

**ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN
MICHAEL A. EFFERTZ, TRUSTEE OF THE MICHAEL A. EFFERTZ TRUST,
EFFERTZ PROPERTIES, L.L.C., AND THE CITY OF LEE'S SUMMIT,
FOR THE KENSINGTON FARMS DEVELOPMENT**

This Annexation And Development Agreement ("Agreement") entered into this 14th day of December, 2004, by and between the City of Lee's Summit, Missouri, a municipal corporation (the "City"), and Michael A. Effertz, Trustee of the Michael A. Effertz Trust, and Effertz Properties, L.L.C. (the "Developer").

WHEREAS, the Developer is the owner of approximately 318 acres of real property located east of Prairie Lane, south of County Line Road and west of Ward Road, which is adjacent to the south and west of the existing City limits, and is legally described in Exhibit A (the "Property"); and

WHEREAS, the Developer proposes to develop the Property in accordance with the ordinances of the City; and

WHEREAS, the Developer desires for the City to extend its corporate boundaries and annex the Property; and

WHEREAS, prior to annexing the Property, the City and the Developer as parties hereto desire to define their duties and responsibilities to insure that in the event the City chooses, in its discretion, to annex the Property, that the parties' respective actions are coordinated in order to meet the shared objectives and minimize uncertainties and delays in the development process; and

WHEREAS, the City is authorized to enter into such agreements pursuant to Section 70.220 of the Revised Statutes of Missouri (2000); and

WHEREAS, Section 70.230 of the Revised Statutes of Missouri provides that the City may enter into such agreements by ordinance duly enacted; and

WHEREAS, the City is authorized to annex the Property pursuant to Chapter 71 of the Revised Statutes of Missouri.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Definitions.** Words or terms not defined elsewhere in this Agreement shall have the following definitions:
 - A. "**Detention Pond**" shall mean construction of an on-site controlled detention area of storm drainage and its regulated discharge to the downstream storm sewer system, in compliance with the Design and Construction Manual, and as approved by the City Engineer.

- B. **"Development"** shall mean the residential development proposed on the Property, commonly known as Kensington Farms, or any other proposal for development of the Property submitted to, and approved by, the City after annexation of the Property.
- C. **"Excess Flow Holding Basin"** shall mean a facility designed to store peak wastewater flows during wet weather events for the Property.
- D. **"Improvements"** shall mean the Road Improvements, the Sewer Improvements, the Water Line Improvements, the Detention Pond, and the Excess Flow Holding Basin.
- E. **"Interim Standards"** shall mean the reconstruction and/or improvement of certain roads described in this Agreement, as required to facilitate the construction of a future arterial road, pursuant to the following standards:
- (1) the removal of existing pavement as required, re-grading of the road and shoulders, and pavement construction;
 - (2) a minimum of twenty-four (24) feet of drivable pavement (two (2) 12-foot lanes consisting of six (6) inches of fly-ash treated sub-grade and six (6) inches base and two (2) inches surface asphalt) with centerline and side markings. Horizontal and vertical alignment and design speeds shall be approved by the Director of Public Works;
 - (3) a minimum of six (6) foot graded shoulders on both sides of the road;
 - (4) storm drainage facilities including any associated extensions and relocations of existing culverts or storm water crossings;
 - (5) all related ditching, seeding, and utility relocations; and
 - (6) modifications to the Interim Standards as follows:
 - (a) At the time of design, the Developer shall, at its own expense, conduct a geotechnical study, which shall evaluate existing subsurface conditions (including soil type, moisture content, swell potential, pavement sub-grade support, ground water and other associated conditions), and shall propose any changes or modifications to the Interim Standards. The study shall be submitted to the City and the City may require changes or modifications to the Interim Standards based on the geotechnical study.
 - (b) The Developer shall cooperate with the City to coordinate the design and construction of a portion of the Prairie Lane and Pryor Improvements with Cass County, which may result in changes or modifications to the Interim Standards.

- F. **"Land Use Applications"** shall mean all applications that must be filed by the Developer with the City pursuant to the City's Unified Development Ordinance ("UDO") to receive approval from the City to develop the Property, which will include, but is not limited to, applications for rezoning, preliminary and final development plan approval, and plat approval.
- G. **"Open Space"** shall mean not less than twenty three (23) acres of land that shall be set aside for the use of residents of the Development, at locations to be shown on the Land Use Applications and approved by the City.
- H. **"Park Land"** shall mean not less than twenty (20) acres of land that shall be conveyed to the City and managed by the City's Parks and Recreation Department as a public park, at a location to be shown on the Land Use Applications and approved by the City.
- I. **"Partial Divided Arterial Standards"** shall mean the construction of two permanent adjacent lanes of travel, including additional widening for permanent right-turn lanes, temporary left-turn lanes, permanent curb and gutters on one side of the roadway and sidewalks on one side of the roadway, pursuant to the following standards:
- (1) the removal of existing pavement as required, re-grading of the road and shoulders, and pavement construction;
 - (2) a minimum of twenty-four (24) feet of drivable pavement (two (2) 12-foot lanes consisting of six (6) inches of fly-ash treated sub-grade and ten (10) inches base and two (2) inches surface asphalt) with centerline and side markings as appropriate;
 - (3) horizontal and vertical alignment and design speeds shall be approved by the Director of Public Works and preliminary design of the entire roadway will be required to ensure proper alignments and drainage requirements;
 - (4) a minimum of six (6) foot graded shoulders adjacent to any travel lane unless adjacent to curb and gutter;
 - (5) storm drainage facilities including any associated extensions and relocations of existing culverts or storm water crossings;
 - (6) all related ditching, seeding, and utility relocations; and
 - (7) modifications to the Partial Divided Arterial Standards as follows:
 - (a) At the time of design, the Developer shall, at its own expense, conduct a geotechnical study, which shall evaluate existing subsurface conditions (including soil type, moisture content, swell potential, pavement sub-grade support, ground water and other associated conditions), and shall propose any changes or

modifications to the Partial Divided Arterial Standards. The study shall be submitted to the City and the City may require changes or modifications to the Partial Divided Arterial Standards based on the geotechnical study.

- (b) The Developer may minimize the use of temporary pavement for turn lanes if the existing facility can be used in conjunction with the new permanent facility.
- (c) Concrete paving may be used in lieu of asphalt for the permanent sections of roadway. The design of such a facility must be reviewed and approved by the City prior to construction.

J. **"Public Facility Land"** shall mean not less than five (5) acres of land that shall be dedicated to the City for the construction of a public facility for public safety (i.e. police or fire facilities) or a public park, to be determined by the City, at a location to be shown on the Land Use Applications and approved by the City.

K. **"Raintree Agreements"** shall mean:

- (1) The Development Agreement between Raintree Lake Corporation, Land Management Development Corporation, and the City of Lee's Summit, Missouri for the Raintree Lake Estates and Stoney Creek developments, which was executed on June 17, 1997, and amended on July 24, 2000.
- (2) The Development Agreement between Cumberland Properties, Inc. and the City of Lee's Summit, Missouri for the Fountains at Raintree development, which was executed on April 14, 2003.

L. **"Road Improvements"** shall mean the following public road and traffic improvements:

- (1) The following improvements to and along Prairie Lane and Pryor Road (**"Prairie Lane and Pryor Improvements"**), a portion of which may be changed or modified through coordination with Cass County:
 - (a) The improvement of Prairie Lane to Interim Standards from the southern property line of the Property north to County Line Road.
 - (b) The improvement of Pryor Road to Interim Standards from County Line Road north to the southern property line of the Napa Valley subdivision.
 - (c) The realignment of Prairie Lane to match Pryor Road. The design of the realignment shall follow the City's standards for arterial roadways. The section of existing Prairie Lane north of the new alignment shall be designed for single access to County Line Road.

The southern end of Prairie Lane shall be designed with a cul-de-sac which meets the City's standards.

- (d) Left-turn lanes on the northbound, southbound, eastbound and westbound approaches at the intersection of Prairie Lane/Pryor Road and County Line Road. The turn lanes on Pryor Road and Prairie Lane shall be twelve (12) feet in width, two hundred (200) feet in length, plus deceleration tapers, except that the eastbound and westbound left-turn lanes shall be twelve (12) feet in width, one hundred (150) feet in length, plus deceleration tapers.
 - (e) Southbound left-turn lanes on Prairie Lane at each of the entrances to the Development, which shall be twelve (12) feet in width, one hundred fifty (150) feet in length, plus deceleration tapers.
 - (f) Separate westbound left-turn and right-turn lanes at each of the access intersections to the Development. The turn lanes should extend to the first median break with room for deceleration tapers.
 - (g) A left-turn lane and right-turn lane on Pryor Road at the intersection of Pryor Road and M-150, which shall be twelve (12) feet in width, one hundred fifty (150) feet in length, plus deceleration tapers.
- (2) The following improvements to and along County Line Road ("**County Line Road Improvements**"):
- (a) The improvement of County Line Road to Interim Standards from the western end of the existing interim-built roadway at Creekview Drive west to the existing Prairie Lane/Pryor Road intersection.
 - (b) Westbound left-turn lanes on County Line Road at each of the access roads leading to the Development, which shall be twelve (12) feet in width, one hundred fifty (150) feet in length, plus deceleration tapers.
 - (c) An eastbound right-turn lane on County Line Road at the intersection of the primary access road to the Development along County Line Road, which shall be twelve (12) feet in width, one hundred fifty (150) feet in length, plus a deceleration taper.
 - (d) The northbound approach of the primary access road connecting to County Line Road shall be constructed with a designated left-turn lane and a shared through/right-turn lane. The left lane shall extend to the first intersection south of County Line Road.

(3) The following improvements to and along Ward Road ("**Ward Road Improvements**"):

- (a) The improvement of Ward Road to Interim Standards from County Line Road to the southern property line of the Property.
- (b) The improvement of Ward Road to Partial Divided Arterial Standards from M-150 south to County Line Road.
- (c) Northbound left-turn lanes and southbound right-turn lanes along Ward Road at each of the entrances leading into the Development, which shall be twelve (12) feet in width, one hundred fifty (150) feet in length, plus deceleration tapers.
- (d) Separate eastbound left-turn and right-turn lanes along Ward Road at each of the entrances to the Development, which shall be twelve (12) feet in width and two hundred (200) feet in length.
- (e) Northbound and southbound left-turn lanes along Ward Road at the intersections of Georgetown Drive and County Line Road, and a southbound left-turn lane at Drake Drive, being twelve (12) feet in width, one hundred fifty (150) feet in length, plus deceleration tapers.
- (f) Eastbound and westbound left-turn lanes on County Line Road at Ward Road, being twelve (12) feet in width, one hundred fifty (150) feet in length, plus deceleration tapers.

M. "**School Land**" shall mean not less than thirteen and one half (13.5) acres of land that shall be dedicated to the Raymore-Peculiar School District for the construction of a new school facility, at a location to be shown on the Land Use Applications and approved by the City.

N. "**Sewer Improvements**" shall mean the construction of a sanitary sewer system sized to provide for the entire watershed in which the Development is located.

O. "**Traffic Study**" shall mean a traffic study to be completed by or at the direction of the Developer which shall contain sufficient data and analysis, as reasonably required by the City, to analyze all traffic that is generated by all proposed development on the Property as well as all applicable surrounding development, and propose road and traffic improvements to serve all proposed development on the Property.

P. "**Water Line Improvements**" shall mean a twelve inch (12") water line to be constructed parallel to County Line Road from the eight inch (8") water line at the intersection of County Line Road and Pryor Road, east to the existing twelve inch (12") water line in front of the Stoney Creek Estates development.

2. **The Property and Annexation** The terms of this Agreement apply to the Property. The Property is contiguous to the existing corporate limits of the City at the date of execution of this Agreement. The Developer and the Developer's heirs, legal representatives, successors and assigns in the Property covenant that they shall cause an Irrevocable Voluntary Petition and Consent to Annexation (the "Annexation Petition") to be presented to the City Council of the City within six (6) months after execution of this Agreement, and upon delivery of notice from the City do all things necessary to cause the Property to be annexed into the City. The Developer and the Developer's heirs, legal representatives, successors and assigns in the Property covenant not to object to such annexation, and stipulate that this Agreement shall estop them individually and severally from making any objection to such annexation.
3. **Termination** This Agreement may be terminated in writing by either party, at its option, if the Property has not been annexed by the City within six (6) months from the date that the Annexation Petition is filed with the City.
4. **General Requirements for Improvements** Unless otherwise specified herein, the provisions set forth in this Section shall be applicable to the financing, design, engineering and construction of the Improvements to be constructed by the Developer as required by this Agreement.
 - A. **Requirement to design, engineer and construct** The Developer agrees to make the Improvements required by this Agreement at the times specified in the construction schedule to be approved pursuant to Section 4.C. below. The Improvements shall be made to ensure that, if the Property is annexed by the City and developed by the Developer, the impacts on City public services and facilities that are caused by or associated with anticipated development of the Property is borne by the Developer in an amount proportionate to its impacts. Notwithstanding anything in this Agreement to the contrary, the parties agree that the Developer's obligations under this Agreement, including, without limitation, the finance, design, engineering and construction of the Improvements and the dedication of the Park Land, Public Facility Land, School Land and other property, shall be contingent upon, and in conjunction with, the development of the Property. The parties acknowledge that the Improvements are based upon the estimated impacts that development of the Property will have on the public services and facilities of the City. The parties acknowledge that, to the extent Developer's Land Use Applications for the Property substantially vary from the HNTB Preliminary Lotting Plan, dated October 25, 2004 (but subject to Section 13 below) the City may require the Developer to design, engineer, and construct additional public facilities as the City considers and approves the Land Use Applications for the Property.
 - B. **Applicable Standards and Approvals** The Improvements shall be designed, engineered, constructed, placed into service and dedicated to the City or School District, if applicable, in accordance with the ordinances of the City, including, but not limited to, the City's Design and Construction Manual then in effect at the time the Improvements are made, and any other applicable rules, requirements

and standards established by the City. The Developer shall be responsible for obtaining approval for any portion of the Improvements that require approval of another jurisdiction, including, but not limited to, Jackson County, Cass County and the State of Missouri. The City agrees to cooperate in good faith with the Developer in obtaining said required approvals from other jurisdictions for the Improvements.

- C. Timing of Improvements. Within ninety (90) days after approval of the annexation ordinance by the City Council, the Developer shall submit to the City a proposed construction schedule for the Improvements to be constructed by the Developer. The City Engineer shall approve the construction schedule as presented or return the schedule with comments, to be resubmitted by the Developer until approved by the City Engineer. The construction schedule approved by the City Engineer shall be incorporated into this Agreement by addendum. The Improvements may be phased along with phases in the Development. The City shall issue no building permits, except for permits for a limited number of model homes, as determined by the Director of Planning and Development, for any structures within a phase until the City has issued a Certificate of Substantial Completion for each of the Improvements associated with the phase. In the course of approving the Land Use Applications, the City and the Developer shall enter into a written addendum to this Agreement setting forth the Development phasing schedule which allows for the phased construction of the Improvements.
- D. Design Phase. The Developer shall meet with City staff regarding preliminary design of the Improvements to be constructed by the Developer pursuant to this Agreement and shall submit all preliminary design documents to the City for approval before proceeding with the construction of the Improvements. On the basis of such approved preliminary design documents, the Developer shall:
- (1) Prepare detailed drawings, plans, design data, estimates, and technical specifications to show the character and scope of the work to be performed by contractors for all Improvements ("**Plans**").
 - (2) Furnish to the City copies of such Plans and other documents and design data as may be required to secure approval of such governmental authorities as may have jurisdiction over design criteria applicable to the Improvements.
 - (3) Furnish the number of approval copies of the final Plans for the Improvements as the City may require.
 - (4) Ensure that the Plans conform to federal and state laws and City ordinances.
- E. Construction. The Developer will construct all the Improvements according to the approved Plans. All final Plans shall be presented to the City for approval and

incorporated into this Agreement by addendum. Incorporation of the final Plans may occur administratively, as approved by City staff, and no action of the Council will be required to incorporate the final Plans.

F. Right of Way Acquisition.

- (1) The Developer shall be responsible for acquiring or negotiating for the donation of all right-of-way or easements that are needed to construct the Improvements, including all necessary temporary construction easements.
- (2) In the event that the Developer is unable, after good faith negotiations, to acquire some or all of the right-of-way or easements necessary for those Improvements over which the City exercises jurisdiction, the City agrees, at its sole discretion, to enter into good faith negotiations or exercise its power of eminent domain to acquire the right-of-way or easements necessary for Improvements over which the City exercises jurisdiction. If a TDD or CID is used to design, engineer and/or construct some or all of the Improvements, the City will not exercise its power of eminent domain to acquire the right-of-way or easements that may otherwise be acquired for any of the Improvements by such TDD or CID. The Developer acknowledges that any City commitment to condemn right-of-way or easements pursuant to this subsection cannot extend to right-of-way for Improvements that will be part of the MoDOT highway system or Cass County roadway system.
- (3) In the event the City agrees to enter into good faith negotiations or exercise its power of eminent domain to acquire the right-of-way or easements necessary for Improvements over which the City exercises jurisdiction, prior to beginning any work to acquire said right-of-way or easements, the Developer shall first deposit into escrow with the City the estimated acquisition costs. Acquisition costs ("**Acquisition Costs**") shall include, but shall not be limited to: the actual price paid for all right-of-way or easements, whether determined by negotiation or eminent domain; expenses related to the establishment of acquisition values of right-of-way or easements, including appraisals; legal fees, other expenses paid to third parties, and expenses incurred by the City related to acquisition of right-of-way or easements, whether through negotiation or eminent domain; and any other reasonable and necessary costs or expenses related to acquisition of the right-of-way or easements. The City may require that the Developer enter into a separate funding acquisition agreement with the City to provide for the terms and conditions under which the Developer will place all estimated Acquisition Costs in escrow with the City prior to commencement of condemnation for right-of-way or easements. The acquisition funding agreement shall obligate the Developer to reimburse the City in full for all Acquisition Costs that result from the City's condemnation process for any portion of the Improvements.

- (4) The Developer agrees to dedicate property owned by the Developer to the City, at no cost to the City, for additional right-of-way along the outer boundaries of the Property. The additional right-of-way to be dedicated shall be that amount necessary to result in City-owned right-of-way of fifty feet (50') from the centerline of County Line Road, Ward Road, and Prairie Lane (50' from centerline of realigned Prairie Lane), or additional amounts that may be required for turn lanes or drainage structures, along the outer boundary of the Property. The Developer shall also dedicate, at no cost to the City, that property owned by the Developer necessary for the Road Improvements.
- G. Utility Relocation. The parties agree that all costs associated with relocating any existing utilities from any existing public or private easement, as a result of construction of the Improvements, shall be paid by the Developer, and are not the responsibility of the City. The parties agree that all costs associated with relocating any existing utilities from any existing right-of-way as a result of construction of the Improvements, which are not paid by a utility company, shall be paid by the Developer and are not the responsibility of the City.
- H. Inspections and Change Orders. The Developer agrees to permit the City, or its designees, to inspect, observe, and oversee the construction of all Improvements in order to ascertain and determine that the standards of the City have been met. The Developer shall obtain the City's approval of all change orders materially altering the design or specifications of the Improvements.
- I. Dedication. Upon completion, inspection and approval of the Improvements by the City, the Developer will dedicate the Improvements to the City, for its use, operation and maintenance. The City shall be under no obligation to accept the dedication or conveyance of any Improvements constructed pursuant to this Agreement until it has been inspected and approved to the satisfaction of the City. Upon written notice of the inspection and approval of the Director of Public Works, the Developer agrees to convey all the Improvements to the City free and clear of all liens and encumbrances or other obligations. Said conveyance shall be by appropriate document, and shall be sufficient, in the opinion of the City Attorney, to convey marketable title of record, as set forth in Title Standard 4 of the Missouri Bar.
- J. Transportation Development Districts and Community Improvement Districts. The obligations imposed upon the Developer in this Agreement may be satisfied in whole or in part by a transportation development district or districts ("TDD") or a community improvement district or districts ("CID") formed by, or with the cooperation of, the Developer. If one or more TDD or CID is used to satisfy obligations imposed upon the Developer by this Agreement, the form and scope of the TDD(s) or CID(s) and the projects that are to be constructed by the TDD(s) or CID(s) shall be approved by the City prior to formation of the TDD(s) or CID(s). In instances where the Developer is authorized by this Agreement to use TDD(s) or CID(s) to satisfy obligations of this Agreement, and TDD(s) or CID(s)

are actually formed by, or with the cooperation of, the Developer, for such purpose, references to the Developer in this Agreement shall include the TDD(s) or CID(s).

5. **Road Improvements**

- A. **General Requirements**. The Developer will design, engineer and construct the Road Improvements in accordance with Section 4 of this Agreement.
- B. **Release of Ward Road Escrow**. The Raintree Agreements provide for the deposit of certain funds with the City for the purpose of making certain improvements to Ward Road south of Highway 150 ("**Ward Road Escrow**"). The City agrees to reimburse the Developer from the Ward Road Escrow, as funds become available, for the costs and expenses associated with the design, engineering and construction of the Ward Road Improvements. Prior to reimbursement of any of the Ward Road Escrow to the Developer, the Developer shall submit to the City a statement of costs and expenses associated with the Ward Road Improvements to demonstrate the actual construction costs of the Ward Road Improvements. In addition, the City shall not provide reimbursement to the Developer of any of the Ward Road Escrow until the Developer provides lien waivers indicating that all contractors, engineers or other parties that have provided goods or services for the Ward Road Improvements have been paid in full by the Developer.
- C. **Additional Road Improvements from Traffic Study**. At the time the first Land Use Application is filed with the City, the Developer shall submit the Traffic Study. The City shall review the Traffic Study after its submission. Based on the Traffic Study and the City's own analysis of traffic conditions in and around the Development, the City shall require the Developer to design, engineer and construct any additional road improvements that are reasonably required to serve the proposed development in addition to the Road Improvements required by this Agreement ("**Additional Road Improvements**"). The Developer shall design, engineer and construct the Additional Road Improvements as reasonably required by the City, and the City shall issue no building permits for any structures on the Property, or in the appropriate phases of development on the Property as approved by the City, except for permits for a limited number of model homes, as determined by the Director of Planning and Development, until the City has issued a Certificate of Substantial Completion for all of the Additional Road Improvements.

6. **Water and Sewer Improvements and Service**

- A. **General Requirements**. The Developer shall design, engineer, and construct the Water Line Improvements and the Sewer Improvements in accordance with Section 4 of this Agreement.
- B. **Excess Flow Holding Basin**. The Developer shall design, engineer, and construct the Excess Flow Holding Basin in accordance with Section 4 of this Agreement.

The Developer shall include the Excess Flow Holding Basin on all Land Use Applications for the Property.

- C. Water and Sewer Service. Cass County Water District No. 3 ("District #3") will provide water service to the Property under the conditions contained herein. The Developer shall ensure that the water infrastructure improvements designed and constructed by the Developer for use by District #3 to provide water to the Development shall meet City's standards regarding infrastructure for the storage and conveyance of water as set forth in the City's Design and Construction Manual and City Code. The City shall provide sewer service to the Property in accordance with its ordinances and regulations, except as otherwise provided herein. Prior to the issuance of any building permits for any structure in the Development, the Developer shall be responsible for procuring a written intergovernmental agreement between the City and District #3 which provides as follows:

- (1) That District #3 shall at all times comply with the City's fire flow standards on the Property.
- (2) That District #3 shall be responsible for billing and collecting for sewer service provided by the City to the Development and that said sewer service collections shall be timely transmitted to the City upon collection by District #3.
- (3) That District #3 will disconnect water service to any customer for nonpayment of sewer service charges.
- (4) That District #3 authorizes the City to provide sewer service to the Property and releases its rights to provide sewer service to the Property.

7. Other Development Requirements

- A. School Land. Within sixty (60) days of the issuance of three hundred fifty (350) building permits for construction of structures on the Property, the Developer shall dedicate the School Land to the Raymore-Peculiar School District at no cost to the School District. The Developer shall include the School Land in all Land Use Applications. Such dedication may occur upon recordation of a plat that includes the School Land or at another time as provided in a subsequent written approval by the City.
- B. Open Space. The Developer shall include the Open Space in all Land Use Applications.
- C. Park Land. The Developer shall convey the Park Land to the City at no cost to the City. Before any building permits are issued for any structure on the Property, the City and the Developer shall enter into a written lease/donation agreement which will provide for the initial lease of the Park Land to the City and the conveyance of the Park Land to the City upon the earlier to occur of the issuance

of three hundred fifty (350) building permits for construction of structures on the Property or the five (5) years anniversary date of execution of this Agreement by the parties. The Developer shall include the Park Land in all Land Use Applications.

- D. Public Facility Land. Within sixty (60) days of the issuance of three hundred fifty (350) building permits for construction of structures on the Property, the Developer shall dedicate the Public Facility Land to the City at no cost to the City. The Developer shall include the Public Facility Land in all Land Use Applications. Such dedication may occur upon recordation of a plat that includes the Public Facility Land or at another time as provided in a subsequent written approval by the City.
- E. Detention Pond. The Developer shall design, engineer, and construct the Detention Pond in accordance with Section 4 of this Agreement. The Developer shall include the Detention Pond on all Land Use Applications for the Property.

8. **Indemnification.**

- A. General Indemnity. The Developer shall indemnify, release, defend, be responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any act, error, omission, or intentional act of the Developer or its agents, employees, or subcontractors, to the extent such loss or injury occurs during the construction of the Improvements expressly authorized herein; provided, however, that the Developer need not save harmless the City from claims, demands, losses and expenses arising out of or to the extent caused by the sole negligence of the City, its employees or agents.
- B. No Limitations or Waiver. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement, or by a limitation of the amount or type of damages or compensation payable by or for the Developer under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by the Developer. The City does not, and shall not, waive any rights against the Developer which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by the Developer, of any of the insurance policies described in this Agreement. In addition, the parties agree that this indemnification by the Developer shall not be limited by reason of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

- C. Notification of Claims. With respect to any claims which are subject to indemnity hereunder, the Developer shall immediately notify the City of any and all claims filed against the Developer or the Developer and the City jointly, and shall provide the City with a copy of the same.
- D. Use of Independent Contractors. The fact that the Developer carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, the Developer's duty of defense and indemnification under this section.

9. **Insurance.**

- A. General Provisions. Prior to commencing construction of the Improvements, the Developer shall file with the City evidence of liability insurance that is consistent with the requirements of the City's Design and Construction Manual and in the amounts set forth below.
- B. Limits and Coverage. Bodily Injury and Property Damage, Commercial General Liability Coverage – Occurrence Form unless otherwise agreed by the City:
 - (1) Commercial General Liability: Minimum \$1,000,000 each occurrence limit for bodily injury and property damage; \$1,000,000 policy aggregate; \$1,000,000 products and completed operations aggregate.
 - (2) Automobile Liability: Minimum \$1,000,000 combined single limit for bodily injury and property damage; applicable to owned, non-owned and hired automobiles.
 - (3) Workers' Compensation: As required by state statute; if exempt, must submit letter stating the exemption; employer's liability \$1,000,000 each occurrence.
 - (4) Umbrella/Excess Liability: An umbrella or excess liability policy in the minimum amount of \$1,000,000 each occurrence and aggregate; at least as broad as the underlying general liability, automobile liability and employer's liability.

The following endorsements shall attach to the policy:

- (1) The policy shall cover personal injury as well as bodily injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad form property damage liability shall be afforded.
- (4) The City shall be listed as an additional insured.
- (5) Standard form of cross-liability shall be afforded.

- (6) The policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

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

- C. Use of Contractors and Subcontractors. The Developer shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Section and the City's Design and Construction Manual. Said insurance shall be maintained in full force and effect until the completion of construction of the Improvements, and issuance of a Certificate of Substantial Completion by the City or MoDOT, as appropriate.
- D. Workers' Compensation. The Developer shall ensure that all contractors or subcontractors performing work for the Developer obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, the Developer shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with State laws, and to fully protect the City from any and all claims arising out of occurrences during construction of the Improvements. The Developer hereby indemnifies the City for any damage resulting to it from failure of either the Developer or any contractor or subcontractor to obtain and maintain such insurance. The Developer further waives its rights to subrogation with respect to any claim against the City for injury arising out of performance under this Agreement. The Developer shall provide the City with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the Improvements.
10. Bonds The Developer shall, or shall ensure that its contractors shall, provide for the following bonds for the Improvements and all other public infrastructure improvements that are constructed by the Developer and dedicated to the City.
- A. Performance Bond and Payment Bond. Prior to commencement of construction and ending upon acceptance of the Improvements by the City, the Developer shall, or shall ensure that its contractors shall, maintain a performance and payment bond in a form approved by the City Attorney, in an amount equal to the cost of the Improvements covered by such bond, as determined by the City Engineer, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The performance and payment bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.

- B. Maintenance bonds. Prior to acceptance and dedication of the Improvements, the Developer shall, or shall ensure that its contractors shall, provide a maintenance bond in a form approved by the City Attorney, in an amount equal to the full cost of the Improvements as approved by the City Engineer, which shall be in effect for a term of two (2) years from the date that the City, issues a certificate of substantial completion for such Improvements covered by the bond, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The performance and payment bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.
- C. Indemnity for failure to provide bonds. The Developer shall, or shall ensure that its contractors shall, indemnify the City and its officers and employees for any damage resulting to the City, its officers or employees from failure of the Developer to provide the bonds set forth in this Section.
11. Prevailing Wage. The Developer shall comply with all laws regarding the payment of prevailing wages to contractors or subcontractors of the Developer, and the Developer shall indemnify the City for any damage resulting to the City from failure of either the Developer or any contractor or subcontractor to pay prevailing wages pursuant to applicable laws.
12. Remedies; Specific Performance. Each party to this Agreement agrees that if it fails to perform when due any act required by this Agreement to be performed, then, in addition to whatever other remedies are available to the non-defaulting parties hereto, the non-defaulting party shall have the right to enforce specific performance of this Agreement against the defaulting party, and such non-defaulting party shall be entitled to its reasonable costs, attorneys' fees and court costs in connection with such enforcement. No right or remedy conferred upon or reserved to any party in this Agreement is intended to be exclusive of any rights or remedies, and each and every right and remedy shall be cumulative and shall be in addition to every right and remedy given now or hereafter existing at law or in equity. In the event this Agreement or the Petition is litigated, venue shall be proper only in the Circuit Court of Jackson County, and the parties expressly waive any rights to venue inconsistent therewith.
13. City Requirements and Prior Approval. The Developer agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's Unified Development Ordinance, the Design and Construction Manual, and all planning or infrastructure requirements related to the development of the Property. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which the Developer must comply and does not in any way constitute prior approval of any future proposal for development.
14. Recording and Binding Effect. The Developer shall file a copy of this Agreement or a memorandum of this Agreement in the office of the Recorder of Deeds for Jackson County, Missouri ("Office") and shall provide proof of recording to the City. This Agreement shall be binding on and inure to the benefit of the parties and their respective legal representatives, successors and assigns. This Agreement shall be governed by and

construed according to the laws of the State of Missouri. Time is of the essence with respect to the duties and obligations set forth herein. Upon request by Developer made from time to time, the City shall prepare and deliver to Developer an estoppel letter confirming for the benefit of any purchaser or lender whether the Developer is or is not in default under this Agreement and verifying the status of Developer's performance of its obligations under this Agreement.

15. **Representations**. The Developer represents that it owns the property described in **Exhibit A** on the date that this Agreement is executed. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions; and (d) has not assigned or transferred any claim against the other party that is the subject of this Agreement.
16. **No Waiver of Breach**. No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
17. **Rules of Construction**. Each party to this Agreement has received independent legal advice from its attorneys of choice with respect to entering this Agreement and the advisability of agreeing to the provisions herein. Because each party has had its respective legal counsel review the terms of this Agreement, the normal rules of construction to the effect that any ambiguities in its terms be resolved against the drafting party shall not be employed with regard to issues of its validity, interpretation, performance or enforcement.
18. **Assignment**. The Agreement may not be assigned or transferred, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the other parties, which consent shall not be unreasonably withheld. Notwithstanding any of the foregoing, Developer shall have the right to assign its obligations under this Agreement to Pulte Homes of Greater Kansas City, Inc. ("Pulte"), or any parent, subsidiary, merged entity, or affiliate, including an entity formed by Pulte or Developer for the sole purpose of further development of this tract, upon written notice to the City. The Developer shall request the assignment of the Agreement, with the consent of the City, to any person, firm, corporation, or entity to which any ownership interest in the Property is transferred after the date of execution of this Agreement.
19. **Entire Agreement**. This Agreement and the acts provided for herein is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all parties. The underlined paragraph headings are for the convenience of the reader, and are not intended to modify, expand or limit the material terms of each section or subsection in this Agreement. All Exhibits referenced in this Agreement are incorporated into this Agreement by such reference as if set forth in full in the text of this Agreement.

20. **Severability.** Any provision of this Agreement which is not enforceable according to law will be severed herefrom, and the remaining provisions shall be enforced to the fullest extent permitted by law.
21. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

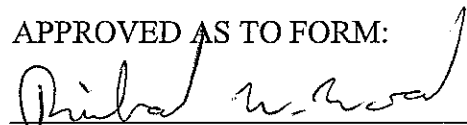
CITY OF LEE'S SUMMIT


Steven Lewis, City Administrator

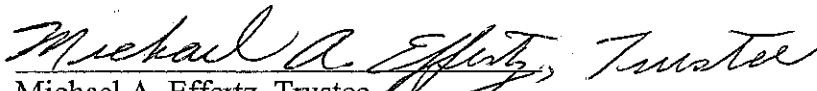
ATTEST:


Denise Chisum, City Clerk

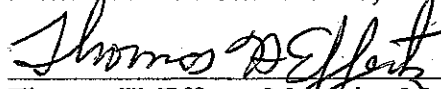
APPROVED AS TO FORM:


Richard W. Wood, Deputy City Attorney

**MICHAEL A. EFFERTZ, TRUSTEE OF THE
MICHAEL A. EFFERTZ TRUST**


Michael A. Effertz, Trustee

EFFERTZ PROPERTIES, L.L.C.


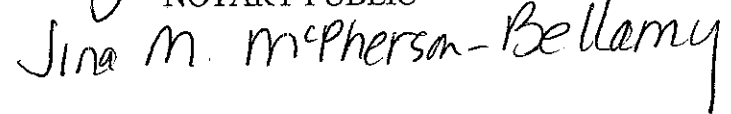

Thomas H. Effertz, Managing Member

Notary for City of Lee's Summit

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this 14th day of December, 2004, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Steven Lewis, the City Administrator of the City of Lee's Summit, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such person duly acknowledged the execution of the same to be the act and deed of said City.

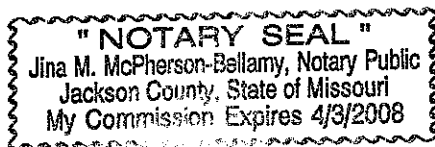
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.


NOTARY PUBLIC


My Commission Expires:

4/3/2008

[SEAL]



Notary for the Michael A. Effertz Trust

STATE OF ~~MISSOURI~~ ^{Kansas})
COUNTY OF Johnson) ss.

BE IT REMEMBERED, that on this 6th day of December, 2004, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Michael A. Effertz, Trustee of the Michael A. Effertz Trust, who is personally known to me to be the same person who executed the within instrument on behalf of Michael A. Effertz Trust, and such person duly acknowledged the execution of the same to be the act and deed of the Michael A. Effertz Trust.

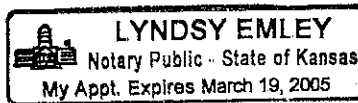
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Lyndsy Emley
NOTARY PUBLIC

My Commission Expires:

3/19/05

[SEAL]



Notary for Effertz Properties, L.L.C.

STATE OF ^{Kansas}MISSOURI)
COUNTY OF ^{Johnson}) ss.

BE IT REMEMBERED, that on this 6th day of December, 2004, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Thomas H. Effertz, the Managing Member of Effertz Properties, L.L.C., who is personally known to me to be the same person who executed the within instrument on behalf of Effertz Properties, L.L.C., and such person duly acknowledged the execution of the same to be the act and deed of Effertz Properties, L.L.C.

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

Lyndsy Emley
NOTARY PUBLIC

My Commission Expires:

3/19/05

[SEAL]

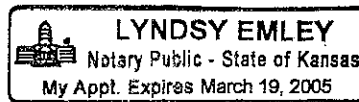


EXHIBIT A

The north half of Section 1, Township 46, Range 32, in Cass County, Missouri. Contains 318.72 Acres, more or less, subject to existing roads and easements of records.