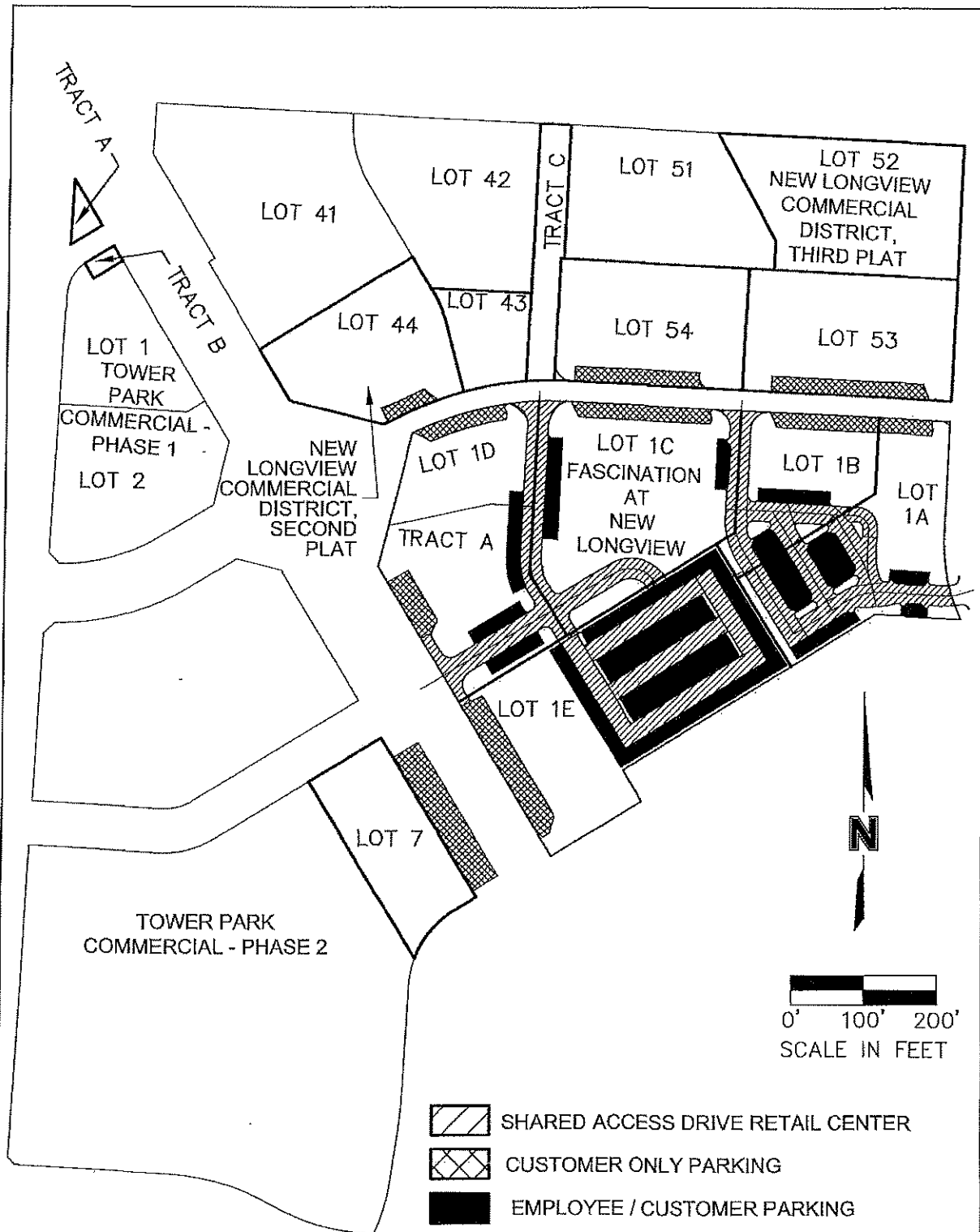
**EXHIBIT B**  
**SITE PLAN OF THE PROPERTY**

DWG: F:\2018\1001-1500\018-1363\40-Design\Survey\SRVY\Sheets\CCR Exhibits\Exhibit B-1.dwg  
 DATE: May 18, 2018 1:24pm  
 USER: nwilloughby



PROJECT NO: 018-1363	EXHIBIT B-1	 1301 BURLINGTON, SUITE 100 NORTH KANSAS CITY, MO 64118 TEL 816.587.4320 FAX 816.587.1393 www.olssonassociates.com	SHEET
DRAWN BY: NRW	COMMON & BUILDING AREAS, & ACTIVITY PLAZA EXHIBIT		1
DATE: 2018.05.16	M-H LONGVIEW, LLC		

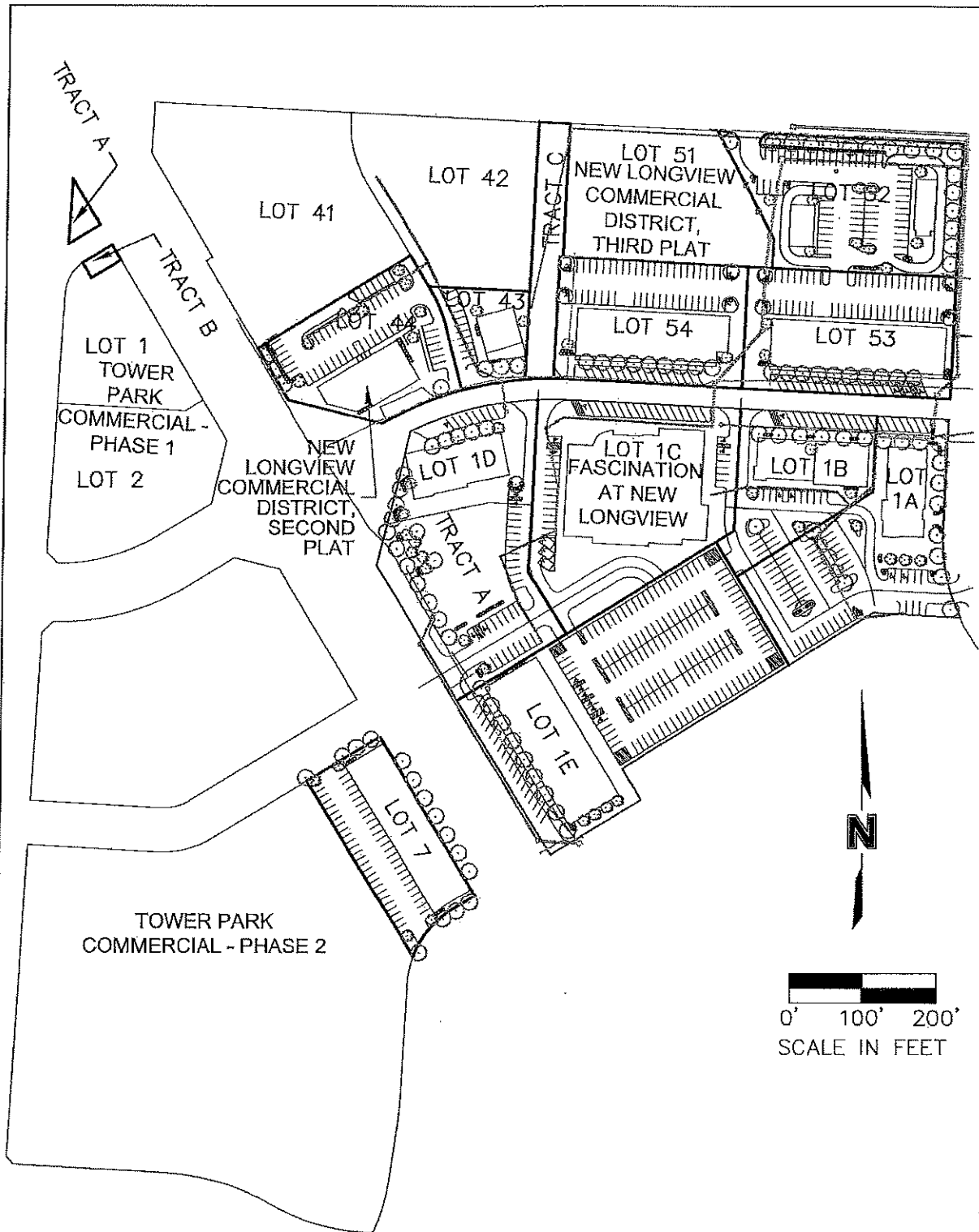




DWG: F:\2018\1001-1800\018-1363\40-Design\Survey\SRV\Sheets\CCR Exhibit\Exhibit B-2.dwg  
 DATE: May 16, 2018 11:57am  
 USER: nwilloughby

PROJECT NO: 018-1363	EXHIBIT B-2	 <b>OLSSON</b> <sup>®</sup> ASSOCIATES	1301 BURLINGTON, SUITE 100 NORTH KANSAS CITY, MO 64116 TEL 816.587.4320 FAX 816.587.1393 <a href="http://www.olssonassociates.com">www.olssonassociates.com</a>	SHEET
DRAWN BY: NRW	PARKING & ACCESS EXHIBIT		1	
DATE: 2018.05.16	M-JB LONGVIEW, LLC			

DWG: F:\2018\1001-1500\018-1353\40-Design\Survey\SRV\Sheets\CCR Exhibits\Exhibit B-3.dwg  
 DATE: May 15, 2018 12:53pm  
 USER: nellioughby



PROJECT NO: 018-1363

EXHIBIT B-3

DRAWN BY: NRW

PARCEL SITE PLAN EXHIBIT

DATE: 2018.05.16

M-H LONGVIEW, LLC

**MOLSSON**  
ASSOCIATES

1301 BURLINGTON, SUITE 100  
 NORTH KANSAS CITY, MO 64116  
 TEL 816.587.4320  
 FAX 816.587.1393  
[www.olssonassociates.com](http://www.olssonassociates.com)

SHEET

1

**EXHIBIT C**  
**RULES AND REGULATIONS**

All Parcels shall be governed by the following Rules and Regulations unless otherwise agreed by Declarant. Declarant shall not be responsible for the violation or nonperformance by any Permittee of the Parcels with regard to these Rules and Regulations; provided, however, that Declarant agrees to use its reasonable efforts to cause such Permittee to comply with these Rules and Regulations. Unless otherwise provided, all terms used in these Rules and Regulations shall have the same meaning as set forth in this Declaration.

1. Building Area

1.1. All Building areas, including entrances and returns, doors, fixtures, windows and plate glass shall be maintained by the party occupying such floor area in a safe, neat and clean condition.

1.2. All trash, refuse and waste materials shall be regularly removed from the premises of each Building, and until removal shall be stored (a) in adequate containers, which containers shall be covered with lids and shall be located in areas designated by Declarant so as not to be visible or emit noxious odors to the general public, and (b) so as not to constitute any health or fire hazard or nuisance to any party.

1.3. Neither sidewalks nor walkways shall be used to display, store or replace any merchandise, equipment or devices, without the express written consent of Declarant.

1.4. Except as otherwise approved by Declarant (without the joinder of any other Owner or party), no advertising medium shall be utilized which can be heard or experienced outside of any building, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios or television.

1.5. No use shall be made of the Parcels or any portion or portions thereof which would (a) violate any law, ordinance or regulation, (b) constitute a nuisance, (c) constitute an extra-hazardous use, or (d) violate, suspend or void any policy or policies of insurance on the stores located thereon.

1.6. All Owners and Occupants shall use their diligent efforts to require all trucks servicing their respective stores to load and unload such trucks (a) prior to the hours the Retail Center or adjacent Outparcel(s) is/are open for business to the general public, or (b) so as not to unreasonably interfere with the operation of the other stores within the Parcels.

1.7. All Owners and Occupants shall use their diligent efforts, promptly upon receiving notice thereof, to notify each Parcel Owner and Declarant or their respective designated representative, of any significant accident, loss, damage, destruction or any

other situation which arises in or about their respective stores or the Common Area which could potentially result in a claim or other action against Declarant or such Parcel Owner.

2. General Owner and Occupant Requirements

2.1 Each Owner and Occupant shall comply with and observe the following rules and regulations:

2.1.1 Each Owner and Occupant shall keep their Parcel or Building free and clear of rodents, bugs and vermin and maintain grease traps, trash bins and containers in accordance with Governmental Requirements and so as not to constitute a health risk or emit noxious odors.

2.1.2 Each Owner and Occupant shall keep the display windows of the their Building and the interior of the Building suitably illuminated during the applicable business hours as established by Declarant from time to time, but no Owner or Occupant shall have or permit any storefront lighting not approved by Declarant. If the Building has a recessed storefront, Declarant shall have the right to control the types of, or prohibit altogether, displays in front of the closure line and each Owner or Occupant shall promptly comply with any written directions of Declarant pertaining to such displays.

2.1.3 No Owner and Occupant Tenant shall place any obstruction on the sidewalks, entrances, passages, corridors or stairways or other Common Area and specifically, without limitation, shall not, without the prior consent of Declarant, use Common Area for the display of merchandise, vending machines or any other activity except ingress and egress.

2.2 Conduct of Persons. The following rules and regulations shall apply for the use of roadways, walkways, the parking areas, and other common facilities provided for the use of Permittees:

2.2.1 No person shall use any roadway or walkway, except as a means of egress from or ingress to any area within the Parcels or adjacent public streets or such other uses as reasonably approved by the Declarant and any affected Parcel Owner. Such use shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways within the Parcels shall not be used at a speed in excess of fifteen (15) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers and/or purchases by customers. No walkway shall be used for other than pedestrian travel or such other uses as approved by the Declarant.

2.2.2 No person shall use the parking areas except for the parking of motor vehicles during the period of time such person or the occupants of such vehicles are

customers, employees or business invitees of the retail establishments within the Parcels. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. During peak periods of business activity, limitations may be imposed as to the length of time for parking use. Such limitations may be made in specified areas.

2.2.3 No person shall use any utility area, truck court or other area reserved for use in connection with the conduct of business, except for the specific purpose for which permission to use such area is given.

2.2.4 Subject to the governmental laws, rules and regulations, no person shall, in or on any part of the Common Area:

2.2.4.1 Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever, except as approved in writing by the Declarant.

2.2.4.2 Exhibit any sign, placard, banner, notice or other written material.

2.2.4.3 Distribute any circular, booklet, handbill, placard or other material.

2.2.4.4 Solicit membership in any organization, group or association or contribution for any purpose.

2.2.4.5 Parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of any of the Common Area by any Permittee, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the retail establishments within the Parcels.

2.2.4.6 Use any Common Area for any purpose when none of the retail establishments within the "Property" is open for business or employment.

2.2.4.7 Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.

2.2.4.8 Use any sound-making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant, or distasteful to the other Parcel Owners or Permittees of the Parcels.

2.2.4.9 Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Parcels, or

the property of customers, business invitees or employees situated within the Parcels.

2.2.5 The listing of specific items as being prohibited is not intended to be exclusive, but to indicate in general the manner in which the right to use the Common Area solely as a means of access and convenience in shopping at the retail establishments located within the Parcels is limited and controlled by the Declarant.

2.2.6 Any party shall have the right to remove or exclude from or to restrain (or take legal action to do so) any unauthorized person from, or from coming upon, the Parcels or any portion thereof, and prohibit, abate and recover damages arising from any unauthorized act, whether or not such act is in express violation of the prohibitions listed above. In so acting such party is not the agent of the Declarant, other Parcel Owners or of tenants of the Parcels, unless expressly authorized or directed to do so by such party in writing.

### 3. Staging Areas for Construction

3.1 The construction staging area (“**Staging Area**”) for each Parcel Owner shall be as reasonably located from time to time by Declarant based on Declarant’s construction schedules and in accordance with reasonable rules and regulations which may be promulgated by Declarant from time to time. Such Parcel Owner shall move trailers, equipment, storage facilities including, but not limited to, containers or construction materials, or items as reasonably requested by Declarant to accommodate all construction or to reasonably keep the appearance of the Parcels in an orderly fashion.

3.2 Each Staging Area user shall, during the course of its construction, routinely remove all trash and debris caused by such Staging Area user to the Staging Area and any portion of the Parcels including, but not limited to, the Common Area and the adjacent streets and driveways. Each Staging Area user shall keep the Staging Area and any adjacent parking areas in a reasonably neat, clean and sightly condition. Each Staging Area user shall periodically sweep its Staging Area by use of a professional sweeping company.

3.3 Each Staging Area user shall cause its employees, or the employees of its contractors and subcontractors to park in areas reasonably designated by Declarant, and in the event of a failure to control such unauthorized parking, Declarant may tow violating vehicles at the vehicle owner’s expense.

3.4 After work is completed for a particular installation with respect to the Parcel Owner’s store, the Staging Area user shall promptly, within forty-eight (48) hours, remove any excess materials no longer necessary for the construction of such store.

3.5 All containers and trailers shall be removed from the Staging Area or parking area as soon as practicable, but in no event later than forty-eight hours (48) hours of emptying of same (provided that the container or trailer is not required for future use after notice and approval by Declarant). The Staging Area user shall move any containers

which can be safely moved or rearranged as directed by Declarant and is reasonably required to minimize inconvenience in connection with the construction or development of the Parcels and their respective Permittees so as to avoid obstructing visibility or access from adjacent roads.

3.6 In the event that a Staging Area user, or its contractors or subcontractors, damage any portions of the Parcels, such Staging Area user must, upon written notice from Declarant, repair such damage at such Staging Area user's expense. If such Staging Area user fails to make such repairs promptly, Declarant may cause repairs to be effected and the Staging Area user will be required to reimburse Declarant for any such repairs.

3.7 Upon receipt of written notice from Declarant, the Staging Area user will promptly repair any damage caused to any portion of the Parcels by the Staging Area user's containers, trailers and operations and shall re-stripe the parking area as necessary in those areas of repair. If the Staging Area user fails to make such repairs promptly, Declarant may cause the damaged area to be reasonably repaired and restriped in the area of the repair and the Staging Area user will be required to reimburse Declarant for any such costs or expenses incurred by Declarant relating to such repair and re-striping.

3.8 Any temporary signs shall be approved by Declarant prior to installation, which approval shall not be unreasonably withheld, conditioned or delayed.

3.9 The Staging Area user shall, at its sole cost and expense, obtain and connect (and disconnect upon completion) all temporary utilities in a safe and sightly manner.

3.10 Promptly after completion of the portion of the construction requiring such Staging Area, the Staging Area user shall completely remove all items related in any way to the construction of its store from the Staging Area and shall return the Staging Area to the condition as hereinbefore provided.

3.11 If a Staging Area user fails to reasonably complete any items above, or fails to remove its containers and other items as required, Declarant may request in writing that the Staging Area user make such repairs, or perform such above-stated items and, upon the Staging Area user's failure or refusal to do so within twenty-four (24) hours, Declarant shall have the right (but shall not be obligated), either itself or through a third-party contractor, to perform all the foregoing items and thereupon the Staging Area user, within ten (10) days, after receipt of invoices and related documentation shall reimburse Declarant for any costs and expenses reasonably incurred by Declarant in connection therewith.

#### 4. Maintenance During Construction

4.1 All construction shall be carried out in an orderly and timely manner;

4.2 All construction sites shall be enclosed with a lockable chain link fence, kept in a neat and good condition at all times and locked whenever construction is not



actually being performed. Stored building materials shall be appropriately hidden from view to the extent deemed reasonably necessary by the Declarant;

4.3 All construction sites shall be equipped with portable toilets and all portable toilets shall be located a minimum of twenty-five feet (25') from property lines, and shall be emptied as often as required to ensure the absence of any noxious odors;

4.4 Dust from all construction sites shall be controlled at all times by watering down the construction site. Any sandblasting activities shall be restricted to the water type application. If trucks entering and leaving the particular site track mud or dust on the interior or public streets, the Owner or Occupant on which or for whose benefit the construction is being performed shall be responsible for maintaining the streets (or causing the same to be maintained) in a clean and dust- and mud-free condition on a daily basis;

4.5 All broken sidewalks or cracked or potholed streets or other Common Areas which are damaged due to the construction process for the development of a Parcel, shall be repaired, to the reasonable satisfaction of the Declarant, at the sole expense of the Owner or Occupant of the Parcel on which or for whose benefit the construction is being performed. The damaged Common Areas shall be repaired within seven (7) days after the damage occurs. If any damaged Common Areas are not completely restored to their pre-damaged condition or replaced by substitutes acceptable to the Declarant within seven (7) days after the damage is detected, the Declarant may, after written notice to Owner or Occupant at its option, cause the damage to be repaired at the expense of the Owner of Occupant of the Parcel on which or for whose benefit the construction is being performed;

4.6 All utilities damaged as a result of any construction being undertaken on or for the benefit of a Parcel shall be repaired immediately and without delay, to the reasonable satisfaction of the Declarant at the sole expense of the Owner or Occupant of the Parcel on which or for whose benefit the construction is being performed. If any damaged utility is not completely repaired or replaced by substitutes acceptable to the Declarant within twenty-four (24) hours after the damage is detected, the Declarant may, at its option, after written notice to Owner or Occupant cause the damage to be repaired at the expense of the Owner or Occupant of the Parcel on which or for whose benefit the construction is being performed;

4.7 Any landscaping materials or sprinkler systems on an adjacent Parcel or on adjacent Common Areas abutting any particular construction project damaged in the course of such construction shall be replaced or repaired within two (2) days after damage is detected, to the reasonable satisfaction of the Declarant, at the sole expense of the Owner or Occupant of the Parcel on which or for whose benefit the construction is being performed. If any damaged landscaping materials or sprinkler systems are not completely repaired or replaced within two (2) days after the damage is detected, the Declarant may, at its option, after written notice to Owner or Occupant cause the damage to be repaired at the expense of the Owner or Occupant of the Parcel on which or for whose benefit the construction is being performed; and

4.8 No parking will be permitted on private or public streets. Construction, delivery and other vehicles operated or utilized in connection with construction activities upon a Parcel shall be parked only upon such Parcel or, with the prior written consent of the Declarant and the Owner of another Parcel, upon such other Parcel.

**EXHIBIT D**  
**EXISTING RESTRICTIONS**

Except as otherwise approved in writing by Declarant in the exercise of its sole and absolute discretion (and without requiring the joinder of any other party or Owner or party), none of the Outparcels or Parcels in the Retail Center shall be used in violation of any of the following Existing Restrictions:

1. Any public or private nuisance.
2. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness.
3. Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Property. The foregoing limitation shall not apply to customary cooking odors emitted from Restaurants, grocery stores, or convenience stores operating in the ordinary course of business that are in compliance with Governmental Requirements, but shall apply to any non-customary cooking odors or any odors, negligently, intentionally projected or released other than in the ordinary course of business.
4. Any use which emits excessive quantities of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store.
5. Any use which could result in, or cause, any fire, explosion or other damaging or dangerous hazard, including without limitation the storage, display or sale of explosives or fireworks.
6. Any operation primarily used for assembling, manufacturing, distillating, refining, smelting, agriculture or mining operations.
7. Any mobile home or trailer court, auction house, labor camp, junkyard, mortuary, funeral home, stock yard, animal raising facility (except that, notwithstanding the foregoing, the provisions of this paragraph shall not prohibit the temporary use of construction trailers as approved by Declarant during periods of construction, reconstruction, or maintenance). Notwithstanding the foregoing, the operation of a veterinary office (which may include, without limitation, boarding of animals), "PetSMART" or "Petco" (or any similar regional or national pet store) as such stores are operated from time to time (which may include, without limitation, veterinary, grooming and/or boarding services) shall be a permitted use within the Property.
8. Any drilling for and/or removal of subsurface substances (such as minerals, oil, etc.).
9. Any automobile, truck, trailer or recreational vehicle sales, rental, leasing or body and fender repair operation.

10. Any flea market and/or swap meet or second hand or surplus store; PROVIDED, HOWEVER, the operation of a consignment shop such as, by way of example only and not of limitation, "Terri's Consign & Design" or "2nd Swing" (or any similar business) shall not be prohibited hereunder.

11. Any adult book shop, movie house or other establishment selling or exhibiting pornographic materials or other pornographic use; provided, however, that such restrictions shall not preclude (i) the showing of films in any first rate motion picture theater operated in the Shopping Center, so long as such motion picture theater does not show any film that has received an "X-rating" from the Motion Picture Association of America or any successor to the Motion Picture Association of America which rates motion pictures, or any other pictures that are considered pornographic, and (ii) the sale or rental of adult books, magazines or videos as an incidental part of the business of a general purpose bookstore or video store which is normally found in a first class center.

12. Any tattoo parlor or any establishment selling drug related paraphernalia or any facility the use of which is unlawful, immoral, obscene, pornographic, or which tends to create or maintain a nuisance or do any act tending to injure the reputation of the Property.

13. Any bar, tavern, cocktail lounge or nightclub; provided, however, the foregoing shall not prohibit the operation of a bar, tavern, or nightclub as a part of any Restaurant being operated on any Parcel, provided that the sale of alcohol from such bar, tavern or nightclub does not exceed sixty percent (60%) of such Restaurant's gross sales.

14. Any abortion clinic, blood bank or drug rehabilitation clinic.

15. Any sales within an Outside Sales Area, unless approved by Developer (in its sole and absolute discretion).

16. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pick up and delivery by the ultimate consumer as the same may be found in a first class center.

17. Any discotheque or dance hall, provided, however, the foregoing shall not prohibit or restrict such operation as a part of any Restaurant being operated on the Property.

18. Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided however, this prohibition shall not be applicable to on-site employee training by a Permittee incidental to the conduct of its business on such Parcel or to pet-training in connection with a pet shop or pet supply store.

19. Any check cashing company, so-called "payday loan" operation or pawn shop.

20. Any carnival, circus or amusement park.

21. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Permittee.

22. No auction, fire or going out of business sales shall be conducted in the Shopping Center except a going out of business sale conducted during the last thirty (30) days of an existing retail operation or as otherwise conducted pursuant to court order.

23. Any marijuana dispensary, head shop or so-called "hooka lounge" or similar use, irrespective of whether such use is legal.

24. The display or projection of a motion picture on a screen larger than 60" measured diagonally or the sale of buttered popcorn within the Common Areas in the Retail Center without the prior written approval of Declarant.

**EXHIBIT E**  
**FUTURE RESTRICTIONS**

# ROUSE FRETS WHITE GOSS GENTILE RHODES, P.C.

BRIAN E. ENGEL  
bengel@rousepc.com  
816.502.4747

August 1, 2019

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
& ELECTRONIC MAIL (to [localgov@dor.mo.gov](mailto:localgov@dor.mo.gov))**

Taxation Division, Local Tax Unit, Sales/Use Tax  
Missouri Department of Revenue  
P.O. Box 3380  
Jefferson City, MO 65105-3380

**Re: Notice of Approval of New Longview Community Improvement District  
One Percent (1.0%) Sales and Use Tax;  
Lee's Summit, Missouri**

Dear Sir or Madam:

This law firm represents the New Longview Community Improvement District ("District"). The District, located within the corporate limits of the City of Lee's Summit, Missouri ("City"), was created by Ordinance No. 8557 adopted on February 19, 2019 by the City Council of the City of Lee's Summit, Missouri pursuant to the Community Improvement District Act, §§ 67.1401, RSMo, *et seq.* ("Act").

In accordance with §§ 67.1545 and 32.087, RSMo, the District hereby provides notice to the Director of the Missouri Department of Revenue (by copy of this letter) that the qualified voters of the District have approved by election the imposition of a sales and use tax at a rate of up to one percent (1.0%) within the District. As this notice has been given on or before September 30, 2019, the District sales tax should be first collected on January 1, 2020.

Below is the Department of Revenue's "District Checklist" relating to the imposition of a district sales tax, and detailing the information enclosed as to the District's newly enacted sales tax:

1. Copy of Ordinance No. 8557 dated February 19, 2019 adopted by the City Council of the City of Lee's Summit, Missouri establishing the District (attached at **Tab A**).
2. Copy of Resolution 2019-03 imposing sales tax (attached at **Tab B**), which includes:
  - A. District name: New Longview Community Improvement District
  - B. Statute authorizing the sales tax: § 67.1545, RSMo
  - C. Rate imposed: One percent (1.0%)
  - D. The sales tax is to be effective for thirty (30) years from the date the Sales Tax becomes effective or such other period to coincide with the termination of the

{70001 / 69855; 842881.}



District. Pursuant to § 67.1545, RSMo, the sales tax shall become effective on the 1<sup>st</sup> day of the 2<sup>nd</sup> calendar quarter after the Department of Revenue has received notice of the adoption of the sales tax. Because this notice is being provided to the Department of Revenue before September 30, 2019, the effective date of the sales tax will be January 1, 2020, and the expiration date will be not later than December 31, 2049, unless extended as authorized by the Petition and the qualified voters and in accordance with the Act.

3. Copy of ballot and copy of election results as certified by the Jackson County Election Board on July 24, 2019 (attached at **Tab C**).
4. Map of District showing street names that make up the boundaries, and indicating that the District is not on both sides of the street (attached at **Tab D**). A copy of the District's legal description is attached as Exhibit A to the Petition for Establishment of the New Longview Community Improvement District (see **Tab A**).
5. List of full and partial cities/counties located in the district:
  - A. City of Lee's Summit is partially located within the District
  - B. Jackson County is partially located within the District
  - C. District is located entirely within City of Lee's Summit and Jackson County
  - D. District is partially located within the City of Lee's Summit, Missouri New Longview Transportation Development District
6. List of business names, addresses and Missouri tax ID numbers for all partial cities or counties (attached at **Tab E**).
7. Indicate District overlaps any other existing districts, Fire Protection, Ambulance or Transportation Development District.

None, except as noted in 5 above.

8. List of initial District officials including name, title and telephone number:
  - A. Mike Jenkins, Chairman  
New Longview Community Improvement District  
c/o Platform Ventures  
4220 Shawnee Mission Parkway, Suite 200B  
Fairway, KS 66205  
(816) 285-3872

- B. Jennifer Metz, Vice Chairwoman  
New Longview Community Improvement District  
c/o Platform Ventures  
4220 Shawnee Mission Parkway, Suite 200B  
Fairway, KS 66205  
(816) 285-3872
- C. Evan Welsh, Treasurer  
New Longview Community Improvement District  
c/o Platform Ventures  
4220 Shawnee Mission Parkway, Suite 200B  
Fairway, KS 66205  
(816) 285-3872
- D. Caleb Holmes, Director  
New Longview Community Improvement District  
c/o Platform Ventures  
4220 Shawnee Mission Parkway, Suite 200B  
Fairway, KS 66205  
(816) 285-3872
- E. Mark Dunning, Director  
New Longview Community Improvement District  
c/o City Hall  
220 SE Green Street  
Lee's Summit, MO 64063  
(816) 478-3095
- F. Becky Ziegler, Secretary (not a Director)  
c/o Rouse Frets White Goss Gentile Rhodes, PC  
4510 Belleview Avenue, Suite 300  
Kansas City, MO 64111  
(816) 753-9200

Taxation Division, Local Tax Unit, Sales/Use Tax  
Missouri Department of Revenue  
August 1, 2019  
Page 4

I trust that the information above and attached hereto provides all of the information needed by your office, but please do not hesitate to contact me with any comments or questions.

Very truly yours,



Brian E. Engel

BEE:arc

Enclosures

cc: Kenneth J. Zellers, Acting Director (by certified mail; w/ encl.)  
David W. Bushek, Esq. (by email w/ encl.)  
Mike Jenkins, District Chairman (by e-mail; w/ encl.)  
Steven Lucas, Esq. (by email w/ encl.)

**Tab A**

**New Longview Community Improvement District  
Copy of Ordinance Forming District**

See following pages

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 10. City officers and agents of the City are each hereby authorized and directed to take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

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

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

PASSED by the City Council for the City of Lee's Summit, Missouri, this 19<sup>th</sup> day of February, 2019.

  
\_\_\_\_\_  
Mayor William A. Baird

ATTEST:

  
\_\_\_\_\_  
City Clerk Trisha Fowler Arcuri

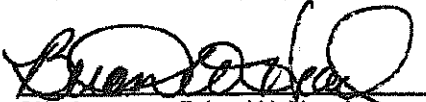
APPROVED by the Mayor of said city this 22<sup>nd</sup> day of February, 2019.

  
\_\_\_\_\_  
Mayor William A. Baird

ATTEST:

  
\_\_\_\_\_  
City Clerk Trisha Fowler Arcuri

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney Brian W. Head



**EXHIBIT A**  
**CID PETITION**

**[Attached]**

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

---

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

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

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

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

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

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

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

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

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

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

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

6. Assessed Value. The total assessed value of all real property in the District is \$4,208,209. The official total assessed valuation for the District may change by the time the District is created.
7. Duration of District. The proposed length of time for the existence of the District is thirty (30) years from the date upon which the CID sales tax is levied within the District pursuant to this Petition. The District may be terminated prior to the end of such term in accordance with the provisions of the CID Act.
8. Real Property and Business License Taxes. The District will not have the power to impose a real property tax levy or business license taxes.
9. Special Assessments. The District will not have the power to impose a special assessment.
10. Sales Tax. Qualified voters of the District may be asked to approve a sales tax of up to one percent (1%) ("District Sales Tax"), in accordance with the CID Act, to fund certain improvements within the District and/or to pay the costs of services provided by the District. Additional details about the District Sales Tax are set forth in the Five Year Plan attached hereto as Exhibit C. It is anticipated that the District will not consent to the capture of its District Sales Tax as economic activity taxes subject to deposit into a special allocation fund for any TIF redevelopment project area within any TIF redevelopment area formed under the Real Property Tax Increment Allocation Act, RSMO 99.800 to 99.865.
11. Borrowing Limits. Petitioner does not seek limitations on the borrowing capacity of the District.
12. Revenue Limits. Petitioner does not seek limitations on the revenue generation of the District.

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

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

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

Name of owner: M-III Longview LLC

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

Owner's telephone number: 816-285-3872

***IF SIGNER IS DIFFERENT FROM OWNER:***

Name of signer: Corey Walker

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

Signer's telephone number: 816-285-3878

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

If owner is an individual:            Single            Married

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

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

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

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

[Signature follows on separate page.]

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

**M-III LONGVIEW LLC,**

a Delaware limited liability company

By: Platform Investments, LLC, its manager

By: By: Platform Ventures, LLC, its manager

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

Name: Corey Walker

Title: Senior Vice President

Date: \_\_\_\_\_

STATE OF KANSAS

)

) ss:

COUNTY OF JOHNSON

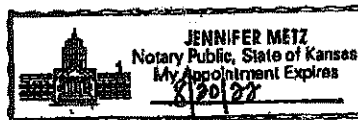
)

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

WITNESS my hand and official seal this 10<sup>th</sup> day of January, 2019.

My Commission Expires: 8/20/22

Jennifer Metz  
Notary Public





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

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

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

Owner's telephone number: 816-347-8100

***IF SIGNER IS DIFFERENT FROM OWNER:***

Name of signer: Keith A. Asel

Title: President - NW Region

Signer's telephone number: 816-347-8100

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

If owner is an individual: ☐ Single ☐ Married

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

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

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

Total Assessed Value\*\*: \$487,645

[Signature follows on separate page.]

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

**HAWTHORN BANK**

By: [Signature]  
Name: KEITH A. ASH  
Title: PRESIDENT - NW REGION

Date: 1-8-2019

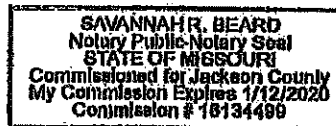
STATE OF MISSOURI                    )  
  ) ss:  
COUNTY OF Jackson                )

On this 8<sup>th</sup> day of January, 2019, before me appeared Keith A. Ash  
\_\_\_\_\_, to me personally known, who, being by me duly sworn did say that he/she is the Regional  
President of Hawthorn Bank, and that said instrument was signed on behalf of said  
bank, and said bank acknowledged said instrument to be the free act and deed of said entity.

WITNESS my hand and official seal this 8<sup>th</sup> day of January, 2019.

My Commission Expires: 1/12/20

[Signature]  
Notary Public



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

Name of owner: Gale Communities, Inc.

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

Owner's telephone number: 816-645-2336

***IF SIGNER IS DIFFERENT FROM OWNER:***

Name of signer: G. David Gale

Title: President

Signer's telephone number: 816-645-2336

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

If owner is an individual:            Single            Married

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

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

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

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

[Signature follows on separate page.]

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

**GALE COMMUNITIES, INC.,**  
a Missouri corporation

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

Date: 1.12.18.

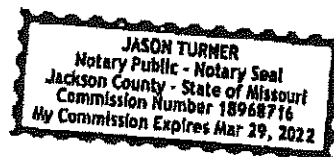
STATE OF MISSOURI                    )  
  ) ss:  
COUNTY OF JACKSON                )

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

WITNESS my hand and official seal this 12<sup>th</sup> day of January, 2019.

My Commission Expires: March 29, 2022

[Signature]  
Notary Public



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

Name of owner: NLVC, LLC

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

Owner's telephone number: 816-589-4415

***IF SIGNER IS DIFFERENT FROM OWNER:***

Name of signer: Russell G. Pearson

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

Signer's telephone number: 816-589-4415

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

If owner is an individual:            Single            Married

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

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

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

Total Assessed Value\*\*: \$99,424

[Signature follows on separate page.]



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

Name of owner: FSD New Longview, LLC

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

Owner's telephone number: 602-714-3099

***IF SIGNER IS DIFFERENT FROM OWNER:***

Name of signer: SG Ellison

Title: President

Signer's telephone number: 707-938-9600

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

If owner is an individual:            Single            Married

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

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

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

Total Assessed Value\*\*: \$820

[Signature follows on separate page.]



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

**FSD NEW LONGVIEW, LLC,**  
a Delaware limited liability company

By: SG Ellison  
Name: SG Ellison  
Title: President

Date: 1/14/19

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me appeared SG Ellison, to me personally known, who, being by me duly sworn did say that he is the President of FSD New Longview, LLC, a Delaware limited liability company, and that said instrument was signed on behalf of said company, and said company acknowledged said instrument to be the free act and deed of said entity.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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

**See Attached Certificate**

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT**

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

State of California

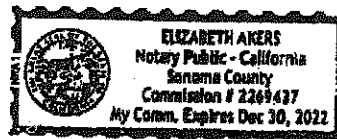
County of Sonoma

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

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

WITNESS my hand and official seal.

  
Elizabeth Akers  
Notary Public



NOTARY SEAL

## EXHIBIT A

### Legal Description of New Longview Community Improvement District

#### NEW LONGVIEW CID

Project No. 018-2866

November 19, 2018

#### Property Description

A tract of land in the Southwest Quarter of Section 3 and the Northwest Quarter of Section 10, Township 47 North, Range 32 West of the 5th Principal Meridian in Lee's Summit, Jackson County, Missouri, being bounded and described as follows: Beginning at the Southwest corner of said Southwest Quarter point also being the Northwest corner of said Northwest Quarter; thence South 87°11'20" East, on the South line of the said Southwest quarter of Section 3, and the North line of the said Northwest quarter of Section 10, 1172.61 feet; thence leaving said line North 02°48'40" East, 50.00 feet to the Southwest corner of Tract B10, WINTERSET VALLEY 10th PLAT, a subdivision of land recorded on Document Number 2014E0094859 in the Jackson County Recorder of Deeds Office; thence continuing South 87°11'20" East on the South line of said Winterset Valley 10th Plat, 44.36 feet; thence North 45°49'13" East on said South line of Winterset Valley 10th Plat, 16.42 feet; thence South 87°11'20" East on said South line of Winterset Valley 10th Plat, 138.33 feet; thence leaving said South line, South 02°48'40" West, 112.01 feet to a point on the South right-of-way line of said Southwest 3rd Street, point also being on the North line of Lot 1, NEW LONGVIEW COMMERCIAL DISTRICT FOURTH PLAT, LOT 1, a subdivision of land recorded on Document Number 2016E0046879 in said Jackson County Recorder of Deeds Office; thence North 87°11'20" West on said North line, 45.30 feet to the Northwest corner of said Lot 1 point also being on the Easterly right-of-way line of Southwest Kessler Drive, as now established; thence South 02°48'40" West on the West line of said Lot 1 and said Easterly right-of-way line, 167.31 feet; thence North 87°11'20" West on the West line of said Lot 1 and said Easterly right-of-way line, 12.00 feet; thence South 02°48'40" West on the West line of said Lot 1 and said Easterly right-of-way line, 164.68 feet to the Southwest corner of said Lot 1; thence leaving said Easterly right-of-way line, South 87°11'21" East on the South line of said Lot 1, 606.38 feet to a point on the Westerly line of BRIDLEWOOD 4th PLAT, a subdivision of land recorded in Book 169 on Page 63 of said Jackson County Recorder of Deeds Office; thence South 03°11'11" West on the West line of said Bridlewood 4th Plat and the West line of BRIDLEWOOD 5th PLAT, a subdivision of land recorded in Book 71 on Page 18 in said Jackson County Recorder of Deeds Office, 439.82 feet to the Northeast corner of Tract A, KESSLER RIDGE AT NEW LONGVIEW - FIRST PLAT, a subdivision of land Recorded on Document Number 2016E0123272 in said Jackson County Recorder of Deeds Office; thence North 86°48'44" West on the North line of said Tract A, 461.29 feet to the Northwest corner of said Tract A, point also being on the Easterly right-of-way line of said Southwest Kessler Drive; thence Northwesterly on said Easterly right-of-way line, with a curve to the left having an initial tangent bearing of North 31°35'13" West with a radius of 310.00 feet, a central angle of 05°37'55" and an arc distance of 30.47 feet; thence North 37°13'07" West on said Easterly right-of-way line, 123.26 feet; thence Northwesterly on said Easterly right-of-way line with a curve to the right being tangent to the last described course with a radius of 190.00 feet, a central angle of 02°01'30" and an arc distance of 6.71 feet; thence leaving said Easterly right-of-way line, North 87°00'49" West, 71.34 feet to a point on the Westerly right-of-way line of said Southwest Kessler Drive point also being the Southeast corner of Lot 1A, FASCINATION AT NEW LONGVIEW LOTS 1A-1E, INCLUSIVE TRACT A, a subdivision of land Recorded on Document Number 2018E0034938 in said Jackson County Recorder of Deeds Office; thence continuing North 87°00'49" West, on the South line of said Lot 1A, 117.45 feet; thence South 58°23'30" West on the South line of said Fascination at New Longview Lots 1A-1E, Inclusive Tract A, 407.26 feet; thence South 31°36'30" East on said South line, 49.74 feet; thence South 58°52'01" West on said South line, 143.96 feet to the Southwest corner of Lot 1E of said Fascination at New Longview Lots 1A-1E, Inclusive Tract A point also on the Easterly right-of-way line of Southwest Longview Boulevard as now established; thence leaving said Easterly right-of-way line, South 61°02'01" West, 116.09 feet to the Southeast corner of Lot 7, TOWER PARK COMMERCIAL - PHASE 2 LOTS 5, 6, 7 AND TRACTS A and B, a subdivision of land Recorded on Document

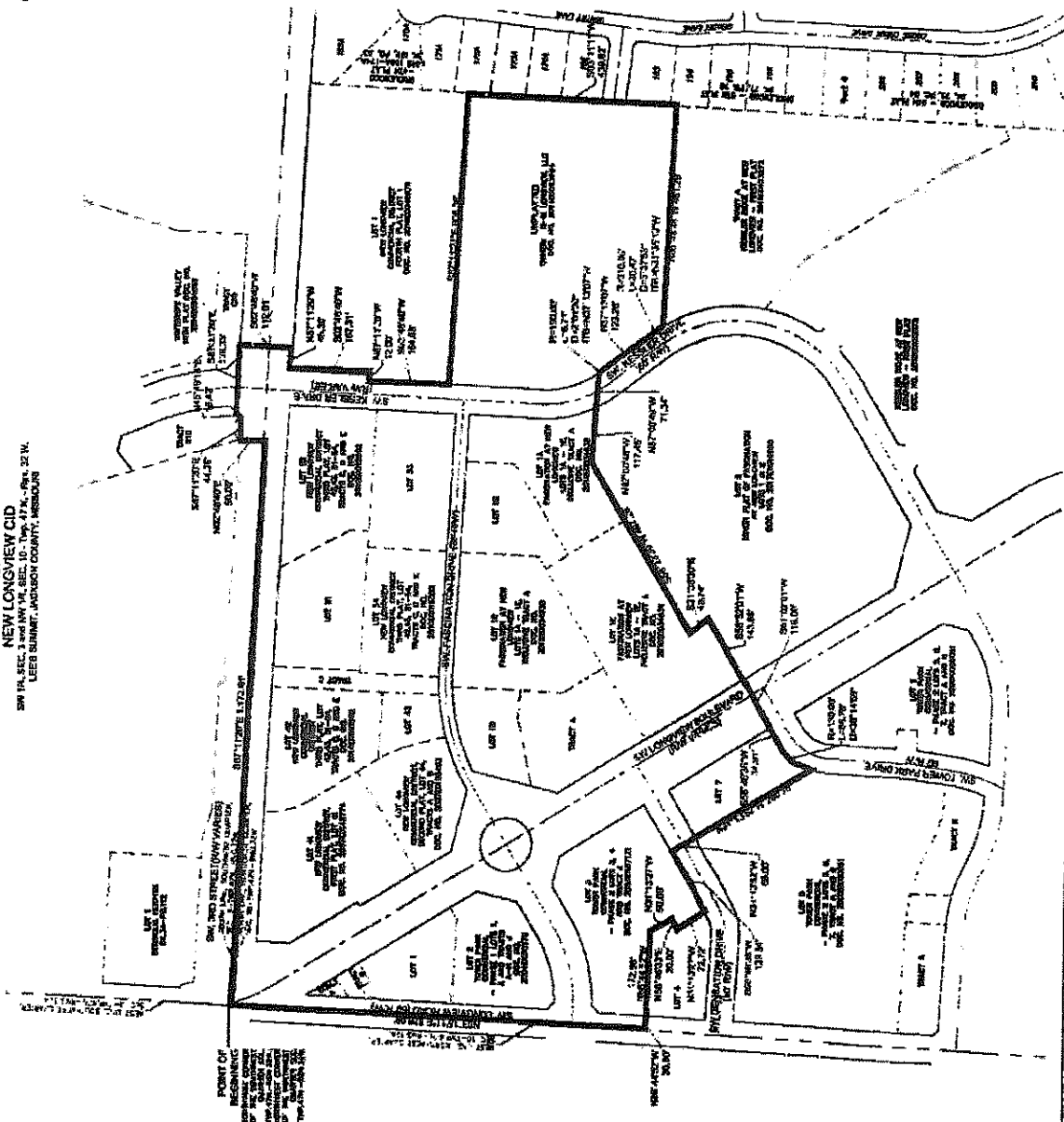
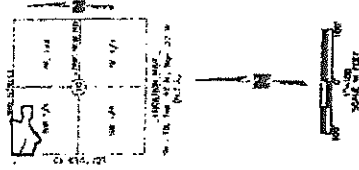
Number 200510090051 of said Jackson County Recorder of Deeds Office point also on the Westerly right-of-way line of said Southwest Longview Boulevard; thence South 58°46'36" West on the South line of said Lot 7, 34.91 feet; thence Southwesterly on the South line of Lot 7 with a curve to the left being tangent to the last described course with a radius of 130.00 feet, a central angle of 38°14'59" and an arc distance of 86.79 feet to the Southwest corner of said Lot 7; thence North 31°13'52" West on the West line of said Lot 7, 280.78 feet to the Northwest corner of said Lot 7 point also being on the Southerly right-of-way line of Southwest Sensation Drive, as now established; thence continuing North 31°13'52" West, 60.00 feet to a point on the Northerly right-of-way line of said Southwest Sensation Drive, point also on the Southerly line of Lot 3, TOWER PARK COMMERCIAL - PHASE 2 LOTS 3, 4 AND TRACT J, a subdivision of land recorded on Document Number 200410107121 in said Jackson County Recorder of Deeds Office; thence South 58°46'36" West on the South line of said Lot 3 and the said Northerly right-of-way line, 139.54 feet; thence North 31°13'27" West on said South line, 72.72 feet; thence North 58°46'33" East on said South line, 20.00 feet; thence North 31°13'27" West on said South line, 50.00 feet; thence North 86°44'52" West on said South line, 172.98 feet to the Southwest corner of said Lot 3, point also being on the Easterly right-of-way line of Southwest Longview Road, as now established, thence continuing North 86°44'52" West, 30.00 feet to a point on the West line of said Northwest Quarter; thence North 03°15'11" East on said West line, 876.09 feet to the Point of Beginning. Containing 1,470,815 square feet or 33.77 acres, more or less.

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

**EXHIBIT B**

General Boundary Map of the New Longview Community Improvement District

PROJECT  
 NEW LONGVIEW CID  
 SW 1/4, SEC. 3 and NW 1/4, SEC. 10, Twp. 47 N., R. 32 W.  
 LEEB SUMMIT, JEFFERSON COUNTY, MISSOURI



**olsson**

1001 E. 1st Street, Suite 100  
 St. Louis, MO 63102  
 (314) 433-1000  
 FAX (314) 433-1001  
 E-MAIL: info@olsson.com

SHEET  
1 of 1

**EXHIBIT C  
FIVE YEAR PLAN**

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

**Budgeted Expenditures – From District Revenue**

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

**Notes:**

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

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

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



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

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

Notes:

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



**Tab B**

**New Longview Community Improvement District  
Resolution 2019-03 Imposing District Sales Tax**

See following pages

**NEW LONGVIEW COMMUNITY IMPROVEMENT DISTRICT**

**Resolution 2019:03**

***Approving the Levy of a Sales and Use Tax Within the New Longview Community  
Improvement District ("District") to Accomplish the Purposes of the District***

**Adopted May 14, 2019**

WHEREAS, by Ordinance No. 8557 ("Creation Ordinance"), adopted on February 19, 2019, and pursuant to the Community Improvement District Act, Sections 67.1401 *et seq.*, RSMo ("Act"), the City of Council of the City of Lee's Summit, Missouri ("Council") approved the Petition for Establishment of the New Longview Community Improvement District ("Petition"), thereby creating the New Longview Community Improvement District ("District") in accordance with the Act; and

WHEREAS, pursuant to the powers granted under the Act, the Board of Directors ("Directors") of the District hereby desires to levy a sales and use tax within the boundaries of the District to carry out the purposes of the District.

THEREFORE, BE IT RESOLVED THAT:

Section 1. The District hereby imposes a district sales and use tax ("Sales Tax") at the rate of up to one percent (1.0%) on all retail sales made in the District, subject to the limitations set forth in Section 67.1545, RSMo.

Section 2. The Sales Tax shall remain in place for a period of thirty (30) years from the date that the Sales Tax becomes effective pursuant to the Act or such other period to coincide with the termination of the District.

Section 3. The Sales Tax is imposed for the purpose of providing funding for the services and improvements described in the Petition, specifically including: (a) public improvements within the District and the maintenance thereof as permitted by the Act or as required pursuant to a Cooperative Agreement between the District and the City, including (i) Activity Plaza consisting of green space, hardscape, landscape, adjacent streetscape along Fascination and Longview Boulevard, pedestrian connectivity, and surface parking; (ii) Offsite Sitework Obligations consisting of installation of a traffic signal and related improvements at 3<sup>rd</sup> Street and Kessler Drive; (iii) Grading, Paving, and Utilities consisting of right-of-way and shared parking stalls; (iv) Streetscape and Landscape at Fascination and Kessler Drive consisting of right-of-way and common areas; (v) North Arch maintenance and upkeep as needed; and (vi) Structured Parking consisting of approximately 160 deck parking spaces; (b) Professional Fees; (c) Contingency; and (d) other improvements and services necessary to carry out the purposes of the District and as permitted under the Act or as authorized by the Petition as approved by the Creation Ordinance, including, without limitation, such administrative costs to operate the District in accordance with the Act and as contemplated in the Petition and the Creation Ordinance. These purposes shall be designated in the District's ballot of submission to its qualified voters to vote upon the Sales Tax.

Section 4. This Resolution shall not become effective or adopted, and the Board shall not levy the Sales Tax, unless and until the Board submits to the District's qualified voters, by mail-in ballot, a proposal to authorize the Sales Tax, and a majority of the votes cast by the qualified voters on the Sales Tax are cast in favor of the Sales Tax.

Section 5. The Sales Tax mail-in ballot shall be substantially in the following form:

*Shall the New Longview Community Improvement District (the "District") impose a community improvement district-wide sales and use tax ("Sales Tax") at the rate of up to one percent (1.0%) for a period of thirty (30) years from the date that the Sales Tax becomes effective pursuant to the Community Improvement District Act, Section 67.1401 et seq., RSMo (the "Act") or such other period to coincide with the termination of the District in accordance with the Act, for the purpose of providing funding for the services and improvements described in the Petition for Establishment of the District (the "Petition") as approved by the City Council of the City of Lee's Summit, Missouri by Ordinance No. 8557 dated February 19, 2019 (the "Creation Ordinance") specifically including: (a) public improvements within the District and the maintenance thereof as permitted by the Act or as required pursuant to a Cooperative Agreement between the District and the City, including (i) Activity Plaza consisting of green space, hardscape, landscape, adjacent streetscape along Fascination and Longview Boulevard, pedestrian connectivity, and surface parking; (ii) Offsite Sitework Obligations consisting of installation of a traffic signal and related improvements at 3<sup>rd</sup> Street and Kessler Drive; (iii) Grading, Paving, and Utilities consisting of right-of-way and shared parking stalls; (iv) Streetscape and Landscape at Fascination and Kessler Drive consisting of right-of-way and common areas; (v) North Arch maintenance and upkeep as needed; and (vi) Structured Parking consisting of approximately 160 deck parking spaces; (b) Professional Fees; (c) Contingency; and (d) other improvements and services necessary to carry out the purposes of the District and as permitted under the Act or as authorized by the Petition as approved by the Creation Ordinance, including, without limitation, such administrative costs to operate the District in accordance with the Act and as contemplated in the Petition and the Creation Ordinance?*

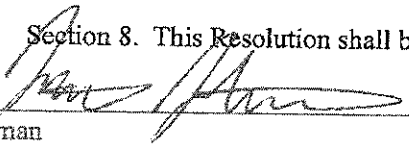
[ ] YES                      [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

Section 6. All revenue received by the District from the Sales Tax shall be deposited into the District's bank account or such other account(s) as provided in the Cooperative Agreement between the District and the City and expended solely for the purposes described in Section 3 above.

Section 7. The appropriate officers and legal counsel of the District are hereby authorized to take all measures deemed necessary or desirable to implement the mail-in election regarding the Sales Tax, including but not limited to submitting a notice of election to the Jackson County Board of Election Commissioners, and any action taken by or on behalf of the District by the officers and legal counsel of the District prior to the date of this Resolution in connection with such election of the Sales Tax, is hereby ratified, approved, and confirmed.

Section 8. This Resolution shall become effective immediately.

  
Chairman

ATTEST:

  
Secretary

**Tab C**

**New Longview Community Improvement District  
Copy of Ballot  
Certified Election Results**

See following pages

## **New Longview Community Improvement District**

### **OFFICIAL BALLOT**

The New Longview Community Improvement District (“District”) presents a sales tax question to the qualified voters of the District for the purpose of providing revenue for the improvements and services within the District as described in the Petition to Establish the New Longview Community Improvement District approved by the City Council of the City of Lee’s Summit, Missouri by Ordinance No. 8557 dated February 19, 2019.

**Please enter your vote for the following sales tax question by placing an “X” in the appropriate boxes.**

### **QUESTION – SALES TAX**

Shall the New Longview Community Improvement District (the “District”) impose a community improvement district-wide sales and use tax at the rate of up to one percent (1.0%) for a period of thirty (30) years from the date that the Sales Tax becomes effective pursuant to the Community Improvement District Act, Section 67.1401 et seq., RSMo (the “Act”) or such other period to coincide with the termination of the District in accordance with the Act, for the purpose of providing funding for the services and improvements described in the Petition to Establish the District (the “Petition”) as approved by the City Council of the City of Lee’s Summit, Missouri by Ordinance No. 8557 dated February 19, 2019 (the “Creation Ordinance”) specifically including: (a) public improvements within the District and the maintenance thereof as permitted by the Act or as required pursuant to a Cooperative Agreement between the District and the City, including (i) Activity Plaza consisting of green space, hardscape, landscape, adjacent streetscape along Fascination and Longview Boulevard, pedestrian connectivity, and surface parking; (ii) Offsite Sitework Obligations consisting of installation of a traffic signal and related improvements at 3<sup>rd</sup> Street and Kessler Drive; (iii) Grading, Paving, and Utilities consisting of right-of-way and shared parking stalls; (iv) Streetscape and Landscape at Fascination and Kessler Drive consisting of right-of-way and common areas; (v) North Arch maintenance and upkeep as needed; and (vi) Structured Parking consisting of approximately 160 deck parking spaces; (b) Professional Fees; (c) Contingency; and (d) other improvements and services necessary to carry out the purposes of the District and as permitted under the Act or as authorized by the Petition as approved by the Creation Ordinance, including, without limitation, such administrative costs to operate the District in accordance with the Act and as contemplated in the Petition and the Creation Ordinance?

☐ YES

☐ NO

If you are in favor of the question, place an “X” in the box opposite “YES”. If you are opposed to the question, place an “X” in the box opposite “NO”.

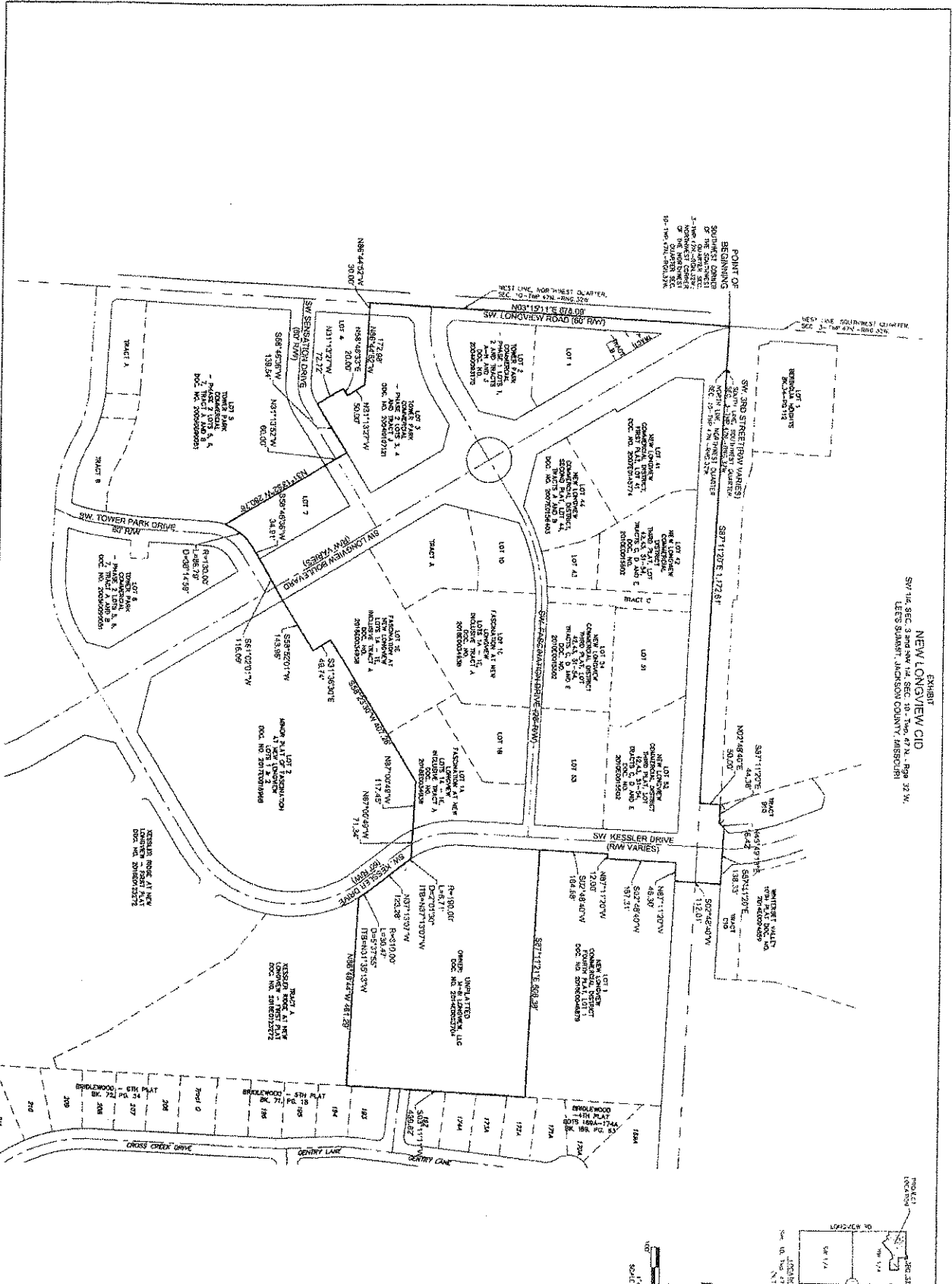




**Tab D**

**New Longview Community Improvement District  
Boundary Map**

See following page



**Tab E**

**List of Business Names, Addresses and Missouri Tax ID Numbers for all Businesses located  
within New Longview Community Improvement District**  
(all businesses within District are located in City of Lee's Summit and Jackson County)

See attached pages

<b>Business</b>	<b>Address</b>	<b>MO Tax #</b>
Advanced Nutrition (Herbalife)	Torrance CA 90502  Local: 3360 SW Fascination Dr Lee's Summit MO 64081	19738587
B&B Theatres	P.O. Box 129 Liberty MO 64069  Local: 3241 SW Fascination Dr Lee's Summit MO 64081	17220530
Better Bodies Pilates LLC	400 SW Longview Blvd #105 Lee's Summit MO 64064	21293589
The Bicycle Shack LLC	3365 SW Fascination Dr Lee's Summit MO 64081	23372168
Bridgeton Phillip 66	4251 Lindell Blvd St. Louis MO 63108  Local: 3325 SW 3 <sup>rd</sup> Street Lee's Summit MO 64081	16315588
CVS Pharmacy #4088	One CVS Drive Woonsocket RI 02895  Local: 3351 SW 3 <sup>rd</sup> Street Lee's Summit MO 64081	19489951
Gusto	3390 SW Fascination Dr Lee's Summit MO 64081	21067716
Long-Bell Pizza Co	3385 SW Fascination Dr Lee's Summit MO 64081	22699384
McDonald's	25525 Wildcat Lane Sedalia MO 65301  Local: 3275 SW 3 <sup>rd</sup> Street Lee's Summit MO 64081	15922481
Rejuvenate Chiropractic Center	400 SW Longview Blvd., Suite #160 Lee's Summit MO 64081	20875223
Salvus TG	400 SW Longview Blvd., Suite #290 Lee's Summit, MO 64081	19535074
Subway #5905	P.O. Box 356 Onalaska WI 54650  Local: 3380 SW Fascination Dr Lee's Summit MO 64081	16989911
Taco Bell (under construction, opening late summer/early fall 2019)	3225 SW 3 <sup>rd</sup> Street Lee's Summit MO 64081	Unknown at this time

## Packet Information

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**File #:** BILL NO. 19-268, **Version:** 1

---

An Ordinance approving the Redevelopment Contract and Lease Agreement between the City of Lee's Summit, Missouri, and DTLS Apartments, LLC, to implement the 2<sup>nd</sup> and Douglas Tax Increment Financing Plan and the 2<sup>nd</sup> and Douglas LCRA Redevelopment Plan.

Issue/Request:

An Ordinance approving the Redevelopment Contract to implement the TIF Plan and LCRA Plan for the downtown Cityscape Apartments, and a Lease Agreement to implement the sales tax exemption on construction materials for the apartments and parking structure.

Key Issues:

This ordinance will approve the contracts that will allow for the use of TIF revenues to fund the parking structure for the apartments through the 2<sup>nd</sup> and Douglas Tax Increment Financing Plan, and also implement the sales tax exemption on the construction materials through the 2<sup>nd</sup> and Douglas Land LCRA Redevelopment Plan. An historic preservation easement for the Sanctuary, which is an attachment to the Redevelopment Contract, must be executed by Developer to receive the incentive benefits. The easement will preserve the facades of the Sanctuary in perpetuity, and the property owner will need to obtain permission from the City to perform any changes to the exterior of the Sanctuary except for routine maintenance and alterations to comply with life/safety code requirements of the City Code.

Additional information about the project and the incentive plans can be found in the attached staff report. A simple majority vote is necessary to adopt the ordinance.

Proposed City Council Motion:

I move for second reading of an Ordinance Approving the Redevelopment Contract and Lease Agreement Between the City of Lee's Summit, Missouri, and DTLS Apartments, LLC, to Implement the 2<sup>nd</sup> and Douglas Tax Increment Financing Plan and the 2<sup>nd</sup> and Douglas LCRA Redevelopment Plan.

Background:

On May 7, 2019, the City Council approved Ordinance Nos. 8625 and 8628 which approved the 2<sup>nd</sup> and Douglas Tax Increment Financing Plan and the 2<sup>nd</sup> and Douglas LCRA Redevelopment Plan, respectively, for the redevelopment of property generally located to the northwest of the intersection of 2<sup>nd</sup> Street and Douglas Street. The development will be an apartment complex containing approximately 274 residential apartment units and a parking structure to serve the apartments. The redevelopment plans call for the demolition of all existing structures on the site located at 114 SE Douglas Street (Summit Church) except for the original 1922 church sanctuary structure located immediately at the northwest corner of 2<sup>nd</sup> Street and Douglas Street. The sanctuary will be preserved and the Cityscape will grant an historic preservation easement to the City which protects the exterior appearance of the facade in perpetuity.

The Developer's proposed investment is approximately \$53.1 million. The TIF Plan will authorize approximately \$8 million in reimbursement for the parking structure, and the LCRA Plan will allow for an estimated \$1.3 million sales tax exemption on the construction materials that are used to construct the apartment complex and parking structure.

Impact/Analysis:

The estimated benefit of the TIF Plan is approximately \$8 million and the LCRA Redevelopment Plan for the Developer will result in sales tax exemption on construction materials for the apartments and structured parking in an estimated amount of \$1,329,790.

David Bushek, Chief Counsel of Economic Development & Planning  
Curt Peterson, Polsinelli Law Firm, Developer's Legal Counsel  
Jim Thomas, DTLS Apartments, LLC, Developer

Staff recommends approval of the ordinance.

On February 14, 2019 the Planning Commission recommended approval of Application PL2018-234, Preliminary Development Plan; DTLS Apartments, 114 SE Douglas St.; subject to staff's letter of February 9, 2019, specifically recommendation items 1 - 5.

On February 27, 2019 the Land Clearance for Redevelopment Authority (LCRA) Board of Commissioners adopted Resolution 2019-1 recommending the 2<sup>nd</sup> and Douglas LCRA Plan be approved by the City Council. The 2<sup>nd</sup> and Douglas LCRA plan would provide for sales tax exemption on the construction materials for the proposed redevelopment project (apartments and structured parking).

On March 25, 2019 the Tax Increment Financing Commission considered the proposed TIF Plan and passed a motion in opposition to the TIF Plan by a vote of 6-3-1 (Rhoads abstaining). The Council approved the TIF Plan by a 6-3 vote on May 7, 2019, which overrode the TIF Commission's negative recommendation. The heightened vote requirement does not apply to this ordinance that would approved the Redevelopment Contract and Lease.



## **BILL NO. 19-268**

---

AN ORDINANCE APPROVING THE REDEVELOPMENT CONTRACT AND LEASE AGREEMENT BETWEEN THE CITY OF LEE'S SUMMIT, MISSOURI, AND DTLS APARTMENTS, LLC, TO IMPLEMENT THE 2<sup>ND</sup> AND DOUGLAS TAX INCREMENT FINANCING PLAN AND THE 2<sup>ND</sup> AND DOUGLAS LCRA REDEVELOPMENT PLAN.

WHEREAS, on May 7, 2019, the City Council approved Ordinance Nos. 8625 and 8628 which approved the 2<sup>nd</sup> and Douglas Tax Increment Financing Plan and the 2<sup>nd</sup> and Douglas LCRA Redevelopment Plan, respectively, for the redevelopment of property generally located to the northwest of the intersection of 2<sup>nd</sup> Street and Douglas Street for the construction of an apartment complex containing approximately 274 residential apartment units and a parking structure to serve the apartments; and,

WHEREAS, the City Council desires to approve a redevelopment contract and a lease agreement to provide for the implementation of the Redevelopment Plans by the developer of record.

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

SECTION 1. The Redevelopment Contract between the City and DTLS Apartments, LLC, which is attached hereto as **Exhibit A** and incorporated herein by reference, and the Lease Agreement between the same parties which is attached hereto as **Exhibit B** and incorporated herein by reference, are hereby approved and the City Manager is authorized and directed to execute the documents in substantial compliance with the attached documents.

SECTION 2. City officers and agents of the City are each hereby authorized and directed to take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, the Redevelopment Contract and the Lease Agreement.

SECTION 3. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 4. This Ordinance shall be in full force and effect from and after its passage, adoption, and approval by the Mayor.

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

ATTEST:

\_\_\_\_\_  
Mayor William A. Baird

\_\_\_\_\_  
City Clerk Trisha Fowler Arcuri

**BILL NO. 19-268**

---

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

ATTEST:

\_\_\_\_\_  
Mayor *William A. Baird*

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *Brian W. Head*

EXHIBIT A

REDEVELOPMENT CONTRACT

[*ATTACHED*]

EXHIBIT B

LEASE AGREEMENT

[*ATTACHED*]

# **REDEVELOPMENT CONTRACT**

**BETWEEN**

**THE CITY OF LEE'S SUMMIT, MISSOURI**

**and**

**DTLS APARTMENTS, LLC**

---

**To implement the**

**2<sup>ND</sup> AND DOUGLAS TAX INCREMENT FINANCING PLAN**

**and the**

**2<sup>ND</sup> AND DOUGLAS LCRA REDEVELOPMENT PLAN**

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**December 10, 2019**

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## LIST OF EXHIBITS

<b><u>Exhibit A</u></b>	<a href="#"><u>Legal Description of Redevelopment Area and Redevelopment Project Area</u></a>
<b><u>Exhibit B</u></b>	<a href="#"><u>Map of Redevelopment Area</u></a>
<b><u>Exhibit C</u></b>	<a href="#"><u>Redevelopment Project Cost Budget</u></a>
<b><u>Exhibit D</u></b>	<a href="#"><u>Private Project Improvements</u></a>
<b><u>Exhibit E</u></b>	<a href="#"><u>Redevelopment Schedule</u></a>
<b><u>Exhibit F</u></b>	<a href="#"><u>Historic Preservation Easement</u></a>
<b><u>Exhibit G</u></b>	<a href="#"><u>Certificate of Substantial Completion</u></a>
<b><u>Exhibit H</u></b>	<a href="#"><u>Form of Assignment Agreement</u></a>

## REDEVELOPMENT CONTRACT

**THIS REDEVELOPMENT CONTRACT** (the “**Contract**”) is made and entered into as of the 10<sup>th</sup> day of December, 2019 (the “**Effective Date**”), by and between THE CITY OF LEE’S SUMMIT, MISSOURI (“**City**”), and DTLA APARTMENTS, LLC, a Missouri limited liability company, the developer selected by the City (“**Developer**”) to implement its plan of redevelopment as more fully described herein.

### RECITALS

1. On April 27, 2019, the Land Clearance for Redevelopment Authority of Lee’s Summit, Missouri (the “**LCRA**”), recommended that the City approve the 2<sup>nd</sup> and Douglas LCRA Redevelopment Plan (the “**LCRA Plan**”). On May 7, 2019, the City Council of the City (the “**City Council**”) approved the LCRA Redevelopment Plan through the adoption of Ordinance No. 8628 pursuant to the Land Clearance for Redevelopment Authority Act set forth in Sections 99.400 through 99.715 of the Revised Statutes of Missouri (the “**LCRA Act**”).

2. On March 25, 2019, the Tax Increment Financing Commission of Lee’s Summit, Missouri (the “**Commission**”), recommended against the City’s approval of the 2<sup>nd</sup> and Douglas Tax Increment Financing Plan (the “**TIF Plan**”). On May 7, 2019, the City Council approved the TIF Plan and the redevelopment project described therein pursuant to Ordinance No. 8625 and 8626, respectively, for the area described in the TIF Plan as the Redevelopment Area (the “**Redevelopment Area**”) pursuant to Missouri’s Real Property Tax Increment Allocation Redevelopment Act Sections 99.800 to 99.865, RSMo (the “**TIF Act**”).

3. Pursuant to Ordinance No. 7228 which was adopted on September 6, 2012, the City Council determined that the Redevelopment Area is a Blighted Area as that term is defined in the LCRA Act. Ordinance No. 8628 re-affirmed that prior blight finding, and made the same blight finding for the project under the TIF Act.

4. Pursuant to Ordinance Nos. 8628 and 8625, the City Council made several factual findings as it related to implementation of the LCRA Plan and the TIF Plan (collectively the “**Incentive Plans**”) and that those plans meet the other applicable requirements of the LCRA Act and the TIF Act, respectively. Those Ordinances also selected DTLA Apartments, LLC, as the developer to implement the Incentive Plans, and authorized City to enter into a contract with such party as the developer for the implementation of the Incentive Plans.

5. The LCRA Plan and TIF Plan call for the construction of the Redevelopment Project which will consist of an apartment complex containing approximately 274 residential apartment units and a parking structure to serve the apartments.

### AGREEMENT

Now, therefore, for and in consideration of the premises, and the mutual covenants herein contained, City and Developer agree as follows:

### ARTICLE 1: RULES OF INTERPRETATION AND DEFINITIONS

**Section 1.01. Rules of Interpretation.** Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Contract:

A. The terms defined in this Contract which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided, that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement other than in accordance with **Section 6.05** of this Contract.

B. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Contract shall refer to this Contract as a whole and not to any particular provision of this Contract. Section, subsection and exhibit references are to this Contract unless otherwise specified. Whenever an item or items are listed after the words “including” and/or “include(s)”, such listing is not intended to be a listing that excludes items not listed.

C. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, limited liability companies, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

D. The table of contents, captions and headings in this Contract are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Contract.

**Section 1.02. Definitions.** All capitalized words or terms used in this Contract that are not otherwise defined in this Contract but are defined in the Incentive Plans shall have the meaning ascribed to them in the Incentive Plans. In addition thereto and in addition to words and terms defined elsewhere in this Contract, the following words and terms shall have the meanings ascribed to them in this **Section 1.02** unless the context in which such words and terms are used clearly requires otherwise.

“**Acts**” means the LCRA Act and the TIF Act.

“**Actual Private/Public Ratio**” shall have the meaning set forth in **Section 4.09**.

“**Action**” shall have the meaning set forth in **Section 6.01**.

“**Administrative Costs**” means all documented costs and expenses reasonably incurred by the City, and to be paid for as provided in **Section 6.11**, for planning, legal, financial, auditing, administrative and other costs associated with the review, consideration, approval and implementation of the Incentive Plans, this Contract and the Redevelopment Project, including all documented in-house legal costs, all cost certifications as set forth in **Section 2.04**, and all consultants’ costs engaged by the City.

“**Affiliate**” means any person, entity or group of persons or entities which controls a party, which a party controls or which is under common control with a party. As used herein, the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

“**Annual Rate of Return**” shall have the meaning set forth in **Section 4.08**.

“**Approved Private/Public Ratio**” shall have the meaning set forth in **Section 4.09**.

“**Assignment Agreement**” shall have the meaning set forth in **Section 5.03**.

**“Bond Documents”** means the trust indenture, purchase contract, official statement, tax compliance agreement, continuing disclosure agreement, and such other contracts, statements, certificates, memoranda and opinions that may be executed or delivered in connection with the issuance of Obligations.

**“Bond Trustee”** means the bank or trust company designated as such in any Bond Documents.

**“Blighted Area”** shall have the meaning set forth for such term in the LCRA Act and the TIF Act, as applicable to the LCRA Plan and the TIF Plan.

**“Budgeted Private Sources”** shall have the meaning set forth in **Section 4.09**.

**“Budgeted Public Sources”** shall have the meaning set forth in **Section 4.09**.

**“Certification Application”** shall have the meaning set forth in **Section 4.03**.

**“City”** means the City of Lee’s Summit, Missouri.

**“City Council”** means the governing body of Lee’s Summit, Missouri.

**“City Engineer”** means the city engineer of Lee’s Summit, Missouri.

**“City Manager”** means the City Manager of Lee’s Summit, Missouri.

**“City Treasurer”** means the Finance Director of Lee’s Summit, Missouri.

**“Commission”** means the Tax Increment Financing Commission of Lee’s Summit, Missouri.

**“Construction Contract”** means each contract between the Developer and any Construction Contractor for the construction of the Private Improvements and Public Improvements on behalf of the City.

**“Construction Contractor”** means Cityscape Construction, LLC, its successor and assigns, or any other construction contractor chosen by Developer to construct all or any portion of the Project Improvements.

**“County”** means Jackson County, Missouri.

**“County Assessor”** means the assessor of Jackson County, Missouri.

**“County Collector”** means the collector of Jackson County, Missouri.

**“Debt Service”** means the amount required for the payment of interest and principal on the Obligations as they come due, including payment of mandatory, optional or special redemption payments and payments to reserve funds required by the terms of the Obligations to retire or secure the Obligations.

**“Design and Construction Manual”** means the Lee’s Summit Design and Construction Manual which is adopted by ordinance, as such document may be amended by the City.

**“Developer”** means DTLs Apartments, LLC, its successors and assigns.

**“Developer Controlled Improvements”** shall have the meaning set forth in **Section 2.08**.

**“Draw Certificate”** shall have the meaning set forth in **Section 4.03**.

**“East Lot”** means the lot with the street address of 107 SE Douglas Street which is Tax Parcel No. 61-340-19-02-00-0-00-000 as of the Effective Date of this Contract which will be purchased by Developer and transferred to the City in accordance with the terms of this Contract.

**“Economic Activity Account”** means the separate segregated account within the Special Allocation Fund into which Economic Activity Taxes are to be deposited.

**“Economic Activity Taxes” or “EATS”** means fifty percent (50%) of the total additional revenue from taxes which are imposed by City or other Taxing Districts, which are generated by economic activities within the Redevelopment Project Area while tax increment financing remains in effect in such area, excluding any taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500, RSMo., licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, personal property taxes, and taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo., and the sales tax imposed by Jackson County, Missouri to fund improvements to the stadium sports complex, until the designation of the Redevelopment Area as a “redevelopment area” for purposes of the TIF Act is terminated pursuant to Subsection 2 of Section 99.850 of the TIF Act.

**“Excusable Delay”** shall have the meaning set forth in **Section 6.03**.

**“Financing Plan”** shall have the meaning set forth in **Section 3.05**.

**“IDA”** means The Industrial Development Authority of the City of Lee’s Summit, Missouri.

**“Incentive Plans”** means the LCRA Plan and the TIF Plan.

**“Indemnified Party” or “Indemnified Parties”** shall have the meaning set forth in **Section 6.01**.

**“Land Use Approvals”** means those approvals required pursuant to the UDO and those ordinances approving the Preliminary Development Plan and all other subsequent zoning approvals which are required for the construction of the Redevelopment Project.

**“LCRA”** means the City of Lee’s Summit Land Clearance for Redevelopment Authority, which exercises its powers and authority through its Board of Commissioners.

**“LCRA Plan”** shall have the meaning assigned in the Recitals on Page 1.

**“Lease”** means the Lease Agreement between the City, as “Lessor,” and Developer, as the “Company” and lessee (as such terms are defined in such lease), to implement the LCRA Plan and the sales tax exemption provided through the LCRA Plan.

**“Legal Requirements”** means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence and specifically including but not limited to all ordinances, rules and regulations of the City, such as zoning ordinances, subdivision

ordinances, building codes, property maintenance codes, and City’s Design and Construction Manual (Ordinance No. 3719).

**“Materials”** means construction materials and supplies necessary for and used in the construction of the Project Improvements and all fixtures and supplies necessary for the completion of and operation of the Project Improvements acquired during construction.

**“Obligations”** means bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by the City, the IDA or any other issuer designated by the City, which are to be repaid using the TIF Revenues to carry out the TIF Plan or to fund outstanding obligations.

**“Ordinance”** means an ordinance enacted by the City Council.

**“Payment in Lieu of Taxes” or “PILOTs”** means those estimated revenues from real property in the Redevelopment Project Area, which revenues are to be used to retire Obligations and pay other Reimbursable Project Costs, which Taxing Districts would have received had the City not adopted tax increment allocation financing, and which would result from levies made after the time of the adoption of tax increment allocation financing during the time the current equalized value of real property in the Redevelopment Project Area exceeds the Total Initial Equalized Value of real property in such area until the designation of the Redevelopment Area as a “redevelopment area” for purposes of the TIF Act is terminated pursuant to subsection 2 of Section 99.850 of the TIF Act, which shall not be later than 23 years after the Redevelopment Project Ordinance was approved. Payments in lieu of taxes which are due and owing shall constitute a lien against the real estate in the Redevelopment Project Area from which they are derived, the lien of which may be foreclosed in the same manner as a special assessment lien as provided in Section 88.861, RSMo.

**“Payment in Lieu of Taxes Account”** means the separate segregated account within the Special Allocation Fund into which Payments in Lieu of Taxes are to be deposited.

**“Preapproved Underwriters”** shall have the meaning set forth in **Section 3.06**.

**“Preliminary Development Plan”** means the Preliminary Development Plan located in District CBD that was approved by Ordinance No. 8627 on May 7, 2019, and as such plan may be modified or amended pursuant to the requirements of the UDO.

**“Prime Rate”** shall have the meaning set forth in **Section 3.04**.

**“Private Funds”** shall have the meaning set forth in **Section 4.02**.

**“Private Investment”** shall have the meaning set forth in **Section 4.07**.

**“Project”** means all of the development work contemplated to be undertaken by Developer within the Redevelopment Area pursuant to the Incentive Plans and this Contract.

**“Project Improvements”** means the Private Project Improvements and the Public Project Improvements.

**“Property”** means all of the property within the Redevelopment Area as legally described in **Exhibit A**.

**“Private Project Improvements”** shall mean those improvements set forth in **Exhibit D**.

**“Public Investment”** shall have the meaning set forth in **Section 4.08**.

**“Public Project Improvements”** shall mean those improvements which are required by the City to be constructed and dedicated to public use, located on public property, in public rights-of-way or in public easements.

**“Purchasing Agents”** shall have the meaning set forth in **Section 2.04**.

**“Ratio Documentation”** shall have the meaning set forth in **Section 4.09**.

**“Ratio True-Up”** shall have the meaning set forth in **Section 4.09**.

**“Redevelopment Project” or “Redevelopment Project Area”** means the geographic area which is legally described in the Redevelopment Project Ordinance as the redevelopment project for the TIF Plan in which the collection of TIF Revenues has been activated. As used in this Contract, all references to the Redevelopment Project and the Redevelopment Project Area for implementation of the TIF Plan shall also apply to implementation of the LCRA Plan unless clearly indicated to the contrary.

**“Redevelopment Project Cost Budget”** means the budget setting forth the Redevelopment Project Costs, and identifying those Redevelopment Project Costs to be funded or reimbursed from TIF Revenues, and/or the proceeds of Obligations, attached hereto as **Exhibit C** and incorporated herein by reference.

**“Redevelopment Project Costs”** means the sum total of all reasonable or necessary costs incurred or estimated to be incurred, and any such costs incidental to the TIF Plan and the Redevelopment Project, as applicable. Such costs include, but are not limited to the following:

- (1) Costs of studies, surveys, plans and specifications;
- (2) Professional service costs, including, but not limited to, architectural, engineering, legal, marketing, financial, planning or special services. Except the reasonable costs incurred by the City or Commission established in the TIF Act for the administration of the TIF Plan, such costs shall be allowed only as an initial expense which, to be recoverable, shall be included in the costs of the TIF Plan and the Redevelopment Project;
- (3) Property assembly costs, including but not limited to, acquisition of land and other property, real or personal, or rights or interests therein, demolition of buildings, and the clearing and grading of land;
- (4) Costs of rehabilitation, reconstruction, or repair or remodeling of existing buildings and fixtures;
- (5) Cost of construction of public works or improvements;
- (6) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of Obligations, and which may include payment of interest on any Obligations issued hereunder accruing during the estimated period of construction the Redevelopment Project for which such Obligations are issued and for not more than eighteen months thereafter, and including reasonable reserves related thereto;

(7) All or a portion of a taxing district's capital cost resulting from the Redevelopment necessarily incurred or to be incurred in furtherance of the objectives of the TIF Plan and the Redevelopment Project, to the extent the City, by written agreement, accepts and approves such costs;

(8) Relocation costs to the extent that a city determines that relocation costs shall be paid or are required to be paid by federal or state law; and

(9) Payments in lieu of taxes.

**"Redevelopment Project Ordinance"** means the ordinance that will approve the Redevelopment Project pursuant to the TIF Plan and which activates the collection of TIF Revenues in such area.

**"Redevelopment Schedule"** shall have the meaning set forth in **Section 2.05**.

**"Reimbursable Project Costs"** means the portion of Redevelopment Project Costs, which pursuant to the TIF Plan and this Contract are to be funded or reimbursed with TIF Revenues and/or the proceeds of Obligations as are estimated in the Redevelopment Project Cost Budget plus any related financing and interest costs. Reimbursable Project Costs also include Administrative Costs.

**"Reimbursable Project Costs Cap"** shall have the meaning assigned in **Section 4.01**.

**"Related Entity"** shall have the meaning set forth in **Section 5.03**.

**"Requisition"** shall have the meaning set forth in **Section 4.05**.

**"Restricted Entity"** shall have the meaning set forth in **Section 5.03**.

**"Restricted Period"** shall have the meaning set forth in **Section 5.03**.

**"Sanctuary"** means the structure that served as the original Sanctuary for the United Methodist Church on the Property, which is located at the northwest corner of the intersection of Douglas Street and 2<sup>nd</sup> Street and which is more particularly described in **Exhibit F**.

**"Special Allocation Fund"** means the fund established by the City into which, as required by the TIF Act, all Payments in Lieu of Taxes and Economic Activity Taxes and other revenues from the Redevelopment Project Area are deposited for the purpose of paying Redevelopment Project Costs and Obligations incurred in the payment thereof. The Special Allocation Fund shall be divided into at least two (2) separate segregated accounts: the Payments in Lieu of Taxes Account and the Economic Activity Taxes Account, and such other accounts as are necessary to account for the several public revenue sources for the Redevelopment Project.

**"Taxing Districts"** means any political subdivision of this state having the power to levy taxes on sales or property in the Redevelopment Project Area.

**"Termination Ordinance"** shall have the meaning set forth in **Section 4.07**.

**"TIF Plan"** shall have the meaning assigned in the Recitals on Page 1.

**"TIF Revenues"** means PILOTs and EATs and amounts which are deposited in the Special Allocation Fund as Additional Rent – PILOTs pursuant to the Lease.



**“Total Initial Equalized Assessed Value”** means that amount certified by the County Assessor which equals the most recently ascertained equalized land assessed value of each taxable lot, block, tract or parcel or real property within the Redevelopment Project Area immediately after the Redevelopment Project Ordinance was approved by the City Council.

**“True-Up Date”** shall have the meaning set forth in **Section 4.09**.

**“UDO”** means the City’s Unified Development Ordinance as set forth in Chapter 33 of the City Code.

**“Work”** means all work, including, but not limited to, demolition, site preparation, development, design, engineering and construction, necessary to prepare the Property and to construct the Project.

## **ARTICLE 2: THE REDEVELOPMENT PROJECT**

**Section 2.01. Redevelopment Area.** The portion of the Redevelopment Area subject to the provisions of this Contract consists of the area legally described on **Exhibit A** attached hereto (the **“Redevelopment Project Area”**).

**Section 2.02. Redevelopment Project Area.** The Redevelopment Project Area will be developed in one phase. The Redevelopment Project Area may only be changed, modified or amended in accordance with the TIF Act. If the Redevelopment Project Area is amended, the parties acknowledge that a corresponding amendment to the LCRA Plan may be necessary. The collection of TIF Revenues within the Redevelopment Project Area will commence upon the effective date of the Redevelopment Project Ordinance.

**Section 2.03. Project Improvements.** In accordance with the Acts and the terms and conditions of the Incentive Plans and this Contract, to ameliorate or satisfy those conditions which are the basis for eligibility and designation of the Redevelopment Area as a Blighted Area and otherwise eligible as a redevelopment area under the Acts, Developer shall use best commercially reasonable efforts to cause the Redevelopment Project Area to be redeveloped through the construction of the Project Improvements; provided that, prior to commencing construction of the Project, Developer may terminate this Contract for any or no reason and the parties hereto shall thereafter have no further obligations hereunder except as specifically stated herein. In the event of such early termination, the City shall be entitled to reimbursement from the Administrative Costs Account for all Administrative Costs incurred through the date of such termination and thereafter for all final wrap-up work associated with completing such termination.

### **Section 2.04. Lease Agreement and Sales Tax Exemption for Construction.**

A. Lease. Developer will transfer fee title to the Property to the City to implement the incentives provided by the LCRA Plan. The City and Developer will coordinate on the schedule for this transaction. Simultaneously with this Contract, the City and Developer will enter into the Lease which will provide the terms for acquisition of the Property by the City from Developer and the lease of the Property back to Developer for the effective period of the Lease, which duration will generally coincide with the construction period for the Project.

#### **B. Rent.**

1. Pursuant to the terms of the Lease, and as such additional capitalized terms used in this paragraph are defined in the Lease, Developer shall pay as annual “Basic Rent” an amount equal to the PILOTs that would be collected from the Redevelopment Project Area assuming

Developer continued to own the Property during the Lease term and assuming the market value of the Property is fixed at \$1,003,436 as assigned by the Jackson County Assessor to the Property for calendar year 2019. Further, Developer will pay as “Additional Rent” such additional amounts as may be charged pursuant to the terms of the Lease. The Additional Rent consists of two components:

(a) amounts which are attributable to an incremental increase in taxes that would be due for the Property as a result of an increase in the assessed valuation of the Property as determined by the County in the normal taxation process during the Lease Term (the “Additional Rent - PILOTS”); and

(b) amounts which are attributable to administrative or enforcement actions undertaken by the City to enforce or ensure compliance with rights, duties and obligations of the Lease (the “Additional Rent – Enforcement”).

2. The Basic Rent, when paid to the City, will be deposited in the Special Allocation Fund and disbursed to the taxing districts in the same manner and in the same proportions as real property taxes would be distributed by the County to the taxing districts that are located within the Redevelopment Project Area.

3. The Additional Rent – PILOTS, when paid to the City, will be deposited in the Special Allocation Fund and disbursed to reimburse Reimbursable Project Costs as set forth in this Contract. The Additional Rent – Enforcement shall be used to reimburse the City or other appropriate party for the costs incurred for administrative or enforcement actions pursuant to the terms of the Lease.

C. Construction Period. During the Term of the Lease, the Developer shall enter into all Construction Contracts with the Construction Contractors for the construction of the Project Improvements on the Property on behalf of the City and all contractors purchasing Materials for the Project on behalf of the City (the “**Purchasing Agents**”). The Developer shall cause each Construction Contract and contracts with Purchasing Agents to include provisions satisfactory to the City:

1. necessary to assure that the Construction Contractor and Purchasing Agent includes in contracts with the Suppliers that sell the Materials necessary for the construction of the Project Improvements: (a) a provision acknowledging that title to the Materials shall pass directly to the City from the Supplier, but only after the Materials have been inspected and accepted by the Construction Contractor or Developer, acting as the agents of the City; and (b) a provision that requires Suppliers to properly submit detailed invoices for Materials for review and approval to the Developer and the City or the City’s designee;

2. stating that the invoices for Materials must reflect that the Developer, Construction Contractor, or a Purchasing Agent is purchasing the Materials on behalf of the City as the City’s agent or subagent, respectively;

3. requiring that the Developer and the Construction Contractor keep full and complete records of the Materials purchased on behalf of the City, and providing that the Developer and the City shall each have reasonable access to those records, as may be necessary or desirable to ascertain that the Materials are, in fact, being acquired in accordance with this Contract;

4. providing that all Work performed under such contracts shall be in accordance with the LCRA Plan, this Contract and the TIF Plan, as applicable; and

5. providing that the Developer, Purchasing Agents and the Construction Contractor acknowledge and affirm that they are each buying the Materials on behalf of, and as agent or subagent, respectively, for, the City and that the Purchasing Agents and Construction Contractor further acknowledge and affirm that any such Materials purchased are the sole property of the City.

D. Agent. The City appoints and, confirms the appointment of the Developer as its agent to purchase the Materials for and on behalf of the City pursuant to power and authority delegated to the City by the LCRA. The Developer has the right to make the Construction Contractor and each Purchasing Agent a subagent for the purchase of the Materials and, accordingly, Developer appoints the Construction Contractor and each Purchasing Agent as a subagent for the City for the limited purpose of purchasing the Materials. The City and the Developer confirm that the Construction Contractor and each Purchasing Agent is authorized to appoint its subcontractors as subagents of the City for the limited purpose of purchasing Materials. The City will provide its sales tax exemption certificate to Developer, Purchasing Agents and Construction Contractor for purposes of purchasing the Materials. Notwithstanding anything in this Contract to the contrary, the Developer acknowledges that the City makes no representation or warranty with respect to any sales tax exemption during the Construction Period. In the event that the City's tax exempt status is reduced or eliminated, or City is otherwise unable to effectively extend sales tax exemption due to: (i) a change in federal or State law as to the purchase of all or any Materials used for construction of the Project Improvements and/or operation of the Project Improvements; or (ii) a lawsuit or administrative proceeding challenging the validity or legality of the sales tax exemption granted by the City during the Construction Period and which results in a determination by a court of competent jurisdiction or by a federal, state or local governing body or agency or department thereof that the sales tax exemption is invalid or illegal, then the Developer shall be fully responsible for payment of any sales or use taxes, interest, fees, charges, or penalties levied or imposed against the City or the LCRA. Developer shall indemnify, protect, defend and hold the City and the LCRA and their respective officers, elected officials, commissioners, agents and employees harmless from and against any and all sales or use taxes, interest, fees, charges, penalties, claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, resulting or arising from, or otherwise incurred in connection with, the loss of any sales tax exemption and/or any related lawsuit or administrative proceeding.

E. Title. Title to the Materials shall pass to the City directly from the Suppliers, but only after the Materials have been inspected and accepted by Developer acting as the agent of the City (or by the Construction Contractor or another person or entity acting as the Developer's subagent); thereafter title to the Materials shall remain in the City unless and until transferred, together with the City's title to the Property, and the Project Improvements, by the City pursuant to the Lease.

F. Enforcement of Warranties. The Developer, in its capacity as the agent of the City, is granted the right to make on behalf of the City, all warranty, indemnification or other claims to enforce any of the City's warranty rights related to the Materials. The Developer is assigned the benefits derived by the City from the actions of the Developer taken pursuant to this Section, insofar as such rights relate to the Materials.

G. Cost Certifications. As a material inducement for the City to enter into this Contract, the Developer shall pay, as part of the Administrative Costs, any costs and fees that may be incurred by the City to review and certify invoices for Materials submitted to the City in the event that the City is audited by a state agency, to ensure that the Materials were properly purchased and used in the construction of the Project Improvements, all in accordance with this Contract.

## **Section 2.05.   Redevelopment Schedule.**

A.       It is the intention of the parties that development activities for the Redevelopment Project Area will be substantially commenced and completed on or before the dates set forth in **Exhibit E** attached hereto and incorporated herein by reference (the “**Redevelopment Schedule**”). Developer shall construct or cause to be constructed all Private Project Improvements, and all Public Project Improvements, and shall complete all other development-related activities including, but not necessarily limited to design, land preparation, environmental evaluation and remediation, construction, management, maintenance and procurement of private financing in sufficient time to comply with the Redevelopment Schedule. Changes in the development program contemplated by the Incentive Plans that require an amendment under the Acts, as reasonably determined by City, shall be processed in accordance with the Acts, and changes in the development program contemplated by the Incentive Plans that do not require an amendment under the Acts, as reasonably determined by City, may be made only by agreement of the parties hereto.

B.       The parties hereto recognize and agree that market and other conditions may affect the Redevelopment Schedule. Therefore, the Redevelopment Schedule is subject to change and/or modification, with the written approval of City, which shall not be unreasonably withheld, upon a showing by Developer of changed market or other conditions.

C.       Any amendment to the Incentive Plans that are approved by City as provided herein may require an amendment to the Redevelopment Schedule and the provisions of this Contract. City shall use reasonable efforts to expedite the approval of the Land Use Approvals; provided, however, that nothing herein shall constitute or be deemed to be a waiver by City or the City Council of its legislative authority.

D.       If Developer does not comply with the Redevelopment Schedule as set forth above, then, unless Developer requests an amendment of such Redevelopment Schedule prior to such violation and any amendment of the Redevelopment Schedule is so approved by City, City may require Developer to appear before the City Council to show cause why this Contract and the Incentive Plans shall not be terminated in accordance with **Section 6.02** hereof.

**Section 2.06.   Design and Construction of Public Project Improvements.** Developer shall cause all of the Public Project Improvements to be designed and constructed as follows:

A.       The Public Improvements shall be constructed in accordance with all Legal Requirements and all additional requirements that the City shall impose pursuant to the City’s Code of Ordinances and all applicable regulations and policies.

B.       The parties agree that the costs associated with relocating any existing utilities from any existing public or private easement or from any existing right-of-way, as a result of construction of the Public Project Improvements, shall be paid by Developer and are not the responsibility of City and such costs shall be a Reimbursable Project Cost. 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 Public Project Improvements, which are not paid by a utility company, shall be paid by Developer and are not the responsibility of City.

## **Section 2.07. Design Criteria and Review Procedures for Private Improvements.**

A. The land uses allowed on the property and the design and configuration of the Redevelopment Project Area shall be controlled by the Preliminary Development Plan. The Preliminary Development Plan may be amended pursuant to the requirements of the UDO. It is the intention of the parties that the uses allowed by the City pursuant to approval of the Preliminary Development Plan, and the City's approval of any amendments thereto, shall control the land uses permitted in the Redevelopment Area pursuant to this Contract.

B. Construction plans for the Private Project Improvements shall conform to the Final Development Plan, which shall be based on the Preliminary Development Plan.

## **Section 2.08. Construction and Maintenance of the Project.**

A. Construction. Except as otherwise provided in this Contract or in the Lease, Developer shall have complete and exclusive control over construction of the Project Improvements that it owns or controls (the "**Developer Controlled Improvements**"), subject, however, to all Legal Requirements. Developer hereby grants to City, its agents and employees the right to enter the Redevelopment Area (but not private residences unless otherwise allowed pursuant to applicable laws) at reasonable times for the purpose of inspecting the Redevelopment Project.

B. Certificates of Occupancy. City shall not be obligated to issue any certificates of occupancy for structures within the Redevelopment Project Area until a certificate of substantial completion for all required Public Project Improvements has been issued by the City pursuant to the provisions of the Design and Construction Manual.

C. Maintenance and Repair. Developer, at its sole cost and expense, at all times shall (1) maintain and operate Developer Controlled Improvements in a first class manner, (2) timely make all necessary repairs to and replacements and restorations of all parts of the Developer Controlled Improvements, (3) keep the Developer Controlled Improvements in good condition, repair and appearance, and (4) maintain casualty insurance on the Developer Controlled Improvements in an amount equal to the full replacement value thereof and provide City with evidence of such insurance upon demand.

Developer shall use its best efforts to contractually obligate any tenant, purchaser, transferee, developer, manager, contractor or subcontractor, except for residents of residential units, to comply with the provisions of this **Section 2.08.C** for all portions of the Private Improvements. Developer shall enforce the provisions of this **Section 2.08.C** to the maximum extent permitted by law. Developer hereby agrees that every lease, sales contract or other contract regarding the Redevelopment Project Area, except for the lease of individual apartment units to residents, shall incorporate the provisions of this **Section 2.08.C** and further provide that City is an intended third party beneficiary of such provisions and as such, City has a separate and independent right to enforce such provisions directly against any such tenant or purchaser. Developer shall use its best efforts to enforce such contract rights.

D. Prevailing Wages. The Developer shall comply with all laws regarding the payment of prevailing wages to contractors or subcontractors of the Developer, as applicable. Upon written request by the City, Developer shall provide or cause to be provided written proof that the requirements of this paragraph have been satisfied from and after the date that the Work has commenced. In the event such request is made, no reimbursement payment shall be made by the City from TIF Revenues for the Reimbursable Project Costs which are subject to the payment of prevailing wages unless the Developer has provided or caused to be provided the written proof as required by this paragraph. Developer shall indemnify the City for any damage resulting to it from failure of either the Developer or any contractor or

subcontractor to pay prevailing wages pursuant to applicable laws. Such indemnification shall be limited to the amount of TIF reimbursement that Developer receives or is entitled to receive pursuant to this Contract, and payments due to Developer pursuant to this Contract from TIF Revenues may be withheld by the City in satisfaction of this indemnification obligation if Developer has not provided payment when due pursuant to the indemnification obligation of this paragraph.

E. Preservation of the Sanctuary. Developer covenants to maintain the integrity of the Sanctuary structure and incorporate the Sanctuary into the operations of the Project. The Sanctuary shall continuously be maintained and used during the effective period of this Contract and while TIF Revenues are being collected on the Property, and for such additional time period as set forth in the historic preservation easement. Developer shall execute an historic preservation easement in compliance with the form of easement attached as **Exhibit F** prior to receiving any reimbursement from TIF Revenues.

**Section 2.09. Permitted Uses.** Property within the Redevelopment Project Area may only be used for multi-family residential uses, along with associated parking, accessory uses and administrative offices for the residential apartments, while the collection of tax increment financing revenues is in effect for the Property.

**Section 2.10. Certificate of Substantial Completion.** Promptly after substantial completion of the Redevelopment Project in accordance with the provisions of this Contract, the Developer shall submit a Certificate of Substantial Completion to the City. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit G**. The City agent or employee designated by the City to perform inspections shall, within thirty (30) days following City's receipt of the Certificate of Substantial Completion, carry out such inspections necessary to verify to their reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. Upon acceptance of the Certificate of Substantial Completion, the Developer may record the Certificate of Substantial Completion with the Jackson County Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to construct the Redevelopment Project.

### **ARTICLE 3: TAX INCREMENT FINANCING**

#### **Section 3.01. Payments in Lieu of Taxes.**

A. Pursuant to the provisions of the TIF Plan and the TIF Act, including, but not limited to, Section 99.845 thereof, from and after the passage of the Redevelopment Project Ordinance, the real property located therein is subject to assessment for annual Payments in Lieu of Taxes. Payments in Lieu of Taxes shall be due November 30 of each year in which said amount is required to be paid and will be considered delinquent if not paid by December 31 of each such year or as otherwise determined by applicable law. The obligation to make said Payments in Lieu of Taxes shall be a covenant running with the land and shall create a lien in favor of City on each such tax parcel as constituted from time to time and shall be enforceable against Developer and its successors and assigns during their ownership of property in the Redevelopment Project Area.

B. Failure to pay Payments in Lieu of Taxes as to any property in the Redevelopment Project Area shall constitute a default by the owner of such property of the provisions of **Section 6.02** hereof, and shall entitle City, the County Collector or any other government official or body charged with the collection of any such sums (any one or more of such persons hereinafter individually or collectively referred to as the "**Collection Authority**") to proceed against such property and/or the owner thereof as in other delinquent property tax cases or otherwise as permitted at law or in equity, and, if applicable, such failure shall entitle the Collection Authority to seek all other legal and equitable remedies it may have to ensure the timely payment of all such sums or of the principal of and interest on any outstanding Obligations secured by such payments;

provided, however, that the failure of any property in a Redevelopment Project Area to yield sufficient payments in lieu of taxes because the increase in the current equalized assessed value of such property is or was not as great as expected, shall not by itself constitute a breach or default.

C. The City shall use all reasonable and diligent efforts to promptly notify the County Assessor, County Collector, the City Director of Finance, the City Treasurer and all other appropriate officials and persons and seek to assess the property within the Redevelopment Project Area as described in the TIF Act and fully collect the Payments in Lieu of Taxes and implement reimbursement of Reimbursable Project Costs as provided in this Contract and in the TIF Plan. Developer shall from time to time provide to City prior to and upon the completion of the Redevelopment Project a report, certified to City by Developer, setting forth the total amount expended from time to time by Developer or any Affiliate of Developer with respect to the construction of any improvements in the Redevelopment Project Area. Developer shall also use its best efforts to contractually obligate any purchaser or tenant of any property in the Redevelopment Project Area to provide to City from time to time prior to and upon the completion of the Redevelopment Project a report, certified to City by such purchaser or tenant, setting forth the total amount expended from time to time by such purchaser or tenant or any Affiliate of such purchaser or tenant with respect to the construction of any improvements in the Redevelopment Project Area. While such information and any documents obtained by the City in this process would be subject to the Sunshine Law, the City agrees that it will not provide any such report or the information contained therein to the County Assessor or other governmental authority unless required by law.

D. Notwithstanding anything to the contrary, herein, the lien on property within the Redevelopment Project Area shall be deemed (1) released as to any public street or other public way included within any plat proposed by Developer, effective upon the passage of an Ordinance by City approving the same, and (2) subordinated to the lot lines, utility easements and other similar matters established by any such plat (but not to any private access or parking rights granted or created by any such plat), effective upon the passage of Ordinance by City as aforesaid, and to any easement or like interests granted to City or any public utility for public facilities or utilities or connection(s) thereto.

**Section 3.02. Economic Activity Taxes.** *The parties acknowledge that, on the Effective Date of this Contract, the Project is not expected to generate any taxable sales and Economic Activity Taxes. This Section and all references to Economic Activity Taxes within this Contract are included in the event that any retail sales occur within the Redevelopment Project Area during the effective period of the TIF Plan and this Contract.*

In addition to the payments in lieu of taxes described herein, and pursuant to Section 99.845.3 of the TIF Act, Economic Activity Taxes shall be allocated to, and paid by the collecting officer to the City Treasurer or other designated financial officer of City, who shall deposit such funds in the Economic Activity Account within the Special Allocation Fund. From and after the passage of the Redevelopment Project Ordinance, for as long as the Redevelopment Project Area is subject to the TIF Plan, Economic Activity Taxes shall be determined in accordance with the following procedures (subject, however, to the provisions of Section 99.835 of the TIF Act):

A. Documentation of Economic Activity Taxes. Developer, its successors and assigns shall provide City with documentation of sales tax receipts for each business in the Redevelopment Project Area, indicating the type and amount of the Economic Activity Taxes paid by each such business located within the Redevelopment Project Area. Developer shall include the provisions as specified in **Section 5.02** hereof in all lease documents with tenants located within the Redevelopment Project Area requiring said sales tax information to be provided to City. A similar provision shall be included in all sales contracts with purchasers of property located in the Redevelopment Project Area requiring said sales tax information to be provided to City. Developer shall enforce said provisions to the maximum extent permitted by law, and Developer hereby agrees that each such lease or sales contract shall provide that City is an intended third

party beneficiary of such provisions and has a separate and independent right to enforce such provisions directly against any such tenant or purchaser.

Notwithstanding anything contained in this Contract to the contrary, Developer's obligation to provide City with documentation of sales tax receipts for each business in the Redevelopment Project Area, include provisions as specified in **Section 5.02** in leases and sales contracts, and enforce such provisions, all as set forth in the foregoing paragraph, shall not be applicable to Developer following any conveyance of property within the Redevelopment Project Area that is (1) approved by City pursuant to **Section 5.03** hereof, or (2) a conveyance for which City's approval is not required pursuant to **Section 5.03** hereof. City agrees to consider performing all functions incident to the administration, collection, and enforcement of the Economic Activity Taxes payable by each Taxing District from which Economic Activity Taxes are due for an administrative fee mutually agreed upon by City and Developer.

B. Certification by City. City, following reasonable research and investigation, using independent consultants, accountants and counsel when appropriate shall certify the nature and amount of Economic Activity Taxes payable by each Taxing District from which Economic Activity Taxes are due, or as otherwise required by the procedures and requirements of the Taxing District from time to time established.

C. Presentation to Taxing Districts. City shall deliver by mail or hand delivery its certification of Economic Activity Taxes payable by each Taxing District to the governing body of each such Taxing District and shall follow such procedures and requirements of the Taxing District from time to time established with respect to obtaining the deposit of the Economic Activity Taxes payable by each Taxing District into the Special Allocation Fund.

D. Net New Sales Calculation For Intra-City Relocations.

1. During the term of this Contract, Developer shall not lease or sell any portion of the Redevelopment Project Area to any business operation that will operate under the same trade name as any business which is currently located in City if such business operation closes its existing business operation within the City in order to move into the Redevelopment Project Area, without prior approval from City. A business operation is deemed to be moved into the Redevelopment Project Area if a business operation that operates under the same trade name which is currently located in the City closes within one year before or one year after the same business operation opens within the Redevelopment Project Area.

2. Should City waive this prohibition on intra-city relocations, or if an existing retail establishment within Jackson County but not in City locates to the Redevelopment Project Area, and within one year from the date of opening for business within the Redevelopment Project Area an existing facility of such retail establishment within City and/or Jackson County closes, and City determines that the retail establishment is a direct beneficiary of tax increment financing, in accordance with the provisions of the TIF Act, the Economic Activity Taxes generated by the retail establishment shall equal the amount by which the total additional revenues from Economic Activity Taxes which are imposed by City and other Taxing Districts exceeds the amount of Economic Activity Taxes generated by the retail establishment in the calendar year prior to its relocation to a Redevelopment Project Area.

**Section 3.03. Special Allocation Fund.** The City Treasurer shall establish and maintain the Special Allocation Fund which shall contain two separate segregated accounts. Payments in Lieu of Taxes shall be deposited into the Payment in Lieu of Taxes Account within the Special Allocation Fund. Economic Activity Taxes shall be deposited into the Economic Activity Account within the Special



Allocation Fund. Payments in Lieu of Taxes, Economic Activity Taxes so deposited and any interest earned on such deposits will be used for the payment of Reimbursable Project Costs, including the retirement of the Obligations and for the distribution to the Taxing Districts, in the manner set forth in the TIF Plan and this Contract.

**Section 3.04. Disbursements from Special Allocation Fund.** Except as otherwise provided in this Section, all disbursements from the Special Allocation Fund will be paid in such priority as the City shall determine from the separate segregated accounts maintained within the Special Allocation Fund for Payments in Lieu of Taxes and Economic Activity Taxes. Disbursements from the Special Allocation Fund will be made in the following manner and order of preference:

A. If Obligations have not been issued and the parties anticipate that all of the Reimbursable Project Costs will be reimbursed on an “as collected” basis in accordance with **Section 4.04**, then disbursements from the Special Allocation Fund will be made in the following manner and order of preference:

1. Payment of Administrative Costs as described in **Section 6.11**;
2. Payment of certified and unreimbursed Reimbursable Project Costs together with interest determined in accordance with **part C of this Section**; and
3. Payment of any other Reimbursable Project Costs that are allowed by the TIF Plan, and approved and certified by the City in accordance with the TIF Act.

B. If Obligations have been issued:

1. Payment of Administrative Costs as described in **Section 6.11**;
2. Payment of such amounts at such times as are required by the Bond Documents, and then
3. Payment of certified and unreimbursed Reimbursable Project Costs together with interest determined in accordance with **part C of this Section**; and
4. Payment of any other Reimbursable Project Costs that are allowed by the TIF Plan, and approved and certified by the City in accordance with the TIF Act.

The items listed above may be modified or adjusted in the Bond Documents for any Obligations as mutually agreed by the Developer and the City at the time Obligations are issued. The City and Developer agree that reimbursement of Reimbursable Project Costs is a mutual goal and will endeavor to maximize reimbursements to City and Developer while balancing reasonable terms of repayment for the Obligations.

C. Reimbursable Project Costs shall include the reimbursement of simple interest on unreimbursed Reimbursable Project Costs at the rate of six percent (6%) per annum, which such interest shall accrue from the date such costs were paid.

*The parties agree that it is not anticipated that the City will issue any Obligations for the Project, but the City reserves the right to issue Obligations in the event that such issuance is financially advantageous for the City. The remaining Sections in this Article shall govern the issuance of Obligations if such option is exercised by the City.*

### **Section 3.05. Financing Plan.**

A. Prior to the issuance of any Obligations, Developer shall submit to City a financing plan for the financing of the relevant portion of the Redevelopment Project Costs related to the Redevelopment Project, as set out in the Redevelopment Project Cost Budget attached hereto as **Exhibit C** setting forth (1) the anticipated sources of funds to pay Redevelopment Project Costs related to the Redevelopment Project and (2) the anticipated type and term of the sources of funds to pay said Redevelopment Project Costs (the “**Financing Plan**”) for City’s review and approval, which approval will not be unreasonably withheld, provided that the type and term of sources of funds described in the Financing Plan are within the parameters set by this Article. Developer shall immediately notify City of any material changes in this information for City’s review and approval, which approval will not be unreasonably withheld, provided that the type and term of sources of funds described in the Financing Plan, as revised, are within the parameters set by this Article.

B. Concurrently with delivery of the Financing Plan described in **Section 3.05.A** above, Developer will deliver to City its certificate stating that, with respect to the relevant portion of the Redevelopment Project: (1) to the best of its knowledge and belief, such sources of funds described in the Financing Plan and the financing commitments will enable Developer to timely implement the Redevelopment Project by constructing the Private Project Improvements and the Public Project Improvements to be contained therein; (2) the information and statements contained in the Financing Plan, taken as a whole, are accurate in all material respects and complete for the purposes for which used and made; (3) the information and statements contained in the Financing Plan do not fail to state any material facts necessary in order to make the statements or representations made therein, in light of the circumstances under which they were made, not misleading. By delivering the items described in **Section 3.05.A** above, Developer shall be deemed to have made such representation and warranty even if Developer fails to deliver its certificate as provided herein. Developer’s warranties and representations as set forth herein shall be deemed to be ongoing until termination or expiration of this Contract.

### **Section 3.06. Obligations**

A. Issuance. City, in its sole discretion, may authorize the issuance of Obligations secured by all or a portion of the TIF Revenues. Obligations may be issued in one or more series, in amounts, on terms and at an interest rate or rates determined by market conditions at the time of issuance and under terms and conditions deemed acceptable by City in its sole discretion. The parties agree that Columbia Capital Management, or another party selected by the City pursuant to its policies and procedures, will be used as the City’s financial advisor to evaluate the issuance of Obligations, and shall be compensated from the proceeds of such Obligations or, in the sole discretion of the City, other funds that are identified by the City. Subject to the provisions of subparagraph (2) below, the underwriter(s) for any Obligations shall be selected by City. The City shall have sole right, power and authority to determine the amount, terms, interest rate or rates, mandatory, optional or special redemption payments and other terms and conditions of the Obligations. The City shall not lend its credit to secure the Obligations and shall not be obligated to make any payments with respect to the Obligations from sources other than TIF Revenues as are pledged to the Obligations.

B. Issuance Process.

1. Notwithstanding anything contained in this Contract to the contrary, the underwriter(s) for any Obligations shall be selected by the City from a list of qualified underwriters previously and reasonably agreed upon by Developer and City which shall contain not less than two firms and not more than four firms (the “**Preapproved Underwriters**”). City and Developer shall mutually and reasonably agree upon an underwriter discount based upon then market rates.

2. In all instances, the purchasers of the Obligations must be a qualified institutional buyer (as that term is defined in Rule 144A promulgated under the Securities Act of 1933) or an accredited investor (as that term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended from time to time).

3. The Developer and City shall reasonably cooperate in the issuance of any Obligations, including delivering such closing certificates and opinions of counsel reasonably necessary or desirable to complete the financing.

C. Use of Proceeds. After funding the costs of issuance, any reserves and capitalized interest, and any unfunded Administrative Costs (subject to the limitations of Section 6.11), the proceeds from Obligations will be used to pay for or reimburse Developer for Private Funds advanced to pay costs certified by City as provided in **Section 4.03** hereof, together with interest determined in accordance with **Section 3.04.C** hereof, to fund Reimbursable Project Costs certified by City as provided in **Section 4.03** hereof.

D. Continuing Disclosure. The City and Developer shall cooperate with respect to the responsibility for any continuing disclosure required by the Bond Documents with respect to the Redevelopment Project or the Redevelopment Area. The City will only take responsibility for information regarding the City itself and the amount of TIF Revenues collected and distributed by the City. Except as otherwise provided in the Bond Documents, the Developer will take responsibility for all other continuing disclosure required by the Bond Documents including the updates with respect to status and completion of the project.

**Section 3.07. Conditions Precedent to Issuance of Obligations.** No Obligations shall be issued unless the following conditions precedent are satisfied:

A. Developer has acquired all of the Property.

B. Developer is not in default under this Contract.

C. City has approved the Preliminary Development Plan, and there exist no known impediments to the issuance of all necessary permits for the applicable portion of the development for which Reimbursable Project Costs will be financed by the pending series of the Obligations.

E. The City has approved the Financing Plan pursuant to **Section 3.05**.

F. Developer has obtaining financing as contemplated in the approved Financing Plan sufficient (together with the proceeds of the Obligations that may be disbursed for such purpose) to complete the applicable portion of the development for which Reimbursable Project Costs will be financed by the pending series of the Obligations.

G. The City has verified that all required utilities for service within the Redevelopment Project Area are available or will be available upon completion of the Project.

## ARTICLE 4: REIMBURSEMENT OF DEVELOPER COSTS

**Section 4.01. Maximum Reimbursement Limit.** The total amount of actual reimbursement on an as-collected basis from TIF Revenues, or from the proceeds of Obligations, shall not exceed \$8,039,380 (the “**Reimbursable Project Costs Cap**”), except that reimbursement of reimbursable interest under **Section 3.04.C**, Developer payments under the Funding Agreement, and Advanced Funds shall, notwithstanding anything in this Contract to the contrary, not count toward the Reimbursable Project Costs Cap.

**Section 4.02. Developer Funding Obligation.** If Obligations have not been issued, Developer shall construct, or cause to be constructed, the Private Project Improvements with private funds (the “**Private Funds**”). Developer shall also construct, or cause to be constructed, any Public Project Improvements with Private Funds. The Private Funds will be derived from a combination of Developer’s equity, assets contributed, or equity investment provided by third parties, and debt incurred by Developer or third parties.

### **Section 4.03. Reimbursable Project Cost Certification.**

A. Developer shall have the right to submit requests for certification for Reimbursable Project Costs as identified in **Exhibit C**, along with reimbursement for Developer’s payments under the Funding Agreement, of Advanced Funds, and of interest on Reimbursable Project Costs as provided in **Section 3.04.C**. The parties agree that, with respect to the design, development (e.g., City and Developer legal fees and development fees), and construction of the structured parking component of the Project, each Certification Application shall be for the reimbursement of such costs and no other hard or soft costs associated with the Project. Developer shall submit each request for certification of Reimbursable Project Costs within 180 days after paying any such costs. For all Reimbursable Project Costs paid by Developer prior to the execution of this Contract, such Reimbursable Project Costs shall be submitted for certification within 180 days after the Effective Date.

B. Upon presentation to City by Developer of an application for certification of Reimbursable Project Costs which details Reimbursable Project Costs paid in accordance with this Contract and the TIF Plan, together with such supporting documentation (including copies of invoices, cancelled checks, receipts, lien waivers, and such other supporting documentation as City shall reasonably require) as City shall reasonably determine to be necessary (the “**Certification Application**”), City shall review, verify and confirm the information included in the Certification Application. The Certification Application shall (1) identify each item of Reimbursable Project Cost by line item category in the Redevelopment Project Cost Budget separately, (2) aggregate all costs in the Certification Application by line item category as set forth in the Redevelopment Project Cost Budget, (3) include a report setting forth the total amount, by line item category from the Redevelopment Project Cost Budget, of all Reimbursable Project Costs set forth in the then-current Certification Application and all prior Certification Applications approved by City or for which approval is pending, and (4) include a report setting forth the estimated percentage of work, by line item category from the Redevelopment Project Cost Budget, completed as of the date of the current Certification Application.

1. If City determines that: (i) the Certification Application accurately reflects Reimbursable Project Costs paid in accordance with this Contract and the TIF Plan; (ii) the Reimbursable Project Costs for which certification is requested (considered in combination with all prior amounts certified for the same cost category or item, as applicable) are reasonable and consistent with the Financing Plan, if any, and in accordance with the Redevelopment Project Cost

Budget, then it shall approve the Certification Application and issue a draw certificate (the “**Draw Certificate**”).

2. If City, pursuant to its review of such Certification Application and supporting documentation, determines that any portion of the request for reimbursement should not be approved, the City shall within 30 days after the City’s receipt of Developer’s Certification Application, provide Developer with a detailed written statement stating the reasons for such disapproval and if the City does not provide Developer with a written statement of disapproval within 30 days, the Certification Application shall be deemed approved and the City will immediately thereafter issue the Draw Certificate.

C. No Certification Application or portion thereof, as applicable, will be approved to the extent it causes the total Reimbursable Project Costs to exceed the Reimbursable Project Costs Cap without prior City Council approval. Any such disapproval may be appealed by Developer to the City Council, which shall upon Developer’s request hold a hearing at which Developer may present new and/or additional evidence as a basis for requesting additional reimbursement.

D. At the option of the City Manager or his designee, each Certification Application for Developer Reimbursable Project Costs may be approved administratively, and if the City Manager or his designee elects to approve such Certification Application administratively, no action of the City Council shall be required to approve such Certification Application.

**Section 4.04. City Obligation to Reimburse Developer on a “Pay As You Go” Basis.** The Parties agree that reimbursement will occur on a “pay as you go” basis as revenues are collected in the Special Allocation Fund in accordance with this Contract. The City shall have no obligation to reimburse Developer until funds are available in the Special Allocation Fund. The City shall have no obligation to reimburse Developer from any funds other than those funds in the Special Allocation Fund. To implement this process, Developer shall present to City a Draw Certificate for payment by City, which Draw Certificate shall seek repayment of Reimbursable Project Costs that have been previously certified by City pursuant to a Certification Application. Disbursement to Developer of sufficient proceeds from the Special Allocation Fund, to the extent such funds are available in the Special Allocation Fund, to pay on the Draw Certificate shall be made within five (5) business days following City’s approval of such Draw Certificate.

**Section 4.05. Payment of Project Costs with Bond Proceeds.**

A. If Obligations have been issued, then at such time as proceeds from the sale of Obligations are available for the reimbursement of or direct payment of Reimbursable Project Costs for which a Draw Certificate has been issued, payment shall be made by presenting such Draw Certificate to the Bond Trustee of the Obligations for payment which has been endorsed by both City and Developer, together with any requisition certificate and supporting documentation required under the Bond Documents (each a “**Requisition**”).

B. Once presented for signature, Developer and City shall promptly each execute and deliver the fully endorsed Requisition to the Bond Trustee directing the Bond Trustee to pay the amount set forth therein. The amount to be included in the initial Requisition shall include all Reimbursable Project Costs that have been certified by City pursuant to all approved Certification Applications as of the date of the Requisition. Once the Requisition is presented to the Bond Trustee, City shall make reasonable efforts to cause the Bond Trustee to promptly make payment thereon.

C. As to any costs that have been incurred but have not been paid by either Developer or City, City shall have the right to cause payment to be made directly to the party entitled to such payment, or to

withhold approval for such payment until payment is made to the party entitled thereto, it being agreed that City shall have no obligation to execute any Certification Application, Draw Request or Requisition with respect to any Developer Reimbursable Project Costs until paid by Developer, and any decision by City to execute any Certification Application or Requisition with respect to any Developer Reimbursable Project Costs not yet paid by Developer shall be at City's sole option and election.

D. City shall have the right to require lien releases (full or partial) and such other releases as City may reasonably require prior to authorizing any such disbursement. Delivery to the Bond Trustee of a Requisition to pay for the Developer Reimbursable Project Costs identified in the Draw Certificate shall be made within thirty (30) days of issuance of such Draw Certificate for which Obligation proceeds are available for payment. Notwithstanding anything to the contrary herein, City shall deliver a copy of any such Requisition to Developer concurrently with submission of said Requisition to the Bond Trustee.

**Section 4.06. Cost Overruns.** In no event shall the aggregate total of the Reimbursable Project Costs that is to be paid for in whole or in part from the Special Allocation Fund or from the proceeds of the Obligations, for costs associated with design and construction of the structures on the Property, exceed the Reimbursable Project Costs Cap in **Section 4.01**. If and to the extent that the Reimbursable Project Costs, for costs associated with design and construction of the structures on the Property, exceed such amount then Developer shall pay and be responsible for such Reimbursable Project Costs that exceed the Reimbursable Project Costs Cap.

**Section 4.07. Full Assessment of Redevelopment Area.** After all Obligations and Reimbursable Project Costs have been paid and after distribution of any excess moneys pursuant to Section 99.845 and 99.850 of the TIF Act, but not later than twenty-three (23) years from passage of the effective date of the Redevelopment Project Ordinance, City shall adopt an Ordinance dissolving the Special Allocation Fund and terminating the designation of the Redevelopment Project Area as a redevelopment area under the TIF Act (the "**Termination Ordinance**"). From that date forward, all property in the Redevelopment Project Area shall be subject to assessments and payment of all ad valorem taxes, including, but not limited to, City, State, and County taxes, based on the full true value of the real property and the standard assessment ratio then in use for similar property by the County Assessor. After the adoption of the Termination Ordinance, the Redevelopment Project Area shall be owned and operated by Developer free from the conditions, restrictions and provisions of the TIF Act, of any rules or regulations adopted pursuant thereto, of the Ordinance, of the TIF Plan, and of this Contract, except as otherwise set forth herein or therein.

**Section 4.08. Reserved.**

**Section 4.09. Development Cost Savings.** Developer and the City agree that an appropriate maximum percentage of total Project costs to be reimbursed with TIF Revenues (excluding reimbursable interest under **Section 3.04.C**) is eighteen percent (18%). For purposes of determining total Project costs expended, Developer shall submit construction pay applications, the land closing settlement statement, and any other documentation reasonably required by the City to evidence such costs, but Developer shall not be required to undergo the cost certification process under **Section 4.03** for total Project costs that are not Reimbursable Project Costs. In the event that reimbursement would exceed 18% in the final year of Plan implementation, the City shall make a payment from available TIF Revenues to achieve no more than 18% reimbursement, and all remaining TIF Revenues shall be used to fund final Administrative Costs and then declared as surplus and distributed as required by the TIF Act.

## ARTICLE 5: PROJECT CONTROL AND OPERATIONS

**Section 5.01. Tenant Approvals.** Subject to the provisions of **Section 2.09**, Developer shall have complete and exclusive control over the leasing of property which it owns within the Redevelopment Project Area including, without limitation, the fixing of rentals and the selection or rejection of tenants.

### **Section 5.02. Lease of Project Property.**

A. Subject to **Section 5.01** hereof, Developer, or any third party, may lease real property within the Redevelopment Project Area. Except for residential leases, Developer shall insert in any such lease, and shall cause any third party to insert, the following language and shall have such Developer lease signed by the lessee indicating acknowledgment and agreement to the following provision:

**Economic Activity Taxes / Continuing Disclosure:** Tenant acknowledges that the Leased Premises are a part of a Tax Increment Financing district (“**TIF District**”) created by Lee’s Summit, Missouri (the “**City**”) and that certain taxes generated by Tenant’s economic activities, including sales taxes, will be applied toward the costs of improvements for the development within the TIF District. Tenant shall forward to the City copies of Tenant’s State of Missouri sales tax returns for its property located in the TIF District when and as they are filed with the Missouri Department of Revenue, and, upon request, shall provide such other reports and returns regarding other local taxes generated by Tenant’s economic activities in the TIF District and/or the City shall require, all in the format prescribed by the City. If the City is required to disclose Tenant’s sales tax information in connection with offering documents or continuing disclosure requirements related to obligations issued in furtherance of the TIF District in order to market and sell obligations or comply with applicable laws or requirements of any governmental authorities, Tenant consents to the disclosure of such sales tax information by the City and parties to which the City is required to provide such information.

Developer shall enforce said provision to the maximum extent permitted by law. Within fifteen (15) days subsequent to its execution, Developer shall provide a certification to City, signed by Developer and each such tenant, confirming that the lease includes the provisions satisfying Developer’s obligation as set forth in this **Section 5.02**. Failure of Developer to require that such restrictions be placed in any such lease shall in no way modify, lessen or diminish the obligations and restrictions set forth herein relating to the Redevelopment Project Area.

### **Section 5.03. Sale or Disposition of Project Property.**

A. Sale of Property. As long as Obligations are outstanding or the Certificate of Substantial Completion under **Section 2.10** has not yet been issued, other than the sale of the Property to an entity that is a “**Related Entity**” (as defined in **Section 5.06**) that is obligated to manage and operate the Project and that agrees that any subsequent change in the party granted the right to manage and operate such property may be made only with the prior written approval of City, no sale, transfer or other conveyance of any property in the Redevelopment Project Area may be made except with the prior written approval of City, which approval will not be unreasonably withheld. In considering the approval of such a transferee, City may require that the proposed transferee demonstrate to City’s reasonable satisfaction that it has sufficient financial, management, property ownership and operation capabilities, and that it is interested in the long-term viability of the subject land use and the TIF Plan as a whole. City shall exercise its right to approve or deny any such proposed sale or transfer within thirty (30) days from the date of receipt of written notice from Developer. In the event City fails to act within said thirty (30) days, the proposed sale or other transfer shall be deemed approved.

A condition precedent to the sale, transfer, or other conveyance of any property in the Redevelopment Project Area shall be the transferee's execution of and delivery to the City an Assignment Agreement in the form attached as **Exhibit H** (the "**Assignment Agreement**"), with those modifications as requested by such transferee and acceptable to City. Upon execution of an Assignment Agreement, Developer shall be released from its obligations in this Contract relating to said transferred property.

B. Continuation of Payments in Lieu of Taxes. In the event of the sale or other voluntary or involuntary disposition of any or all of the real property of Developer or any third party in the Redevelopment Project Area, Payments in Lieu of Taxes with respect to the real property so sold or otherwise disposed of shall continue and shall constitute a lien against the property from which they are derived, and such obligations shall inure to and be binding upon Developer and its successors and assigns in ownership of said property as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable as if such purchaser, transferee or other possessor thereof were originally a party to and bound by this Contract.

C. Obligation to Ameliorate Existing Conditions. Developer's obligations pursuant to **Section 2.03** hereof, unless earlier satisfied and certified pursuant to **Section 2.10** hereof, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable against purchasers or other transferees as if such purchaser or transferee were originally a party to and bound by this Contract.

D. Reserved.

E. Restriction on Transfer to Tax-Exempt Entities. No sale, transfer or other conveyance of any property in the Redevelopment Project Area may be made to an entity that may claim exemption, or is exempt, from real property taxes for all or part of the property in the Redevelopment Project Area (a "**Restricted Entity**") for the earlier of (i) twenty three (23) years from the date that a Redevelopment Project Ordinance is approved for such area or (ii) termination of this Contract (the "**Restricted Period**"), without the prior written approval of the City. In the event that Developer seeks to transfer any property in the Redevelopment Area to a Restricted Entity during the Restricted Period, such transfer may only occur upon the prior written approval of the City, which approval shall not be unreasonably withheld, and upon the prior execution of a separate agreement between the purchasing Restricted Entity and the City which provides for the annual payment of an amount equal to Payments in Lieu of Taxes which otherwise would have been paid in regard to such property by such Restricted Entity for each of the years remaining in the Restricted Period. This requirement shall be a covenant running with the land and shall be enforceable for such period as if such purchaser, transferee or possessor thereof were originally a party to and bound by this Contract.

F. Notification to City of Transfer. Developer shall notify City in writing of any proposed sale or other transfer of any or all of the real property in the Redevelopment Project Area. Such notice shall be provided not less than thirty (30) days prior to the proposed effective date of the sale or other transfer in a manner as described in **Section 6.04** hereof.

#### **Section 5.04. Progress Reports.**

A. At the first regularly-scheduled meeting of the City Council following the first anniversary of the execution of this Contract, and thereafter at the request of the City on each anniversary of said execution until all Project Improvements are completed, Developer shall report to the City Council the progress of its implementation of the Redevelopment Project. Such reports shall include such information as is required under the reporting requirements of the TIF Act, such additional information as City may



reasonably require, and such additional information as Developer wishes to present, including, without limitation:

1. Project Improvements completed;
2. status of Project Improvements in progress but not yet completed;
3. actual assessed value of the Redevelopment Project Area before and after completion of the Project Improvements as compared to TIF Plan estimates;
4. actual Payments in Lieu of Taxes as compared to TIF Plan estimates;
5. actual Redevelopment Project Costs in the Redevelopment Project Area compared to TIF Plan estimates;
6. actual start and completion dates of Project Improvements in the Redevelopment Project Area compared to TIF Plan estimates; and
7. estimated start date of Project Improvements not yet commenced at date of report.

B. Until all Project Improvements are completed, Developer shall from time to time furnish such other reports on specific matters related to construction of the Project not addressed by the foregoing as City may reasonably require.

**Section 5.05. Compliance with Laws.** Subject to Developer's rights to contest the same in any manner permitted by law, Developer, its officers, directors and principals, at its sole cost and expense, shall comply in every respect with all Legal Requirements, ordinances, rules and regulations of all federal, state, county and municipal governments, agencies, bureaus or instrumentalities thereof now in force or which may be enacted hereafter which pertain to the ownership, occupancy, use and operation of the Redevelopment Project and the Redevelopment Project Area.

**Section 5.06. Assignment of Developer's Obligations.**

A. Restriction on Assignments. Unless in conjunction with a sale, transfer, or other conveyance pursuant to the terms of **Section 5.03** hereof, Developer may not assign this Contract or the rights and obligations hereunder to any assignee other than a Related Entity, without the written consent of the City; provided that, no City consent shall be required for Developer to assign its rights to receive reimbursement with TIF Revenues, as long as Developer remains responsible for the obligations hereunder.

B. Collateral Assignment of Payments. Notwithstanding subsection A above, Developer may collaterally assign or pledge its interests in this Contract or more narrowly its right to receive TIF Revenues hereunder by providing City with notice of any such assignment or pledge, and such assignment shall be in a form as approved by the City Attorney, which such approval shall not be unreasonably withheld, conditioned, or delayed.

**Section 5.07. Transfer of Interests in Developer – City Approval.**

A. Until the Certificate of Substantial Completion under **Section 2.10** has been issued, Developer shall, prior to the sale, conveyance, merger or other transfer of any interest in Developer (including without limitation any stock if Developer is a corporation or membership interests if Developer is a limited liability company and any transfers by operation of law), deliver to City a request for approval of such transfer,

and no such transfer shall be permitted except with the prior approval of City; provided, however, that the members, partners or shareholders of Developer as of the Effective Date, shall have the right to transfer, in one or more transactions, up to a cumulative total of one hundred percent (100%) of the ownership interest in Developer, without City's consent, to a Related Entity.

B. Upon submission by Developer of any request for transfer to City, City shall have the right to request such documentation and information as City shall determine to be necessary or desirable to determine whether such transfer is acceptable to City. Any purported transfer by Developer or any party owning any interest in Developer of any interest without the consent of City shall be null and void. Notwithstanding the foregoing, Developer or Developer's members, or any one of them, may, without notice to or approval of City, transfer interests in Developer to any Affiliate of such member, if such transfer does not result in a material change in the controlling interests of Developer.

**Section 5.08. East Lot.** On the date that the Property is transferred to the City to implement the Lease, Developer will also simultaneously transfer fee title for the East Lot to the City. The following terms and conditions shall apply to such transfer of the East Lot:

A. Transfer of the East Lot to the City shall be by special warranty deed and shall be for the consideration of \$1 and other good and valuable consideration as set forth in this Section regarding use and maintenance of the East Lot, which the Parties agree provides substantial benefit to Developer.

B. Transfer of the East Lot to the City shall be permanent with no reversionary interest being retained by Developer. The City may dispose of the East Lot at the City's discretion and in accordance with the additional terms and conditions of this Section.

C. The East Lot shall be available for use by Developer during the term of the Lease, plus any additional time as needed to complete construction of the Project, for use as a parking and staging area for construction of the Project. When a final certificate of occupancy has been issued by the City for the Project, the right of Developer to use the East Lot as a staging and parking area for construction shall cease.

D. After construction of the Project is completed, the City shall use the East Lot for a parking field and shall make [6] spaces available to Developer and dedicate such spaces exclusively for the parking of customers and tenants of Developer's business on the Property at all times. The location of such spaces may be identified by signage or pavement markings by the Developer after approval by the City.

E. The City shall maintain the parking field on the East Lot in a good state of repair and maintenance during the period of City ownership.

F. The City may attempt to acquire other properties in the vicinity of the East Lot, and if the City is successful in this effort and if the City is able to provide to Developer the same number of exclusively dedicated parking spaces set forth in paragraph D of this Section, at a location that is closer to the Sanctuary than the East Lot, then the City's obligation to provide parking spaces to Developer in the East Lot under paragraph D of this Section shall be transferred to such new lot. The City's obligation to provide such exclusively dedicated parking spaces under this Section 5.08 shall terminate ninety-nine (99) years after the Effective Date of this Contract and shall survive the expiration or termination of this Contract.

## ARTICLE 6: GENERAL COVENANTS

### Section 6.01. Indemnification.

A. Developer shall indemnify, protect, defend and hold City and its officers, directors, members, commissioners, employees and agents (collectively, the “**Indemnified Parties**” or, individually, an “**Indemnified Party**”) harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys’ fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any acts or omissions of Developer, its constituent members or partners, their employees, agents, independent contractors, licensees, invitees or others acting by, through or under such indemnifying parties, in connection with its or their activities conducted pursuant to this Contract and/or in connection with the ownership, use or occupancy and development or redevelopment of the Redevelopment Area or a portion thereof and the Project Improvements; provided that, Developer shall have no obligations under this Section 6.01 where the liability at issue has arisen out of one or more Indemnified Party’s negligence or intentional actions.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an “**Action**”) is begun or made as a result of which Developer may become obligated to one or more of the Indemnified Parties hereunder, the Indemnified Party shall give prompt notice to Developer of the occurrence of such event, but the failure to notify Developer will not relieve Developer of any liability that it may have to an Indemnified Party. After receipt of such notice, Developer may elect to defend, contest or otherwise protect the Indemnified Party against any such Action, at the cost and expense of Developer, utilizing counsel of Developer’s choice. The Indemnified Party shall have the right, but not the obligation, to participate, at the Indemnified Party’s own cost and expense, in the defense thereof by counsel of the Indemnified Party’s choice. In the event that after Developer receives notice from the Indemnified Party Developer shall fail timely to defend, contest or otherwise protect an Indemnified Party against such Action, the Indemnified Party shall have the right to do so, and (if such defense is undertaken by the Indemnified Party after notice to Developer asserting Developer’s failure to timely defend, contest or otherwise protect against such Action), the Indemnified Party may submit any bills for fees and costs received from its counsel to Developer for payment and, within thirty (30) business days after such submission, Developer shall transfer to the Indemnified Party sufficient funds to pay such bills. Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

C. An Indemnified Party shall submit to Developer any settlement proposal that the Indemnified Party shall receive. Developer shall be liable for the payment of any amounts paid in settlement of any Action to the extent that Developer consents to such settlement. Neither Developer nor the Indemnified Party will unreasonably withhold its consent to a proposed settlement.

D. Developer expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Contract imposed upon Developer in order to induce City to enter into this Contract. To the fullest extent permitted by law, an Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Contract. If such court action is successful, the Indemnified Party shall be reimbursed by Developer for all fees and expenses (including attorneys’ fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

E. The right to indemnification set forth in this Contract for any liability arising during the Term of this Contract shall survive the termination of this Contract and the Redevelopment Project Area as a development area.

#### **Section 6.02. Breach-Compliance.**

A. If Developer or City does not comply with provisions of this Contract, including provisions of the TIF Plan pertaining to the Redevelopment Project Area, within the time limits and in the manner for the completion of the Redevelopment Project as therein stated, except for any extensions or waivers described herein and Excusable Delays, in that Developer or City shall do, permit to be done, or fail or omit to do, or shall be about so to do, permit to be done, or fail or omit to have done, anything contrary to or required of it by this Contract or the Acts, and if, within thirty (30) days after notice of such default by the nondefaulting party to the defaulting party, the defaulting party shall not have cured such default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period (but in any event if the defaulting party shall not have cured such default within one hundred twenty (120) days), then the nondefaulting party may institute such proceedings as may be necessary in its opinion to cure the default including, but not limited to, proceedings to compel specific performance by the party in default of its obligations and, in the case of default by Developer, City is granted the right to terminate this Contract, and if the Certificate of Substantial Completion has not been issued pursuant to **Section 2.10**, the right to withhold or apply funds from the Special Allocation Fund to such extent as is necessary to protect City from loss or to ensure that the TIF Plan and the Redevelopment Project are fully and successfully implemented in a timely fashion, and the right to withhold issuance of a Certificate of Substantial Completion.

B. If any action is instituted by either party hereunder, the nonprevailing party in such action shall pay any and all costs, fees and expenses, including attorneys' fees incurred by the prevailing party in enforcing this Contract.

C. The rights and remedies of the parties to this Contract, whether provided by law or by this Contract, shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by either party shall apply to obligations beyond those expressly waived.

D. Developer (for itself and its successors and assigns, and for all other persons who are or who shall become liable, by express or implied assumption or otherwise, upon or subject to any obligation or burden under this Contract), waives to the fullest extent permitted by law and equity all claims or defenses otherwise available on the ground of being or having become a surety or guarantor, whether by agreement or operation of law. This waiver includes, but is not limited to, all claims and defenses based upon extensions of time, indulgence or modification of terms of contract.

E. Any delay by either party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit them in any way. No waiver in fact made by either party of any specific default by the other party shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect, to the particular default except to the extent specifically waived.

F. In no event shall City be obligated to certify any Reimbursable Project Costs, approve any Certification Application or Draw Certificate or reimburse Developer for any Reimbursable Project Costs incurred or paid by Developer at any time while any default by Developer has occurred, or any event that, with the passage of time or the giving of notice or both, will ripen into or constitute a default hereunder. The City shall notify Developer if this Section is being relied upon to withhold disbursement.

G. Notwithstanding anything to the contrary herein, Developer agrees that in the event of any default by City under this Contract, it will not bring any action or suit to recover damages against City or any officer, director, commissioner, member, employee, or agent of any of them, except that this **Section 6.02.G** shall not prevent the award of attorneys' fees under **Section 6.02.B** hereof in the event of a default by City under this Contract or Developer's recovery of TIF Revenue that the City withheld from distribution to Developer in violation of this Contract. Actions brought in equity or which otherwise do not seek to recover damages are not precluded by this Section.

### **Section 6.03. Excusable Delays.**

A. The parties understand and agree that Developer shall not be deemed to be in default of this Contract because of an "**Excusable Delay**" (as herein defined). For purposes of this Contract, the term "**Excusable Delay**" shall mean any delay beyond the reasonable control of Developer, caused by damage or destruction by fire or other casualty, strike, shortage of materials, civil disorder, war, wrongful failure or refusal of any governmental entity to issue any permits and/or legal authorization necessary for the Developer to proceed with construction of the Work or any portion thereof, the Developer's inability to secure acceptable financing for the development despite the Developer's commercially reasonable efforts, unavailability of labor or other labor/contractor disputes outside the reasonable control of the Developer, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, and any other events or conditions, which shall include but not be limited to any litigation interfering with or delaying the construction of the Project in accordance with this Contract, which in fact prevents the Developer from discharging its obligations hereunder.

B. With the approval of City, the time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any of the foregoing causes, which approval shall not be arbitrarily or unreasonably withheld. Developer shall be granted such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays. Nothing herein shall excuse Developer from any obligation to pay money hereunder, nor shall this Section excuse Developer from performance of its obligations because of a lack of funds or inability to obtain financing, except if financing commitments obtained by Developer are not fulfilled by the party issuing such commitment through no fault of Developer, in which case Developer shall be entitled to additional time not to exceed ninety (90) days to obtain new financing commitments. Notwithstanding the foregoing, in no event shall such Excusable Delays entitle Developer to a certificate of occupancy for any structure located within the Redevelopment Project Area until a certificate of substantial completion for the Public Project Improvements has been issued by City pursuant to the provisions of the Design and Construction Manual.

**Section 6.04. Notice.** Any notice required by this Contract shall be deemed to be given if it is mailed by United States certified mail, postage prepaid (which notice shall be deemed given two (2) business days after mailed), or Federal Express or comparable national overnight delivery service (which notice shall be deemed given the day it is deposited with such overnight delivery service) and addressed as hereinafter specified.

Any notice to City shall be addressed to:

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

With a copy to:

Any notice to Developer shall be addressed to:

James E. Thomas, Jr.  
Cityscape Residential, LLC  
8335 Keystone Crossing, Suite 220  
Indianapolis, IN 46240

With a copy to:

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

Curt Petersen  
Polsinelli PC  
900 W. 48<sup>th</sup> Place, Suite 900  
Kansas City, MO 64112

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.

**Section 6.05. Modification.** The terms, conditions, and provisions of this Contract and of the Incentive Plans can be neither modified nor eliminated except in writing and by mutual agreement between City and Developer. Any modification to this Contract as approved shall be attached hereto and incorporated herein by reference.

**Section 6.06. Effective Date.** This Contract shall become effective on the Effective Date and shall remain in full force and effect until the termination of tax increment financing in the Redevelopment Project Area pursuant to the Termination Ordinance.

**Section 6.07. Recording.** Upon full execution by City and Developer, a Memorandum of this Contract (using the legal description for the Redevelopment Project Area) shall be recorded by City, at Developer's expense, in the Office of the Recorder of Deeds for Jackson County, Missouri.

**Section 6.08. Applicable Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Missouri.

**Section 6.09. Covenant Running With the Land.** The provisions of this Contract shall be covenants running with the land and shall remain in effect until passage of the Termination Ordinance. Until such time, they shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and be enforceable by, City, its successors and assigns, against Developer, its successors and assigns, and every successor in interest to the subject real property, or any part of it or any interest in it and any party in possession or occupancy of the real property or any part thereof.

**Section 6.10. Relocation Costs.** City shall not be responsible for any relocation activity or the costs thereof that may be required by law to be paid with respect to any part of the Incentive Plans. Developer shall provide the relocation services and benefits as provided for under the TIF Plan with respect to the Redevelopment Project Area and shall hold City harmless from any claim, cost or expense for said services and benefits made by individuals and entities arising from implementation of the TIF Plan with respect to the Redevelopment Project Area, except that such costs may be deemed by City to be Redevelopment Project Costs. City acknowledges that the amounts paid by Developer to purchase real property from third parties within the Redevelopment Project Area are Reimbursable Project Costs up to the reimbursable amounts shown on **Exhibit C**, as these amounts include relocation costs. Notwithstanding the foregoing, City may assist in administering relocation activity if requested by Developer and approved by City, or if directed by the City Council of City.

**Section 6.11. Administrative Costs and Expenses.**

A. **Termination of Funding Agreement.** The Developer has previously advanced, pursuant to a Funding Agreement between the City and the Developer dated July 26, 2018 ("the **Funding Agreement**"), certain funds for Administrative Costs. Within thirty (30) days after execution of this Contract, the City shall submit final invoices which will be paid by Developer, along with the payment of

any other outstanding invoices, pursuant to the terms of the Funding Agreement. All such invoiced amounts shall be paid first from the existing advanced funds and thereafter by the Developer directly to the extent that invoiced amounts exceed the existing advanced funds. All such payments by Developer are Reimbursable Project Costs and are eligible for reimbursement with TIF Revenues. After final payment of all outstanding invoices is made by Developer under the Funding Agreement, the Funding Agreement shall be terminated, and any funds remaining on deposit with the City pursuant to the Funding Agreement shall be used by the City in accordance with **Section 6.11.B.** hereof and shall be treated as a Reimbursable Project Cost to Developer.

B. **Initial Deposit.** In addition to the Administrative Costs paid under the Funding Agreement, the City shall also be reimbursed for all other Administrative Costs incurred in connection with the Plans and this Contract. Upon termination of the Funding Agreement, the City shall deposit the funds remaining on deposit with the City pursuant to the Funding Agreement in a separate, segregated account of the City (the “**Advanced Funds Account**”), and, if such amount is less than \$10,000, then Developer shall make a payment to the City (all amounts in the Advanced Funds Account are the “**Advanced Funds**”) so that the initial amount on deposit in the Advanced Funds Account, together with funds remaining from the Funding Agreement, is \$10,000. If there are no funds on deposit with the City pursuant to the Funding Agreement on the Effective Date, then the Developer shall advance the sum of \$10,000 to the City as Advanced Funds for deposit in the Advanced Funds Account. If there are more funds on deposit with the City pursuant to the Funding Agreement than what is necessary to advance the sum of \$10,000 to the City as Advanced Funds for deposit in the Advanced Funds Account, then the City shall promptly refund such excess amount to the Developer. The City may invest the Advanced Funds in the same manner as other funds of the City are invested, and interest earnings shall remain in the Advanced Funds Account. All Advanced Funds shall be used to pay Administrative Costs. The City shall submit to the Developer an itemized statement of actual payments made from the Advanced Funds Account for such expenses on a regular periodic basis, but no more often than monthly and no less often than quarterly. Developer shall have no further obligation to advance to the City funds for Administrative Costs. All such payments of Advanced Funds by Developer are Reimbursable Project Costs in addition to the Reimbursable Project Costs Cap and will be eligible for reimbursement with TIF Revenues.

C. **Future Administrative Costs from Special Allocation Fund.** When funds are available in the Special Allocation Fund for the TIF Plan, the City shall transfer any balance in the Advanced Funds Account into a separate, segregated account of the City (the “**Administrative Costs Account**”) and may annually withdraw funds from the Special Allocation Fund in the lesser of (i) \$10,000 or (ii) the amount necessary to fund up the Administrative Costs Account to a balance of \$10,000 to pay the Administrative Costs of the City.

**Section 6.12. Validity and Severability.** It is the intention of the parties hereto that the provisions of this Contract shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Contract. Accordingly, if any provision of this Contract shall be deemed invalid or unenforceable in whole or in part, this Contract shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Contract in order to render the same valid and enforceable. All exhibits attached hereto are hereby incorporated into this Contract by reference; however, in the event of any conflict between any exhibit and the text of the Contract, the text of the Contract shall prevail.

**Section 6.13. Time and Performance are of the Essence.** Time and exact performance are of the essence of this Contract.

**Section 6.14. City's Legislative Powers.** Notwithstanding any other provisions in this Contract, nothing herein shall be deemed to usurp the governmental authority or police powers of City or to limit the legislative discretion of the City Council, and no action by the City Council in exercising its legislative authority shall be a default under this Contract.

**Section 6.15. Disputes between Private Parties and Affiliated Entities.** In the event of a dispute regarding the rights, duties and obligations of any of the private parties that are associated with developing the Redevelopment Area, including any disputes between or among Developer, Affiliates of Developer, Related Entities and such parties' lenders, the City shall have no obligation to resolve such disputes, and the private parties that are connected with such dispute shall independently resolve their issues. In the event that the City is requested to take any action associated with the implementation of the Plans or development of the Redevelopment Area, and another private party that is Developer, an Affiliate, a Related Entity of Developer, a lender, or another private party that has a colorable right under this Contract, contests or challenges the City's right to take such action, the City may decline to take such action until such time as the dispute between the appropriate parties is resolved to the City's satisfaction.

**Section 6.16. Approvals by City.** Unless specifically provided to the contrary herein, all approvals or consents of the City may be given by the City Manager or his or her designee without the necessity of any action by the City Council. The City Manager, in his/her discretion, may seek the advice, consent or approval of the City Council for any action that requires consent or approval by the City Manager pursuant to this Contract.

**Section 6.17. Electronic Storage.** The Parties agree that the transactions described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

*[Remainder of the page intentionally left blank]*



IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

**CITY OF LEE'S SUMMIT, MISSOURI**

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

[SEAL]

ATTEST:

\_\_\_\_\_  
Trisha Fowler Arcuri  
City Clerk

STATE OF MISSOURI     )  
                                      )   ss.  
COUNTY OF JACKSON    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. Arbo, 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 free 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.

[SEAL]

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

My Commission Expires:

\_\_\_\_\_

**DTLS APARTMENTS, LLC**

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

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

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

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, a notary public, appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he is the Manager of DTLS Apartments, LLC, and is authorized to sign documents on behalf of said entity and that said instrument was signed on behalf of said entity by authority of its Articles of Organization and acknowledged said instrument to be the free act and deed of said company.

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

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF REDEVELOPMENT AREA  
AND REDEVELOPMENT PROJECT AREA**

**TRACT 1:**

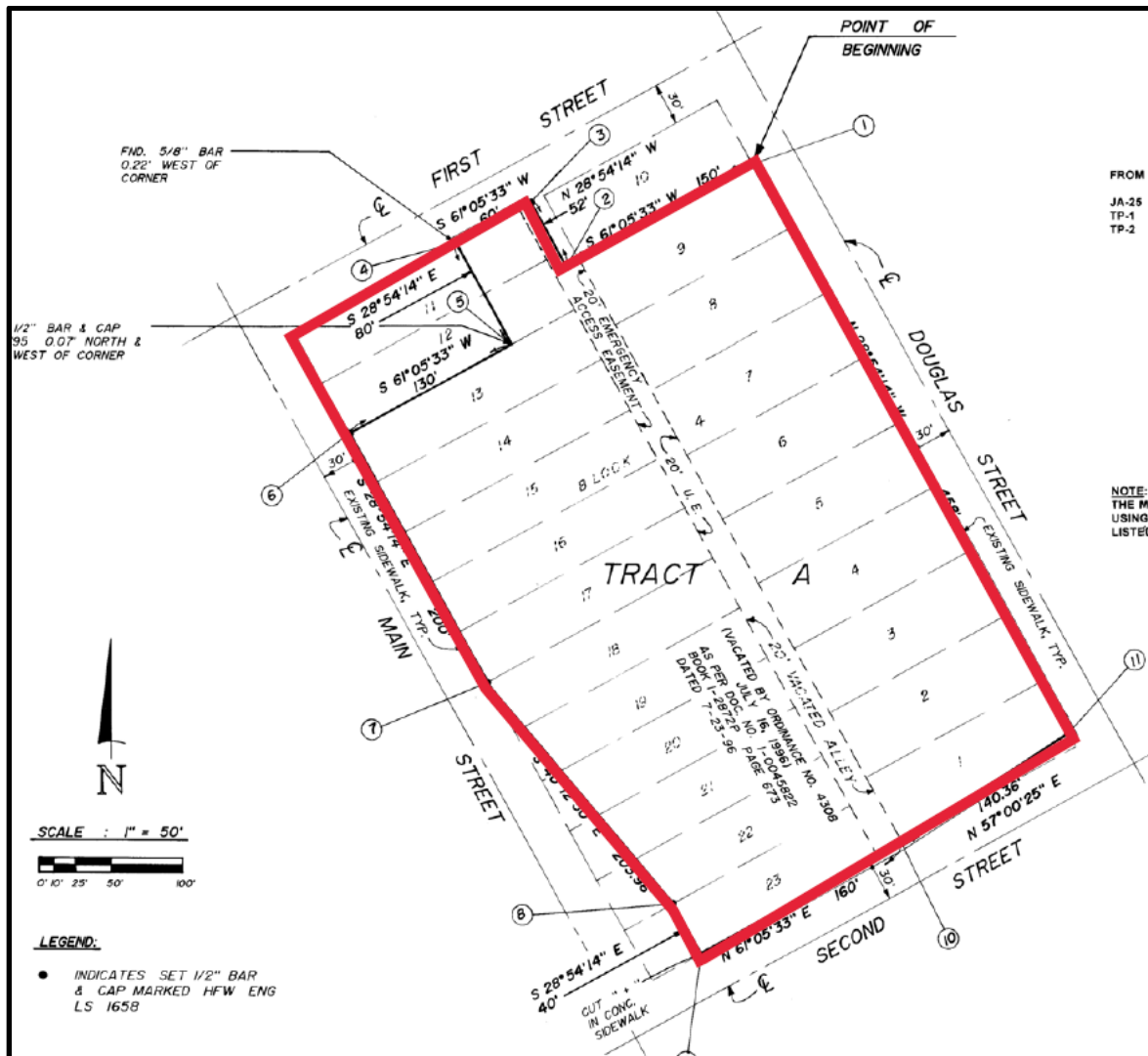
TRACT A, REPLAT OF LOTS 1 THRU 9 AND 11 THRU 23, INCLUSIVE, BLOCK 4, TOWN OF STROTHER, A SUBDIVISION IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI.

**TRACT 2:**

THE WEST 130 FEET OF LOTS 11 AND 12, BLOCK 4, CITY OF LEE'S SUMMIT, FORMERLY THE TOWN OF STROTHER, A SUBDIVISION IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI.

# EXHIBIT B

## MAP OF REDEVELOPMENT AREA



**Note:** This map is overlaid on the plat titled "Replat of Lots 1 thru 9 and 11 thru 23, Inclusive, Block 4 Town of Strother" before the Project received current zoning approvals, and is solely for the purpose of illustrating the general boundaries of the Redevelopment Area in relation to the adjacent streets.

## EXHIBIT C

### REDEVELOPMENT PROJECT COST BUDGET

Project Cost	Total	Projected TIF Reimbursed Costs	Developer Private Costs
Land Acquisition	\$2,800,000	\$0	\$2,800,000
Site Work/Infrastructure	\$1,500,000	\$0	\$1,500,000
less sales tax exemption savings	-\$47,100		-\$47,100
<i>Adjusted Site Work/Infrastructure Cost</i>	<i>\$1,452,900</i>		<i>\$1,452,900</i>
Building Construction	\$32,550,000	\$0	\$32,550,000
less sales tax exemption savings	-\$1,022,070		-\$1,022,070
<i>Adjusted Building Construction Cost</i>	<i>\$31,527,930</i>		<i>\$31,527,930</i>
Structured Parking	\$8,300,000	\$8,300,000	\$0
less sales tax exemption savings	-\$260,620	-\$260,620	
<i>Adjusted Structured Parking Cost</i>	<i>\$8,039,380</i>	<i>\$8,039,380</i>	
Soft Costs/Other	\$8,000,000	\$0	\$8,000,000
<b>TOTAL PROJECT COSTS</b>	<b>\$51,820,210</b>	<b>\$8,039,380</b>	<b>\$43,780,830</b>
	<b>Projected TOTAL PROJECT COSTS</b>	<b>Projected TIF Reimbursed Costs</b>	<b>Developer Private Costs</b>

**Notes:**

The amounts set forth in the Projected TIF Reimbursed Costs column totaling approximately \$8,039,380 are net reimbursable project costs reimbursements and do not include interest expenses, financing expenses, fees, or costs of issuance for Obligations or any other financing instrument, which may be Reimbursable Project Costs in addition to the cap established in Section 3.02.D of this Contract.

The amounts designated as “less sales tax exemption savings” are the projected amount of savings that will result from implementation the LCRA Plan and are not amounts that are reimbursable from TIF Revenues.

## **EXHIBIT D**

### **PRIVATE PROJECT IMPROVEMENTS**

The construction of an approximately 274 unit multi-family residential apartment structure, a four-story interior parking deck, and preservation reuse of the Sanctuary structure as part of the apartment operations as set forth in this Contract.

The foregoing description of the Private Project Improvements is based on the Preliminary Development Plan approved by the City for the Redevelopment Project Area as of the Effective Date of this Contract and is subject to change based on changes to the Private Project Improvements approved in any amendment to the Preliminary Development Plan, as the same may be amended from time to time.

**EXHIBIT E**

**REDEVELOPMENT SCHEDULE**

<b>EVENT</b>	<b>ESTIMATED COMMENCEMENT</b>	<b>ESTIMATED COMPLETION</b>
Demolition	Q2 2020	Q3 2020
Construction of Apartments	Q1 2021	Q3 2023

The above schedule is the Developer's estimate based on information available on the Effective Date of this Contract. Developer's obligations to commence and complete construction of the Project Improvements in accordance with this Redevelopment Schedule are subject to the provisions of **Section 6.03** of this Contract. Developer may commence construction activities earlier than the dates set forth in this Redevelopment Schedule.

**EXHIBIT F**  
**HISTORIC PRESERVATION EASEMENT**

*[Attached]*



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*(Space above reserved for Recorder of Deeds certification)*

1. *Title of Document:* **Historic Preservation Easement – United Methodist Church Sanctuary**
  2. *Date of Document:* **December \_\_, 2019**
  3. *Grantor(s):* **DTLS Apartments, LLC**
  4. *Grantee(s):* **City of Lee's Summit, Missouri, a municipal corporation**
  5. *Statutory Mailing Address(s):*  

**Grantee's Address:   Lee's Summit City Hall  
220 SE Green Street  
Lee's Summit, MO 64063**
  6. *Legal Description:* **See Attached Exhibit A**
  7. *Reference Book and Page(s):* **N/A**
-

## **HISTORIC PRESERVATION EASEMENT – UNITED METHODIST CHURCH SANCTUARY**

THIS HISTORIC PRESERVATION EASEMENT (“Easement”) is made this \_\_\_\_ day of December \_\_, 2019, by **DTLS APARTMENTS, LLC** (“Grantor”), and the **CITY OF LEE’S SUMMIT, MISSOURI**, a municipal corporation (“Grantee”).

### **RECITALS OF CONSIDERATION**

A. Grantor is the owner in fee simple of a parcel of land located in the downtown area of the City of Lee’s Summit, Jackson County, Missouri, such parcel of land being legally described on **Exhibit A** attached hereto (together with all improvements on the land, the “Property”), the location of which is depicted in **Exhibit B**, generally situated at the northwest corner of 2<sup>nd</sup> Street and Douglas Street. The structure is commonly known as the original Sanctuary for the United Methodist Church (the “**Structure**”), is located on the Property, and is the subject matter of this Easement.

B. Grantor has agreed to preserve certain elements of the “Façade,” in accordance with the terms hereof. The term “**Façade**” means the easterly and southerly facing exterior surfaces and features of the Structure, and the northeasterly and southwesterly facing exterior corner surfaces and features of the Structure, which are visible from the Viewshed Areas (as such term is defined below), as shown on **Exhibit C** attached hereto, together with the structural portions of the Structure that support such exterior features. The term Façade shall not include those northerly and westerly facing portion of the exterior of the Structure that become adjoined to the apartment development when the redevelopment is completed, it being understood that the Structure will adjoin and connect to the apartment structure in order to integrate the Structure into the operations of the apartment redevelopment project.

C. The City has approved tax incentives to Grantor for the purpose of providing for the redevelopment of the Church property and structures which are located on the same block as the Property, in the form of the 2<sup>nd</sup> and Douglas Tax Increment Financing Plan and the 2<sup>nd</sup> and Douglas LCRA Redevelopment Plan which were approved on May 7, 2019 through the adoption of Ordinance No. 6825 and 6828, respectively, and through the execution of the Redevelopment Contract dated December 10, 2019, all of which serve as consideration to Grantor in exchange for providing this Easement and undertaking other obligations for redevelopment activities by Grantor.

D. Grantor and Grantee desire to ensure that certain significant exterior features of the Façade are preserved to the reasonable extent possible for benefit of future generations through the grant of this Easement.

NOW THEREFORE, in consideration of the foregoing and for other good and sufficient consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to Grantee, and Grantee hereby accepts, this Easement on the following terms and conditions:

## Article I

### BACKGROUND AND DEFINITIONS

#### A. Property Subject to Easement

The property subject to this Easement is comprised of the Façade.

#### B. Purpose

Subject to the terms hereof, this Easement is granted in perpetuity to preserve the Façade. This Easement, to be of the nature and character hereinafter further expressed, shall constitute a binding servitude upon the property of the Grantor subject to the terms contained herein, and to that end Grantor covenants on behalf of itself, its successors and assigns, with Grantee, its successors and assigns, such covenants being deemed to run as a binding servitude, in perpetuity, with the land, to do upon the Property each of the following covenants and stipulations, which contribute to the public purpose of which public incentives have been approved by Grantee for redevelopment of the Property and assure the present and future historic integrity of the Structure.

In furtherance of this purpose, after the Effective Date the Façade shall not be altered, restored, renovated or extended except in a way that would, in the reasonable opinion of Grantee, be in keeping with the historic character of the Structure. Alterations, renovations or improvements to the Façade shall be architecturally compatible with the original function and appearance of the Structure in Grantee's reasonable opinion. Except as otherwise may be specifically set forth herein, in no event may any exterior construction to, or alteration, renovation or redecoration of, the Façade be undertaken without the prior written approval of Grantee as hereinafter provided.

#### C. Baseline Data

In order to document the present condition of the Façade, to permit Grantor and Grantee to monitor the future condition of the Façade, and to assure compliance with the terms hereof, Grantee has prepared a photographic inventory of the condition of the Façade existing on the Effective Date which is attached hereto as **Exhibit C** (the "**Baseline Data**"). The identity and condition of each element of the Façade and all related exterior architectural features shall be detailed in the Baseline Data.

In the event Grantor alters, restores or modifies the Façade in accordance with the terms of this Easement, Grantor and Grantee will, together, periodically update the photographs and other documentation in the Baseline Data to reflect the upgraded condition of the Façade. Once the Façade has been restored to a good and sound state of repair, Grantee shall prepare a revised inventory of the Façade's condition to identify and document the condition of each element of the Façade depicted in the original Baseline Data. Once such revised Baseline Data has been completed, such revised Baseline Data shall be accepted by Grantor and Grantee as an accurate depiction of the condition of the Façade as restored.

## Article II

### RESTRICTIONS, COVENANTS AND AGREEMENTS.

Grantor covenants on behalf of itself, its successors and assigns to do, or refrain from doing, each of the following acts.

#### A. Maintenance

Grantor shall maintain the Façade in a good and sound state of repair, as depicted in the Baseline Data, in order to preserve the original architectural character and integrity of the Façade, as the same may be revised from time to time.

#### B. Façade and Viewshed Alterations Prohibited Without Grantee's Prior Written Approval

1. Exterior changes, alterations, additions and improvements to the Façade as would not, in the reasonable opinion of Grantee, adversely affect the structural soundness, or fundamentally alter the historic character, of the Façade may be made thereto by Grantor upon prior written consent of Grantee, which consent shall be granted or withheld in accordance with the terms of this Easement; provided that, Grantor may replace, without Grantee consent, any (1) exterior windows; (2) doors (including inscription in the doorway); (3) or any other items directly related to life/safety which are required to be replaced to meet the City's Building Code and Property Maintenance Code in Chapters 7 and 16 of the Code of Ordinances, as amended from time to time.

2. The view and visibility of the Façade and the Structure from public rights-of-way, including streets, sidewalks, pedestrian areas, parks and any other public areas where the public is generally allowed to gather or traverse (the "**Viewshed Areas**"), shall not be substantially blocked or obstructed by the placement or construction, whether temporary (except during periods of construction, maintenance, or repairs) or permanent, or by any other structure or object within the boundaries of the Property and any other adjacent areas or properties under ownership or control of Grantor, or any affiliated or related persons or entities of Grantor, without the prior written approval of the Grantee. Structures and objects which are prohibited from the Viewshed Areas include, but are not limited to, buildings, structures (whether temporary or permanent), poles, flags, banners, awnings, wires, tents, utility boxes and related structures, signage, bill boards, advertising, vehicles, trailers, automobiles (except for parking as allowed pursuant to the City Code), whether fixed to the Structure or standing independently of the Structure. Temporary gatherings, festivals and related events which are allowed by permission of the City pursuant to the City Code or a City-issued permit shall not be treated as prohibited Viewshed Area obstructions pursuant to this paragraph. Trees, plants and vegetation that are permitted by the final development plan, as may be amended from time to time, shall be allowed in the Viewshed Area. Notwithstanding the foregoing, items included in an approved final development plan that includes the Structure shall not be prohibited hereunder.

**C. Commercial or Industrial Activities**

No industrial or commercial activities shall be conducted on the Property except to the extent permissible under then applicable land use regulations or as set forth in that certain Redevelopment Contract by and between Grantor and Grantee dated as of December 10, 2019, as may be amended or modified by the parties.

**D. Signage**

No commercial signs, billboards or advertising shall be displayed on the Façade other than those approved by Grantee in its reasonable discretion. Notwithstanding the foregoing, Grantor and Grantee may mutually elect to affix at the Property such historical and interpretative signs as Grantor shall elect provided the historical or structural integrity of the Façade is not materially affected thereby.

**E. Payment of Taxes**

Grantor shall pay before delinquent all general taxes, special assessments, payments in lieu of taxes, water charges, sewer service charges and any and all other charges which, if unpaid, would become a lien on the Property. The obligation to pay shall not apply during (i) any period Grantor has (a) timely objected to the amount or validity of the charge, (b) diligently prosecuted the appeal of such assessment or charge, and (c) effectively stayed any enforcement action relating to any such lien against the Property, and (ii) any grace period following the conclusion of such appeal.

**F. Reference on Conveyance**

Grantor agrees (i) to insert a reference to the existence of this Easement in any deed or other legal instrument by which it transfers title to the Property or any interest therein (including a leasehold interest other than residential leases or a deed to the City in implementation of the 2<sup>nd</sup> and Douglas LCRA Redevelopment Plan) and (ii) to notify Grantee of any such conveyance or other transfer of interest (providing the name, address and contact information for such transferee) at least ten (10) days prior to the date of any such conveyance or transfer. The failure to include such reference in the legal instrument shall authorize the City to void such transaction upon such declaration by the City Council.

**Article III**

**GRANTOR'S RESERVED RIGHTS**

Grantor reserves for itself, its successors and assigns, all rights as fee owner of the Property, including, without limitation, the right to use and enjoy the Property in any way and for any purpose not prohibited by this Easement or otherwise prohibited by law. Without limiting the generality of the foregoing, Grantor reserves the right to make alterations to any interior features of the Structure without prior consultation with Grantee, except as prohibited by applicable City Code provisions, provided that any such interior alteration shall not materially impair the historical or structural integrity of the Façade or the structural integrity of the Structure.

## Article IV

### EASEMENT ADMINISTRATION

#### A. Evidence of Compliance

Grantee acknowledges that the intended uses of the Property are compatible with the purposes of this Easement. For any sale, leasing, refinancing, mortgaging or other business purpose, Grantee shall, within ten (10) business days of request, furnish Grantor or its designee with a statement that (i) provides to the best of Grantee's knowledge, information and belief after reasonable inquiry, Grantor is in full compliance with its obligations under this instrument or (ii) that details any noncompliance with its obligations under this Easement.

#### B. Grantee Marker

Grantee is authorized to maintain one plaque or marker, not to exceed twelve (12) inches by twenty-four (24) inches, at a location mutually agreeable to Grantor and Grantee to afford public notice of (i) the history of the Property, (ii) Grantee's ownership of the right to enforce the terms of this Easement, and (iii) Grantee's name, address and phone number.

#### C. Inspection

Upon prior reasonable written notice to Grantor, its successors and assigns, Grantee shall be entitled to enter upon the Property for the purpose of inspecting the Façade to ensure there are no violations under the terms of this Easement. Any such inspection will be conducted in a manner that will not unreasonably interfere with the uses being made of the Property and Grantor's quiet enjoyment of the same at the time of such entry. Grantee's right to enter upon the Property is solely for the purpose of inspecting the Façade and making determinations regarding enforcement of this Easement. In the absence of evidence of a violation of the terms of this Easement, such inspection will not take place more often than annually.

#### D. Initial Work

Grantee acknowledges that Grantor intends to repair, renovate and alter the Structure ("**Grantor's Initial Work**") to preserve the physical integrity of the Structure and prevent further deterioration and consents to such work, subject to the terms of this Easement. Grantor hereby agrees that Grantor's Initial Work shall be performed in accordance with plans and specifications submitted by Grantor and approved by Grantee, the approval of which shall be subject to the terms of this Easement.

#### E. Requests for Changes and Review of Proposed Work

Grantor shall notify Grantee promptly of any proposed work to the Façade requiring Grantee's prior approval pursuant to the terms of this Easement. Depending upon the nature of the proposed work, Grantee may request Grantor to furnish a written narrative, a sketch plan, or more detailed plans to enable Grantee to confer further with Grantor. Grantee shall notify Grantor within ten (10) business days following receipt of the initial requested information whether Grantee has sufficient information to complete its review of the proposed work and, if Grantee has

sufficient information, whether the proposed work appears permissible hereunder and any areas of particular concern. At that time, Grantee shall also (i) furnish Grantor with a description of any additional information Grantee will reasonably require to approve the proposed work, if possible, or (ii) schedule a meeting with Grantor and its professional advisors to discuss and refine the scope of the proposed work to render it eligible for conceptual approval. Notwithstanding anything in this Easement to the contrary, Grantor shall not need to obtain Grantee consent for routine maintenance tasks involving the Façade, including, without limitation, window washing, tuck pointing, brick washing, and window touch-up painting.

Once the scope of the proposed work is identified and Grantee has granted conceptual approval, Grantor shall submit to Grantee a set of plans and a work schedule in sufficient reasonable detail to enable Grantee to review the proposed work. Within twenty (20) business days of receipt of such plans (“**Approval Period**”), Grantee shall notify Grantor in writing whether it approves such plans, approves such plans with conditions, or disapproves such plans. If Grantee disapproves the plans or approves such plans with conditions, as the case may be, Grantee will identify with specificity its objections to the proposed plans. If the proposed plans cannot be modified to make them acceptable, Grantee shall furnish Grantor with a written statement of the reasons for denying approval.

#### **F. Standards for Review**

In exercising its review authority hereunder concerning the Façade, Grantee shall look to the Baseline Data, the original designs for the Façade, Grantee’s own reasonable general guidelines for review of alterations to historic resources located in Lee’s Summit, Missouri, and Grantor’s purpose in creating this instrument. Grantee agrees that any review of proposed changes shall take into account Grantor’s budgetary constraints, code compliance, federal, state and local laws, this Easement and the TIF Plan, while maintaining those features of the Façade that make them unique. All authority vested in the Grantee under this Easement shall be exercised by the Director of the Development Center for the City, or his/her designee.

#### **G. Enforcement Rights of Grantee**

In the event of a violation of any term, condition, covenant, or restriction contained in this Easement, upon prior written notice to Grantor, Grantee may institute a suit for one or more of the following: to compel the restoration of the Façade to the condition existing prior to the violation; or to enjoin by temporary or permanent injunction such violation. Grantee’s failure to act shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this Easement in the future. If any legal action is undertaken by Grantee to enforce this Easement or to enjoin a violation, the prevailing party in such action shall be entitled to recover its reasonable attorneys’ fees and costs incurred in connection with such action.

#### **H. Notice**

All notices required by this Easement must be in writing. Notices may be given either by hand delivery, mail service, Federal Express or comparable national overnight delivery service, or electronic mail. Mailed postal notice must be contained in an accurately addressed, sealed

envelope, marked for delivery by first class registered or certified mail, with sufficient prepaid postage affixed and with return receipt requested, and mailed to the following:

Notice to City shall be addressed to:

City Manager  
Lee's Summit City Hall  
220 SE Green Street  
Lee's Summit, MO 64063  
E-mail: stephen.arbo@cityofls.net

With a copy to:

City Attorney  
Lee's Summit City Hall  
220 SE Green Street  
Lee's Summit, MO 64063  
E-mail: David.Bushek@cityofls.net

Notice to Developer shall be addressed to:

James E. Thomas, Jr.  
Cityscape Residential, LLC  
8335 Keystone Crossing, Suite 220  
Indianapolis, IN 46240  
E-mail:  
jthomas@cityscaperesidential.com

With a copy to:

Curt Petersen  
Polsinelli PC  
6201 College Blvd., Suite 500  
Overland Park, KS 66221  
E-mail: cpetersen@polsinelli.com

Notice shall be deemed given and received as of the date of its hand delivery, the date it is deposited with the national overnight delivery service, the date it is sent by electronic mail, or two business days following the date of its mailing.

## **I. Enforcement**

Subject to the terms and provisions of Article VIII, Paragraph B. below, Grantee may hire or contract for advice and guidance regarding the administration and enforcement of this Easement, at no cost to Grantor except as may be specifically provided herein, which shall not be deemed an assignment and shall not require prior approval of Grantee. Any costs incurred by Grantee in connection with any such hiring or contracting shall be at the cost of Grantee, except that if such advice is sought in connection with an alleged violation of this Easement, and a violation by Grantor is established as provided in Article IV, Paragraph G. above, then the reasonable, actual, verified costs incurred by Grantee in connection with any such hiring or contracting shall be reimbursed to Grantee by Grantor.

## **Article V**

### **CASUALTY DAMAGE OR DESTRUCTION; INSURANCE**

#### **A. Insurance**

##### **1. Property Insurance**

Grantor shall keep the Structure insured against loss from the perils commonly insured under fire and extended coverage insurance policy in an amount equal to one hundred percent



(100%) of the full replacement cost of the Structure. Such insurance shall be issued by a company or companies reasonably acceptable to Grantee.

## **2. Issuance and Renewal of Insurance; Required Terms**

Upon Grantee's acceptance of this instrument, and within ten (10) days following the City's written request thereafter, Grantor shall cause its insurance carrier to furnish to Grantee certificates of insurance policies required hereunder.

### **B. Casualty Damage or Destruction**

If the Structure is damaged or destroyed by fire, flood, windstorm, tornado, earth movement, or other casualty, Grantor shall notify Grantee in writing within ten (10) days of the damage or destruction. Grantor's notice shall include a statement of any emergency work which has been completed or commenced. In the event of any damage or destruction, Grantor shall make no exterior repairs or reconstruction of any type to the Façade without Grantee's prior written approval, other than temporary emergency work reasonably required to stabilize the Façade to prevent further damage, or to protect public safety.

### **C. Grantee Rights Upon Determination that Reconstruction or Restoration is Impracticable**

If Grantor determines that restoration or reconstruction of the Structure is impracticable within the limits of available insurance proceeds and funds advanced by Grantee, if any, Grantor may demolish, raze or remove the Structure, or the damaged elements thereof. Notwithstanding anything to the contrary in this Easement, Grantor and Grantee acknowledge that a mortgagee may require that insurance proceeds be used to retire its mortgage loan prior to using such funds to fund restoration or reconstruction of the Structure.

### **D. Review after Casualty Damage or Destruction**

Unless Grantor shall determine that the restoration or reconstruction of the Structure and the Façade is impracticable (in accordance with the provisions of Article V.C. above), Grantor shall establish a schedule for completing the restoration or reconstruction work for the Structure and the Façade in accordance with plans and specifications to be submitted to Grantee for review and approval as set forth in this Easement, and promptly following such approval by Grantee, Grantor shall proceed to restore or reconstruct the Structure and the Façade.

## **Article VI**

### **AMENDMENT, CONDEMNATION AND EXTINGUISHMENT**

#### **A. Amendment**

Grantor and Grantee recognize that circumstances could arise that might justify the modification of certain of the restrictions contained in this Easement. To this end, Grantee shall consider in good faith any amendments to this Easement requested by Grantor provided that they

are not inconsistent with the basic purpose of this Easement to protect the Façade. This Easement may be amended in the same manner as other easements under the laws of the State of Missouri.

## **B. Condemnation**

If all or any part of the Property is threatened to be taken under the power of eminent domain by public, corporate or other authority other than Grantee, or any agency, department or division thereof, or otherwise acquired by such authority through a purchase in lieu of such a condemnation, Grantor shall defend against the condemnation to recover the full value of the Property, together with all incidental and direct damages recoverable under applicable law. Grantor and Grantee shall first satisfy prior claims against the Property and any net expenses reasonably incurred by Grantor and Grantee in connection with the condemnation. Thereafter, Grantor and Grantee shall split the balance of the condemnation proceeds in accordance with the final ruling by a court of competent jurisdiction to the extent that such ruling provides for the receipt of damages by Grantee for damage to the property interest created by this Easement.

## **C. Extinguishment**

Grantor and Grantee recognize that circumstances may arise which might make impossible the continued ownership or use of the Property in a manner consistent with the purposes of this Easement, in which event it might become desirable to extinguish this Easement. In the event the parties mutually determine that extinguishment is appropriate and desirable, they may mutually agree to such extinguishment by appropriate action which is in recordable form, or petition a court of competent jurisdiction to extinguish the easement by the parties.

# **Article VII**

## **MORTGAGEE SUBORDINATION AND RIGHTS OF MORTGAGE LENDERS**

### **A. Subordination of Mortgages**

Grantor and Grantee agree that all mortgages and rights in the Property of all mortgagees are subject to and subordinate at all times to this Easement and the rights of Grantee to enforce this Easement. Grantor hereby warrants and represents that the Property is not currently subject to any mortgages or other liens or, to the extent any such mortgages or other liens exists, Grantor will deliver to Grantee, concurrently with the execution of this Easement, an instrument, acceptable in form and content to Grantee, pursuant to which the holder of any such mortgage or lien has agreed that all of its rights, titles and interests in the Property are subordinate to this Easement. Further, Grantor covenants that all mortgages and encumbrances which Grantor may be placed on the Property shall be subordinate at all times and subject to this Easement.

### **B. Rights of Mortgagees**

#### **(1) Proceeds on Condemnation or Casualty Loss**

Notwithstanding any mortgage lender's relative priority in relation to this Easement, if a mortgage grants to a mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain or

the right to receive insurance proceeds as a result of any insured casualty occurring on the Property, the mortgagee shall have a prior claim to any such proceeds and shall be entitled to receive same in preference to Grantee until the mortgage has been paid off or discharged. This partial subordination of Grantee's relative priority in favor of a mortgage lender's competing claims to direct the application of condemnation or insurance proceeds shall only apply if the mortgage creating such mortgagee's right is recorded before the first discussion of the possibility of condemnation or eminent domain is published in the local news media, in the case of a condemnation, or before occurrence of the insured occurrence in the case of an insured loss.

## **(2) Mortgage Obligations Under Easement**

Until a mortgagee or purchaser at foreclosure obtains ownership of the Property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under this Easement; provided, however, that if at any time such mortgagee or purchaser shall operate the Property during the period of its ownership, it shall be obligated to maintain the Property, including without limitation the Façade, in accordance with the terms of this Easement.

## **(3) Extinguishment**

Nothing contained herein shall give any mortgagee the right to extinguish this instrument, whether by foreclosure, deed in lieu of foreclosure, or otherwise.

# **Article VIII**

## **THIRD PARTY RIGHTS NEGATED**

### **A. Public Access Prohibited**

This Easement shall not be construed to include a grant to the public of any right to enter the Property for any purpose.

### **B. No Third Party Enforcement Rights**

Grantor and Grantee understand that strangers to this Easement may, by virtue of the grant, claim standing to influence Grantee's administration of its rights hereunder. Grantor and Grantee agree, to the maximum extent permissible by law, to deny standing to any persons, nonprofit institutions, or governmental entities to intervene, whether by action at law or equity, in Grantee's interpretation, administration, and enforcement of its rights, burdens and benefits under this Easement. Nothing contained herein is intended to create any beneficial interest in any party that is not a signatory to this Easement. Under no circumstances does Grantor intend to create, nor does it create, any rights in third parties to intervene in Grantee's exercise of the discretionary powers entrusted to Grantee hereunder.

Grantor and Grantee understand that Grantee has the right to appoint a neutral, unrelated person or entity as a "third party enforcer" to ensure that Grantor complies with the terms of this Easement.

## **Article IX**

### **DEFINITIONS AND MISCELLANEOUS**

#### **A. Use of Pronouns**

The terms “Grantor” and “Grantee”, wherever used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and its successors and assigns and the above-named Grantee and its successors and assigns approved by Grantor.

#### **B. Severability**

If any provision of this Easement, or the applicability thereof to any person or circumstance, are found to be invalid, the remainder of the provisions of this Easement and the application of such provisions shall remain in full force and effect.

#### **C. Binding Effect**

The restrictions and covenants contained herein shall be deemed to run with the land in perpetuity as covenants at law and equitable servitudes, and extend to and be binding on Grantor and Grantee and their respective heirs, administrators, devisees, successors, and assigns in perpetuity.

#### **D. Non-Waiver**

The failure of Grantee to exercise any right or remedy granted under this instrument with respect to any particular violation shall not have the effect of waiving or limiting the exercise of such right or remedy with respect to the identical (or similar) type of violation at any subsequent time or the effect of waiving or limiting the exercise of any other right or remedy.

#### **E. Governing Law**

This Easement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Missouri.

#### **F. Recording and Effective Date**

Grantee shall do and perform at Grantor's expense all acts necessary to the prompt recording of this Easement in the land records of Jackson County, Missouri. Grantor and Grantee intend that the “Effective Date” of this Easement shall be the date this instrument is accepted by Grantee, even though such date is before the date this instrument is recorded among the land records of Jackson County, Missouri.

#### **G. Entire Agreement**

This Easement reflects the entire agreement of Grantor and Grantee. Any prior or contemporaneous correspondence, understandings, agreements and representations are null and

void upon execution of this Easement unless the same are identified and incorporated herein by reference.

TO HAVE AND TO HOLD the said Easement, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said City of Lee's Summit, Missouri its successors and assigns, in fee simple.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Grantor and Grantee (who joins in this deed to evidence its acceptance of the burdens and undertakings imposed hereunder) have executed this Easement as of the day and year first above written.

GRANTOR:

DTLS APARTMENTS, LLC

Witness:

\_\_\_\_\_

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

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

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

COUNTY OF \_\_\_\_\_ )  
STATE OF \_\_\_\_\_ ), ss:

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned officer, a notary Public in and for the County and State aforesaid, personally appeared \_\_\_\_\_, as \_\_\_\_\_ of DTLS Apartments, LLC, known to me or satisfactorily proven to be the person whose name is subscribed to the within deed and acknowledged that he executed the same on behalf of said company for the purposes therein contained, and further acknowledged that said Easement is its free act and deed or said company.

In Witness Whereof, I have set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_.

GRANTEE:

CITY OF LEE'S SUMMIT, MISSOURI

(Corporate Seal)

Attest:

\_\_\_\_\_  
Trisha Fowler Arcuri, City Clerk

\_\_\_\_\_  
William A. Baird, Mayor

Approved As To Form:

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

COUNTY OF JACKSON     )  
STATE OF MISSOURI     ), ss:

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the County and Sate aforesaid, came William A. Baird, the Mayor 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 set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_.

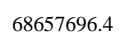
## **Exhibit A**

### **LEGAL DESCRIPTION OF THE PROPERTY**

THAT PORTION OF TRACT A IN THE “REPLAT OF LOTS 1 THRU 9 AND 11 THRU 23, INCLUSIVE, BLOCK 4, TOWN OF STROTHER,” A SUBDIVISION IN LEE’S SUMMIT, JACKSON COUNTY, MISSOURI, CONSISTING OF THE PROPERTY THAT WAS FORMERLY LOTS 1 AND 2 ON THE PLAT OF BLOCK 4, THE TOWN OF STROTHER, A PRIOR SUBDIVISION IN LEE’S SUMMIT, JACKSON COUNTY, MISSOURI.



### MAP SHOWING LOCATION OF PROPERTY



**Exhibit C**  
**BASELINE DATA**

**[Add pictures of the Facade]**

## EXHIBIT G

### CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, DTLA Apartments, LLC (the “*Developer*”), pursuant to that certain Tax Increment Financing Redevelopment Contract dated as of June \_\_\_, 2019, between the City of Lee’s Summit, Missouri (the “*City*”) and the Developer (the “*Contract*”), hereby certifies to the City as follows:

1. That as of \_\_\_\_\_, 20\_\_\_, the Redevelopment Project (as such term is defined in the Contract) has been substantially completed in accordance with the Contract.
2. The Redevelopment Project has been substantially completed in a good and workmanlike manner.
3. Lien waivers for the Public Project Improvements have been obtained.
4. This Certificate of Substantial Completion is accompanied by the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as Appendix A and by this reference incorporated herein, certifying that the Redevelopment Project has been substantially completed in accordance with the Contract.
5. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Contract to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Redevelopment Project.
6. The City’s acceptance (below) or the City’s failure to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate of Substantial Completion to the City (which written objection, if any, must be delivered to the Developer prior to the end of such 30-day period), and the recordation of this Certificate of Substantial Completion with the Jackson County Recorder of Deeds, shall evidence the satisfaction of the Developer’s agreements and covenants to construct the Redevelopment Project.

This Certificate of Substantial Completion shall be recorded in the office of the Jackson County Recorder of Deeds. This Certificate of Substantial Completion is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Contract.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**DTLS Apartments, LLC**  
a Missouri limited liability company

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

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

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

**ACCEPTED:**

**CITY OF LEE'S SUMMIT, MISSOURI**

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

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

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

[Insert Notary Form(s) and Legal Description]

## EXHIBIT H

### FORM OF ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and is made by and among DTLS Apartments, LLC (“Assignor”), \_\_\_\_\_, a \_\_\_\_\_ (“Assignee”), and the City of Lee’s Summit, Missouri, a municipal corporation (the “City”).

#### RECITALS

A. On May 7, 2019, the City Council by Ordinance No. \_\_\_\_ approved the 2<sup>nd</sup> and Douglas Tax Increment Financing Plan, and by Ordinance No. \_\_\_\_ approved the 2<sup>nd</sup> and Douglas LCRA Redevelopment Plan (together the “Plans”).

B. On \_\_\_\_, 2019, the City and Assignor entered into a Redevelopment Contract that set forth the respective obligations and duties of the City and Assignor with respect to the implementation of the Plans (the “**Redevelopment Contract**”).

C. Pursuant to Section 5.06 of the Redevelopment Contract, Assignor now desires to enter into this Assignment to convey to Assignee its [rights, interests,]<sup>1</sup> duties and obligations under the Redevelopment Agreement, and Assignee has agreed to assume and perform all of Assignor’s rights, duties, interest and obligations under the Redevelopment Contract.

NOW, THEREFORE, in consideration of the foregoing and the covenants and obligations contained in this Assignment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and among Assignor, Assignee and the City as follows:

*Capitalized terms that are not defined in this Assignment shall have the meaning assigned to them in the Redevelopment Contract.*

1. Assignee acknowledges that it has been provided with and/or has reviewed true and accurate copies of the Plans, the Ordinances that approved the Plans, the Project Ordinance, the Redevelopment Contract and all other documents associated with the Plans that may be necessary for Assignee to make an informed decision regarding purchase of the Property with respect to the matters set forth in those documents and this Assignment Agreement.

2. [The Assignor hereby assigns to the Assignee all of the Assignor’s rights, duties, interests and obligations under the Plans, with respect to the Redevelopment Project Area, and the Redevelopment Contract.] [Assignor hereby assigns and Assignee hereby assumes all of Assignor’s obligations under the Agreement with respect to the Property, and Assignee also acknowledges and agrees that its acquisition of the Property and the transfer of the Property to Assignee is subject in all respects to the Redevelopment Contract, the requirements of the Plans, the Ordinances that approved the Plans, and the rights of the City pursuant to the Redevelopment Contract, the TIF Act and the LCRA Act.]

---

<sup>1</sup> Alternative bracketed language in the Form of Assignment Agreement reflects the fact that Assignor may determine to convey only its obligations under the Contract, or may decide to also convey some or all of its rights thereunder, including the right to reimbursement with TIF Revenues.

3. [Assignee acknowledges and agrees that the Property is or will be included in the Redevelopment Area created by the City pursuant to the TIF Plan and that certain taxes generated by Assignee's economic activities, including sales taxes, will be applied toward Reimbursable Project Costs after the Redevelopment Project is activated by the City. Assignee shall forward to the City copies of Assignee's State of Missouri sales tax returns for the Property located in the Redevelopment Area when and as they are filed with the Missouri Department of Revenue, and, upon request, shall provide such other reports and returns regarding other local taxes generated by Assignee's economic activities in the Redevelopment Area and/or as the City shall require, all in the format prescribed by the City. Assignee will set forth the obligation contained in this subparagraph in any further lease or sale contract affecting the Property.]

4. Assignee acknowledges that the Property will be subject to assessment for annual Payments in Lieu of Taxes ("PILOTs") when the Redevelopment Area is activated by the City. PILOTs are due on November 30 of each year and are considered delinquent if not paid by December 31 of each year. The obligation to make said PILOTs shall be a covenant running with the land and shall create a lien in favor of the City on the Property and shall be enforceable against Assignee and its successors and assigns in ownership of the Property.

5. Assignee acknowledges that in the event of the sale, lease, sublease, assignment, or other voluntary or involuntary disposition of any or all of the Property, PILOTs with respect to the Property shall continue and shall constitute a lien against the Property from which they are derived, and such obligations shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable as if such purchaser, tenant, transferee or other possessor thereof were originally a party to and bound by the Redevelopment Contract. Assignee assumes the duty to notify any purchaser, tenant, transferee or other possessor of the property its rights, duties and obligations under the Redevelopment Contract.

6. Assignee acknowledges that, for any subsequent conveyance, the City must be notified in writing of the proposed sale of the Property prior to the proposed effective date of the sale, which notification shall include a copy of the instrument affecting such sale. Assignee acknowledges that its purchase and any subsequent sale of the Property will be subject to any and all rights of the City or Developer, as are set forth in the Redevelopment Contract, the TIF Plan, the TIF Plan Ordinance and the TIF Act with respect to such purchaser or transferee of the Property, whether or not specifically enumerated herein.

7. The Incentive Plans and the Redevelopment Contract shall inure to and be binding upon the successors and assigns of Developer, as to the Property, including Assignee, as if they were in every case specifically named and shall be construed as a covenant running with the land and shall be enforceable against purchasers or other transferees as if such purchaser or transferee were originally a party to and bound by this Assignment Agreement.

8. Assignee and the City acknowledge that, upon the full execution of this Assignment Agreement, Developer is hereby released from all its obligations under the Redevelopment Contract relating to the Property.

9. This Assignment Agreement shall be governed by the laws of the State of Missouri.

10. Except as otherwise provided herein, each of the parties hereto will pay its own costs and expenses, including attorney's fees, incurred by such party or on its behalf in connection with this

Assignment and the transactions contemplated herein, except that Assignee shall pay for all expenses incurred by the City pursuant to the Redevelopment Contract.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

**ASSIGNOR:**

DTLS Apartments, LLC

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

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

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

STATE OF MISSOURI       )  
  ) ss.  
COUNTY OF JACKSON     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of DTLS Apartments, LLC, personally known by me to be the person who executed the within instrument on behalf of said company and acknowledged to me that he executed the same for the purposes therein stated.

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

\_\_\_\_\_  
Notary Public

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

[SEAL]

My Commission Expires:

\_\_\_\_\_



**ASSIGNEE:**

\_\_\_\_\_

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

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

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, personally known by me to be the person who executed the within instrument on behalf of said \_\_\_\_\_ and acknowledged to me that he executed the same for the purposes therein stated.

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

\_\_\_\_\_  
Notary Public

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

[SEAL]

My Commission Expires:

\_\_\_\_\_

**CITY:**

CITY OF LEE'S SUMMIT, MISSOURI

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

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

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

STATE OF MISSOURI                    )  
  )  
COUNTY OF JACKSON                )

ss:

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did say that he/she is the City Manager of the City of Lee's Summit, Missouri, a Missouri municipal corporation, that said instrument was signed on behalf of said corporation by authority of its City Council, and acknowledged said instrument to be the free act and deed of said corporation.

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

\_\_\_\_\_  
Notary Public

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

[SEAL]

My Commission Expires:

\_\_\_\_\_

# **LEASE AGREEMENT**

**BETWEEN**

**THE CITY OF LEE'S SUMMIT, MISSOURI,  
as Lessor**

**and**

**DTLS APARTMENTS, LLC,  
as Lessee**

---

**For the**

**2<sup>ND</sup> AND DOUGLAS LCRA REDEVELOPMENT PLAN**

---

**\_\_\_\_\_, 2020**

# **LEASE AGREEMENT**

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## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, dated as of \_\_\_\_\_, 2020 (the “Lease”), is between the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, as lessor (the “City”), and **DTLS APARTMENTS, LLC**, a limited liability company organized and existing under the laws of the State of Missouri, as lessee (the “Company”);

### RECITALS:

1. The Land Clearance for Redevelopment Authority of the City (the “**LCRA**”) is authorized under Section 99.400 to 99.715 of the Revised Statutes of Missouri, as amended (the “**LCRA Act**” or the “**Act**”), to recommend approval of redevelopment plans, to purchase, acquire and lease real and personal property in blighted areas for the purpose of facilitating redevelopment upon such terms and conditions as the LCRA shall deem advisable, and to delegate to the City all of the authority, powers and functions of the LCRA as granted by the LCRA Act with respect to the planning and undertaking of a redevelopment plan.

2. The LCRA adopted Resolution 2019-01 on February 27, 2019, which recommended approval of the 2<sup>nd</sup> and Douglas LCRA Redevelopment Plan (the “**LCRA Plan**”) and which delegated to the City all of the authority, powers and functions of the LCRA as granted to the LCRA under the LCRA Act with respect to the planning and undertaking of the LCRA Plan and the land clearance project authorized therein within the Redevelopment Area, and the City was thereby authorized to carry out and perform such authority, powers and functions for the LCRA.

3. Pursuant to the LCRA Act, the City Council passed Ordinance No. 8628 (the “**Ordinance**”) on May 7, 2019, approving the LCRA Plan for the purpose of facilitating the redevelopment of certain real property in the City (the “**Project Site**,” as more fully described on **Exhibit A** hereto), including the demolition of existing structures, the preservation of certain existing structures, and the construction of new structures on the Project Site (the “**Project Improvements**” as more fully described on **Exhibit B** hereto).

4. Pursuant to the Ordinance, and Ordinance No. \_\_\_\_ which was adopted by the City Council on December 10, 2019 to approve this Lease, the City is authorized to enter into this Lease for the purpose of leasing property to the Company to facilitate the construction of the Project Improvements, and lease the Project Site and the Project Improvements as they may at any time exist until the termination of this Lease (collectively, the “**Project**”), to the Company in consideration of rental payments by the Company.

5. The City and Company entered into a Redevelopment Contract dated December 10, 2019 (the “**Redevelopment Contract**”), for the purpose of implementing the LCRA Plan and the 2<sup>nd</sup> and Douglas Tax Increment Financing Plan.

6. Pursuant to the foregoing, the City desires to lease the Project to the Company and the Company desires to lease the Project from the City, for the rentals and upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the City and the Company do hereby represent, covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** In addition to any words and terms defined elsewhere in this Lease and the words and terms defined in the Redevelopment Contract which definitions are hereby incorporated herein by reference, the following words and terms as used in this Lease shall have the following meanings:

**“Additional Rent”** means the additional rental described in **Sections 5.2 and 6.2** of this Lease.

**“Basic Rent”** means the rental described in **Section 5.1** of this Lease.

**“Company”** means DTLS Apartments, LLC, a Missouri limited liability company, and its successors or assigns.

**“Environmental Law”** means and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, any other “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials, as now or at any time hereafter in effect.

**“Full Insurable Value”** means the actual replacement cost of the Project less physical depreciation as determined in accordance with **Section 7.2** hereof.

**“Lease Term”** means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** hereof.

**“Lender”** means any person who from time to time has made a loan to Company which is secured by a Mortgage.

**“Mortgage”** means any mortgage or deed of trust (together with all related loan documents and security agreements) relating to the Project permitted pursuant to the provisions of **Section 10.4** hereof.

**“Net Proceeds”** means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees and any extraordinary expenses of the City) incurred in the collection of such gross proceeds.

**“Permitted Encumbrances”** means, as of any particular time, as the same may encumber the Project Site, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) this Lease, (c) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the City, (d) such minor defects, irregularities, encumbrances, easements, mechanic’s liens, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project Site and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the City, (e) any Mortgage, (f) any assignment of leases and rents or similar assignment delivered by the Company in favor of a Lender in connection with



any Mortgage (delivered pursuant to **Section 10.4(b)** of this Lease), and (g) any encumbrance noted in a title report.

**“Plans and Specifications”** means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time prior to the Completion Date, the same being duly certified by the Company, and on file with the Company, or with the architect/engineers retained by the Company for the Project, and which shall be available for reasonable inspection by the City and its duly appointed representatives.

**“Project Site”** means the real property upon which the property comprising the Project is located as more fully described in **Exhibit A**.

**“Related Entity”** means any entity in which the ownership or membership of such entity is controlled by the Company or the owners of a majority of the interests in the Company. For purposes hereof, “control” shall mean the power to direct or cause the direction of the management or policies of such entity.

## **Section 1.2. Rules of Interpretation.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

## **ARTICLE II**

### **REPRESENTATIONS**

**Section 2.1. Representations by the City.** The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers;

(b) As of the date of delivery hereof, the City has acquired the Project Site and agrees to construct and improve or cause to be constructed and improved thereon the Project Improvements. The City agrees to lease the Project to the Company for the purpose of furthering the public purposes of the LCRA Act;

(c) The purchase, construction, extension and improvement of the Project and the leasing of the Project by the City to the Company will further the public purposes of the Act;

(d) To the City's knowledge, no member of the City Council or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby;

(e) The City will not knowingly take any affirmative action that would permit a lien to be placed on the Project except with the written consent of the Authorized Company Representative; and

(h) The City shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof.

**Section 2.2. Representations by the Company.** The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri and is authorized to conduct business in the State of Missouri;

(b) The Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its members the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives;

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Company will not, to the best of the Company's actual knowledge, conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Company is a party or by which it or any of its property is bound, or the Company's organizational documents, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party;

(d) The estimated costs of the construction and improvement of the Project are in accordance with sound engineering and accounting principles;

(e) The Project will comply in all material respects with all presently applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations; and

(f) The Project is located wholly within the corporate limits of the City of Lee's Summit, Missouri.

## ARTICLE III

### GRANTING PROVISIONS

**Section 3.1. Granting of Leasehold Estate.** The City hereby exclusively rents, leases and lets the Project to the Company, and the Company hereby rents, leases and hires the Project from the City, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

**Section 3.2. Lease Term.** This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have a term commencing as of the date of this Lease and terminating on December 31, 2022.

**Section 3.3. Possession and Use of the Project.**

(a) The City covenants and agrees that as long as the City has not exercised any of the remedies set forth in **Section 11.2** following the occurrence and continuance of an Event of Default, the Company shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the City's right of access pursuant to **Section 10.3** hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XI** hereof, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Company, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project and will defend the Company's enjoyment and possession thereof against all parties.

(b) Subject to the provisions of this Section, the Company shall have the right to use the Project for any lawful purpose allowed by law and contemplated by the LCRA Act and this Lease. The Company shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. In the event of demonstrated noncompliance with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements the Company will take all reasonable steps to comply with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the

Company shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

**Section 3.4. Title to the Project.** The City shall be the sole owner of the Project during the Lease Term.

## **ARTICLE IV**

### **CONSTRUCTION AND IMPROVEMENT OF THE PROJECT**

**Section 4.1. Construction and Improvement of the Project.** The City and the Company agree that the Company, as the agent of the City, shall construct and improve the Project as follows:

(a) The Company has acquired the Project Site prior to the execution hereof. Concurrently with the execution of this Lease, (i) a deed and any other necessary instruments of transfer have been delivered to the City and placed of record, and (ii) the commitment for title insurance or ownership and encumbrance report required by **Article VII** hereof will be delivered to the City;

(b) On behalf of the City, the Company will construct and improve the Project Improvements on the Project Site and otherwise improve the Project Site in material accordance with the Plans and Specifications and in a manner materially consistent with the description of the Project Improvements included in **Exhibit B** to this Lease. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that would alter the intended purpose of the Project may be made only with the prior written approval of the City, which shall not be unreasonably conditioned or delayed. The Company agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Company for its purposes, and that all real and personal property described in the Plans and Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.2**;

(c) The Company will comply with the provisions of Section 107.170 of the Revised Statutes of Missouri, as amended, to the extent applicable to the construction of the Project; and

(d) The Company agrees that it will use reasonable efforts to cause the construction and improvement of the Project to be completed as soon as practicable with all reasonable dispatch. The Company agrees to advance all funds necessary for such purpose.

**Section 4.2. Payment for Project Costs.** All Project Costs as specified in **Section 4.1** hereof shall be paid by the Company.

**Section 4.3. Establishment of Completion Date.** The Completion Date shall be evidenced to the City by a certificate signed by the Authorized Company Representative stating (a) the construction and improvement of the Project has been substantially completed in accordance with the Plans and Specifications, and (b) that all costs and expenses incurred in the construction and improvement of the

Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Company. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

**Section 4.4. Project Property of City.** The Project Site and the Project Improvements, which the Company desires to convey to the City, including all work and materials on the Project Improvements as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the City, subject only to this Lease and any Permitted Encumbrances, until the Property is transferred to the Company.

**Section 4.5. Non-Project Improvements, Machinery and Equipment Property of the Company.** Any improvements or items of machinery or equipment which do not constitute part of the Project Improvements and the entire purchase price of which is paid for by the Company with the Company's own funds shall be the property of the Company and shall not constitute a part of the Project for purposes of **Section 6.4** hereof and therefore are subject to taxation, to the extent otherwise provided by law.

**Section 4.6. Environmental Matters.** The Company acknowledges that it is responsible for maintaining the Project in compliance with all Environmental Laws. In the event that the Company fails to undertake to comply with any final, non-appealable order issued by any local, state or federal authority under applicable Environmental Law, the City, immediately after notice to the Company, may elect (but shall not be required) to undertake such compliance. Any moneys expended by the City in efforts to comply with any applicable Environmental Law (including the reasonable cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and reasonable attorneys' fees) shall be due and payable as Additional Rent hereunder from the date such cost is incurred. There shall be unlimited recourse to the Company to the extent of any liability incurred by the City with respect to any breaches of the provisions of this section.

The Company shall and does hereby indemnify the City and agree to defend and hold the City harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs associated incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the Project during the term of this Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim is raised before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, this indemnity shall only relate to claims resulting from the City's ownership of the Project.

## **ARTICLE V**

### **RENT PROVISIONS**

**Section 5.1. Basic Rent.** The Company covenants and agrees to pay to the City in same day funds for the account of the City during this Lease Term, on or before each December 1, commencing December 1, 2020 and continuing until this Lease has been terminated, a Basic Rent amount as set forth in

this Section. In 2019, the Project (two parcels) was assigned by Jackson County a market valuation of \$3,156,564, with the resulting assessed valuation of \$1,003,436. The parties agree that the following amounts are projected to be the annual Basic Rent based on the 2019 tax levy rates and County assessed valuation of \$1,003,436 as applicable to the Project Site in 2019:

<u>Year</u>	<u>Amount</u>
2020	\$83,724
2021	\$83,724
2022	\$83,724

The parties further agree that the amounts stated above shall be modified to reflect a Base Rent payment that is the assessed value of \$1,003,436 multiplied by the property tax levy rates which are applicable to the property in the years stated above. All payments of Basic Rent provided for in this Section shall be paid directly to the City Finance Department, which shall be disbursed to the taxing districts in proportion to their real property tax levy rates. In the event that the Lease Term is extended by agreement of the parties, the method described in this Section to calculate Basic Rent shall be applied to such additional years of the Lease Term, including any partial year in which this Lease is in effect as of January 1 of such year.

**Section 5.2. Additional Rent.** The Company shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts as and when the same become due:

(a) As “Additional Rent – Enforcement” those amounts which are attributable to the following:

(1) all reasonable fees, charges and expenses, including agent and counsel fees, of the City incurred under the Redevelopment Contract, this Lease, or any other document entered into in connection with the Project, as and when the same become due;

(2) all reasonable costs which are reasonably incurred in connection with the enforcement of any rights against the Company or the Project or in connection with a failure of the Company to perform its obligations under this Lease or the Redevelopment Contract by the City, including counsel fees and expenses;

(3) all other payments of whatever nature which Company has agreed to pay or assume under the provisions of this Lease except for the Additional Rent – PILOTs as defined below;

(b) As “Additional Rent – PILOTs” those amounts which are attributable to an incremental increase in taxes that would be due for the Property as a result of an increased in the assessed valuation of the Property as determined by the County in the normal taxation process during the Lease Term.

All payments of Additional Rent shall be paid to the City Finance Department and disbursed in accordance with the applicable terms of the Redevelopment Contract.

**Section 5.3. Additional Rent Following Cessation of Construction.** If for any reason the Company ceases construction of the Project during the term of this Lease, the Base Rent and Additional Rent shall still be paid when due until the Lease is terminated. “Ceases construction” or “cessation of construction” for the purpose of this paragraph means, subject to force majeure and other delays not within the Company’s reasonable control, the Company completely vacates, abandons and permanently ceases construction for a period of 90 consecutive days during the term of this Lease, unless the Project has been

subject to a casualty and the Company is intending to rebuild the Project or the Company's interest in this Lease has been transferred pursuant to this Lease and the Project construction continues thereafter.

#### **Section 5.4. Obligations of Company Absolute and Unconditional.**

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this **Section 5.4(a)** or **Section 5.4(b)** is intended or shall be deemed to affect or impair in anyway the rights of the Company to terminate this Lease as provided herein.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Company of any rights or claims the Company may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the City. The Company may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

**Section 5.5. Prepayment of Basic Rent.** The Company may at any time and from time to time prepay a portion of the Basic Rent provided for hereunder. During such times as the amount held by the City as Basic Rent shall be sufficient to pay, at the time required, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

## **ARTICLE VI**

### **MAINTENANCE, TAXES AND UTILITIES; TAX ABATEMENT**

**Section 6.1. Maintenance and Repairs.** Throughout the Lease Term the Company shall, at its own expense, keep the Project in as reasonably safe condition as the operation thereof will permit, and keep the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof it determines to be necessary. Without limiting the generality

of the foregoing, the Company shall at all times remain in compliance with all provisions of the City's Code of Ordinances relating to property maintenance and appearance.

**Section 6.2. Taxes, Assessments and Other Governmental Charges.**

(a) Subject to subsection (b) of this Section and Section 6.4, the Company shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would encumber the City's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Company, before instituting any such contest, gives the City written notice of its intention to do so, (2) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the Company promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the City from any costs and expenses the City may incur related to any of the above, which may be charged as Additional Rent as provided in Section 5.2.

**Section 6.3. Utilities.** All utilities and utility services used by the Company in, on or about the Project shall be paid for by the Company and shall be contracted for by the Company in the Company's own name (or the name(s) of its affiliates), and the Company shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

**Section 6.4. Property Tax Exemption.** So long as the City owns title to the Project, the City expects that the Project will be exempt from *ad valorem* taxes on real property. The first year of the exemption period for purposes of this Lease shall be 2020. Notwithstanding any other provision of this Lease to the contrary, the last year of such exemption period shall be 2022. The Company covenants and agrees that, during each year the Project is exempt from *ad valorem* taxes by reason hereof, the Company will make the Basic Rent payments. The City and the Company hereby agree that the tax abatement provided by this Lease shall not apply to personal property relating to the Project other than construction materials.

**Section 6.5. Obligation of City to Effect Tax Abatement.** The City agrees to take all actions within its control to obtain and/or maintain in effect the exemption referred to in **Section 6.4** above, including any filing required with any governmental authorities; provided, however, the City shall not be



liable for any failure of Jackson County, Missouri or any other governmental taxing authority to recognize the exemption provided herein. The City covenants that it will not voluntarily take any action that may cause or induce the levy or assessment of ad valorem taxes on the Project. In the event such a levy or assessment should occur, the City shall, at the Company's request and at the Company's expense, fully cooperate with the Company in all reasonable ways to prevent and/or remove any such levy or assessment against the Project.

**Section 6.6. Administration Costs.** Under Section 99.520 of the LCRA Act, the City is authorized to covenant as to the amount of revenues to be raised each year or other period of time by rents, fees and other revenues and create special funds for moneys held for administrative costs, and may require the Company to reimburse the City for its actual costs of administering the LCRA Plan including costs associated with this Lease. The City will charge such costs pursuant to **Section 6.11** of the Redevelopment Contract as Administrative Costs, as such term is defined in the Redevelopment Contract. In the event that the City incurs costs in excess of the annual amount stated in **Section 6.11** of the Redevelopment Contract, the City may charge an additional amount, not to exceed an annual cap of \$10,000, for the administration of this Lease and the transactions and administrative actions required pursuant to this Lease. The provisions of this paragraph shall be in effect until this Lease expires or is terminated, and after such expiration or termination the City may charge any final Administrative Costs under this Lease pursuant to **Section 6.11** of the Redevelopment Contract to wind up the transactions and tracking associated with the sales tax exemption which is provided through the LCRA Plan and this Lease

**Section 6.7. No Abatement on Special Assessments, Licenses or Fees.** The City and the Company hereby agree that the property tax exemptions described in this Lease shall not apply to special assessments and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project. The Company hereby agrees to make payments with respect to all special assessments, licenses and fees which would otherwise be due with respect to the Project if such Project was not owned by the City.

**Section 6.8. Sales Tax Exemption.** [Promptly after the Effective Date of this Lease, the City will issue] [Prior to the execution of this lease, the City has issued] a sales tax exemption certificate to the Company for construction materials to be purchased for the Project and the City shall provide such other documentation as may be necessary from time to time to effect said sales tax exemption. The Company shall use the exemption certificate only for the purchase of construction materials to be incorporated into the Project on the Project Site and shall not use the exemption certificate for the purchase of any personal property other than construction materials. The Company shall indemnify and defend the City and its respective officers, employees and agents against and from any and all causes of action or actions in law or equity, liens, claims damages, loss, costs or expenses of any nature whatsoever by any person or entity, arising out of the City's furnishing of the exemption certificate.

## **ARTICLE VII**

### **INSURANCE**

**Section 7.1. Title Report.** Before conveying title to any real property to the City, the Company will provide a report reasonably acceptable to the City showing the ownership of and encumbrances on the Project Site. Copies of such report shall be provided to the City.

**Section 7.2. Property Insurance.**

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term, a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of B+ or the equivalent thereof or better as may be selected by the Company. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Company as insured and the City shall be named as a loss payee and shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the cancellation of such insurance. Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City. The City shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements. The insurance required in this Section may be supplemented with any additional insurance requirements imposed by a Lender, to the extent required by the Lender.

(b) In the event of loss or damage to the Project, the Net Proceeds of property insurance carried pursuant to this Section shall be applied as provided in **Article IX** of this Lease.

### **Section 7.3. Commercial General Liability Insurance.**

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term general accident and commercial general liability insurance under which the City shall be named as an additional insured, properly protecting and indemnifying the City, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri (subject to loss deductible clauses not to exceed \$25,000). The policies of said insurance shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the cancellation of such insurance. The Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City. The City shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements.

(b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

**Section 7.4. Workers' Compensation.** The Company agrees throughout the Lease Term to maintain or cause to be maintained the Workers' Compensation coverage required by the laws of the State of Missouri.

**Section 7.5. Blanket Insurance Policies; Self-Insurance.** The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with. Nothing in this Lease shall be construed from prohibiting the Company from self-insuring provided the Company, or in combination with its parent corporation, has a net worth in excess of \$200,000,000, as determined by generally accepted accounting principles.

**Section 7.6. Certificate of Compliance.** The Company shall provide the City, on an annual basis, commencing on December 1, 2019 with a certificate of an Authorized Company Representative certifying compliance with this **Article VII**.

## ARTICLE VIII

### ALTERATION OF THE PROJECT

**Section 8.1. Additions, Modifications and Improvements to the Project.** Subject to all applicable laws and requirements and the requirements of the LCRA Plan and the Redevelopment Contract, the Company shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to the authority of this Section shall (a) be made in workmanlike manner and will comply in all material respects with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project; provided, however, that additions of machinery and equipment installed on the Project Site by the Company and not constituting repairs, renewals or replacements of the Project shall remain the property of the Company and may be removed by the Company. Such property shall be subject to *ad valorem* taxes.

**Section 8.2. Permits and Authorizations.** The Company shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in material compliance with all applicable building, zoning and other laws, ordinances, governmental regulations. In the event of demonstrated noncompliance with such laws, ordinances, governmental regulations and requirements the Company will take all reasonable steps to comply with laws, ordinances, governmental regulations and requirements.

**Section 8.3. Mechanics' Liens.**

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project, except Permitted Encumbrances, and the Company shall promptly notify the City of the imposition of such lien of which the Company is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project, the Company shall discharge the same of record. Notice is hereby given that the City shall not be liable for any labor or materials furnished the Company or anyone claiming by, through or under the Company upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to the Project or any part thereof.

(b) Notwithstanding paragraph (a) above, the Company may contest any such mechanics' or other similar lien if the Company (1) within 60 days after the Company becomes aware of any such lien notifies the City in writing of its intention so to do, (2) diligently prosecutes such contest, (3) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (4) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (5) thereafter promptly procures record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Company is notified by the City that, in the opinion of counsel, by nonpayment of any such items, the interest of the City in the Project will be subject to loss or forfeiture. In that event, the Company shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim if the same shall arise at

any time. The Company shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

## **ARTICLE IX**

### **DAMAGE, DESTRUCTION AND CONDEMNATION**

#### **Section 9.1. Damage or Destruction.**

(a) If the Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall either (i) determine that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, or that the Company does not have the right under any Mortgage to use any Net Proceeds for repair or restoration of the Project, or (ii) repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding the Project is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Company's option, construct upon the Project Site new buildings and improvements thereafter together with all new machinery, equipment and fixtures which are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (A) the value thereof shall not be less than the value of such destroyed or damaged Project Improvements immediately before the occurrence of such damage or destruction and (B) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Project as an enterprise permitted by the Act.

If the Company elects to construct any such new buildings and improvements, for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings and improvements and all additions thereto and all replacements and alterations thereof.

(b) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Company shall remain and continue liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.

(c) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(d) The Company agrees to give prompt notice to the City with respect to all fires and any other casualties occurring in, on, at or about the Project Site which damages a material portion of the Project.

(e) The Company shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

## **Section 9.2. Condemnation.**

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$1,000,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City and any Lender under a Mortgage (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Company determines that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed before the exercise of the said power of eminent domain, including the acquisition or construction of other improvements suitable for the Company's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Company without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by this Lease other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds). If the Company determines that it is not practicable and desirable to acquire or construct substitute improvements then proceeds may be paid to a lender, if applicable.

(c) The Company shall not, by reason of its inability to use all or any part of the Project during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the City or to any abatement or diminution of the rentals payable by the Company under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The City shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Company.

## **ARTICLE X**

### **SPECIAL COVENANTS**

**Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification.** The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the City from, agrees

that the City shall not be liable for, and agrees to hold the City harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project or the Company's use thereof, unless such loss is the result of the City's negligence or willful misconduct. This provision shall survive termination of this Lease.

**Section 10.2. Reserved.**

**Section 10.3. City's Right of Access to the Project.** The Company agrees that the City and its duly authorized agents shall have the right at reasonable times during business hours, subject to 24 hours' advance written notice and the Company's usual safety and security requirements, to enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) as may be reasonably necessary to cause to be completed the purchase and installation provided for in **Section 4.2** hereof, and (c) performing such work in and about the Project Site made necessary by reason of the Company's default under any of the provisions of this Lease.

**Section 10.4. Granting of Easements; Mortgages and Financing Arrangements.**

(a) Subject to **Sections 10.4(b)** and (c), if no Event of Default under this Lease has happened and is continuing, the Company may at any time or times (i) grant subleases (as permitted in **Section 12.1(b)** hereof), easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (ii) release or terminate existing subleases, easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine, or (iii) incur Permitted Encumbrances. The Company may take such actions and may execute any applicable documents in the Company's own name. No separate signature of or authorization from the City shall be required for the execution and delivery of any such document, although the City agrees to execute and deliver such confirming documents as are described below, under the procedures described below, if the Company chooses to make such a request. All third parties entering into agreements with the Company or receiving delivery of or the benefit of such agreements or documents shall be entitled to rely upon the same as having been executed and delivered by the City, unless such third party has actual or constructive notice, expressly in writing, that the agency herein granted by the City to the Company has been terminated by the City because of an uncured Event of Default hereunder. The City agrees that it will execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any such sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the City of: (i) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (ii) a written application signed by an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, and will be a Permitted Encumbrance. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(b)** and (c), upon (i) termination of this Lease for any reason other than the completion of construction of the Project by the Company or (ii) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the City.

(b) The City acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project, this Lease, and the leasehold estate created hereby with prior notice to but

without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such Mortgage, and the note or other obligation secured thereby, is delivered to the City within thirty (30) days after the execution thereof. The Company may mortgage the fee estate held by the City with the consent of the City, not to be unreasonably withheld, conditioned, or delayed. In either case, in connection therewith, the Company shall have the right to assign this Lease, the leasehold estate, any sublease, and any rights in connection therewith, and/or grant liens or security interests therein, to any Lender, provided that the requirements of the Redevelopment Contract have been satisfied. Any further sublease or assignment by any Lender shall be subject to the provisions of **Section 12.1(c)**. The Parties acknowledge that Company has granted a Deed of Trust to \_\_\_\_ covering the Project Site together with an Assignment of Leases (collectively the “\_\_\_\_ **Deed of Trust**”), and that this Lease is subject and subordinate to the \_\_\_\_ Deed of Trust in all respects.

(c) With respect to the \_\_\_\_ Deed of Trust and any future Mortgage, upon notice by the Company to the City in writing that it has executed a Mortgage under which it has granted rights in this Lease to a Lender which includes the name and address of such Lender, the following provisions shall apply in respect of each such Lender:

(1) there shall be no merger of this Lease or of the leasehold estate created hereby with the fee title to the Project, notwithstanding that this Lease or said leasehold estate and said fee title shall be owned by the same Person or Persons, without the prior written consent of such Lender;

(2) the City shall serve upon each such Lender (at the address, if any, provided to the City) a copy of each notice of the occurrence of an Event of Default and each notice of termination given to the Company under this Lease, at the same time as such notice is served upon the Company. No such notice to the Company shall be effective unless a copy thereof is thus served upon each Lender (at the address, if any, provided to the City);

(3) each Lender shall have the same period of time which the Company has, after the service of any required notice upon it, within which to remedy or cause to be remedied any payment default under this Lease which is the basis of the notice plus thirty (30) days, and the City shall accept performance by such Lender as timely performance by the Company;

(4) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of each Lender under this **Section 10.4(c)** as to such other events of default;

(5) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Lender and permitting such Lender (or its designee, nominee, assignee, or transferee) a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured (provided that the period to remedy such event of default shall continue beyond any period set forth in the Lease to effect said cure so long as the Lender (or its designee, nominee, assignee, or transferee) is diligently prosecuting such cure); provided that the Lender (or its designee, nominee, assignee, or transferee) shall pay or cause to be paid to the City all expenses, including reasonable counsel fees, court costs and disbursements incurred by the City in connection with any such default; and

(6) such Lenders (and their designees, nominees, assignees, or transferees) shall have the right to enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Mortgage(s).

(d) In connection with the execution of one or more Mortgages, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a Lender and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Mortgage, provided that the City shall not be required to undertake any duties or payment obligations under such documents. The Company agrees to reimburse the City for any and all costs and expenses incurred by the City pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(e) This Lease is subject and subordinate to any Mortgage.

(f) Notwithstanding anything contained to the contrary in this Lease, (a) the Company shall have the right to assign this Lease and any subleases to a Lender or to the designee or nominee of a Lender in compliance with the requirements of the Redevelopment Contract, without the consent of the City, and (b) if a Lender or its designee or nominee shall acquire ownership of the leasehold estate, either following foreclosure of the applicable Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof, said Lender or its designee or nominee shall have the further right to further assign this Lease and any subleases and any purchase money mortgage accepted in connection therewith, without the consent of the City and such assignee shall enjoy all rights, powers and privileges granted herein to said Lender; provided, however, that such Lender or its assignee or nominee, or their assignee or nominee, shall assume in writing all rights, duties and obligations of the Company under this Lease.

(g) During the term of any Mortgage, the following provisions shall apply:

(i) this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without the prior written consent of the applicable Lender;

(ii) if this Lease shall terminate prior to the expiration of the Lease Term, the City shall enter into a new lease for the Project with the applicable Lender or its designee or nominee, for the remainder of the Lease Term, effective as of the date of such termination, at the same rent and upon the same terms, covenants and conditions contained herein, except that such new lease shall not guarantee possession of the Project to the new tenant as against the Company and/or anyone claiming under the Company, and the City, simultaneously with the execution and delivery of such new lease, shall turn over to the new tenant all monies, if any, then held by the City under the Lease on behalf of the Company, on condition that:

(A) The applicable Lender shall make written request for such new lease within thirty (30) days after the date of such termination, and

(B) on the commencement date of the term of the new lease, the applicable Lender shall cure all defaults of the Company under the Lease (susceptible of being cured by such Lender) which remain uncured on that date, and shall pay or cause to be paid all unpaid sums which at such time would have been payable under this Lease but for such termination, and shall pay or cause to be paid to the City on that date all fees, costs, charges and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements,



incurred by the City in connection with any such default and termination as well as in connection with the execution and delivery of such new lease;

(iii) if a Lender or its designee or nominee shall become the owner of this Lease either following foreclosure of a Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof and said Lender or its designee or nominee shall have assigned this Lease, said Lender or its designee or nominee so assigning shall be released from all liability accruing from and after the date of such assignment.

(h) The City agrees that any requested consent or signature of the City to any Mortgage under this Section (including any related document, including but not limited to documents subordinating the City's fee interest in the Project Site or any portion thereof to a Mortgage) may be given by the City Manager, in his or her discretion, without further approval of the City Council.

**Section 10.5. Indemnification of City.** The Company shall indemnify and save and hold harmless the City and the City Council members, officers, agents and employees (collectively, the "Indemnified Parties") from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any person, firm or corporation arising from the execution of this Lease, the Redevelopment Contract or any other documents entered into in connection with this Lease and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Lease or any related document, (c) any contract entered into by the Company in connection with the purchase, construction, extension or improvement of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, and (g) any claim relating to the presence on, escape or removal from the Project during the term of the Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim arises before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, the indemnification contained in this **Section 10.5** shall not extend to the City if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of work being performed at the Project by employees of the City or the result of negligence or willful misconduct by the City. Upon notice from the City, the Company shall defend the City in any such action or proceeding. This **Section 10.5** shall survive any termination of this Lease with respect to liability arising during the Lease Term.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all reasonable expenses and the right to negotiate and consent to settlement. If the Company shall have wrongfully failed to assume the defense of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company. If any of the Indemnified Parties is advised by counsel retained by the Company to defend such action that there may be legal defenses available to it which are adverse to or in conflict with those available to the Company or any other Indemnified Party, and that the defense of such Indemnified Party should be handled by separate counsel, the Company shall not have the right to assume the defense of such Indemnified Party, but shall be responsible for the reasonable fees and expenses of counsel retained

by such Indemnified Party in assuming its own defense, provided, such counsel shall be acceptable to the Company. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, then provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

**Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits.** The City agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the City will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits.

**Section 10.7. Company to Maintain its Corporate Existence.** The Company agrees that until this Lease is terminated, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets except as allowed by the Redevelopment Contract; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations to consolidate with or merge into it, or may sell or otherwise transfer to another domestic corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporation expressly assumes in writing all of the obligations of the Company contained in this Lease; and, further provided, that if the surviving, resulting or transferee corporation, as the case may be, has a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least (i) equal to or greater than that of the Company immediately prior to said consolidation, merger or transfer, or (ii) \$50,000,000. The term “net worth,” as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Company and all of its subsidiaries.

**Section 10.8. Security Interests.** The City and the Company agree to enter into all instruments (including financing statements and statements of continuation) necessary for perfection of and continuance of the perfection of the security interests of the City in the Project.

## **ARTICLE XI**

### **DEFAULTS AND REMEDIES**

**Section 11.1. Events of Default.** If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an “Event of Default” or “default” under this Lease:

- (a) Default in the due and punctual payment of Basic Rent for a period of 5 days following written notice to the Company by the City; or
- (b) Default in the due and punctual payment of Additional Rent for a period of 15 days following written notice to the Company by the City; or

(c) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company's part to be observed or performed, and such default shall continue for 30 days after the City has given the Company written notice specifying such default (or such longer period as shall be reasonably required to cure such default provided that (1) the Company has commenced such cure within said 30-day period, and (2) the Company diligently prosecutes such cure to completion); or

(d) The Company: (1) admits in writing its inability to pay its debts as they become due; or (2) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company's consent or acquiescence, vacated or set aside; or (5) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (7) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(e) the Company vacates, abandons, ceases operations, fails to occupy or is ejected from the Project Site or any material portion thereof, and the same remains uncared for or abandoned for a period of 90 days; or

(f) the Company fails to complete the Project as described in **Exhibit B** within the term of this Lease.

With regard to any alleged default concerning which notice is given to the Company under the provisions of this Section, the City hereby grants the Company full authority for account of the City to perform any covenant or obligation, the nonperformance of which is alleged in said notice to constitute a default, in the name and stead of the City, with full power to do any and all things and acts to the same extent that the City could do and perform any such things and acts in order to remedy such default.

**Section 11.2. Remedies on Default.** If any Event of Default referred to in **Section 11.1** hereof has occurred and continues beyond the period provided to cure, then the City may at the City's election, then or at any time thereafter, and while such default continues, give the Company written notice of the City's intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, this Lease shall thereupon be terminated.

**Section 11.3. Survival of Obligations.** The Company covenants and agrees with the City and Owners that those of its obligations under this Lease which by their nature require performance after the end of the term of this Lease, or which are expressly stated herein as intended to survive expiration or

termination of this Lease, shall survive the cancellation and termination of this Lease, for any cause, except as specifically limited in this Lease.

**Section 11.4. Performance of the Company's Obligations by the City.** If the Company shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the City may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 30 days after written notice of such failure is given the Company by the City, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City and all incidental reasonable costs and expenses incurred by the City (including, without limitation, attorneys' fees and expenses) in performing such obligations shall be deemed Additional Rent and shall be paid to the City on demand, and if not so paid by the Company, the City shall have the same rights and remedies provided for in **Section 11.2** hereof in the case of default by the Company in the payment of Basic Rent.

**Section 11.5. Rights and Remedies Cumulative.** The rights and remedies reserved by the City and the Company hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 11.6. Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of any covenant, agreement or undertaking by the Company or the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving the City's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the Company which were in existence at the time such payment or payments were accepted by the City.

**Section 11.7. Application of Article.** If any portion of the Project Site has been assigned pursuant to an Assignment and Assumption Agreement, this **Article XI** and the rights and obligations hereunder shall be applied individually with respect to each Assigned Property. Each "Event of Default" or "default" shall be individual to the particular Assigned Property and shall not create an "Event of Default" or "default" with respect to any other Assigned Property. If any portion of the Project Site has become Assigned Property, application of this Article to the remainder of the Project Site with respect to which the original Company maintains rights and obligations shall occur separately from the Assigned Property.

## **ARTICLE XII**

### **ASSIGNMENT AND SUBLEASE**

#### **Section 12.1. Assignment of Lease; Sublease of Project.**

(a) The Company may not assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof to any person or party except a Related Entity or as allowed by **Section 10.7** for any

lawful purpose under the Act. With respect to any assignment, the Company shall comply with the following conditions:

(1) Such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;

(2) Such assignment shall include the entire then unexpired term of this Lease; and

(3) A duplicate original of such assignment shall be delivered to the City within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

(b) The Company shall not have the right to sublet all or any part of the Project to any person or party except a Related Party or a residential tenant. The Company shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City a true and correct copy of each such sublease. Any sublease may provide, at the Company's option, that the City's consent shall not be required in respect of any further subletting thereunder if such further subletting is to an Related Entity and for a similar purpose as the original sublease and is for a purpose permissible under the Act.

(c) The City agrees that any requested consent or signature of the City to any sublease or assignment to an Related Entity under this Article, including any related document, may be given by the City Manager, in his or her discretion, without further approval of the City Council.

**Section 12.2. Assignment of Revenues by City.** The City shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the Special Allocation Fund for disbursement in accordance with the Redevelopment Contract.

**Section 12.3. Prohibition Against Fee Mortgage of Project.** Except as otherwise set forth in **Section 10.4**, the City shall not mortgage its fee interest in the Project, but may assign its interest in and pledge any moneys receivable under this Lease to the Special Allocation Fund for distribution as provided in the Redevelopment Contract.

**Section 12.4. Restrictions on Sale or Encumbrance of Project by City.** During this Lease Term, the City agrees that it will not sell, assign, encumber, transfer or convey the Project or any interest therein, but may assign its interest in and pledge any moneys receivable under this Lease to the Special Allocation Fund for use in accordance with the Redevelopment Contract.

## ARTICLE XIII

### AMENDMENTS, CHANGES AND MODIFICATIONS

**Section 13.1. Amendments, Changes and Modifications.** Except as otherwise provided herein, this Lease may not be effectively amended, changed, modified, altered or terminated except as mutually agreed by the Parties.

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

**Section 14.1. Notices.** All notices, certificates or other communications required or desired to be given hereunder shall be in writing. Notices with respect to Assigned Property shall be given to the appropriate Partial Assignee.

**Section 14.2. City Shall Not Unreasonably Withhold Consents and Approvals.** Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any additional project or matter unrelated to the Project subject to zoning, building permit or other regulatory approvals by the City.

**Section 14.3. Net Lease.** The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City a source of revenue to replace the real property taxes that are abated during the Lease Term, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent – Enforcement, such further sums of money, in cash, as may from time to time be required for such purposes as set forth in this Lease.

**Section 14.4. Limitation on Liability of City.** No provision, covenant or agreement contained in this Lease or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

**Section 14.5. Governing Law.** This Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

**Section 14.6. Binding Effect.** This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns.

**Section 14.7. Severability.** If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

**Section 14.8. Execution in Counterparts.** This Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 14.9. Electronic Storage.** The parties hereto agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be

deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 14.10. Satisfaction of the Company's Obligations.** Any obligation of the Company under this Lease, including, but not limited to, the obligations of the Company to pay Basic Rent, Additional Rent and to maintain insurance as required herein, may be performed by a member of the Company, and such performance by a member of the Company shall be treated as though the obligation were performed by the Company.

**Section 14.11 Complete Agreement.** To protect the Company and the City from misunderstanding or disappointment, any agreements the Company and the City reach covering the subject matter of this Lease are contained in this Lease, which are the complete and exclusive statements of the agreement between the Company and the City, except as the Company and the City may later agree in writing to modify this lease.

**Section 14.12. Employee Verification.** The Company will comply with and satisfy the requirements of Section 285.530.2, RSMo., as amended, which requires (1) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Company shall provide such affidavits and documentation to the City on or before December 1 of each year during the term of this Lease, beginning December 1, 2020, and also upon execution of this Lease.

[Remainder of this page intentionally left blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

**CITY OF LEE'S SUMMIT, MISSOURI**

By: \_\_\_\_\_  
Name: William A. Baird  
Title: Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Name: Trisha Fowler Arcuri  
Title: City Clerk

Approved as to form:

By: \_\_\_\_\_  
Name: David Bushek  
Title: Chief Counsel of Economic Development & Planning

Lease Agreement  
Lee's Summit (2<sup>nd</sup> and Douglas LCRA Plan)



**DTLS APARTMENTS, LLC,**  
a Missouri limited liability company

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

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

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

**EXHIBIT A**

**PROJECT SITE**

The following described real estate located in Jackson County, Missouri:

**TRACT 1:**

TRACT A, REPLAT OF LOTS 1 THRU 9 AND 11 THRU 23, INCLUSIVE, BLOCK 4, TOWN OF STROTHER, A SUBDIVISION IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI.

**TRACT 2:**

THE WEST 130 FEET OF LOTS 11 AND 12, BLOCK 4, CITY OF LEE'S SUMMIT, FORMERLY THE TOWN OF STROTHER, A SUBDIVISION IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI.

## **EXHIBIT B**

### **PROJECT IMPROVEMENTS**

The Project Improvements consist of the following:

A project consisting of the demolition of existing structures and the site preparation work and construction of an approximately 274 unit multi-family apartment complex with all associated amenities and improvements, including the location of the administrative offices in the Sanctuary (as such term is defined in the Redevelopment Contract), and other uses permitted from time to time in accordance with the Redevelopment Contract.



# LEE'S SUMMIT

LAW DEPARTMENT  
OFFICE OF THE CITY ATTORNEY

---

April 16, 2019

**TO:** Mayor Baird and City Council

**FROM:** David Bushek

**RE:** Summary of 2<sup>nd</sup> and Douglas TIF Plan and LCRA Plan

**Actions by Recommending Bodies:**

**Tax Increment Financing Commission**

On March 25, 2019, the TIF Commission passed a motion in opposition to the TIF Plan by a vote of 6-3-1 (Rhoads abstaining). This triggers a heightened voting requirement at the City Council; the TIF Plan can only be approved by a two-thirds majority vote of the full City Council (six affirmative votes). This heightened voting requirement applies to the ordinance which would approve the TIF Plan and the TIF Project, but has no effect on other ordinances for the project.

**Land Clearance for Redevelopment Authority Board of Commissioners**

On February 27, 2019, the LCRA Board of Commissioners adopted a resolution recommending that the LCRA Plan should be adopted by the City Council. The normal voting requirements will be applicable to the LCRA Plan ordinance. The resolution approved by the LCRA Board also delegated to the City all power and authority that is needed to implement the LCRA Plan, meaning that the City rather than the LCRA can take all actions as granted to the LCRA by the Land Clearance for Redevelopment Authority Act, Section 99.400 to 99.715, RSMo, which are necessary to implement the LCRA Plan.

**Developer:** DTLS Apartments, LLC (the “Developer”), a subsidiary of Cityscape Residential based in Indianapolis, Indiana

**Current Property Owner:** The United Methodist Church of Lee’s Summit

**Property:** The proposed Redevelopment Area contains approximately 3.69 acres and is bounded by Douglas Street on the northeast, 2<sup>nd</sup> Street on the southeast, Main Street on the southwest and 1<sup>st</sup> Street on the Northwest. A map showing the Redevelopment Area, overlaid on the previously approved plat, is attached to this memorandum.

## **Reimbursement and Financing Structure:**

Developer is requesting reimbursement from two revenues sources:

### **1. TIF Revenue – PILOTs**

- **PILOTs:** 100% of the PILOTs in the TIF Redevelopment Project area will be captured and used to repay Reimbursable Project Costs according to the budget set forth in Exhibit 3 of the TIF Plan. Developer estimates that the TIF Redevelopment Project will generate about \$15.9 million in PILOTs over the 23-year life of the TIF Plan. It is assumed in the Redevelopment Plan that property tax revenues will increase at a rate of 2.0% bi-annually.
- **EATs:** No EATs are projected to be captured because there will be no retail sales in the TIF Project Area.
- **Reimbursable Project Costs:** TIF revenue is proposed to reimburse about \$8.04 million in project costs, all for the structured parking.

### **2. LCRA Redevelopment Plan – Sales Tax Exemption**

- Developer is requesting that an LCRA Redevelopment Plan be approved simultaneously with the TIF Plan.
- The benefits of the LCRA Redevelopment Plan for the Developer will be sales tax exemption on construction materials for the apartments and the structured parking, in these projected amounts:

Site Work and Infrastructure	-\$47,100
Building Construction	-\$1,022,070
Structured Parking	<u>-\$260,620</u>
<b>Total Sales Tax Exemption</b>	<b>-\$1,329,790</b>

**Redevelopment:** The Redevelopment Project is proposed to consist of land acquisition, demolition of structures, engineering, site preparation, construction of public infrastructure improvements, and the design and construction of private improvements consisting of an approximately 274 unit apartment complex along with structured and surface parking and other site improvements. Developer has indicated that the sanctuary structure at the northwest corner of Douglas and 2<sup>nd</sup> will not be demolished and will be incorporated into the new project.

## **Property Investment and Valuation:**

- Current County market valuation of Redevelopment Area: \$1,003,436
  - Taxable Property Value in Redevelopment Project Area today is \$0 due to the church non-profit exemption from real property taxes.
- Total Project Costs: about \$51.8 million
- Projected assessed valuation of TIF Project Area after full build-out: about \$9.4 million

**Sources of Funds:** The project budget is set forth in *Exhibit 3* of the TIF Plan:

Project Sources and Uses			
Project Cost	Total	Projected TIF Reimbursed Costs	Developer Private Costs
Land Acquisition	\$2,800,000	\$0	\$2,800,000
Site Work/Infrastructure	\$1,500,000	\$0	\$1,500,000
less Ch. 100 sales tax exemption savings	-\$47,100		-\$47,100
<i>Adjusted Site Work/Infrastructure Cost</i>	<i>\$1,452,900</i>		<i>\$1,452,900</i>
Building Construction	\$32,550,000	\$0	\$32,550,000
less Ch. 100 sales tax exemption savings	-\$1,022,070		-\$1,022,070
<i>Adjusted Building Construction Cost</i>	<i>\$31,527,930</i>		<i>\$31,527,930</i>
Structured Parking	\$8,300,000	\$8,300,000	\$0
less Ch. 100 sales tax exemption savings	-\$260,620	-\$260,620	
<i>Adjusted Structured Parking Cost</i>	<i>\$8,039,380</i>	<i>\$8,039,380</i>	
Soft Costs/Other	\$8,000,000	\$0	\$8,000,000
<b>TOTAL PROJECT COSTS</b>	<b>\$51,820,210</b>	<b>\$8,039,380</b>	<b>\$43,780,830</b>
	Projected TOTAL PROJECT COSTS	Projected TIF Reimbursed Costs	Developer Private Costs

### **Ownership and Development Structure**

- **Current Ownership:** The property is currently owned by the United Methodist Church and will be purchased by Developer for \$2.8 million.
- **Ownership and redevelopment process after Council approval:** If the City Council approves the incentive package including the LCRA Redevelopment Plan, then Developer will purchase the property and transfer ownership to the City. The City will own the property during the construction period and lease the property to Developer which will construct the project. City ownership during the construction period allows for the sales tax exemption on construction materials as a result of the companion LCRA Redevelopment Plan.

When the property is purchased by Developer, it will become taxable property. When the property is transferred to the City during the construction period, the property will again become tax-exempt but Developer will make payments during the period of City ownership pursuant to the LCRA Redevelopment Plan in the amount of what the taxes would have been if the property were privately owned during this period. These payments during the construction period will be treated as rent payments under a lease between the City and Developer pursuant to the LCRA Redevelopment Plan.

- **TIF Project Area:** The Redevelopment Area includes one TIF Redevelopment Project, which will be activated this year. TIF collection will begin when the Redevelopment Project is approved, and

may last for a maximum of 23 years. Developer will make payments during the construction period, while the property is owned by the City, in an amount equal to what the taxes would be based on the 2019 assessed valuation of \$1,003,436 as if the property were taxable.

**TIF Financing Options:** Reimbursement will start as pay-as-you go. Bonds may be issued at the City Council’s discretion and as provided in the redevelopment contract to finance Redevelopment Project Costs.

**Benefit to Taxing Districts:** The Cost-Benefit Analysis attached to the TIF Plan as *Exhibit 11* shows the projected tax revenues to be generated by the project for each taxing district if the project does not occur and if the project does occur with the use of TIF.

**Basis of Reimbursement and the “But For” Test:**

- The basis of the reimbursement request is that reimbursement needed to achieve a rate of return that is sufficient to cause Developer to undertake the project.
- The cash flow and rate of return analysis based on Developer’s calculation in *Exhibit 10* and Columbia Capital’s calculation in their report financial advisor engaged by the City) are summarized as follows:

	Developer Calculation – Equity Rate of Return	Columbia Capital – City Financial Advisor Calculations	
		Project Rate of Return	Equity Rate of Return
Without Incentives	1.44%	3.74%	-0.05%
With Incentives	8.89%	6.19%	8.56%

**Comparison to City’s Economic Development Policy:** The City’s Economic Development Policy Guidelines state that typically incentives using TIF will be an amount not to exceed 25% of the total private development costs. The TIF assistance is about **15.5%** of the total project costs. Developer has not separately identified any of the project costs that are only public in nature. All public incentives (TIF and sales tax exemption together) are about **18.1%** of the total project costs.

**Required Findings for TIF Plan:** The following is a list of the findings required to be made by the City Council with a recommendation from the TIF Commission, along with references to the pages in the TIF Plan where supporting information may be found:

- **Blight:** The Redevelopment Area must be a blighted area, as such term is defined in Section 99.805(1), RSMo, as follows:

an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an

economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.

The City Council found that the Redevelopment Area, as a parcel in the larger downtown area, is a blighted area pursuant to the Land Clearance for Redevelopment Act (“**LCRA Act**”) through the adoption of Ordinance No. 7228 on September 10, 2012. The definition of “blighted area” under the LCRA Act matches the definition of “blighted area” under the TIF Act and therefore the previous finding by the City Council satisfies the TIF Act requirement.

The TIF Plan is also accompanied by a site-specific Blight Study set forth as *Exhibit 5*, demonstrating that the Redevelopment Area is still a blighted area as such term is defined in Section 99.805(1), RSMo, due to the presence of deteriorating site improvements and that the property is an economic liability in its present condition and use. The TIF Plan is also accompanied by an affidavit which is set forth in *Exhibit 9*, signed by the Developer, attesting to the conditions of the Redevelopment Area which qualify the area as a blighted area

- **But-For Test:** The proposed redevelopment must satisfy the “but for” test set forth in Section 99.810, RSMo, in that the Redevelopment Area has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing. The Redevelopment Area has been used as a church property for many years and has not been redeveloped. *Exhibit 11* states that the rate of return for the project without incentives is 1.44%, and the rate of return with incentives is 8.89%. The TIF Plan is accompanied by an affidavit, signed by the Developer, attesting to the “but for” test (*Exhibit 13*).

**City Financial Advisor Review:** Columbia Capital has prepared a report for the TIF Commission which reaches the following conclusions:

- Developer’s projected project costs are reasonable.
  - Developer’s vacancy assumptions are consistent with the Kansas City market.
  - Developer’s revenue projections are reasonable.
  - Developers project rate of return with and without incentives is reasonable, and Columbia Capital’s rate of return calculation substantially matches Developer’s calculation.
  - The requested incentives (TIF and sales tax exemption) are required for the Project to develop as proposed by Developer.
  - Developer’s proposal meets the “but for” test.
- **Consistency with the Comprehensive Plan:** The Old Lee’s Summit Development Master Plan (February 2004) (the “Downtown Plan”) is the portion of the City’s comprehensive plan that sets forth land use recommendations and goals for the downtown area including the Redevelopment Area. The Redevelopment Area is designated as part of the “Downtown Core” (see Map III.2) under the Downtown Plan, but the parcel does not have a site-specific land use designation. The Downtown Plan indicates at page 48 that one of the City’s goals for the Downtown Core is to encourage the market absorption of between 300 and 450 dwelling units, which could occur on several parcels in the Downtown Core.
- **Relocation Plan:** The TIF Plan includes as *Exhibit 8* a Relocation Assistance Plan as required by the TIF Act.



- **Cost-Benefit Analysis:** A cost-benefit analysis is required showing the economic impact of the TIF Plan on each taxing district and political subdivision within the Redevelopment Area if the project is built pursuant to the TIF Plan or is not built. A cost-benefit analysis has been provided in *Exhibit 11* to the TIF Plan.
- **Financial Feasibility:** There must be evidence that the proposed project is financially feasible for the Developer to construct with TIF assistance. Developer has provided *Exhibit 10* as evidence that the project is financially feasible to undertake with public assistance. Columbia Capital has verified this conclusion based on their independent analysis.
- **TIF Plan Contents:** The TIF Plan must contain the following information, and the page and exhibit references below indicate where the information may be found in the TIF Plan:
  - A general description of the program to be undertaken to accomplish its objectives (*Pages 3-5, 14*).
  - The estimated redevelopment project costs (*Page 4, 15 and Exhibit 3*).
  - The anticipated sources of funds to pay the costs (*Page 16 and Exhibits 3 and 6*).
  - Evidence of the commitments to finance the project costs (*Exhibit 7*).
  - The anticipated type and term of the sources of funds to pay costs (*Pages 15-18*).
  - The anticipated type and terms of the obligations to be issued (*Pages 17*).
  - The most recent equalized assessed valuation of the property within the Redevelopment Area which is to be subjected to payments in lieu of taxes and economic activity taxes pursuant to Section 99.845, RSMo (*Page 18 and Exhibit 4*).
  - An estimate as to the equalized assessed valuation after redevelopment (*Page 18 and Exhibit 4*).
  - The general land uses to apply in the Redevelopment Area (*Pages 3, 14-15*).
  - Estimated dates for the retirement of obligations incurred to finance redevelopment project costs, and said dates are not more than twenty-three (23) years from the adoption of an ordinance approving a Redevelopment Project within the Redevelopment Area (*Page 16 and Exhibit 6*).
  - Estimated dates of completion of the redevelopment project (*Exhibit 6*).
- **Plan Requirements:** The TIF Plan must also meet the following requirements, and the page and exhibit references below indicate where the information supporting these requirements may be found in the TIF Plan:
  - The TIF Plan is in conformance with the Comprehensive Plan for the development of the City as a whole (*Pages 14-15, 21*).
  - A Relocation Assistance Plan has been developed for relocation assistance for businesses and residences, and the relocation of any business or residents in the Redevelopment Area, if necessary, will take place in accordance with the Relocation Assistance Plan (*Page 22 and Exhibit 8*).

- The TIF Plan does not include the initial development or redevelopment of any gambling establishment (*Page 22*).
- The areas selected for the Redevelopment Project include only those parcels of real property and improvements thereon which will be directly and substantially benefited by the Redevelopment Project improvements (*Exhibit 1 & 2*).

**Required Findings for LCRA Redevelopment Plan:** The following findings are required to be made by the City Council for the LCRA Plan:

1. **Blight:** The Redevelopment Area must be a blighted area, as such term is defined in Section 99.320(3), RSMo, as follows:

an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.

The City Council found that the Redevelopment Area, as a parcel in the larger downtown area, is a blighted area pursuant to the Land Clearance for Redevelopment Act (“**LCRA Act**”) through the adoption of Ordinance No. 7228 on September 10, 2012.

The Plan is also accompanied by a site-specific Blight Study set forth as *Exhibit 5*, demonstrating that the Redevelopment Area is still a blighted area, due to the presence of deteriorating site improvements and that the property is an economic liability in its present condition and use. The Plan is also accompanied by an affidavit which is set forth in *Exhibit 9*, signed by the Developer, attesting to the conditions of the Redevelopment Area which qualify the area as a blighted area.

2. **Necessity:** The City Council must find that redevelopment of the Redevelopment Area is necessary and in the interests of the public health, safety, morals and welfare of the residents of the City. Columbia Capital has prepared a report which examines the financial projections of the Plan reaches the following conclusions:

- Developer’s projected project costs are reasonable.
- Developer’s vacancy assumptions are consistent with the Kansas City market.
- Developer’s revenue projections are reasonable.
- Developers project rate of return with and without incentives is reasonable, and Columbia Capital’s rate of return calculation substantially matches Developer’s calculation.
- The requested incentives (TIF and LCRA sales tax exemption) are required for the Project to develop as proposed by Developer.
- Developer’s proposal meets the “but for” test under the TIF Act, which is equivalent to the necessity finding under the LCRA Act.

The cash flow and rate of return analysis are summarized above in the memo.

3. **Conformance with the Comprehensive Plan:** The City Council must find that the LCRA Plan is in conformance with the Comprehensive Plan for the City. The City Council must find that the proposed land uses and building requirements in the Redevelopment Area are designed with the general purpose of accomplishing, in conformance with the Comprehensive Plan, a coordinated, adjusted and harmonious development of the community and its environs which, in accordance with present and future needs, will promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development. The LCRA Plan addresses several factors that are addressed in the LCRA Act including providing for adequate parking, the promotion of healthful and convenient distribution of population, the provision of adequate public facilities, the promotion of sound design and arrangement and the efficient expenditure of public funds, the prevention of the recurrence of unsanitary and unsafe dwelling accommodations, and blight clearance.

The Old Lee's Summit Development Master Plan (February 2004) (the "**Downtown Plan**") is the portion of the City's comprehensive plan that sets forth land use recommendations and goals for the downtown area including the Redevelopment Area. The Redevelopment Area is designated as part of the "Downtown Core" (see Map III.2) under the Downtown Plan, but the parcel does not have a site-specific land use designation. The Downtown Plan indicates at page 48 that one of the City's goals for the Downtown Core is to encourage the market absorption of between 300 and 450 dwelling units, which could occur on several parcels in the Downtown Core. The LCRA Plan is therefore in conformity with Downtown Plan as the City's Comprehensive Plan document for the Redevelopment Area.

## Packet Information

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**File #:** BILL NO. 19-269, **Version:** 1

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An Ordinance vacating certain utility easements located at 1695 SE Decker Street and 60 SE Thompson Drive in the City of Lee's Summit, Missouri.

Proposed City Council Motion:

I move for a second reading of an Ordinance vacating certain utility easements located at 1695 SE Decker Street and 60 SE Thompson Drive in the City of Lee's Summit, Missouri.

Josh Johnson, AICP, Assistant Director of Plan Services

## **BILL NO. 19-**

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AN ORDINANCE VACATING CERTAIN UTILITY EASEMENTS LOCATED AT 1695 SE DECKER STREET AND 60 SE THOMPSON DRIVE IN THE CITY OF LEE'S SUMMIT, MISSOURI.

WHEREAS, Application #PL2019-292 was submitted by Thompson Properties, LLC, requesting vacation of utility easements located on properties addressed 1695 SE Decker Street and 60 SE Thompson Drive in Lee's Summit, Missouri; and,

WHEREAS, the easements were dedicated to the City via the plat titled *Southside Industrial Park – Lots 20 & 21* recorded by Document No. 2000I0026019 BK 67, PG 28; and,

WHEREAS, the Planning Commission considered the request on November 14, 2019, and rendered a report to the City Council recommending that the vacation of easements be approved; and,

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

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

SECTION 1. That the following described easements are hereby and herewith vacated:

All that part of lot 20, Southside Industrial Park – Lots 20 and 21, a subdivision in the City of Lee's Summit, Jackson County, Missouri, more particularly described as;

Commencing at the Southwest corner of said Lot 20; thence South 88 degrees 05 minutes 37 seconds East, along the South line of said Lot 20, a distance of 232.50 feet; thence North 02 degrees 02 minutes 58 seconds East, a distance of 15.00 feet, to the point of Beginning; thence North 02 degrees 02 minutes 58 seconds East, a distance of 120.00 feet; thence South 88 degrees 05 minutes 37 seconds East. A distance of 7.50 feet; thence South 02 degrees 02 minutes 58 seconds West, a distance of 120.00 feet; thence North 88 degrees 05 minutes 38 seconds West, a distance of 7.50 feet, to the Point of Beginning. Containing 900 square feet.

And

All that part of lot 20, Southside Industrial Park – Lots 20 and 21, a subdivision in the City of Lee's Summit, Jackson County, Missouri, more particularly described as;

Commencing at the Southeast corner of said Lot 20; thence North 88 degrees 05 minutes 37 seconds West, along the South line of said lot 20, a distance of 247.18 feet, thence North 05 degrees 12 minutes 38 seconds East, a distance of 14.16 feet, to the point of Beginning; thence North 05 degrees 12 minutes 38 seconds East, a distance of 300.64 feet; thence North 02 degrees 32 minutes 23 seconds East, a distance of 2.56 feet; thence South 87 degrees 57 minutes 02 seconds East, a distance of 15.00 feet; thence South 02 degrees 32 minutes 23 seconds West, a distance of 3.04feet; thence South 05 degrees 12 minutes 38 seconds West, a distance of 227.07 feet; thence South 16 degrees 40 minutes

## **BILL NO. 19-**

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55 seconds West, a distance of 75.42 feet, to the Point of Beginning. Containing 3,999.84 square feet.

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

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

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

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

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

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

\_\_\_\_\_  
Mayor *William A. Baird*

ATTEST:

\_\_\_\_\_  
City Clerk *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *Brian W. Head*

## The City of Lee's Summit

### Action Letter - Draft

### Planning Commission

Thursday, November 14, 2019

5:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

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#### Call to Order

**Present:** 7 - Board Member John Lovell  
Board Member Jake Loveless  
Board Member Carla Dial  
Chairperson Jason Norbury  
Board Member Terry Trafton  
Board Member Jeff Sims  
Board Member Dana Arth

**Absent:** 2 - Board Member Mark Kitchens  
Vice Chair Donnie Funk

#### Roll Call

#### Approval of Agenda

A motion was made by Board Member Dial, seconded by Board Member Trafton, that the agenda be approved. The motion carried unanimously.

#### Public Comments

There were no public comments at the meeting.

#### Approval of Consent Agenda

[TMP-1419](#) Appl. #PL2019-292 - VACATION OF EASEMENT - 1695 SE Decker St and 60 SE Thompson Dr; Thompson Properties, LLC, applicant

A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

[2019-3143](#) Appl. #PL2019-370 - SIGN APPLICATION - Edward Jones, 500 SW Market St; Fastsigns, applicant

A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be approved. The motion carried unanimously.

[2019-3114](#) Minutes of the October 24, 2019, Planning Commission meeting

A motion was made by Board Member Dial, seconded by Board Member Sims, that the minutes be approved. The motion carried unanimously.

## Public Hearings

[2019-3140](#)

Public Hearing: Application #PL2019-305 - Preliminary Development Plan - Main Orchard, 510 NW Main St and 6 NW Orchard St; Engineering Solutions, LLC, applicant.

Chairperson Norbury opened the hearing at 5:06 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Matt Schlicht of Engineering Solutions gave his address as 50 SE 30th Street in Lee's Summit. The project was located on the west side of Main Street, north of Orchard Street; 510 Main and NW Orchard. This was a vacant property, about 2.5 acres. One existing home on 510 Main dated to about 1920 and was a bungalow-style, front porch home with a dormer and a gravel drive but no garage. The proposal was to divide the property into six residential lots, adding a garage and an above-garage loft space to the existing home. The other five lots would be sold. The applicants had provided staff with a memorandum of ideas, outlining the applicants' preference for the size and style of the homes, with the developer providing some help with what the applicant wanted to see. They wanted to leave the existing home in place, with the new homes being the early-mid 20th century style of 'foursquare' bungalow style with dormers, front porches and garages in the back.

The sheet that the applicant had given the Commissioners a summary of the house characteristics. They would be a minimum 1,000 square feet, with each having a garage, including the existing house; and each would have a front porch covering at least 50 percent of the front side and a minimum 6-foot depth. All would be one or two stories with a dormer on the two-story houses. These would all be consistent with the Craftsman style that was common throughout the Downtown area. The driveway width would be limited to 16 feet at the front and side, in order to keep the streetscape more similar to the older style.

A neighborhood meeting had been held at the Gamber Center, with all residents within a 300-foot radius of the property invited; however, only 3 neighbors attended. They had asked if the homes would be rentals, and he had replied that the lots would be sold for development. Mr. Schlicht noted that many of the same people attended these meetings: young couples who wanted to purchase a Downtown home. This would provide someone to have their desired home built. These houses were in the \$200,000-\$300,000 range.

Mr. Schlicht displayed a colored example of what the houses would look like. Each would be built slightly above grade with a welcoming stairway/porch entry. Each would have a sidewalk from the front steps to the public sidewalk. Like the style, the colors and materials would be standard for the older Downtown neighborhoods: shake shingles or Hardiboard siding, real stone or brick veneers. He wanted to avoid using vinyl or metal sidings or stucco. Colors would be low-contrast, but color palettes were provided for buyers who wanted a slightly different color.

Originally, the Old Lee's Summit development master plan had identified this specific area, and some areas to the west of it, as being parts of the Downtown core that were under-utilized. The applicants believed that this plan was consistent with the plan. Mr. Schlicht then displayed a photo of the existing home at 510 Main Street. It had been built in the early 1920s and was currently being rented. The house was 1,100 square feet, had a stone foundation and a faux dormer at the top. The plan was to add a garage with a loft behind it, and to replace the gravel drive with a concrete one. Other photos showed the interior of the existing house.

Mr. Schlicht stated that he had worked with staff to control some of the stormwater from nearby houses. He showed a diagram of individual detention pits. Stormwater would be piped down from all the roofs, downspouts and hard surfaces into the pit area for each lot. A rock chamber below would store water during major rain events. It was basically a design for a



rain garden. Rain gardens reduced some of the peak runoff that would go downstream.

The applicants were asking for one modification. The rule for the RP-2 zoning district dictated that a garage could not be any taller than the principal structure. That would rule out a loft above a garage in this case. He had done a sight line survey and showed that the garages would be far back enough to not be visible above the roofs of the houses.

Following Mr. Schlicht's presentation, Chairperson Norbury asked for staff comments.

Ms. Thompson entered Exhibit (A), list of exhibits 1-17 into the record. She confirmed that the applicant was submitting a preliminary development plan for five single-family homes at the northwest corner of NW Orchard and NE Main Street. This property and the surrounding properties were zoned RP-2, for planned two-family residences. She displayed a slide of the proposed site plan, showing the five vacant lots and one existing home; and footprints for the five proposed homes. She showed a number of elevations for similar structures, adding that once a residential building permit was submitted to the City, the planning staff would review these elevations to make sure they complied with what was approved. The modification request was for a detached garage with loft on Lot 3, with an overall building height of 26 feet. Staff did not support a detached garage that was taller than the principal structure, and requested that the garages conform to height limits.

Ms. Thompson confirmed that this area was part of the Old Downtown part of Lee's Summit. They were in favor of increasing the housing stock in the area, which this plan could do. Regarding sidewalks, they were required as part of the platting process; however, there were not many sidewalks in this particular area. The applicant asked for a waiver for a sidewalk along Orchard and to make a payment in lieu of construction. He did propose a sidewalk along NE Main Street, which would be constructed as each house was built.

The application had two Conditions of Approval. The detached garage would conform to the UDO requirements for building height, and the developer would pay the City of Lee's Summit for construction costs instead of constructing a sidewalk along NW Orchard.

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

Mr. Loveless noted Ms. Thompson's mention that before a builder applying for get a building permit on one of these lots would have to submit plans that staff would approve as architecturally consistent with the rest of the neighborhood. Ms. Thompson stated that they would have to submit a plot plan along with residential plans, including floor plans and elevations. This required a review from a planner, who would check for approved elevations and complied with what was approved.

Mr. Loveless then asked Mr. Schlicht for some details about the stormwater collection plan. He noted that with connectivity among the lots and asked why they could not be tied in with the typical water system. Mr. Schlicht pointed out on the map the about 30 acres in the neighborhood that drained a large area through Olive. It had open ditches and few collection systems. The idea was for the individual houses to collect rainwater off the roofs on site and give each homeowner individual control. They would also have the opportunity to start rain gardens. Mr. Loveless asked if it was accurate that this would effectively create a net zero in terms of impervious surface, and Mr. Schlicht replied that it was.

Mr. Loveless asked about driveways. Mr. Schlicht pointed out the two houses, including the existing one that would have two large maple trees on each side, and a corner with a few more large trees. One of the houses would be built behind the trees, which would enable landscaping along the north side with a long driveway. This was typical of the old Downtown

neighborhood, which had houses built varying distances from the street instead of just a row of houses directly next to each other. Mr. Loveless noted that Mr. Schlicht planned to keep the existing home but add a garage behind the home that would be taller than the house. Mr. Schlicht explained that he planned to build a garage with loft behind the existing house at 510 Main. He had discussed this with staff, and determined that a garage with loft could be permitted, up to a height of 40 feet. If the garage was first built and a loft added later it would not comply with the UDO. The garage was part of this application; but he would not ask for a modification at this time.

Mr. Trafton asked why Lot 1 was offset so far back. Mr. Schlicht stated that he wanted to keep the trees on the lots, and the lots had different characteristics, and provided different opportunities for buyers. A buyer could choose the narrow, elongated 60-foot lot or the corner lot which was a little bit larger. These lots reflected Downtown's unique character and lent itself to providing different opportunities. The L-shaped lot at the north end in particular made a bigger building and a choice of location for the garage. It was an opportunity to do something different.

Concerning the detention pit, Mr. Trafton said he assumed these were not tied to any kind of runoff from the street, but would provide a way to collect the water and let it naturally move into the system. He asked if there were other parts of Lee's Summit where this had been tried successfully. Mr. Schlicht did not know of any within the city limits, although a rain garden would be somewhat similar. They did lots of redevelopment in Leawood, Fairway and Prairie Village, tearing down homes and rebuilding in infill sites, and were using this system. It seemed to function well. With no infrastructure for stormwater, the water would just either run across the ground and continue onto another property or be diverted into a large detention basin that that was used by a number of residents. The latter was often a headache.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:32 p.m. and asked for discussion among the Commission members, or for a motion.

Ms. Dial made a motion to recommend approval of Application PL2019-305, Preliminary Development Plan, Main Orchard, 510 NW Main St and 6 NW Orchard St; Engineering Solutions, LLC, applicant; subject to staff's letter of November 7, specifically Conditions of Approval 1 through 11. Mr. Trafton seconded.

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

A motion was made by Board Member Dial, seconded by Board Member Lovell, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

[2019-3144](#)

Public Hearing: Application #PL2019-307 - Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan - Osage, approximately 32 acres located at the southwest corner of SW M-150 Hwy and SW Pryor Rd; Clayton Properties Group, Inc., applicant.

Chairperson Norbury opened the hearing at 5:34 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. John Erpelding of Olsson stated that Mr. Vince Walker and Mr. Travis Roof of Summit Homes were also present. They proposed a rezoning and preliminary development plan for Osage, which would cover about 31.5 acres at Pryor Road and 150 Highway. It would consist of a total 160 units. Mr. Erpelding displayed a color-coded map showing the different types of housing product. They planned 32 single-family homes, 22 two-family structures named "Twin Gallery", in the middle and 21 four-family townhomes. The property also included 16 common

area tracts that would be used for detention, landscaping, buffer areas, monument signs and amenities. These tracts totaled about 6.3 acres, about 20 percent of the property.

Osage was to be developed in three phases, and Mr. Erpelding pointed out these phases, indicated by dashed lines, on the map. The first would have two points of access, one on Pryor and one on M-150. The latter would be a right-in-right-out intersection due to an existing median. Mr. Erpelding listed improvements associated with the first phase. These included monument signs at both entrances and on the M-150 and Pryor Road corner, the stormwater detention facility at the property's southeast corner, an off-site sanitary sewer extension reaching about 780 feet to the east and some street stubs to adjacent properties to the south and west that would allow for future connectivity. Some street improvements were also planned. The M-150 entrance would have an eastbound right-turn lane and some and both northbound and southbound turn lanes at the Pryor Road access. The northbound left turn lane on Pryor Road would be extended. They would add paved shoulders on both sides of Pryor along the length of the east side. As part of another project, Summit Homes would also widen and add paved shoulders further to the south, from County Line Road to the subject properties south boundary. These were interim road improvements. The second phase would focus on the northwest quadrant of the development. Streets would be looped for better connectivity; and the third phase would develop the southwest corner of the property.

The single-family lots would be 50 to 70 feet wide and 120 feet deep. The Twin Gallery structures would be on lots about 70 by 118 feet; and both would have a minimum of 10 feet between each structure. The townhomes would be on 140 feet wide and 120 feet deep, with a minimum of 20 feet between buildings. The applicant was not requesting any modifications to the zoning requirements, as they were meeting all the requirements for setbacks, density, lot widths and depths, landscape buffers or parking. They would provide 20-foot wide landscape buffers between adjoining properties, and these buffers would confirm to UDO requirements. Additionally, a five-foot tract would run along the south property line, to preserve the existing trees and fence. The streets would be lined with trees with 30-foot spacing.

They had held two neighborhood meetings. One was an unofficial one in August, and a formal neighborhood meeting on October 14th. This was also sparsely attended, with about five people; but everyone within 300 feet had been invited. Most of the questions were about prices. The applicant agreed with all of staff's Conditions of Approval.

Mr. Vince Walker addressed the project's layout and architecture. They had heard and taken into account the feedback they had previously received. In using a variety of housing designs, they were able to provide prospective buyers a variety of options. The four-unit detached townhomes would be at the property's north end bordering M-150. The Twin Gallery units would be in the center section, and the "Lifestyle Collection" single-family homes would be on the south side. A central amenity section would include a 25-meter lap pool and children's "splash" area, clubhouse pavilion and a park. These would be administered by a Homeowners Association. All homes would be built using the same quality materials on both exteriors and interior finishes. He then presented a visual video of what Osage was planned to look like. It showed the road system, considerable green space including trees, playground, pavilion, and various types of housing.

Following the applicant's presentation, Chairperson Norbury asked for staff comments.

Mr. McGuire entered Exhibit (A), list of exhibits 1-16 into the record. He confirmed that the applicant was asking to rezone 31.47 acres at the corner of Pryor Road and 150 Highway from AG and R-1 to RP-3. The development would have 32 single-family lots, 22 two-family lots, 21 four-family lots and 16 common area tracts. The surrounding area was a mixture of single-family homes (to the north) and undeveloped properties (to the east and west). Large-lot single-family homes were to the south. The Napa Valley single-family subdivision was

to the southeast, and Grand Summit View and Arborwalk to the northeast.

Displaying colored elevations, of single-family and two-family dwellings and the proposed clubhouse Mr. McGuire observed that the applicant proposed to use materials and designs compatible with other nearby subdivisions and throughout Lee's Summit in general. Exteriors would be stone veneer, lap and panel or shake siding and composite shingle roofs. The requested RP-3 zoning would provide for medium-density mixed residential uses, and the project was generally consistent with the Comprehensive Plan, including the plan's objectives of providing diverse housing types. The maximum density would be 10 units per acre. Any deviation from the approved plan would require approval of a replacement preliminary development plan.

This project was compatible with existing and planned uses on surrounding properties. The 310-acre Arborwalk development was further to the northeast. This was also a mixed-use development that included single-family villa lots, standard single-family lots, duplexes, triplexes, fourplexes and apartments. Villa lots at Arborwalk were allowed a minimum size of 3,675 square feet. The 88-acre Napa Valley development was to the southeast. Napa Valley also had a mixture of single-family villa lots, standard single-family lots and estate-size lots. Napa Valley's villa lots had a minimum lot size of 4,950 square feet. This project's proposed 6,000 square foot minimum lot size for a single-family house was 2,325 square feet larger than the minimum at Arborwalk and 1,050 square feet larger than Napa Valley's minimum. If this application was approved, the plan would satisfy any requirements applicable to zoning district as outlined in the UDO and the Design and Construction Manual.

Following Mr. McGuire's comments, Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application.

Mr. Charles Ray gave his address as 4090 SW Pryor Road. He asked what the plans were for Pryor Road to the south, and asked where sidewalks would be. He noted that the small number of people attending the meeting was due to not many people living within 300 feet of this property. The neighbors who did live nearby had a nice park down the street that they had to get to on foot, so they knew that the traffic on Pryor Road had increased considerably. He knew that adding 160 housing units on that corner would increase the traffic even more.

Mr. Roofl stated that they had an obligation connected with Stoney Creek to make interim improvements to Pryor Road from County Line Road up to Pryor. The improved road would be 24 feet wide and restriped, with 6-foot paved shoulders on both sides up to Napa Valley's entrance. When the Osage project was completed, the road would be improved from Napa Valley to M-150 and additional rights-of-way were dedicated for future road improvements. This project would have sidewalks up to the property lines. The 6-foot paved shoulders could be used as pedestrian or bike lanes for the present.

Chairperson Norbury then asked if the Commission had questions for the applicant or staff.

Mr. Trafton asked if it was correct that the median on M-150 would be left intact, in order to prevent traffic problems generated by left turns. Mr. Walker answered that it was. Mr. Trafton then asked what the street widths inside the development were, remarking that the video had not shown cars parked on the streets and in driveways. There were likely to be many of them due to the fourplexes. Mr. Erpelding answered that they would be 28 feet wide, which was the City's standard for local streets. That was wide enough to allow for on-street parking. He acknowledged that cars parked on both sides could cause difficulties for other vehicles, including emergency vehicles. He displayed a parking diagram, with red lines indicating parts of streets in front of side yards. Parked cars would be less of a problem in those locations, as long as they did not block driveways. The plan identified a total of 77 on-street parking spaces.

Mr. Trafton then asked what was the reasoning for concentrating so much of the density in one north quadrant with about 180 residents. Mr. Walker answered that it was typical for this kind of land use to concentrate higher densities near a highway corridor and transition into lower-density product further down. M-150 would have a sidewalk just to the north side of the property line; but the interim improvements for Pryor Road did not require sidewalks on both sides. Mr. Trafton asked staff if this meant the Livable Streets ordinance would not require adding sidewalks on Pryor. Mr. Soto answered that Pryor would require sidewalks. He confirmed that for interim standards, the paved 6-foot wide shoulders could serve as a proxy for sidewalks until final improvements were made to the road.

Mr. Park noted that Pryor Road was in a state of transition from a rural to an urban roadway. The proposed improvements met the standards for an interim road, which Pryor Road was north of M-150 Highway. That meant a 24-foot width with turn lanes and paved shoulders required by the Access Management Code. The paved shoulders did serve as a pedestrian route in the absence of sidewalks. If Pryor was improved from this interim condition it would be brought up to urban standards which included curbs, sidewalks and traffic signals. At this point, the City's progression of Pryor started at M-150 and moved north to Longview Road. The capital improvement program had funds to begin develop Pryor to urban standard from Hook Road to Longview. After that, improvements would extend south from M-150 based on demand. Mr. Trafton asked if this meant that the City intended to just let kids and families walk on the road's shoulders; and Mr. Park replied that staff was following the standards that the City Council had adopted. They permitted an interim road standard at this point. It was within the Council's purview to require a development to exceed that standard. He added that if sidewalks were put in at this point, they would have to be torn out at the time that Pryor Road was improved along that stretch. At present, many people walked, jogged and ride bicycles on the paved shoulders of Pryor north of M-150.

Mr. Trafton asked what the average prices for the development were. Mr. Walker answered that the prices were not set at this time. They did intend to have three different price points. Concerning the parking, he pointed out that the development included two-car garages as well as 25-foot building lines. The latter allowed for two cars parked in a driveway as well. The subdivision's layout did follow the pattern of transitioning from a higher density at one end where there was a major roadway down to a lower single-family density at the opposite end. Mr. Trafton asked what the estimated square footage of the fourplexes would be. Mr. Walker answered that the townhomes would be about 1,500 square feet, with two-story and 1.5-story plans; and the Twin Gallery units would range from 1,300 to 1,900 square feet. The single-family homes would range from 1,500 to 2,500 square feet. All these units would have full basements. He did not specify the square footage of the fourplexes.

Mr. Lovell asked how many bedrooms the townhomes would have, and Mr. Walker answered that they would be 2 or 3 bedrooms. These would be for sale and not for rent. The streets were 28 feet wide from curb to curb. Mr. Lovell remarked at in New Longview where he lived, detached garages were in the back but residents had no room to park extra cars behind the garages, resulting in a lot of cars parked on the streets. Concerning the townhomes, he asked if they might be maintenance-free for yards. Mr. Walker answered that there had been discussion of that but nothing was finalized.

Chairperson Norbury remarked that much of tonight's application was in response to concerns raised in the previous application. Mr. Walker responded that the project as a whole had been a more uniform project, without the multiple home choices that tonight's version had. Much of the feedback they'd received had to do with the uniformity of the product. The elevations they'd shown had been contemporary; whereas tonight's version showed a 'modern farmhouse' look, which was a little more traditional. Traffic had also been an issue with the initial application; and the traffic impact would be less with tonight's plan than if the whole project had been a single-family development. 'Too much of one thing' was one of the criticisms they'd heard, and they had now provided more of a variety of choices. This was a

very conventional development in terms of what was provided in Lee's Summit. They had received feedback from the Napa Valley neighbors that this plan was a major improvement.

Mr. Walker confirmed for Chairperson Norbury that these units would all be for sale and not rentals. Chairperson Norbury recalled from the previous application that price points were \$225,000 to \$275,000, and asked about the prices of the townhome and duplex units. Mr. Walker answered that the single-family homes would be somewhat over \$300,000. They did not have price points for the other housing. He noted that M-150 did not have a crosswalk.

Mr. Loveless left the meeting, at 6:16 p.m.

Mr. Ray returned to the podium and asked about people coming out of the subdivision making U turns off M-150 to go west. Mr. Park consulted the traffic study and replied that the current traffic count at peak hour was about 3 doing a U turn at M-150 and Pryor. The traffic engineer hired by the applicant projected an increase of 9 over a 60-minute period at the busiest time. That would maintain a satisfactory level of service. He did think a pedestrian crosswalk was a very good suggestion, adding that M-150 was under the jurisdiction of MoDOT, not the City. He was willing to report this suggestion to MoDOT.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 6:17 p.m. and asked for discussion among the Commission members.

Mr. Lovell stated that in view of the changes in tonight's application, it looked like a very good project. It would accommodate upwardly mobile younger buyers who did not necessarily want to buy a large house; and Lee's Summit needed more product that would encourage them to remain in the community. He also liked developments that reflected thinking outside the box, and definitely supported this application.

Ms. Arth agreed with Mr. Lovell's commendation on the improvements, and said she had enjoyed the video. She also appreciated the applicant being aware of and responding to the parking issues, as well as the amenities and variety of housing options.

Mr. Trafton asked if there were covenants and restrictions covering the requirements for buying the townhomes, duplexes and fourplexes rather than renting or leasing. Chairperson Norbury stated that once these units were for sale, there was no guarantee that someone could not buy a unit and then rent it, subject to the City's rules regarding short-term renting.

Chairperson Norbury commended the applicant for making every effort to get a development done on this piece of land and responding to what the residents and the City Council had to say. However, he considered the prior project to be a better one, and the varying sizes of the homes and being able to have a single-family home in the price range now cited for townhomes was a far better idea for the community. The architecture now was rather standard-looking and unimpressive. The City Council had essentially cut off any capacity for the applicant to have any architectural variation or interest; and the city would be poorer for that. This was a precursor to the uniformity that Lee's Summit would end up with. He did think the applicant had done an admirable job of sticking to the original goal of offering housing product that someone of medium income could afford for new construction. He planned to recommend approval, though he would not if it was a rental project as that would not meet the goal he'd referenced. He hoped that there would be more vision from City officials in the future.

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

Ms. Dial made a motion to recommend approval of Application PL2019-307, Rezoning from AG and R-1 to RP-3 and Preliminary Development Plan: Osage, approximately 32 acres located at

the southwest corner of SW M-150 Hwy and SW Pryor Rd; Clayton Properties Group, Inc., applicant; subject to staff's letter of November 7, 2019, specifically Conditions of Approval 1 through 17. Ms. Arth seconded.

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

Commissioner Loveless left the meeting at 6:14 P.M., before vote.

A motion was made by Board Member Dial, seconded by Board Member Arth, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

[2019-3137](#)

Public Hearing: Application #PL2019-359- Unified Development Ordinance (UDO) Amendment - Changes to Article 1 - General Provisions, Article 2 - Applications and Procedures and Article 8 - Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant.

Chairperson Norbury opened the hearing at 6:25 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Johnson entered Exhibit (A), list of exhibits 1-6 into the record. He stated that this amendment had two goals. One was create a reasonable accommodation process. It addressed situations such as someone needing something added to their home to accommodate a disability, such as a ramp, and that item had to be put in a setback. The City code currently required a variance that would be granted by the Board of Zoning Adjustments. The change would create a no-cost process where a staff board could approve it administratively. This board would consist of a member each of Development Services, the Fire Department and Public Works. A development review committee now met every week and could do that review so the process would be fairly quick.

The second part of the amendment would adopt standards from the building code for ADA standards for parking lot design. The City adopted new codes every 6 years and the International Building Code had been adopted by not only Lee's Summit but also most other jurisdictions in the metro area. All were now under the 2018 code.

The third revision was to require applicants to show accessible routes in final development plans, making it easier to evaluate parking areas for accommodation.

Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application. As there were none, he opened the hearing Commissioners' questions.

Chairperson Norbury asked if there was nothing that would prevent the City from either augmenting or varying from the IBC if they so decided on a particular issue. Mr. Johnson responded that the IBC was the guide for designing parking lot facilities. There could be code modification requests but it had not been the City's policy to do that when it involved the ADA. Chairperson Norbury said he was referring to a situation where the City decided that the IBC was outdated after a new standard was adopted.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 6:30 p.m. and asked for discussion among the Commission members, or for a motion.

Ms. Dial made a motion to recommend approval of Application PL2019-359, Unified Development Ordinance (UDO) Amendment: Changes to Article 1, General Provisions; Article

2, Applications and Procedures and Article 8, Site Design to create an administrative reasonable accommodation process and reference ADA design standards in the International Building Code; City of Lee's Summit, applicant. Mr. Sims seconded.

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

A motion was made by Board Member Dial, seconded by Board Member Sims, that this application be recommended for approval to the City Council - Regular Session, due back on 12/3/2019. The motion carried unanimously.

## Roundtable

Regarding the earlier question about water management as proposed for the Main Orchard project, Mr. Monter stated that staff had taken some time reviewing this with the applicant. It was not much different from rainwater draining off a parking lot into a rain garden area. There was an example on Douglas at the Nationwide business. The apartments next to the Sonic were another example. This was something that staff wanted to encourage, especially for infill projects. It could be an improvement over detention basins that might or might not be maintained.

Ms. Dial said she had been contacted by some members of the public who had a problem with a developer who gave testimony under oath that they were going to use or not use a particular product on their building. In reality it turned out that the product was one the developer had said they would not use. The Homes Association and the Alliance had said this was not enforceable by the City because specific wording had not been included in the development plan approved by the City Council. She wanted to make the Commission aware that this had happened, and hopefully they could find a way to ensure it would not happen again. Mr. Johnson replied that this concerned an email exchange between the Alliance and himself. During public testimony at the Kessler Ridge application, the president of Inspired Homes promised not to use a certain product and made a few other commitments. This was not added to the ordinance as a condition of approval, and the elevations they had provided did not call out any materials. There was nothing holding the project to a specific set of materials. It had to be locked into an ordinance and public testimony itself was not binding. This had been reflected in the Main Orchard application, where specific criteria about items such as front porches. Chairperson Norbury remarked that if a developer wanted to make a specific promise it could be made a condition of recommendation.

## Adjournment

There being no further business, Chairperson Norbury adjourned the meeting at 6:33 P.M.

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**LEE'S SUMMIT**  
MISSOURI  
Development Services Department

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## Development Services Staff Report

<b>File Number</b>	PL2019-292 – VACATION OF EASEMENT
<b>Applicant</b>	Thompson Properties LLC
<b>Property Address</b>	1695 SE Decker St 60 SE Thompson Dr
<b>Planning Commission Date</b>	November 14, 2019
<b>Heard by</b>	Planning Commission and City Council
<b>Analyst</b>	C. Shannon McGuire, Planner
<b>Checked By</b>	Hector Soto, Jr., AICP, Planning Manager Kent Monter, PE, Development Engineering Manager

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### Public Notification

Pre-application held: N/A  
Neighborhood meeting conducted: N/A  
Newspaper notification published on: N/A  
Radius notices mailed to properties within 300 feet on: N/A  
Site posted notice on: N/A

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### Table of Contents

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### Attachments

Exhibit and Legal Description, dated September 5, 2019  
Location Map

## 1. Project Data and Facts

Project Data	
Applicant/Status	Thompson Properties, LLC/owner
Applicant's Representative	HG Consult, Inc. – Kevin Sterrett /engineer
Location of Property	1695 SE Decker St 60 SE Thompson Dr
Size of Property	±7.62 Acres
Zoning	PI (Planned Industrial District)
Comprehensive Plan Designation	Industrial
Procedure	The Planning Commission makes a recommendation to the City Council on the vacation of easement. The City Council takes final action on the vacation of easement in the form of an ordinance.  Approval of the vacation of easement does not expire unless stated in the approval.

Current Land Use
The subject properties are Lots 2 and 3 of the recently approved Decker Street Minor Plat Lots 1 Thru 3. A 12,000 sq. ft. industrial building occupies Lot 2. Lot 3 is currently undeveloped.

Description of Applicant's Request
The applicant requests to vacate an unused portion of a general utility easement approximately 7.5' wide on Lot 2 and a portion of the unused general utility easement approximately 15' wide on Lot 3.

## 2. Land Use

Description and Character of Surrounding Area
The properties are located in the Southside Industrial Park area. The area is bordered by M-291 Hwy on the west and industrial uses to the north and east. Vacant agricultural ground is located to the south across SE Thompson Drive. A creek runs north/south along the eastern side of the property.

### Adjacent Land Uses and Zoning

North:	Industrial / PI
South:	Vacant (across SE Thompson Dr.)/ PI
East:	Industrial / PI
West:	Vacant (across SE Decker St.)/ PI

Site Characteristics
Lot 2 is a 1.1 acre lot with a 12,000 sq. ft. industrial building and parking lot. Lot 3 is a 5.6 acre irregularly-shaped vacant property. A large portion of Lot 3 is undevelopable due to the 60' wide stream buffer that meanders through the eastern section of the property.

<b>Special Considerations</b>
N/A

### 3. Unified Development Ordinance (UDO)

Section	Description
2.480, 2.490	Vacation of Easement

#### Unified Development Ordinance (UDO)

The purpose of the vacation of easements is to eliminate unused utility easements.

### 4. Analysis

#### Background and History

The applicant requests to vacate portions of two (2) separate utility easements located on Lots 2 and 3 of *Decker Street Minor Plat, Lots 1 Thru 3*.

- October 15, 1985 – The City Council approved the final plat for Southside Industrial Park (Appl. #1985-188) by Ordinance No. 2701.
- June 7, 1990 – The minor plat of *Southside Industrial Park, Lots 16-18* was administratively approved (Appl. #1990-156).
- April 4, 2000 – The minor plat of *Southside Industrial Park, Lots 20 & 21* was administratively approved (Appl. #1999-289).
- October 13, 2004 – The minor plat of *Lemone-Smith Business & Rail Center, Plat 8, Lots 11-13* was administratively approved (Appl. #2004-223).
- October 17, 2019 – The minor plat of *Decker Street Minor Plat, Lots 1-3* was administratively approved (Appl. #PL2019-294).

#### Compatibility

The proposed vacation of easements allows for the elimination of unused easements. The properties are located in an industrial area generally located northeast of the intersection of SE Decker St and SE Thompson Dr.

#### Adverse Impacts

The proposed vacation of easements will not negatively impact the use or aesthetics of any neighboring property, nor does it negatively impact the health, safety and welfare of the public.

#### Public Services

No objections to the requested vacation of easements have been expressed by the utility companies, including the City's Public Works and Water Utilities Departments. The vacation will not impact the provision of utilities to the area.

#### Comprehensive Plan

The proposed vacation of easements does not compromise the ability to implement and/or achieve any policies, goals or objectives outlined in the Comprehensive Plan.

**Recommendation**

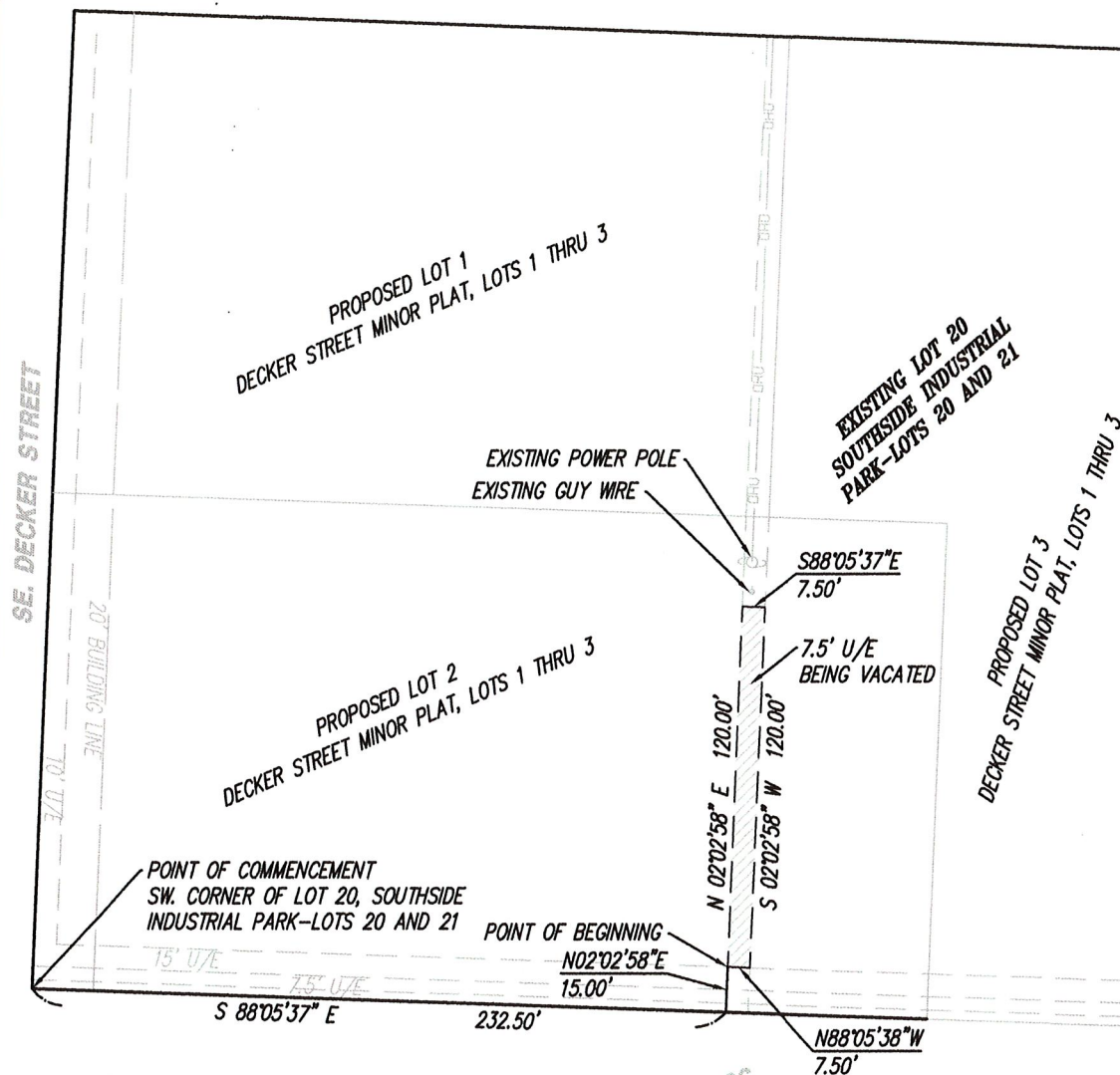
With the conditions of approval below, the application meets the requirements of the UDO and Design and Construction Manual (DCM).

**5. Recommended Conditions of Approval**

**Standard Conditions of Approval**

1. The ordinance approving the vacation of easements shall be recorded with the Jackson County Recorder of Deeds office and a copy of the recorded document shall be returned to the Development Services Department prior to the issuance of any building permit on the affected lot.

# EXHIBIT "A" VACATION OF EASEMENT



SEPT. 5, 2019

LOT 12  
LEMONE-SMITH BUSINESS  
AND RAIL CENTER, PLAT 8

2019-2022

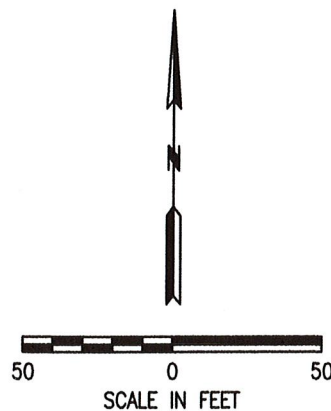
RECEIVED

SEP 05 2019

Development Services

## LEGAL DESCRIPTION:

All that part of Lot 20, Southside Industrial Park - Lots 20 and 21, a subdivision in the City of Lee's Summit, Jackson County, Missouri, more particularly described as;  
Commencing at the Southwest corner of said Lot 20; thence South 88 degrees 05 minutes 37 seconds East, along the South line of said Lot 20, a distance of 232.50 feet; thence North 02 degrees 02 minutes 58 seconds East, a distance of 15.00 feet, to the Point of Beginning; thence North 02 degrees 02 minutes 58 seconds East, a distance of 120.00 feet; thence South 88 degrees 05 minutes 37 seconds East, a distance of 7.50 feet; thence South 02 degrees 02 minutes 58 seconds West, a distance of 120.00 feet; thence North 88 degrees 05 minutes 38 seconds West, a distance of 7.50 feet, to the Point of Beginning. Containing 900 square feet.

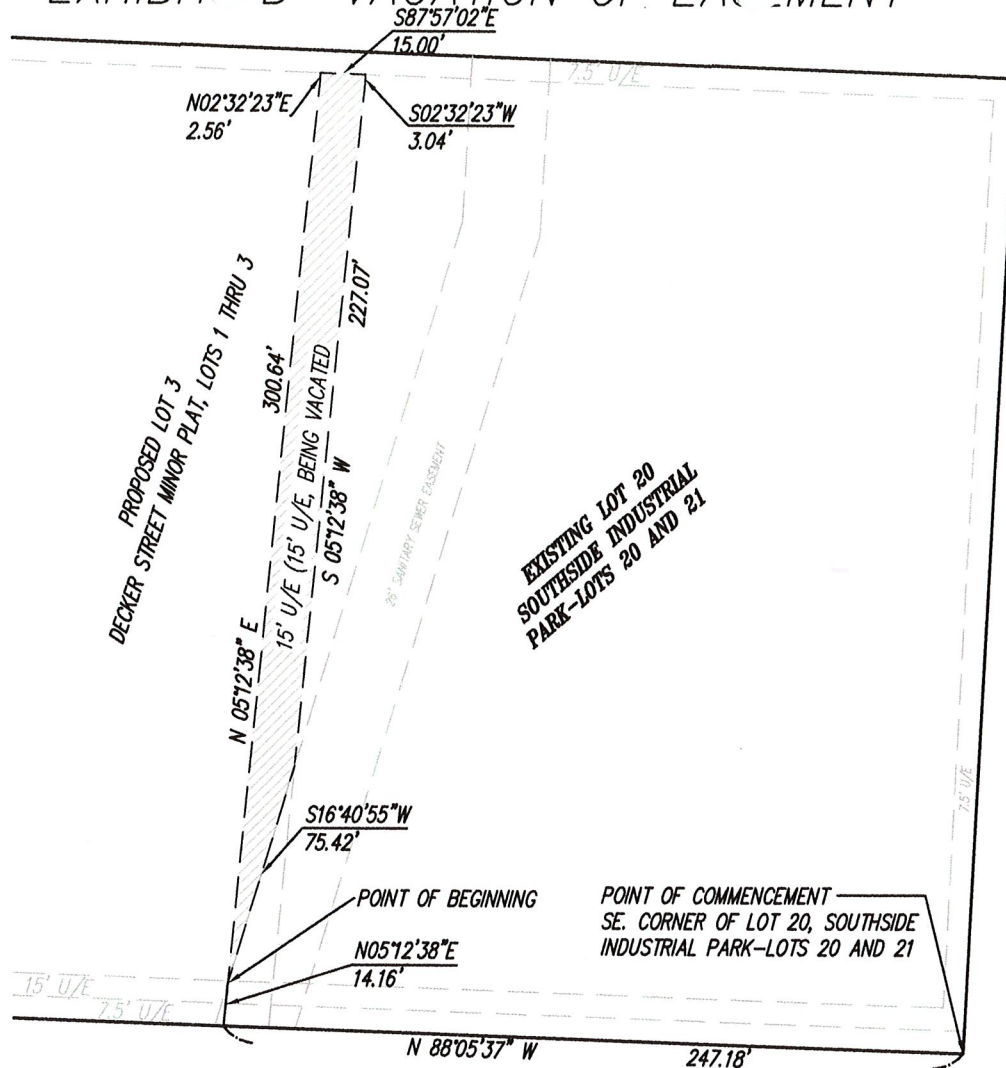


**LADWIG & ASSOCIATES, LLC.**

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



# EXHIBIT "B" VACATION OF EASEMENT



SEPT. 5, 2019

2019-2023

## LEGAL DESCRIPTION:

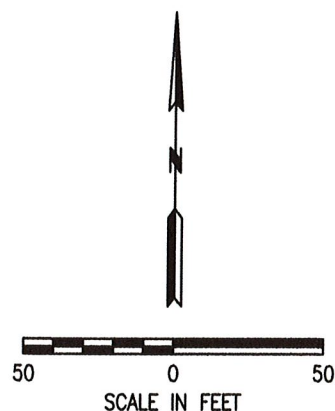
All that part of Lot 20, Southside Industrial Park - Lots 20 and 21, a subdivision in the City of Lee's Summit, Jackson County, Missouri, more particularly described as;  
Commencing at the Southeast corner of said Lot 20; thence North 88 degrees 05 minutes 37 seconds West, along the South line of said Lot 20, a distance of 247.18 feet; thence North 05 degrees 12 minutes 38 seconds East, a distance of 14.16 feet, to the Point of Beginning; thence North 05 degrees 12 minutes 38 seconds East, a distance of 300.64 feet; thence North 02 degrees 32 minutes 23 seconds East, a distance of 2.56 feet; thence South 87 degrees 57 minutes 02 seconds East, a distance of 15.00 feet; thence South 02 degrees 32 minutes 23 seconds West, a distance of 3.04 feet; thence South 05 degrees 12 minutes 38 seconds West, a distance of 227.07 feet; thence South 16 degrees 40 minutes 55 seconds West, a distance of 75.42 feet, to the Point of Beginning. Containing 3,999.84 square feet.

LOT 11  
LEMONE-SMITH BUSINESS  
AND RAIL CENTER, PLAT 8

RECEIVED

SEP 05 2019

Development Services



**LADWIG & ASSOCIATES, LLC.**

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



**Appl. #PL2019-292 – VACATION OF EASEMENT**  
**1695 SE Decker St**  
**Thompson Properties, LLC, applicant**

