

# REVISED

---

CITY OF CLAYTON BOARD OF ALDERMEN  
**EXECUTIVE SESSION – 6:00 P.M.**  
TUESDAY, JUNE 9, 2015  
CITY HALL, COUNCIL CHAMBERS, 2<sup>ND</sup> FL.  
10 N. BEMISTON AVENUE

---

CITY OF CLAYTON BOARD OF ALDERMEN AGENDA  
TUESDAY, JUNE 9, 2015 – 7:00 P.M.  
COUNCIL CHAMBERS - 10 N. BEMISTON AVENUE

---

## ROLL CALL

## MINUTES – May 26, 2015

## REPORT FROM THE CITY MANAGER

1. Motion – To approve a liquor license for B.O.S.S. Eat, LLC (dba Barrister’s) located at 7923 Forsyth Boulevard.
  - *The applicant (new owner) is requesting a liquor license to sell all kinds of intoxicating liquor at retail by the drink, including Sundays.*

## UNFINISHED BUSINESS

2. Ordinance – To approve a modification to the Municipal Traffic Code Related to On-Street Parking in the 7400 block(s) of the Moorlands (Byron Place, Parkdale Avenue, Buckingham Drive, Oxford Drive, and York Drive). (Bill No. 6498)
  - *To consider parking restrictions in the 7400 blocks of the Moorlands.*

## REPORT FROM THE CITY MANAGER (cont’d)

2. **Motion – Regarding the modification to the Municipal Traffic Code Related to On-Street Parking in the 7400 block(s) of the Moorlands.**

## PUBLIC HEARING

1. Ordinance – To approve rezoning at 111 N. Central Avenue from R-3, One and Two Family Dwelling District to C-2, General Commercial District. (Bill No. 6499)
2. Ordinance – To approve rezoning at 25 N. Central Avenue from High Density Commercial (HDC) and Central Business District (CBD) Core Overlay District (COD) to a Planned Unit Development District (PUD). (Bill No. 6500)
  - *To consider approvals for rezonings and a PUD for the Opus Development Company, LLC, to allow the construction of a mixed-use development at 25 North Central Avenue and a 30-space surface parking lot at 111 North Central Avenue.*
3. Ordinance – To approve a subdivision plat at 25 N. Central Avenue. (Bill No. 6501)
  - *To consider an application for a subdivision plat in support of the development of a new mixed-use project.*
4. Ordinance – To approve a petition requesting the formation of the 25 North Central Community Improvement District (CID) and to approve a Redevelopment Agreement. (Bill No. 6502)
  - *To consider a petition request submitted by 25 NC, LLC for the formation of a CID and to consider approving the Redevelopment Agreement.*

# REVISED

## REPORT FROM THE CITY MANAGER *(cont'd)*

1. Ordinance – To approve the 2<sup>nd</sup> Quarter FY2015 Budget amendment. (Bill No. 6503)
  - *The City of Clayton reviews and makes adjustments to its budgeted revenues and expenditures on a quarterly basis to respond to changes as the fiscal year progresses and to update the Board regarding budgetary issues.*
2. Ordinance – To approve an amendment to Section 605.280, Relating to Parades and Assemblies. (Bill No. 6504)
  - *The proposed ordinance would amend the City's existing parade and assembly regulations to include the addition of Subsections A(11) and (12).*
3. Ordinance – To approve an amendment to Chapter 215, Section 215.156, Entitled Breaching Barricade or Police Line. (Bill No. 6505)
  - *The proposed ordinance would ensure that people do not enter into a secured area that is being controlled by public safety personnel.*

## ADJOURNMENT

**Subject to a motion duly made in open session and a roll call vote pursuant to Section 610.022 the Board of Aldermen may also hold a closed meeting, with a closed vote and record for one or more of the reasons as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, negotiation of a contract pursuant to Section 610.021(12) RSMO., proprietary information pursuant to Section 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO.**

*Agenda topics may be added or deleted at any time prior to the Board of Aldermen meeting without further notice. To inquire about the status of agenda topics, call 290.8469. Individuals who require an accommodation (i.e., sign language, interpreter, listening devices, etc.) to participate in the meeting should contact the City Clerk at 290.8469 or Relay Missouri at 1.800.735.2966 (TDD) at least two working days prior to the meeting.*

# THE CITY OF CLAYTON

Board of Aldermen  
City Hall – 10 N. Bemiston Avenue  
May 26, 2015  
7:00 p.m.

## Minutes

Mayor Sanger called the meeting to order and requested a roll call. The following individuals were in attendance:

Aldermen: Cynthia Garnholz, Mark Winings, Joanne Boulton, Alex Berger III, Rich Lintz, and Ira Berkowitz.

Mayor Sanger  
City Manager Owens  
City Attorney O'Keefe

**Alderman Boulton moved to approve the May 12, 2015 minutes. Alderman Winings seconded.**

**The motion to approve the minutes passed unanimously on a voice vote.**

## PUBLIC REQUESTS AND PETITIONS

Elizabeth Ruskos, resident on Westwood Drive, addressed the Board and inquired about the homeless people living (or seen) in the old Schnucks building and asked if anything new will be done about the site.

Mayor Sanger explained that the property is privately owned and has been empty for 14 years. There had been potential tenants in the past but nothing firm.

City Manager Owens requested that Ms. Ruskos report any homeless activity to the police department. He added that the building should be secure to prevent anyone from going inside.

Mayor Sanger congratulated the 2014-2015 Mayor's Youth Advisory Committee for an excellent year. The 12 juniors and seniors of Clayton High School were recognized for their hard work and commitment on their project – creating websites for the Hillcrest, Ellenwood, Clayshire, Clayton Gardens, and Skinker Heights neighborhoods. Miceala Stoner was presented with an award for Outstanding Service and Commitment.

## A PUBLIC HEARING AND ORDINANCE TO CONSIDER A SUBDIVISION PLAT FOR 8500 MARYLAND AVENUE

**Mayor Sanger opened the public hearing and requested proof of publication.**

City Manager Owens reported this is a public hearing and subsequent ordinance to consider approving a subdivision plat.

On November 7, 2014, the City of Clayton received an application, plat and supporting documents from David Braswell, Partner, Covington Realty Partners, owner of 8500 Maryland Avenue, for a subdivision plat in support of the development of a new mixed-use project.

The project consists of the demolition of the existing structure and the construction of a 273,500 square foot, five-story building located on top of a two-level, partially below grade parking structure. The building contains 4,526

05-26-15 BOA Minutes

April 14, 2015

Page 1 of 8

square feet of ground floor retail and live/work units, 229 residential units, and 352 parking spaces. The building will be located entirely within the City of Clayton. The Ladue portion of the property will be developed with a 10-foot multi-use path and linear garden connecting Maryland Avenue and the Centennial Greenway.

The plat, as presented, provides for a 5,883 right-of-way dedication to the City along Maryland and Gay Avenues to allow the installation of new streetscape and the widening of Maryland Avenue. The plat does not consolidate or create any new lots. The property will measure 2.3 acres after approval of the right-of-way dedication.

The plat also allows for new ingress/egress and maintenance easements for the multi-use path and greenway connection, and a right-of-way dedication to the City of Ladue along Maryland Avenue. These provisions will be considered and approved separately by the City of Ladue. The plat identifies multiple utility easements that will be vacated. Staff has recommended some minor changes to the plat pertaining to the vacated easements, and the applicant has agreed to make the requested revisions.

The Plan Commission reconsidered this request at its April 6, 2015 meeting and voted unanimously to recommend approval.

Recommendation: If the applicant submits a revised plat which can be reviewed and approved by staff prior to the meeting, staff recommends approving the plat. If the revised plat cannot be reviewed and approved by staff prior to the meeting, staff recommends opening the public hearing and continuing this item to the next available meeting

**Alderman Winings recused himself from the meeting.**

David Braswell, Covington Realty Partners, 135 N. Meramec Avenue, addressed the Board stating that they have provided the City with the revised plats.

**Mayor Sanger closed the public hearing.**

**Alderman Garnholz introduced Bill No. 6496, an ordinance to consider approving a subdivision plat for 8500 Maryland Avenue to be read for the first time by title only. Alderman Boulton seconded.**

**City Attorney O'Keefe reads Bill No. 6496, an Ordinance Providing for the Approval of a Plat of Certain Property Generally Located at 8500 Maryland Avenue in the City of Clayton, Missouri for the first time be title only.**

**The motion passed unanimously on a voice vote.**

**Alderman Garnholz moved that the Board give unanimous consent to consideration for adoption of Bill No. 6496 on the day of its introduction. Alderman Boulton seconded.**

**The motion passed unanimously on a voice vote.**

**Alderman Garnholz introduced Bill No. 6496, an Ordinance Providing for the Approval of a Plat of Certain Property Generally Located at 8500 Maryland Avenue in the City of Clayton, Missouri to be read for the second time by title only. Alderman Boulton seconded.**

**City Attorney O'Keefe reads Bill No. 6496, an Ordinance Providing for the Approval of a Plat of Certain Property Generally Located at 8500 Maryland Avenue in the City of Clayton, Missouri for the second time be title only.**

**Alderman Garnholz – Aye; Alderman Boulton – Aye; Alderman Berger – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; and Mayor Sanger – Aye. The bill was adopted and became Ordinance No. 6371 of the City of Clayton.**

**Alderman Winings rejoined the Board.**

**A PUBLIC HEARING AND ORDINANCE TO CONSIDER A SUBDIVISION/LOT CONSOLIDATION PLAT FOR 123 AND 125 GAY AVENUE**

**Mayor Sanger opens the public hearing and requests proof of publication.**

City Manager Owens reported that this is a public hearing and subsequent ordinance to consider approving a lot consolidation plat for the consolidation of two parcels located in the Colonial Park Subdivision.

On April 23, 2015, the City of Clayton received an application, plat and supporting documents from Robert Slavin, co-owner of Slavin Runyon, LLC, owner of 123 & 125 Gay Avenue, for a lot consolidation plat. This same request was approved by the Board of Aldermen on January 14, 2014; however, the plat was not filed with St. Louis County and has subsequently expired. Recommendation is to approve the Plat.

Kelly Christner, resident, addressed the Board stating that the property abuts her property and that she has experienced issues with the building.

**Mayor Sanger closed the public hearing.**

**Alderman Garnholz introduced Bill No. 6497, an ordinance to consider approving a subdivision plat for 123 and 125 Gay Avenue to be read for the first time by title only. Alderman Boulton seconded.**

**City Attorney O’Keefe reads Bill No. 6497, an Ordinance Providing for the Approval of a Plat to Consolidate Property Generally Located at 123 and 125 Gay Avenue in the City of Clayton, Missouri for the first time by title only.**

**The motion passed unanimously on a voice vote.**

**Alderman Garnholz moved that the Board give unanimous consent to consideration for adoption of Bill No. 6497 on the day of its introduction. Alderman Winings seconded.**

**The motion passed unanimously on a voice vote.**

**Alderman Garnholz introduced Bill No. 6497, an ordinance to consider approving a subdivision plat for 123 and 125 Gay Avenue to be read for the second time by title only. Alderman Boulton seconded.**

**City Attorney O’Keefe reads Bill No. 6497, an Ordinance Providing for the Approval of a Plat to Consolidate Property Generally Located at 123 and 125 Gay Avenue in the City of Clayton, Missouri for the second time by title only.**

**Alderman Garnholz – Aye; Alderman Boulton – Aye; Alderman Winings – Aye; Alderman Berger – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; and Mayor Sanger – Aye. The bill was adopted and became Ordinance No. 6372 of the City of Clayton.**

**AN ORDINANCE TO CONSIDER APPROVING A MODIFICATION TO THE MUNICIPAL TRAFFIC CODE RELATED TO ON-STREET PARKING IN THE MOORLANDS SUBDIVISION**

Mayor Sanger reported that the Board and staff has received a number of requests for the City to reconsider voting on this item. He stated that the Board will not be voting tonight because they would like to give the public an opportunity to be heard and asks that the audience do not approach the Board to repeat a comment.

City Manager Owens reported that late last year, the City was requested by residents in the 7400 blocks of several streets in the Moorlands to initiate tighter on-street parking restrictions for parkers that do not reside in or are not visiting residents in the 7400 blocks. In response, the Public Works Department surveyed the residents in the 7400 blocks of the Moorlands to determine the level of desire for tighter restrictions. Based on those results, on-street parking was restricted to residential parking only from 10pm – 6am beginning the first week of January on a trial basis.

At the end of the trial period, the Public Works Department again surveyed the residents in the 7400 blocks of the Moorlands as to whether or not the temporary on-street parking restrictions should be made permanent. Exhibits A and B, attached, indicate the results of the survey regarding the trial on-street parking restrictions. Support for making the temporary restrictions permanent was sporadic. In addition, a couple of letters have been received from the 7500 Block of Oxford Drive opposing the proposed restrictions. Based on the results of this residential input, the Public Works Department is recommending the Board of Aldermen not adopt the trial parking restrictions as permanent restrictions. Should the Board of Alderman desire to proceed with making the restrictions permanent, an ordinance has been prepared to do so.

Passage of this ordinance would be necessary to codify the existing temporary on-street parking restrictions posted in the Moorlands subdivision.

This parking restriction trial was initiated because some neighbors on the 7400 Blocks were having difficulty parking in front of their own homes. The trial and recommendations reflect only this element.

Through this process a concern was raised about passability of large vehicles when parking was occurring on both sides of the street on the 7400 blocks. Our fire department is aware of three existing neighborhoods where there is a variance from what is prescribed by existing fire code. In these neighborhoods the fire department has work-around tactics which allow adequate access.

However, it is our intent to address these three areas this fall which will likely mean parking will be eliminated on one side of the street. The 7400 blocks of the Moorlands will be included. Though there are a number of ways to address this, the way we have addressed this in other neighborhoods is to alternate portions of the year to restrict parking on each side to all vehicles.

Though the consideration of the restrictions this evening should be independent of this impending fire code action, it is a factor that may have an impact on this same area in the upcoming months.

Staff recommendation is to remove the temporary restrictions and return parking to the condition that existed before the trial.

**Alderman Garnholz introduced Bill No. 6493, an ordinance to consider approving the parking restrictions in the 7400 blocks of the Moorlands to be read for the first time by title only. Alderman Winings seconded.**

**City Attorney O’Keefe reads Bill No. 6493, an Ordinance Approving Changes to the Traffic Code to Codify Temporary On-Street Parking Restrictions at Certain Locations in the Moorlands Subdivision for the first time by title only.**

John Wulf, Public Works, provided a summary background on the parking restrictions. In response to the Board’s questions, John explained that the survey related to parking in the Moorlands was no different than the

surveys done in the past for other locations (i.e. Hillcrest and Davis Place). He explained that the City sent surveys to 145 residences and 90 (62%) were returned; 57 responses favored adoption of the restrictions. He said that there have not been any restrictions in the 7400 block of the Moorlands with the exception of Cromwell which those restrictions were put into place prior to 1998, before he began working for the City.

John explained that the City was having difficulty in street sweeping and leaf collections due to vehicles being parked overnight or for an extended amount of time.

John stated that when determining the restrictions they looked at past experiences for other neighborhoods, but this issue was a little more unique. At this time they do not believe that adopting the restrictions will make the parking issues any better.

John explained that it has been the procedure to survey the properties adjacent to the restrictions which in this case the 7400 blocks and those properties adjacent were notified of the intent of the trial period.

Larry Lipsitz, KLMR Properties, addressed the Board reading a statement (**attached**) and also provided a handout.

Alderman Garnholz read a statement from Christine Schmiz, 7506 Byron Place. (**attached**)

Justin Zimmerman, 7452 Parkdale, addressed the Board stating that the parking is a burden on the homeowner and he presented a PPT with photos of parking in the neighborhood.

John Ackerberg, resident homeowner and owner of a duplex, complimented the Board on dealing with this issue. He commented about the Washington University students who park their vehicles long term on the street and then ride a bus to the school. He said that this is a situation that the homeowners have to deal with and it should not be the homeowners' problem. He challenged that the multi-family building owners to find a parking solution for their tenants.

Mark (?), 7400 block of Parkdale, addressed the Board stating that the parking problem has worsened due to the multiple tenants in the multi-family buildings and the homeowners should not subsidize parking availability.

Lauren and Engler, residents in the 7400 block, stated that the parking problem is worse due to the multi-family building tenants. This is the building owners' problem and that the same offenders take advantage each weekend, late nights, loud music and trash in the streets and on lawns.

Brad Bishop, 7400 block of Parkdale, addressed the Board with regard to the survey results.

Christian (son, Jovani) Boatright, 7531 Byron Place, addressed the Board stating that she lives in a five unit building and parking is very tough to find, especially when coming home late at night.

Priscilla Sullivan, Parkdale resident, addressed the Board with regard to difficult parking issues.

Nick Akers, 7400 block Byron Place, thanked the Board for the trial period.

David Fryman, 7463 York, commented that people parking in front of his home creates a blind spot when coming out of his driveway.

In response to Alderman Garnholz question with regard to a violation related to a car that is property licensed is parked for a long period of time, City Attorney O'Keefe answered no – not in violation.

Andrew Gott, property owner 7400 block, addressed the Board with his concerns regarding parking issues.

Stacy Smith, resident on York at Glenridge, stated that parking has been a problem for the last three to four years.

Joan Sheets, 7500 block of Buckingham, stated that she is in favor of the restrictions.

Jerry (?), 7500 block of Buckingham, stated that he pays taxes and he should be able to park on the streets.

Michelle (?), 7500 block of York, urges the Board to find a common solution to the problem.

Michele Donnelly, 7400 block of Parkdale, urges people to respect other people's property.

Gary Soule, 7507 Buckingham Drive, expressed his disappointment with the signage and the communication to the residents.

Richard Katz, 7475 York, urge the Board to find a middle ground to solve the issue.

Josh Corson, 7400 block of Glenridge at Oxford Drive, commented that there are cars parked for weeks in front of residences.

Andrea Aston-Kendrick, Byron Place, lives in a five –unit building and it is difficult to find parking, urges the Board to find a better solution.

Cole (?), 7500 block of Clayton Road, suggested a 48 hour limit for parking in the 7400 blocks.

**Alderman Garnholz moved to continue the discussion at the next meeting. Alderman Winings seconded.**

**The motion passed unanimously on a voice vote.**

**A RESOLUTION TO CONSIDER APPROVING THE SUBMITTAL OF A HAZARDOUS MOVING VIOLATION ENFORCEMENT GRANT APPLICATION**

City Manager Owens reported that the problem of Hazardous Moving Violations (HMV), also known as aggressive driving, is a serious one on Missouri's roadways and has contributed substantially to traffic crashes, especially crashes resulting in death. Aggressive drivers are defined within Missouri's Blueprint to SAVE MORE LIVES as, "drivers of motorized vehicles who committed one or more of the following violations which contributed to the cause of a traffic crash: speeding; driving too fast for conditions; and/or following too close."

Aggressive drivers not only put their own lives at risk, but the lives of others as well. Of the 959 people killed in a recent reporting period, 67.4% were the aggressive driver and the other 32.6% were some other party in the incident. Of the 5,617 seriously injured, slightly more than one-half (53.2%) were the aggressive drivers with nearly one-half (46.8%) being some other involved person.

The reduction of traffic crashes on the roadways within the City of Clayton is a priority for the Clayton Police Department. The City of Clayton is a densely populated urban area. It has a network of bike lanes and pedestrian walkways which are attached to major roadways. The risk of personal injury is greater when pedestrian and cyclist traffic is mixed with vehicular traffic. The result is an increase in traffic complaints, congestion and collisions. Any collision involving a motor vehicle with a pedestrian or cyclist has substantially



greater potential for serious physical injury or death of involved parties. The most frequently occurring contributing circumstances are hazardous moving violations.

A portion of Interstate I-170 passes through the City of Clayton and, according to MoDOT's 2013 St. Louis District Traffic Volume and Commercial Vehicle Count Map, the City of Clayton's portion of I-170 accommodates approximately 127,954 vehicles a day. That one stretch of highway accounts for approximately 24% of all crashes investigated by the Clayton Police Department.

The Clayton Police Department intends to seek a MoDOT grant to assist the Department to address the issue of aggressive driving in a multifaceted approach.

1. Additional deployment of commissioned Clayton police officers to patrol for hazardous moving violations. The officers will be brought in on their days off and paid overtime to address solely the problems related to this safety plan. Officers will also conduct patrol and traffic enforcement targeting drivers that commit hazardous moving violations, focusing on the top contributing circumstances.
2. Provide a quick response to vehicle crashes. The presence of emergency vehicles at a crash on a major roadway not only will help protect the victims of the original crash but help prevent the occurrence of secondary crashes due to traffic congestion. A prompt response from arriving police officers, as well as having a coordinated traffic control plan once on scene, can reduce traffic crashes.
3. Directly address issue of speed. *Clayton Police Officers will use RADAR devices to detect speeders.*

Recommendation is to approve the resolution authorizing submittal of the grant application.

In response to Alderman Garnholz question, Chief Kevin Murphy explained that they will provide more traffic detail to try to reduce aggressive driving.

**Alderman Garnholz moved to approve Resolution No. 15-06**, to approve the submittal of the MoDot grant application. **Alderman Winings seconded.**

**The motion passed unanimously on a voice vote.**

#### APPOINT A CHAIRMAN TO THE PARKS & RECREATION COMMISSION

City Manager Owens reported that it is the Board's recommendation to appoint Eric Schneider as chairman to the Parks & Recreation Commission

**Alderman Garnholz moved to approve appointing Eric Schneider as chairman to the Parks and Recreation Commission Alderman Winings seconded.**

**The motion passed unanimously on a voice vote.**

#### APPOINTMENT TO UNIFORMED EMPLOYEES' RETIREMENT FUND BOARD (UERF)

City Manager Owens reported that William Grayson, currently a member of the Non-Uniformed Employees Retirement Fund Board (NUERF), has expressed an interest in serving on the UERF Board. Mayor Sanger has reviewed his qualifications and recommends Mr. Grayson's appointment/approval by the Board of Aldermen.

**Alderman Garnholz moved to approve the appointment of William Grayson to the UERF Board. Alderman Winings seconded.**

**The motion passed unanimously on a voice vote.**

Other

Alderman Berger commented that it will be a loss for the Plan Commission with Jim Liberman's resignation due to his relocation.

Alderman Berkowitz expressed his gratitude to City Manager Owens and staff for the orientation.

**Alderman Berkowitz moved that the Board adjourn to a closed meeting, with a closed vote and record, as authorized by Section 610.021(1), (2) and (3) Revised Statutes of Missouri, relating to legal issues, real estate and/or personnel, and to discuss matters related to negotiation of a contract pursuant to Section 610.021(12), RSMo. and/or proprietary information pursuant to Sec. 610.021(15), and/or information related to public safety and security measures pursuant to Section 610.021(18) and (19) RSMO. Alderman Boulton seconded the motion.**

**Alderman Garnholz – Aye; Alderman Boulton – Aye; Alderman Winings – Aye; Alderman Berger – Aye; Alderman Lintz – Aye; Alderman Berkowitz – Aye; and Mayor Sanger – Aye.**

There being no further regular business the meeting was adjourned at 9:10 p.m.

\_\_\_\_\_  
Mayor

ATTEST:

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



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

---

---

## REQUEST FOR BOARD ACTION

---

**TO:** MAYOR SANGER; BOARD OF ALDERMEN  
**FROM:** CRAIG S. OWENS, CITY MANAGER (CSO)  
JANET K. WATSON, DIRECTOR OF FINANCE & ADMINISTRATION  
**DATE:** JUNE 9, 2015  
**SUBJECT:** MOTION TO APPROVE A LIQUOR LICENSE FOR B.O.S.S. EAT, LLC (DBA BARRISTER'S) AT 7923 FORSYTH BOULEVARD

---

B.O.S.S. Eat, LLC (dba Barrister's) is requesting a liquor license to sell all kinds of intoxicating liquor at retail by the drink, including Sundays, at 7923 Forsyth Boulevard. The restaurant is under new ownership. The current business, Barrister's has a liquor license, but it cannot be transferred to the new owners.

The Police Department has completed its review of the application and supports the issuance of the requested license. The Planning and Development department has also approved the application with no objections.

The applicant has chosen not to submit a petition from surrounding property owners and first floor tenants. As a result, they are aware that this application must have a super majority vote of five Board members in order to be approved. Staff has requested that a representative be in attendance at the meeting.

**Recommended Action:** Staff recommends passing a motion to approve the liquor license to sell all kinds of intoxicating liquor at retail by the drink, including Sundays.



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

---

---

## REQUEST FOR BOARD ACTION

---

**TO:** MAYOR HAROLD J. SANGER; BOARD OF ALDERMEN

**FROM:** CRAIG S. OWENS, CITY MANAGER  
DALE L. HOUDSHELL, P.E., DIRECTOR OF PUBLIC WORKS

**DATE:** JUNE 9, 2015

**SUBJECT:** ORDINANCE – TO APPROVE MODIFICATION TO THE MUNICIPAL TRAFFIC CODE RELATED TO ON-STREET PARKING IN THE MOORLANDS SUBDIVISION

---

Late last year, the City was requested by residents in the 7400 blocks of several streets in the Moorlands to initiate tighter on-street parking restrictions for parkers that do not reside in or are not visiting residents in the 7400 blocks. In response, the Public Works Department surveyed the residents in the 7400 blocks of the Moorlands to determine the level of desire for tighter restrictions. Based on those results, on-street parking was restricted to residential parking only from 10pm – 6am beginning the first week of January on a trial basis.

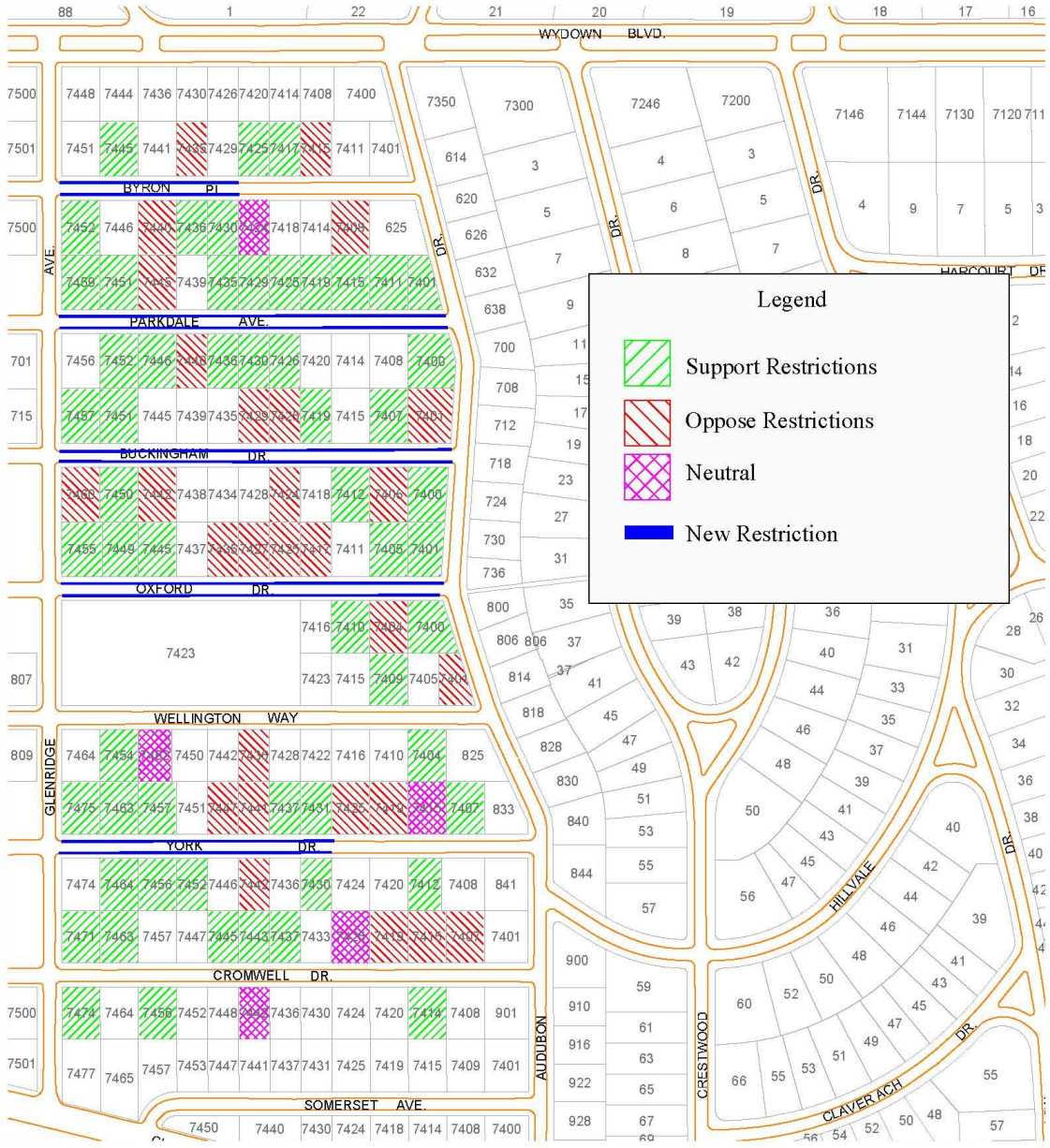
At the end of the trial period, the Public Works Department again surveyed the residents in the 7400 blocks of the Moorlands as to whether or not the temporary on-street parking restrictions should be made permanent. Exhibits A and B, attached, indicate the results of the survey regarding the trial on-street parking restrictions. Support for making the temporary restrictions permanent was sporadic. In addition, a couple of letters have been received from the 7500 Block of Oxford Drive opposing the proposed restrictions. Based on the results of this residential input, the Public Works Department is recommending the Board of Aldermen not adopt the trial parking restrictions as permanent restrictions. Should the Board of Alderman desire to proceed with making the restrictions permanent, an ordinance has been prepared to do so.

Passage of this ordinance would be necessary to codify the existing temporary on-street parking restrictions posted in the Moorlands subdivision.

**Recommendation:** To not adopt an ordinance codifying the existing temporary on-street parking restrictions posted in the Moorlands subdivision and to allow those temporary restrictions to expire.

# Exhibit A

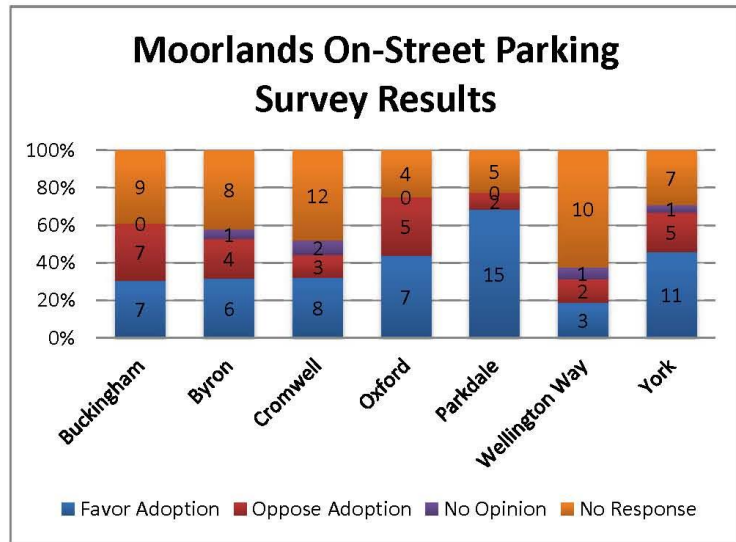
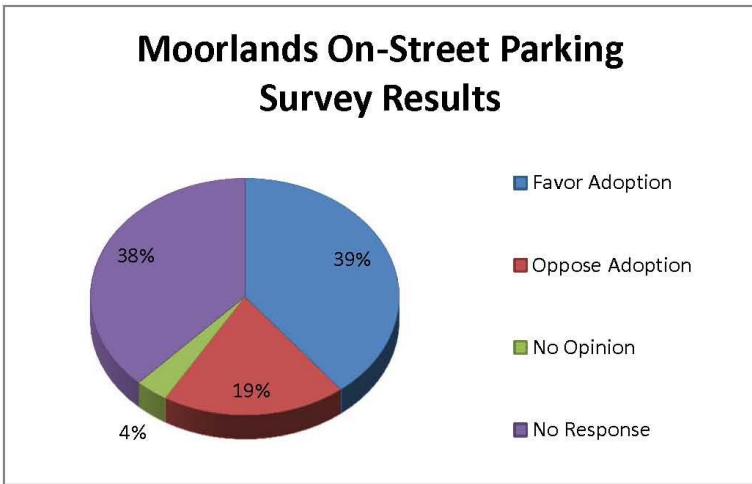
## Proposed Parking Restrictions The Moorlands-7400 Block



**Exhibit B**

Results by Street	Favor Adoption	Oppose Adoption	No Opinion	No Response
Buckingham	7	7	0	9
Byron	6	4	1	8
Cromwell	8	3	2	12
Oxford	7	5	0	4
Parkdale	15	2	0	5
Wellington Way	3	2	1	10
York	11	5	1	7

**Total Responses: 90 out of 145 62%**



BILL NO. 6498

ORDINANCE NO.

**AN ORDINANCE APPROVING CHANGES TO THE TRAFFIC CODE TO  
CODIFY TEMPORARY ON-STREET PARKING RESTRICTIONS AT CERTAIN  
LOCATIONS IN THE MOORLANDS SUBDIVISION**

---

**WHEREAS**, the City has exercised its legislative discretion and police powers to temporarily regulate the parking of motor vehicles on streets of the Moorlands subdivision with a goal of testing to find an appropriate balance among sometimes competing interests; and

**WHEREAS**, the City has been requested to permanently place parking restrictions on portions of certain streets in the Moorlands subdivision in accord with the temporary restrictions which have been tested; and

**WHEREAS**, it is the desire and intent of the Board of Aldermen to modify parking restrictions on portions of certain streets in the Moorlands subdivision to accomplish the requested changes.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:**

**Section 1.**

Table III-G. Residential Permit Parking Zones in Schedule III Parking Restrictions of Title III Traffic Code, of the Clayton, Missouri, Municipal Code is hereby amended as follows:

*Byron Place:*

**ADD** - On both sides from Glenridge Avenue to west property line of 7425 Bryon Place between 10:00 P.M and 6:00 A.M. each day.

*Parkdale Avenue:*

**ADD** - On both sides from Glenridge Avenue to Audubon Drive between 10:00 P.M and 6:00 A.M. each day.

*Buckingham Drive:*

**ADD** - On both sides from Glenridge Avenue to Audubon Drive between 10:00 P.M and 6:00 A.M. each day.

*Oxford Drive:*

**ADD** - On both sides from Glenridge Avenue to Audubon Drive between 10:00 P.M and 6:00 A.M. each day.

*York Drive:*



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

---

---

## REQUEST FOR BOARD ACTION

---

**TO:** MAYOR SANGER; BOARD OF ALDERMEN

**FROM:** CRAIG S. OWENS, CITY MANAGER  
MARK THORP, CHIEF OF FIRE DEPARTMENT  
DALE L. HOUDSHELL, P.E., DIRECTOR OF PUBLIC WORKS

**DATE:** JUNE 9, 2015

**SUBJECT:** MODIFICATION TO THE MUNICIPAL TRAFFIC CODE RELATED TO ON-STREET PARKING IN THE MOORLANDS SUBDIVISION

---

Late last year, the City received a request from residents in the 7400 blocks of several streets in the Moorlands to initiate tighter on-street parking restrictions for parkers that do not reside in or are not visiting residents in the 7400 blocks. In response, the Public Works Department surveyed the residents in the 7400 blocks of the Moorlands to determine the level of desire for tighter restrictions. Based on those results, on-street parking was restricted to residential parking only from 10pm – 6am beginning the first week of January on a trial basis.

At the end of the trial period, the Public Works Department again surveyed the residents in the 7400 blocks of the Moorlands as to whether or not the temporary on-street parking restrictions should be made permanent. Support for making the temporary restrictions permanent was sporadic. In addition, residents who reside in the 7500 blocks have voiced opposition to the proposed restrictions citing limited parking capacity in the 7500 blocks to accommodate demand. Based on this conglomeration of residential input, the Public Works Department recommended the Board of Aldermen not adopt the trial parking restrictions as permanent restrictions.

Bill # 6498 was introduced and public comment was taken at the meeting on May 26, 2015.

During the Public Works study of parking capacity, residents in the 7400 blocks sited concerns regarding safety; specifically the ability of fire apparatus to respond to emergencies unimpeded by on-street parking. Hence, the Fire Department reviewed the widths of streets in the Moorlands for compliance with the ICC Fire Prevention Code 2009 Edition, Sec. 503.2.1, as Adopted by Sec. 205.070 of the Clayton City Code. This section of the International Fire Code (IFC) requires that Fire Apparatus Roads shall have an unobstructed width of not less than 20 feet. Based upon this review, the Fire Department determined that on-street parking that conflict with this section of the IFC could hinder passage of emergency vehicles. To provide the appropriate unobstructed pavement width, the fire department will be implementing fire lane restrictions to limit parking to one side of the street per the authority granted to the Chief of the Fire Department in Section 305.030.A of the City Code for all streets in the 7400 block, between Glenridge Avenue and Audubon Drive as well as Audubon Drive from Wydown Boulevard to Clayton Road.



Prior to the development of the IFC in 2000, “fire lane” widths were not regulated. Neighborhoods that were developed 50 plus years prior to this requirement are challenged to meet this requirement and maintain the on-street parking that the residents have become accustomed to. To meet the intent of the IFC and minimize the impact to on-street parking throughout the City, the Fire Department has recommended consideration of a reduction in the Fire Apparatus Road width to 17 feet of unobstructed pavement. Using 7 feet for the width of an on-street parking space, street widths between 24 feet and 31 feet would allow for on-street parking on one side and street widths 31 feet or greater would allow for on-street parking on both sides of the street.

These No Parking restrictions have the potential to address some of the residential concerns voiced at the Board of Aldermen Meeting on 5/26/2015 regarding congestion, narrow drive lanes and space to maneuver in and out of driveways. Public Works and the Fire Department will work with area property owners including Glenridge School to best determine issues such as side of street and impacts to the school before implementing restrictions.

**RECOMMENDATION:** Based on the change to the fire lane restrictions that will be implemented, staff recommends Bill No. 6498 be withdrawn from consideration, allow the fire lane restrictions to be implemented, and no additional zoned parking restrictions be implemented at this time.





City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

---

---

## REQUEST FOR BOARD ACTION

---

**TO:** MAYOR SANGER; BOARD OF ALDERMEN

**FROM:** CRAIG S. OWENS, CITY MANAGER  
SUSAN M. ISTENES, AICP, DIRECTOR, PLANNING & DEV. SERVICES

**DATE:** JUNE 9, 2015

**SUBJECT:** ORDINANCES APPROVING REZONINGS & A PLANNED UNIT DEVELOPMENT  
OPUS DEVELOPMENT - 25 AND 111 NORTH CENTRAL AVENUE

---

This is a public hearing to solicit input regarding the following items:

- 1) The proposed rezoning of property located at 25 North Central Avenue from HDC High Density Commercial District and CBD Core Overlay District to a Planned Unit Development (PUD) District;
- 2) To consider the terms and conditions of the PUD if the property is rezoned; and
- 3) The proposed rezoning of property located at 111 North Central Avenue from R-3 One & Two Family Dwelling District to C-2 General Commercial District.

These rezonings and PUD are at the request of Opus Development Company, LLC, developer/owner under contract, to allow the construction of a mixed-use development at 25 North Central Avenue and a 30-space surface parking lot at 111 North Central Avenue.

This memorandum combines the subjects because they are interrelated; however, separate ordinances have been prepared for each legislative action. This project also requires approval of a Subdivision Plat.

### REZONINGS

#### *25 North Central Avenue:*

Planned Unit Developments are a distinct zoning district and therefore, an application to rezone 25 North Central Avenue from HDC High Density Commercial District and the CBD Core Overlay District to a Planned Unit Development District (PUD) was filed by the applicant.

#### *111 North Central Avenue:*

Parking lots and parking structures are not permitted uses in the R-3 zoning district and therefore, the applicant requests to rezone 111 North Central Avenue to C-2 General Commercial District.

### Project Description:

The proposed project consists of the demolition of the existing structures at 25 North Central Avenue and the construction of a 123,806-square-foot, 6-story (+/- 69 feet) building located on top of a 2 level below grade parking structure. The building will contain 13,297 square feet of ground floor retail, 121 residential units (9 studio units, 30

alcove units, 38 one-bedroom units, 43 two-bedroom units, and 1 guest suite), and 145 parking spaces. The existing parking structure at 111 North Central Avenue will be demolished and replaced with a 30-space surface parking lot.

One access point is proposed along the southern alley to serve the below grade parking structure, visitor parking lot, and loading/service spaces. City streetscape will be installed along the project limits on Maryland Avenue and South Central Avenue. To accommodate the streetscape along Maryland Avenue, the applicant proposes the removal of three on-street parking spaces. This project will implement the first phase of a “road diet” on North Central Avenue between Maryland Avenue and Bonhomme Avenue. The road will be reduced from two lanes in each direction to one lane in each direction and a center turn lane will be installed. The cost of streetscape at 111 North Central Avenue will be escrowed and installed at a later date.

**PLANNED UNIT DEVELOPMENT (25 NORTH CENTRAL AVENUE)**

The following table summarizes the applicable zoning requirements and whether the proposed development complies with each standard. The PUD process gives the Board of Aldermen the authority to approve waivers from specific zoning requirements in exchange for public benefits. Once approved, the PUD becomes the specific zoning regulations governing the use and development of the property at 25 North Central Avenue.

<b>Development Standard</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Waiver Required</b>
Floor Area Ratio (FAR)	1.5 (maximum)	3.88	Yes
Setback (Front)	None	0' (Maryland & N. Central Avenues)	No
Setback (Side)	None	2-10'	No
Setback (Rear)	15' (minimum)	0-10'	No
Height	4 Stories or 45' (maximum)	6 stories (+/- 69')	Yes
Building Stepback	15' stepback (upper story building setback), beginning at the 3 <sup>rd</sup> story, along all building elevations with street frontage, except alleys.	14-17.5' stepback at the 2 <sup>nd</sup> story for 60' (30%) of the North Central Avenue frontage. No stepback provided on Maryland Avenue.	Yes
Unit size	750 sq.ft. (minimum)	65 units (54%) are less than 750 sq.ft.	Yes
Ground Floor Uses	Retail, personal care, or similar	Retail	No
Parking (Automobile)	287 spaces (minimum)	175 spaces (145 at 25 N. Central, 30 at 111 N. Central)	Yes
Parking (Bicycle)	9 racks (minimum)	9 racks	No

The purpose of the PUD process is to foster appropriate use of existing buildings and enable compatible redevelopment which provides public benefits (as itemized in Section 405.1380), and achieve the following objectives:

- 1) Creation of a more desirable environment than would be possible through strict application of other City land use regulations;
- 2) Promotion of a creative approach to the use of land and related physical facilities resulting in better design and development, including aesthetic amenities;
- 3) Combination and coordination of architectural styles, building forms and building relationships;
- 4) Preservation and enhancement of desirable site characteristics such as natural topography, vegetation and geologic features and the prevention of soil erosion;
- 5) Preservation of buildings which are architecturally or historically significant or contribute to the character of the City;
- 6) Use of design, landscape or architectural features to create a pleasing environment;
- 7) Inclusion of special features;

- 8) Elimination of deteriorated structures or incompatible uses through redevelopment or rehabilitation; and
- 9) Facilitate implementation of the recommendations of the business district's master plan.

### **Public Benefits:**

According to the applicant, the following public benefits are being provided:

- With the installation of streetscape along North Central and Maryland Avenues, there will be a net gain in the number of street trees. Additionally, an approximately 3,800 square foot green roof is proposed at the rear of the building.
- The entrance to the parking structure is located off the alley and not visible from the public right-of-way.
- The building sits between the taller buildings to the west, the mid-rise buildings along North Central Avenue, and the residential neighborhood to the north. As a transitional building, it displays significant mass at the corner of North Central and Maryland, defining the street edge and covering the existing parking to the west.
- The elevations are articulated by interior balconies that break the mass down into residential scaled volumes, with proportions and openings that relate to historic and residential buildings in the context. According to the applicant, "the aesthetic is timeless, with unique and exciting elements, yet restrained and respectful of context."
- The use of brick on the North Central and Maryland Avenue elevations acknowledge the history of the heart of downtown, while the modern detailing and use of complementary materials make for an attractive, well-appointed contemporary building. The extensive use of glass makes the building open and inviting, provides more "eyes on the street", and will enhance the visible activity level of the neighborhood.
- Overhead utilities will be relocated underground.
- The alley will be widened 4 feet in conformance with city standards. City standard streetscape will be installed along the project limits on Maryland and North Central Avenues. The cost for streetscape at 111 North Central Avenue will be escrowed for future development.
- Approximately 30 percent of residences are reduced in size (475 to 650 square feet) to offer lower monthly rent options. Although not considered "affordable housing", it is an attempt to offer product at the lower end of market rents.
- Sustainable building design and construction including, but not limited to sustainable site development, green roofs, water savings, energy efficiency, materials selection and indoor environmental quality.
- Secure and tempered residential parking, bike storage, and residential storage will be located beneath the building. The public bicycle racks are located on the sidewalk on North Central Avenue. An additional six bicycle racks are located in the parking structure for residents use.
- The property is located three blocks from the Metro transit center and Metrolink station.

### **Traffic & Parking:**

*Traffic:*

One access point is proposed along the southern alley to serve the below grade parking structure, visitor parking lot, and loading/service spaces.

The City's contracted traffic engineer analyzed the potential traffic impacts of the proposed development and the adjacent intersections. According to the traffic study, the surrounding intersections currently operate at acceptable levels of service during morning and afternoon peak hours. The project is expected to generate 85 new vehicular trips during the a.m. peak hour and 160 new vehicular trips during the p.m. peak hour. The traffic study took into consideration the proposed "road diet" which will reduce North Central Avenue from two lanes in each direction to one lane in each direction and a center turn lane between Maryland Avenue and Bonhomme Avenue. The study finds that acceptable levels of service can be maintained at the surrounding intersections after the project is developed without additional road improvements. The layout of the parking structure meets the City's requirements for circulation and access. One loading space for the building will be located off the rear alley in accordance with the city's loading space requirements.

*Vehicular parking:*

The City's parking regulations require 287 off-street parking spaces for the proposed project and the applicant proposes 175 parking spaces; 145 parking spaces will be located in the below grade parking structure at 25 North Central (including 8 visitor parking spaces) and 30 parking spaces on a new surface parking lot at 111 North Central Avenue. According to the applicant, up to 35 percent of the total parking spaces at both sites may be reserved, including ADA spaces. A reduction in the amount of required parking spaces can be approved through the PUD process. The City's contracted traffic engineer conducted a parking study based on field data and standard parking models. The parking study estimates that the 175 parking spaces proposed by the development is sufficient to meet the needs of the project as long as the number of reserved spaces (including ADA) does not exceed 35 percent of the total number of parking spaces.

To accommodate new streetscape along Maryland Avenue, the applicant proposes the removal of three on-street parking spaces. Removal of the parking spaces will result in loss of revenue to the city, and the development will increase the demand for on street parking in this area. For these reasons, the Public Works Department does not support the removal of the on street parking spaces. The Board of Aldermen has ultimate authority regarding the preservation or elimination of on-street parking spaces.

*Bicycle parking:*

Based on the City's Bicycle Parking Regulations the proposed development is required to provide nine bicycle racks. The applicant proposes to install six bicycle racks in a secure room in the parking structure. Three additional bicycle racks will be located on the public sidewalk along North Central Avenue. The proposed bicycle racks are in conformance with the City's Bicycle Parking Regulations.

**COMPLIANCE WITH DOWNTOWN MASTER PLAN**

The site is located in the North Central District as identified in the Downtown Master Plan. The vision of the district is to "grow at a human scale along key pedestrian streets, with fine-grained development, active streets and walkable commercial areas." North Central Avenue is identified in the plan as a pedestrian priority corridor. The proposed development will be appropriately scaled, urban in character, will maintain a consistent street wall along the majority of its street frontage, and will have pedestrian oriented storefront architecture. The proposed uses and design will increase residential density, pedestrian activity, and will contribute positively to downtown as a whole.

**Plan Commission Consideration**

The Plan Commission considered these requests at their meeting of May 4, 2015, and voted to recommend approval per the conditions as follows:

*Rezoning of 111 North Central Avenue from R-2 to C-2:*

1. That this rezoning request be contingent upon approval of the Planned Unit Development by the Board of Aldermen. If approval of the Planned Unit Development expires, becomes invalid or the project is not constructed, the subject properties will revert back to R-3 "One and Two Family Dwelling District".
2. That the rezoning only becomes effective if the existing parking structure is removed.

Rezoning of 25 North Central Avenue from HDC High Density Commercial District and the CBD Core Overlay District to a Planned Unit Development District (PUD):

1. That no more than 35 percent of the 175 parking spaces may be reserved, including ADA spaces.
2. That the approved development plan and Planned Unit Development Ordinance be recorded with St. Louis County and proof of recording be submitted to the City prior to the issuance of a Building Permit

The Plan Commission did not support staff's recommendation to retain the three on-street parking spaces on Maryland Avenue.

The architectural elements of the project were considered and approved by the Architectural Review Board at their meeting of May 4, 2015.

**Recommendation:** To approve the rezonings as submitted, and to approve the Planned Unit Development Ordinance with the following condition:

1. That the plans be revised to show the preservation of the three existing on-street parking spaces and the installation of city standard streetscape along Maryland Avenue.

ORDINANCE NO.

AN ORDINANCE PROVIDING FOR THE REZONING OF CERTAIN PROPERTY LOCATED AT 111 NORTH CENTRAL AVENUE FROM R-3 ONE AND TWO FAMILY DWELLING DISTRICT TO C-2 GENERAL COMMERCIAL DISTRICT, AND PROVIDING FOR THE CHANGE IN THE ZONING MAP OF THE CITY OF CLAYTON, MISSOURI; AND OTHER ACTIONS RELATED THERETO

---

**WHEREAS**, on April 13, 2014, a request for the rezoning of property known as 111 North Central from R-3 One and Two Family Dwelling District to C-2 General Commercial District to allow for the construction of a 30 space surface parking lot was received from Opus Development Company, LLC, and

**WHEREAS**, on May 4, 2015, the Plan Commission recommended that the proposed rezoning be approved by the Board of Aldermen; and

**WHEREAS**, after notice required by law and ordinance, a Public Hearing was held before the Board of Aldermen of the City of Clayton on June 9, 2015, to consider the request and recommendation; and

**WHEREAS**, upon due consideration, this Board of Aldermen finds and determines that good planning practice, those elements of the City's comprehensive plan applicable to the area in question, and the public health, safety, morals and general welfare would be best served if the subject Property is rezoned as hereinafter provided.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:**

Section 1. The zoning classification of the property located at 111 North Central Avenue, more fully described as follows, is hereby changed from R-3 One and Two Family Dwelling District to C-2 General Commercial District, to wit:

PART OF LOT 2, BLOCK G IN THE BEMISTON SUBDIVISION  
IN THE CITY OF CLAYTON, ST. LOUIS COUNTY, MISSOURI

Section 2. The zoning map described in Chapter 405, Section 405.060. "Zoning Map" of the Code of Ordinances of the City of Clayton is hereby revised to be consistent with the rezoning approved in Section 1 of this Ordinance.

Section 3. This Ordinance is specifically contingent upon completion of the development plan for 25 North Central Avenue as approved by the Board of Aldermen. If construction of that project as approved or hereafter amended does not begin within one (1) year of approval of the Planned Unit Development by the Board of Aldermen, unless further extended by the Board of Aldermen, the zoning of this property will automatically revert back to R-3 One and Two Family Dwelling District and this Ordinance shall thereupon lapse and be of no further force or effect.

Section 4. This Ordinance shall be in full force and effect from and after the date of its passage and adoption by the Board of Alderman.

Adopted this 9<sup>th</sup> day of June, 2015

\_\_\_\_\_  
Mayor

ATTEST:

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



ORDINANCE NO.

AN ORDINANCE PROVIDING FOR THE REZONING OF CERTAIN PROPERTY LOCATED AT 25 NORTH CENTRAL AVENUE FROM HIGH DENSITY COMMERCIAL (HDC) DISTRICT AND CBD CORE OVERLAY DISTRICT TO A PLANNED UNIT DEVELOPMENT DISTRICT AND APPROVING A DEVELOPMENT PLAN THEREFOR, AND PROVIDING FOR THE CHANGE IN THE ZONING MAP OF THE CITY OF CLAYTON, MISSOURI, AND OTHER ACTIONS RELATED THERETO

---

**WHEREAS**, Chapter 405, Article X “Planned Unit Development”, Section 405.1360 “Purpose Statement” of the City’s Land Use Code states that “Planned unit developments are a distinct zoning district”; and

**WHEREAS**, on February 4, 2015, a request for the rezoning of property known as 25 North Central Avenue (the “Site”) from CBD Core Overlay District (base zoning of High Density Commercial District) to a Planned Unit Development District was received from Opus Development Company, LLC; and

**WHEREAS**, Joseph Downs, Senior Director, Opus Development Company, LLC, (the “Developer”) also submitted an application for a development plan on February 4, 2015, (the “Development Plan”) for use of the Site for the development of an approximately one hundred twenty three eight hundred six (123,806) square foot residential/retail development consisting of thirteen thousand two hundred ninety seven (13,297) square feet of ground floor retail, 121 rental apartment units (9 studio units, 30 alcove units, 38 one bedroom units, 43 two bedroom units and 1 guest suite) and one hundred forty five (145) parking spaces (the “Project”); and

**WHEREAS**, a planned unit development is a distinct zoning district and in approving any planned unit development, the Board of Aldermen has the authority to change, alter, modify or waive any provisions of the zoning regulations set forth in Chapter 405 of the Land Use Code in order to encourage the efficient use of land and resources, promote greater efficiency in public and utility services, and encourage innovation in the planning and building of all types of development; and

**WHEREAS**, the City Plan Commission considered this rezoning and the proposed Development Plan and the Project at their meeting of May 4, 2015, and voted to recommend approval to the Board of Aldermen; and

**WHEREAS**, this Board has received the favorable report of the City Plan Commission with respect to the approval of the Development Plan; and

**WHEREAS**, after notice required by law and ordinance, a Public Hearing was held before the Board of Aldermen of the City of Clayton on June 9, 2015, to consider the request and recommendation; and

**WHEREAS**, upon due consideration, this Board of Aldermen finds and determines that good planning practice, those elements of the City’s comprehensive plan applicable to the area in question, and the public health, safety, morals and general welfare would be best served if the Site is rezoned as hereinafter provided and that the approval of the Development Plan would be in the best interest of the City and its citizens;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:**

Section 1. Rezoning. The zoning classification of the property located at 25 North Central Avenue, more fully described as follows, is hereby changed from CBD Core Overlay District (base zoning of High Density Commercial District) to a Planned Unit Development District, to wit:

LOTS 10-12 AND PARTS OF LOTS 13 & 14, BLOCK 5,  
IN THE TOWN (NOW CITY) OF CLAYTON,  
ST. LOUIS COUNTY, MISSOURI

Section 2. Map Amendment. The zoning map described in Chapter 405, Section 405.060. "Zoning Map" of the Code of Ordinances of the City of Clayton is hereby revised to be consistent with the rezoning approved in Section 1 of this Ordinance.

Section 3. Findings and Development Plan Approval. The Development Plan received by the City's Planning & Development Services Department on May 29, 2015, attached hereto and made part of this Ordinance as prepared by Stock & Associates, on behalf of Opus Development Company, LLC, developer, and on file in the Department of Planning & Development Services, as submitted by Opus Development Company, LLC, (the "Developer") for the Project is hereby approved as the Development Plan for the Site as that term is used in Section 405.1420(C) of the City Code, this Board having found and determined that the Project, as set forth in the aforesaid Development Plan, furthers the following objectives as specified in Chapter 405, Section 405.1400:

- The proposed development is in harmony with general purposes and intent of Chapter 405 of the Municipal Code and is compatible with and implements the planning goals and objectives of the City;
- Streets or other means of access to the proposed development meet City of Clayton standards and are suitable and adequate to carry anticipated traffic and will not overload the adjacent streets;
- The internal circulation system of the proposed development encourages safe movement for vehicles and pedestrians;
- Existing or proposed utility services are adequate for the proposed development;
- Appropriate buffering is provided to protect adjacent land uses from light, noise and visual impacts;
- Architecture and building materials are consistent with the design of the development and compatible with the adjacent neighborhood;
- Landscaping is appropriate with the scale of the development and consistent with any applicable City codes, ordinances and standards.
- *Topography.* Every attempt shall be made to preserve the topography of the property. If the topography must be altered to accommodate construction, the plan must contain specific information regarding the proposed topography change and its impact on the flow of drainage on adjacent properties.
- *New plantings.* New developments should be screened from adjacent properties by use of high caliper tree plantings. A landscape plan depicting all new plantings on the site must be submitted as part of the plan.
- *Tree preservation.* The preservation of mature trees is encouraged. The developer/architect will be required to submit a plan showing trees and other significant plant material as they currently exist and how they will be preserved. Tree preservation must comply with the provisions of the Architectural Review Board guidelines, landscape ordinance and any other applicable City codes and standards. Landscape plan requirements shall be in conformance with the City's adopted landscape ordinance.
- The proposed development preserves architectural and environmental features of the property.
- The proposed materials, design and uses are compatible with the neighborhood surrounding the proposed development or the City as a whole.
- The proposed development complies with all other applicable codes and ordinances.

Section 4. Conditions of Plan Approval. In accord with the provisions of Section 405.1420(A) for the City Code, the approval of the Development Plan by this Board of Aldermen is hereby subject to the following conditions:

- 1) That the Project shall consist of an approximately one hundred twenty three eight hundred six (123,806) square foot residential/retail development consisting of thirteen thousand two hundred ninety seven (13,297) square feet of ground floor retail, 121 rental apartment units (9 studio units, 30 alcove units, 38 one bedroom units, 43 two bedroom units and 1 guest suite) and one hundred forty five (145) parking spaces;
- 2) That the Project shall be a retail/residential mixed use development;
- 3) That the building shall not exceed six (6) stories above two (2) levels of parking or approximately sixty nine (69) feet in height as measured from average grade;

- 4) That the Project provide a minimum of one hundred seventy five (175) parking spaces; one hundred forty five (145) within the garage and an additional thirty (30) on the surface parking lot at 111 North Central Avenue being constructed in support of this project;
- 5) That no more than thirty five percent (35%) of the 175 parking spaces in the building's garage be reserved, including ADA spaces;
- 6) That the approved development plan and this Ordinance be recorded with St. Louis County and proof of recording be submitted to the City prior to the issuance of a building permit;
- 7) That the building be fully sprinklered and meet all Fire and Building Codes as well as ADA standards;
- 8) That the Developer shall develop the streetscape using design and materials consistent with the streetscape plans developed by the City dated October 28, 1997 and that the streetscape receive approval from the Public Works Department
- 9) That the Developer provide an aerial easement for proposed private facilities located in the right-of-way, to be approved by the Board of Aldermen prior to issuance of a building permit; and
- 10) That all applicable federal, state and local laws, ordinances and regulations be complied with strictly.

Section 5. As required by Section 405.1450 of the City Code, this Ordinance is specifically contingent upon completion of the development plan as approved by the Board of Aldermen. If construction of the Project does not begin within one (1) year of approval of the Planned Unit Development by the Board of Aldermen, unless further extended by the Board of Aldermen, the zoning will revert back to CBD Core Overlay District and base zoning of High Density Commercial District.

Section 6. Implementation. The City Manager is hereby authorized and directed to take all such actions as may be necessary and proper (or to cause the same to be taken) in order to implement the approval of the Final Development Plan authorized by this Ordinance.

Section 7. This Ordinance shall be in full force and effect from and after the date of its passage and adoption by the Board of Alderman.

Adopted this 9<sup>th</sup> day of June, 2015

---

Mayor

ATTEST:

---

City Clerk



City of Clayton
10 North Bemiston Avenue
Clayton, Missouri 63105
(314) 290-8453 FAX: (314) 863-0296



APPLICATION FOR
REZONING/
TEXT AMENDMENT

(please type or print)

PAID

- ALL APPLICABLE SECTIONS OF APPLICATION MUST BE COMPLETE.
\$285.00 APPLICATION FEE\* MUST ACCOMPANY THIS APPLICATION

PART A: PARTIES OF INTEREST

Name of Applicant: Opus Development Company, L.L.C. (Owner Under Contract)

Address: 7733 Forsyth Boulevard, Suite 1100, Clayton, MO 63105

Phone Number & e-mail address: Joe Downs; 314-296-6160; joe.downs@opus-group.com

Interest in Property: Owner Under Contract

Owner information (if request is to rezone specific property)

Name: 25 NC, LLC

Address: 34 North Meramec, Clayton, MO 63105

Phone Number & e-mail address: Jason Casey; 314-573-9540; jason.casey@graybar.com

PART B: SITE DESCRIPTION (rezoning)

Address(es) 111 N. Central Avenue

Legal Description (required): Part of Lot 2, Block G Bemiston

Reason for Requested Rezoning: Existing property contains a legal non-conforming use as a parking structure. Proposed to rezone to allow for modification to a surface lot.

Current Use of Property: Parking Structure Proposed Use of Property: Surface Parking Lot

Current Zoning: R-3 Proposed Zoning: C-2

PART C: TEXT AMENDMENT

Chapter/Article/Section that is the subject of the proposed amendment: Not requested.

Specify amendment being requested (specify existing and proposed text): Not requested.

Updated October, 2014

---

---

Please describe why the proposed amendment is being sought: Not requested.

---

**PART D: SIGNATURES**

**Signature of Applicant (Required):** \_\_\_\_\_



4/8/15

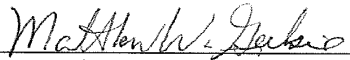
**Date:** \_\_\_\_\_

**Relation to the Owner:** on behalf of Owner Under Contract, Opus Development Company, L.L.C.

**Signature of Property Owner (Required):**

25 NC, LLC

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

  
Matthew W. Geekie, Manager

Date: 4/10/15

\*PLUS COST OF ADVERTISING



# PETITION FOR CHANGE IN ZONING

APPLICATION FEE: \$200.00

TO THE HONORABLE MAYOR AND BOARD OF ALDERMEN  
CITY OF CLAYTON, MISSOURI

The undersigned hereby requests an amendment to the zoning classification so as to reclassify property located in the  
HDC District to the PUD District, located in the City of Clayton, Missouri.

Property known and numbered as 25 N. Central (Loc. # 18K310986)

Legal description: (required): A tract of land being lots 10-12 & parts of 13 & 14 in Block 5 of the Town  
(Now City) of Clayton

Please state reasons for above application:

A zoning amendment to mixed use PUD, specifically designed by the City for the project, is in the  
public interest and appropriate land use planning, for the reasons stated in the attached Public  
Benefit description. The rezoning, per the attached plans and specific PUD text ordinance to be  
developed consistent with City precedents for the HDC, is consistent with goals and specifications  
of the City's Master Plan for the HDC. Each of the surrounding properties is zoned HDC or C-2  
and engaged in commercial, mixed, public or religious uses. The amendment complies with the  
elements of Article X and specifically Sections 405.1360 and 405.1380 of the City's Zoning Regulations.

The name(s), complete address(es) and telephone number(s) of the legal owner(s) of the subject property is/are:

<u>25 NC, LLC</u>	<u>Graybar Electric Company</u>
<u>21 Bolivar Street</u>	<u>24 North Meramec Avenue</u>
<u>Jefferson City, MO 65101</u>	<u>Clayton, MO 63105</u>
<u>Attn: CSC</u>	<u>Attn: Jason Casey, 314-573-9540</u>

Opus Development Company, L.L.C.  
(Owner Under Contract)  
7733 Forsyth Boulevard, Suite 1100  
Clayton, MO 63105  
Attn: Joe Downs, 314-296-6160

Respectfully submitted,  
Joseph P. Downs

Print Name

Signature

Representative for Owner Under Contract

Interest in Property

2/3/2015

Date

PAID RECEIVED

FEB 4 2015

CITY OF CLAYTON  
PLANNING & DEVELOPMENT

The City Plan Commission and Board of Aldermen have directed that all petitions for rezoning must be accompanied by a plat certified by the owner of the property that he/she is the owner. Plat must also show relationship to adjacent property.

NOTE: It is necessary that you or your representative be present at City Plan Commission and Board of Aldermen meeting to present your petition. Please indicate the name, address and telephone number of person you desire the City to notify as to the time and place of the meeting (if other than above).

The petition, when properly filled out and signed, should be filed together with twenty-five (25) copies of the plat and the fee to the Planning Department, Clayton City Hall, 10 North Bemiston Avenue.

Deed restrictions, trust indentures, etc., if any, must be attached to this application.



Planning and Development Services  
10 N. Bemiston Avenue • Clayton, Missouri 63105 • 314-727-8100 • FAX 314-863-0296 • TDD 314-290-8435

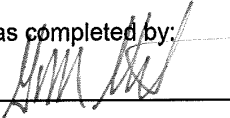
## APPLICATION FOR PLANNED UNIT DEVELOPMENT

Check off each box to indicate that the required items, in the quantities required, have been included in your submittal. Completion of this page does not mean the submittal is "sufficient," it means that the application can be accepted for later sufficiency review by staff. Make sure to include all other items required for your specific project. **Incomplete applications will not be accepted.**

- Completed and signed Planned Unit Development application (pages 5-13), Petition For Rezoning (page 23), and Architectural Review Board application (pages 28-33). If the project requires a lot consolidation or subdivision (most projects do), the application for Subdivision/Boundary Adjustment (page 24) must be submitted as well.
- A \$1,990 submittal fee (\$2,275 if a subdivision/boundary adjustment plat is required) which includes a \$535 Planned Unit Development application fee, \$285 Petition For Rezoning application fee, \$135 Architectural Review Board application fee, \$285 site plan review fee, \$450 deposit for landscape review, and \$300 Storm Water Prevention Pollution Plan (SWPPP) review fee).
- 6 copies of **complete and stapled** plan sets folded print side out to approximate 8 ½ X 11. Plan sheets should be 24" x 36" in size. Plan sets must include the follow items:
  - Current boundary survey
  - Subdivision Plat (if applicable)
  - Proposed Site Plan (Civil and Architectural)
  - Stormwater Pollution Prevention Plan (SWPPP)
  - Landscape Plan
  - Floor Plans
  - Architectural and Context Elevations, and Colored Renderings
  - Colored photos of the property and adjacent properties
- A completed City of Clayton Tree Chart (excel spreadsheet). Contact [kscott@claytonmo.gov](mailto:kscott@claytonmo.gov) to request a blank spreadsheet.
- A PDF copy of the complete plan set and all supplemental documents (CD, flash drive or email)
- A brief narrative describing the proposed project.
- Subdivision Trustee approval (via letter or signatures on plans), if applicable.

PAID  
RECEIVED

FEB 4 2015  
CITY OF CLAYTON  
PLANNING & DEVELOPMENT

This page was completed by:  
Signature 

Date 2015-02-03

Print Name George M. Stock, P.E.

Phone & Email 636-530-9100  
george.stock@stockassoc.com

**ALL APPLICABLE SECTIONS OF THIS APPLICATION MUST BE COMPLETED, AND THE APPLICATION MUST BE CONSISTENT WITH SUBMITTED MATERIALS**

*(type or print)*

Address of Project: 25 N. Central & 111 N. Central

Project Description: Mixed Use; Residential and Retail

**PARTIES OF INTEREST**

*The full legal names of owner (partnership, incorporation, etc.), applicant, agent, architect, landscape architect, planner, engineer and/or manager are required.*

Name of Owner(s): Joseph P. Downs, on behalf of Opus Development Co., L.L.C. (Owner under Contract)

*Complete Address (include zip code):* 7733 Forsyth Blvd., Suite 100

*Phone Number (include area code):* 314-296-6160

Name of Applicant: Same as above.

*Complete Address (include zip code):* \_\_\_\_\_

*Phone Number (include area code) and E-mail:* \_\_\_\_\_

*Interest in Property:* \_\_\_\_\_

Name of Applicant's Agent - if different from above: \_\_\_\_\_

*Complete Address (include zip code) :* \_\_\_\_\_

*Phone Number and E-mail:* \_\_\_\_\_

Name of Architect, Landscape Architect, Planner or Engineer:

*Name/Position:* Opus AE Group, L.L.C. - Architect and Structural Engineer

*Complete Address (include zip code):* 10350 Bren Rd. West, Minnetonka, MN 55343

*Phone Number and E-mail:* 952-656-4444; dean.newins@opus-group.com

Cole and Associates - Landscape Architect

314-984-9887; jroach@colestl.com

Stock & Associates Consulting Engineers, Inc.

636-530-9100; george.stock@stockassoc.com



**SITE DESCRIPTION**

10-12 Part

Lot Number: of 13 & 14 Block Number: 5 Locator Number: 18K310986

Subdivision: \_\_\_\_\_

Current Zoning: HDC Overlay or Urban Design District (If applicable): \_\_\_\_\_

Current Use of Site: Vacant Commercial Building

**PROPOSED PROJECT**

Briefly describe the project and intended use: \_\_\_\_\_

Mixed use redevelopment. 120 apartment units. 13,500 s.f. street level retail.

Project Type: Residential \_\_\_\_\_ Commercial \_\_\_\_\_ Mixed-Use X

Is the intended use: Permitted X Conditional \_\_\_\_\_

Will there be any dwelling units in the project? Yes X No \_\_\_\_\_

If yes, number of units: 120

(208,832 including lower level garages)

**SITE DEVELOPMENT**

Total Square Footage of Site: 32,742 Total Square Footage of Building(s): 148,162 s.f. (L1-L6)

Floor Area Ratio (FAR) [for commercial or mixed-use project] 4.52 (32,742/148,162)

Total Lot Impervious Coverage Percentage—Existing: 100% Proposed: 93%

Total height of new structure (measured from average existing grade to the mean elevation of the pitched roof, or to the top of a flat roof: Approximately 70'

Number of Floors: 2 below grade, 6 above grade

Describe Stormwater Mitigation: Connection to existing storm sewer. Exempt from detention, channel protection, & water quality per discussions with MSD.

Stormwater Differential Runoff Calculations—Existing: 2.93 CFS

Proposed: 2.95 CFS Differential Runoff: 0.02 CFS

Total Number of Proposed Off-Street Parking Spaces: 175

145 @ 25 N. Central

Location of Proposed Parking: 30 @ 111 N. Central

bike storage, bike shop, residential storage, underground  
Describe any amenities to be provided: heated parking, balconies, terrace with fire pit and bar,  
club room, fitness on demand, cardio, dog wash.

Provide a tabulation/breakdown of the total square footage of the site and what percentage and amount of square footage will be reserved for commercial space, residential, off-street parking, open spaces, parks, etc.

<u>Intended Use:</u>	<u>Square Footage</u>	<u>Percentage</u>
<u>Offstreet Parking</u>	<u>Approx. 65,000 sf</u>	<u>                    </u>
<u>Retail</u>	<u>Approx. 13,500 sf</u>	<u>                    </u>
<u>Residential</u>	<u>Approx. 120,000 sf</u>	<u>                    </u>
<u>L2 Amenity Terrace</u>	<u>Approx. 1,100 sf</u>	<u>                    </u>

Give a statement showing the relationship of the proposed Planned Unit Development to applicable recommendation of the Master Plan. If there is no relationship to the Master Plan, please give justification for the variance:

See attached.

Give a statement showing how the proposed Planned Unit Development (PUD) differs from the zoning ordinance requirements:

See attached.

Explain why this difference from the zoning ordinance is necessary for the project to proceed:

See attached.

What aspects of this project make it unusual and desirable enough for the City to allow the variation from the zoning ordinance:

See attached.

---

---

What, if any, public benefit is the developer willing to provide the City? (Refer to Section 405.1380 of the Zoning Code).

See attached - Design Vision Statement

---

---

---

**Adjacent Land Use:**

*How is the proposed development compatible with the surrounding neighborhood?*

See attached.

---

---

*Will there be any adverse impact on the surrounding neighborhood or the City as a whole?*

See attached.

---

---

*If appropriate, will buffering be provided to protect adjacent land uses from light, noise, etc.?*

See attached.

---

---

*How are the operating and delivery hours compatible with the adjacent land use?*

Operating and delivery hours compatible with adjacent Retail and Office uses to the west, south, and east. Service and delivery to building strategically located on south side of property to buffer from Residential neighbors to the north.

---

**Architecture:**

*How is the architecture/building materials consistent with a high quality development and adjacent area?*

See attached.

---

---

*How does the development preserve significant architectural/environmental features of the property?*

See attached.

---

---

*Describe how the development preserves the designated historical features of the property*

Not applicable.

---

---

---

**Landscape:**

*Demonstrate how the landscaping is appropriate for the scale of the development and enhances greenspace in the City.*

See attached for demonstration description.

---

---

*What provisions will be made for care and maintenance of greenspace areas?*

A professional property management firm will be hired to lease and manage the property in a Class A manner, including greenspace areas.

---

---

**Traffic:**

*Will street and other means of access to the proposed development be suitable and adequate to any anticipated traffic without overloading the adjacent streets?*

Yes, see attached Traffic Management Plan.

---

---

*If not, how will this be resolved?*

---

---

*How does the internal circulation of the proposed development allow for movement of vehicles and pedestrians?*

Proposed internal circulation separates residential parking access to existing curb cut location on Maryland. Service for Residential and Retail separate off of Alley. Public pedestrians have clear path of travel along perimeter sidewalks on Maryland and N. Central.

---

---

**Utilities:**

*Are the existing or proposed utility services adequate for the proposed development?*

Pending review and approval by utility service providers.

---

---

**LANDSCAPE PLAN**

Are trees and/or evergreens to be removed? Yes   x   No       

If yes, number of trees   8   Caliper inches (total)   14  

Number of evergreens   1  

New trees/evergreens proposed: Number of trees   28   Caliper inches (total)   42  

Number of evergreens   14   (1:1 replacement required)

**LAND DISTURBANCE**

Check one of the three boxes below that accurately describes the proposed land disturbance associated with this application:

- Site Less Than 5,000 SF:** A Land Disturbance Permit and Storm Water Pollution Prevention Plan (SWPPP) are not required for sites with proposed land disturbance activities in an area less than 5,000 SF. Erosion and sediment control measures shall be provided as directed by the City’s Public Works Department.
- Site Less Than One Acre but Equal to or Greater Than 5,000 SF:** A Storm Water Pollution Prevention Plan (SWPPP) is required for all sites with proposed land disturbance activities of an area greater than 5,000 SF. The SWPPP shall be separate from other site plan sheets. Refer to the Site Plan Review Checklist for requirements.
- Site Equal to or Greater Than One Acre:** A Land Disturbance Permit is required for all sites with proposed land disturbance activities in an area greater than 1 acre (43,560 SF). This is a separate permit that is required in addition to any other City permits. Application and information regarding a Land Disturbance Permit can be obtained from the Public Works Department or on the City’s Website at <http://www.claytonmo.gov/permits> under Land Disturbance Requirements (SWPPP).

**AMENDMENT TO A PLANNED UNIT DEVELOPMENT (PUD) ORDINANCE**

Please describe in detail the proposed Amendment: N/A  
\_\_\_\_\_  
\_\_\_\_\_

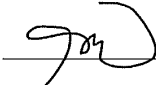
Please describe why Amendment is being sought:  
N/A  
\_\_\_\_\_  
\_\_\_\_\_

Please describe how the proposed Amendment is in conformance with the approved Development Plan:  
N/A  
\_\_\_\_\_  
\_\_\_\_\_

**\*A letter addressed to the Mayor & Board of Aldermen describing the request in detail must accompany this application.**

---

**SIGNATURES (FULL LEGAL NAME IS REQUIRED)**

Signature of Property Owner (Required):   
Print name: Joseph P. Downs, on behalf of Opus Development Co., L.L.C.  
(Owner Under Contract)  
Date: 2015-02-04 Title: Senior Director

Signature of Applicant (Required): Same as above  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_ Title: \_\_\_\_\_

Give a statement showing the relationship of the proposed Planned Unit Development to applicable recommendation of the Master Plan. If there is no relationship to the Master Plan, please give justification for the variance:

The Master Plan states as one of its main goals to *“build upon the already strong business, government, and dining functions of the area and to grow into a mixed-use, human-scale center for activity for the city and the region”* (City of Clayton Master Plan, page 6). This mixed-use project is a perfect fit for this vision, and is designed to reinforce the active nature and pedestrian scale of the North Central District. The design also includes the widening of the adjacent sidewalk as proposed in the Master Plan.

Give a statement showing how the proposed Planned Unit Development (PUD) differs from the zoning ordinance requirements:

The proposed project varies from the zoning requirements of the CBD Core Overlay District in:

- Proposed FAR of 4.52 (not counting parking within the building) versus 1.5 allowed by CBD
- Proposed height of 6 stories and 70 feet, versus 4 stories and 45 feet allowed by CBD
- Upper story front yard setbacks along both streets. CBD requires 15' setback at 3<sup>rd</sup> story or 30' (whichever is less). The project proposes building to the property line along both streets, but it does incorporate a 13'-6" setback starting on level 2 along the southernmost 66' of frontage on North Central.
- Rear yard of 4' along the alley, versus 15' required by CBD
- Parking: 145 private stalls in building and 30 public/private/retail stalls at 111 North Central property (for 5,950 retail sf)
- Other variances as determined during planning staff review

Explain why this difference from the zoning ordinance is necessary for the project to proceed:

The proposed project is tailored to incorporate the intent of the Master Plan's objective for higher density residential and Zoning Ordinances with actual market demands. Deviations listed above are required to achieve certain Master Plan objectives and accommodate market demands.

What aspects of this project make it unusual and desirable enough for the City to allow the variation from the zoning ordinance:

The proposed project redevelops an obsolete, vacant, and underutilized property in the main corridor in downtown Clayton. The project's mixed uses and design will infuse this downtown Clayton corridor with the residential and street level retail vibrancy and energy that is a main goal of the Master Plan. In addition to City's Master Plan, the project also embraces goals of the Old Town Neighborhood for this property:

- creative solution with modest massing
- elegant architectural solution with quality materials
- residential product a “natural use” for Clayton residents looking for a walkable Clayton lifestyle
- non-intrusive parking at 111 North Central
- strong emphasis on safety and security
- redeveloping this prime and underutilized property in a thoughtful way that is respectful of its surroundings

*How is the proposed development compatible with the surrounding neighborhood?*

The building sits between the taller buildings to the west, the mid-rise buildings along North Central, and the residential neighborhood to the north. As a transitional building, it displays significant mass at the corner of North Central and Maryland, defining the street edge and covering the existing parking to the west. The elevations are articulated by interior balconies that break the mass down into residential scaled volumes, with proportions and openings that relate to historic and residential buildings in the context. The aesthetic is timeless, with unique and exciting elements, yet restrained and respectful of context.

*Will there be any adverse impact on the surrounding neighborhood or the City as a whole?*

There will be no negative impacts on the surrounding neighborhood or the City as a whole. The project is a large benefit to the City for the reasons stated in the Master Plan and the Public Benefit statement.

*If appropriate, will buffering be provided to protect adjacent land uses from light, noise, etc.?*

No additional buffering is appropriate or necessary for this project given the location in the HDC and the site plan benefits.

*How is the architecture/building materials consistent with a high quality development and adjacent area?*

The use of brick on the North Central and Maryland elevations acknowledge the history of the heart of downtown, while the modern detailing and use of complementary materials make for an attractive, well-appointed contemporary building. The extensive use of glass makes the building open and inviting, provides more “eyes on the street”, and will enhance the visible activity level of the neighborhood.

*How does the development preserve significant architectural/environmental features of the property?*



The use of brick for the new building will help preserve brick as an existing neighborhood building material.

*Describe how the development preserves the designated historical features of the property*

NA



ST. LOUIS  
Power House at Union Station  
401 S. 18th Street, Suite 200  
St. Louis, MO 63103  
314.984.9887 tel

ST. CHARLES  
1520 S. Fifth Street  
Suite 307  
St. Charles, MO 63303  
636.978.7508 tel

DALLAS  
6175 Main Street  
Suite 367  
Frisco, TX 75034  
972.624.6000 tel

PHOENIX  
2701 E. Camelback Road  
Suite 175  
Phoenix, AZ 85016  
602.795.4111 tel

**Landscape:**

*Demonstrate how the landscaping is appropriate for the scale of the development and enhances greenspace in the City.*

The proposed landscape along North Central Ave. follows the streetscape that is currently existing within the city guidelines. There are 7 existing street trees along North Central Ave. adjacent the project site and the new building is proposing 8 of similar size and type. In addition, there are 4 streets trees of similar size and type to those along North Central proposed along Maryland Avenue to aid in fostering the pedestrian environment favored by the city. Also, there are two exterior outdoor plazas as part of the project. One is internal and is to contain over 3000 square feet of green roof, as well as, an approximately 460 square foot planter that will contain shade tolerant and vertical evergreens to break down the scale and visual effect of the neighboring parking structure. There is a second outdoor area above street level along the east façade of the building. This space is intended to have plant material in pots that should be visible from the streetscape adding to its appeal. The overall affect is one of refined, urban greenery, building upon the City of Claytons prototypes.

*What provisions will be made for care and maintenance of greenspace areas?*

A professional property management firm will be hired to lease and manage the property in a Class A manner, including greenspace areas.

# Attachment to Planned Unit Development Application Opus Development Company, L.L.C.

## 25 North Central Proposed Development

### Public Benefit List to the City

Section 405.1380 Public Benefit

[Ord. No. 5814 §1(12.3), 4-27-2004; Ord. No. 5935 §1(12.3), 7-11-2006]

A.

The public benefits to the City that are intended to be derived from the approval of planned unit developments include, but are not limited to:

1.

Extraordinary landscaping and greenspace provisions;

**Widening of Sidewalk along North Central to allow for vibrant pedestrian experience and outdoor dining.**

**Net gain in trees in public right of way.**

**New streetscape and ADA accessibility along entire public perimeter.**

**Green Roof with Landscaping at Level Two courtyard (private).**

2.

Garage entryways by virtue of their location, materials and design blend with the architecture of the surrounding neighborhood;

**Residential garage buried below grade to avoid parking use above grade. Service entry located appropriately in Alley.**

**Architecture on public streets of Maryland and North Central designed to engage the public at street level through use of open glass and wide ADA compliant sidewalks.**

3.

Architectural distinction and significance that would make the development noteworthy;

**The building sits between the taller buildings to the west, the mid-rise buildings along North Central, and the residential neighborhood to the north. As a transitional building, it displays significant mass at the corner of North Central and Maryland, defining the street edge and covering the existing parking to the west. The elevations are articulated**

by interior balconies that break the mass down into residential scaled volumes, with proportions and openings that relate to historic and residential buildings in the context. The aesthetic is timeless, with unique and exciting elements, yet restrained and respectful of context.

4.

Extensive use of high quality building materials that would add significant value to the property and benefit the adjacent properties;

**The use of brick on the North Central and Maryland elevations acknowledge the history of the heart of downtown, while the modern detailing and use of complementary materials make for an attractive, well-appointed contemporary building. The extensive use of glass makes the building open and inviting, provides more “eyes on the street”, and will enhance the visible activity level of the neighborhood.**

5.

Provision of new public infrastructure including, but not limited to, streets, curbs, sidewalks, sanitary sewers, stormwater sewers, lighting and public parking;

**Overhead utilities in Alley are being buried and Alley being replaced. Width of Alley being extended by 4' at request of Public Works. ADA accessibility around entire perimeter and all curb cuts. New street lighting and widened sidewalk along North Central. Potential additional public parking at 111 North Central if not used by the proposed development. Extended corner sidewalk allows for reduced travel distance to North across Maryland Avenue.**

6.

Provisions for reduced sale or rental for a percentage of the units to encourage the goal of affordable housing;

**Approximately 30% of residences are reduced in size (475 to 650sf) to offer lower monthly rent option. Not considered “affordable housing,” but is an attempt to offer product at lower end of market rents.**

7.

Sustainable building design and construction including, but not limited to, sustainable site development, green roofs, water savings, energy efficiency, materials selection and indoor environmental quality.

**See attached Sustainable Initiatives document.**

**B.**

For projects proposed within the central business district, the public benefits specific to the central business district that are intended to be derived from the approval of planned unit developments include, but are not limited to, the following accessory complimentary features:

**1.**

Inclusion of below grade public parking facility located underneath the proposed development;

**Secure and tempered residential parking, bike storage, and residential storage will be located beneath the building.**

**Potential public parking at 111 North Central is a surface lot and not an above grade structure.**

**2.**

Inclusion of public parking spaces in excess of what is required by Chapter **405**, Article **XXV** of the Municipal Code;

**Potential exists for public parking at 111 North Central. Depending on proposed development use, excess stalls will be made available to the public. Also, Applicant proposes increase in minimum retail tenant size requirement for no parking to 5,950sf.**

**3.**

Inclusion of street level landscape garden, plaza or park available for public use;

**Sidewalk widened along North Central for vibrant pedestrian experience. Net gain in trees, outdoor dining, and clear pedestrian pathway. Sidewalk along Maryland Avenue to allows for landscaping, lighting, and ADA accessibility.**

**4.**

Inclusion of special access features or provisions to existing or planned public transit facilities;

**Public bikes spaces provided within the building footprint. Property is located three blocks from metro garage and metro link.**

**5.**

Inclusion of a mixed use development plan where no single use exceeds eighty percent (80%) of the total floor area;

**Retail about 12% and Residential about 88%.**

**6.**

Public art;

**Widened sidewalk and street level architecture is designed to maximize pedestrian street level experience.**

**7.**

Architectural distinction and significance that would make the building(s) noteworthy; and

**Please refer to the answer for part A number 3**

**8.**

Extensive use of high quality building materials that would add to the assessed valuation of the structure.

**Please refer to the answer to part A number 4.**



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

---

---

## REQUEST FOR BOARD ACTION

---

**TO:** MAYOR SANGER; BOARD OF ALDERMEN

**FROM:** CRAIG S. OWENS, CITY MANAGER  
SUSAN M. ISTENES, AICP, DIRECTOR, PLANNING & DEV. SERVICES

**DATE:** JUNE 9, 2015

**SUBJECT:** PUBLIC HEARING AND ORDINANCE TO CONSIDER A SUBDIVISION PLAT  
25 NORTH CENTRAL AVENUE

---

This is a public hearing and subsequent ordinance to consider approving a subdivision plat.

On February 3, 2015, the City of Clayton received an application, plat and supporting documents from Joe Downs, Partner, Opus Development Company, LLC, developer/owner under contract, of 25 North Central Avenue, for a subdivision plat in support of the development of a new mixed-use project.

The proposed project consists of the demolition of the existing structures at 25 North Central Avenue, and the construction of a 123,806-square-foot, 6-story (+/- 69 feet) building located on top of a 2 level below grade parking structure. The building will contain 13,297 square feet of ground floor retail, 121 residential units (9 studio units, 30 alcove units, 38 one-bedroom units, 43 two-bedroom units, and 1 guest suite), and 145 parking spaces. A 30 space surface parking lot at 111 North Central Avenue is also proposed as part of the project.

The proposed plat will consolidate five existing lots (Lots 10-12 and parts of Lots 13 & 14, Block 5 in the Town (now City) of Clayton) that have historically been under common ownership and addressed as 25 North Central Avenue. The plat also provides for an 800 square foot right-of-way dedication to the City along the southern alley to allow it to be widened to meet city standards. The consolidated lot will measure 31,942 square feet.

The Plan Commission reconsidered this request at its May 4, 2015 meeting and voted unanimously to recommend approval.

**Recommendation:** If the Board of Aldermen approves the Planned Unit Development as proposed, staff recommends approval of the plat as presented.

If the Board of Aldermen approves the Planned Unit Development with the condition that the three existing on-street parking spaces on Maryland Avenue be preserved, staff recommends that action on the plat be delayed until a revised plat can be prepared to show a right-of-way dedication or easement along Maryland Avenue to accommodate the new streetscape.

**AN ORDINANCE PROVIDING FOR THE APPROVAL OF A PLAT OF CERTAIN PROPERTY GENERALLY LOCATED AT 25 NORTH CENTRAL AVENUE IN THE CITY OF CLAYTON, MISSOURI.**

---

**WHEREAS**, there presently exists in the City of Clayton a commercially zoned property numbered 25 North Central Avenue, and

**WHEREAS**, the owners of said property desire to consolidate five existing lots that have typically been under common ownership and addressed 25 North Central Avenue and to dedicate 800 square feet of the property to the City in accordance with the City of Clayton Subdivision Ordinance, and have submitted the plat of said property to the Board of Aldermen of the City of Clayton for approval, which plat is attached hereto, marked "Exhibit A", and made part of this Ordinance; and

**WHEREAS**, the City Plan Commission has considered the subdivision plat and recommended approval; and

**WHEREAS**, a public hearing on the proposed plat was held by the Board of Aldermen on June 9, 2015, after due notice as required by law; and

**WHEREAS**, the Board of Aldermen has considered the objectives and criteria specified in Sec. 415.360 of the Clayton City Code and the provisions of Title IV of the City Code in general and finds that the proposed subdivision meets the criteria for approval.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:**

**Section 1.** The subdivision plat of the property numbered 25 North Central Avenue, and more fully described as:

LOTS 10-12 & PARTS OF LOTS 13 & 14, BLOCK 5 IN THE TOWN (NOW CITY) OF CLAYTON  
ST. LOUIS COUNTY, MISSOURI

is hereby approved as attached hereto and marked "Exhibit A" and made part of this ordinance.

**Section 2.** The City Clerk of the City of Clayton is authorized and directed on behalf of the City to sign the approved plat of consolidation of the subject property.

**Section 3.** The owner (applicant) must submit to the City Clerk within 30 days proof of filing with the St. Louis County Recorder of Deeds Office showing the book and page where the approved plat was properly recorded as required by law.

**Section 3.** This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen.

Passed this 9<sup>th</sup> day of June, 2015

\_\_\_\_\_  
Mayor

ATTEST:

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





DEPARTMENT OF PLANNING & DEVELOPMENT SERVICES  
10 North Bemiston Avenue, Clayton, MO 63105

**APPLICATION FOR SUBDIVISION/  
BOUNDARY ADJUSTMENT**

*(please print)*

Date: 2015-02-03

**NOTE: PLATS MUST BE FILED WITH THE ST. LOUIS COUNTY RECORDER OF DEEDS OFFICE AND PROOF OF SUCH FILING MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE WITHIN 30 DAYS OF APPROVAL BY THE BOARD OF ALDERMEN.**

**\$285.00 FEE (INCLUDES \$35 NON-REFUNDABLE PROCESSING FEE) MUST ACCOMPANY THIS APPLICATION**

*Application is being made for:*

Subdivision of Lot \_\_\_ Lot Consolidation \_\_\_ Boundary Adjustment x

Name of Subdivision: Town (now City) of Clayton

Existing Address(es): 25 N. Central Avenue

Lot Number(s): 10-12 Part of 13 & 14 Block Number: 5

Number of Existing Lots: 1 Number of Proposed Lots: \_\_\_

Square Footage of Existing Lot(s): 32,742

Square Footage of Proposed Lot(s): 31,942

Boundary Adjustment, if applicable, is being made to adjust To adjust line

southern property line, for the following reason: to dedicate 4.00' of alley R/W.

Current Zoning: HDC Proposed Zoning (if different): PUD

Updated October, 2014

PAID

RECEIVED

FEB 4 2015

CITY OF CLAYTON  
PLANNING & DEVELOPMENT

Applicant's Name: Opus Development Company, L.L.C. (Owner under contract)

Applicant's Address (include City, State & Zip Code): \_\_\_\_\_

7733 Forsyth Boulevard, Suite 1100

Applicant's Phone No. & E-Mail Address: 314-296-6160; joe.downs@opus-group.com

Property Owner's Name, Address & Phone No. (if other than above) \_\_\_\_\_

Same as above.

---

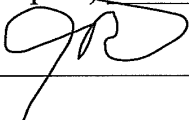
**It is hereby requested that the boundary adjustment plat be considered by the City's Plan Commission.**

**It is hereby requested that the subdivision/lot consolidation plat be considered by the Honorable Mayor and Members of the Board of Aldermen upon recommendation of the City's Plan Commission.**

**A representative will need to attend the appropriate meeting(s).**

Respectfully Submitted,

Name of Applicant (please print) Joseph P. Downs on behalf of applicant

Signature of Applicant 

Updated October, 2014



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

---

---

## REQUEST FOR BOARD ACTION

---

**TO:** MAYOR SANGER; BOARD OF ALDERMEN

**FROM:** CRAIG OWENS, CITY MANAGER (CSO)

**DATE:** JUNE 9, 2015

**SUBJECT:** ORDINANCE – ESTABLISHING THE 25 NORTH CENTRAL COMMUNITY IMPROVEMENT DISTRICT, DECLARING PROPERTY WITHIN THE DISTRICT AS BLIGHTED AND APPROVING A DEVELOPMENT AGREEMENT

---

### OVERVIEW:

Opus Development Company, L.L.C. (the “Developer”) intends to redevelop the property located at 25 North Central Avenue into a mixed-use project consisting of approximately 121 market-rate apartments on levels 2 through 6 with an amenities area and a residential guest suite on level 2, restaurant, retail and/or service uses totaling approximately 13,297 square feet on level 1, and surface and structured parking to be located on two levels below grade and totaling approximately 145 parking stalls. The Developer also intends to acquire the property located at 111 North Central Avenue, demolish and remove the existing improvements thereon, and construct a surface parking lot consisting of approximately 30 parking stalls. To assist in financing this redevelopment, the Developer has petitioned the City to create a Community Improvement District (the “CID”) on the retail/apartment site pursuant to the Community Improvement District Act, Sections 67.1401 to 67.1571, RSMo. (the “CID Act”). The CID will impose an additional 1% sales tax on restaurant and other retail sales. The Developer has also requested that the City contribute an amount equal to 50% of the sales tax revenues generated from taxable sales in the CID and actually received by the City from its 2.5% cumulative sales tax. The CID will use the sales tax revenues to pay for certain eligible project costs. The attached ordinance:

- Approves the petition to establish the CID;
- Appoints a Board of Directors for the CID;
- Declares the property within the CID to be blighted pursuant to the CID Act;
- Directs the City Clerk to notify the Department of Economic Development that the CID has been established (as required by the CID Act); and
- Approves a Development Agreement among the City, the Developer and the CID.

### APPROVAL OF CID PETITION AND APPOINTMENT OF BOARD OF DIRECTORS:

The petition to establish the CID defines the basic scope of the CID, including its boundaries and its ability to seek voter approval of the aforementioned CID sales tax and special assessment (in this case, the CID Act provides that the only qualified voter to vote on these matters is the sole property owner within the CID, which is currently 25 NC, LLC). If the attached ordinance is passed, the CID will be established as a separate political subdivision and will be a separate legal entity from the City.

The CID will be governed by a five-member board of directors appointed by the Mayor with the consent of the Board of Aldermen. Only registered voters residing within the CID and the authorized representatives of property owners within the CID may be appointed to the Board of Directors. In this case, the Developer will be the sole property owner (after it acquires the property from 25 NC, LLC) within the CID and has designated the five persons named in the attached ordinance to be considered for appointment to the board of directors.

**BLIGHT FINDING:**

The blight finding is supported by a study prepared by the Developer's consultant, Development Dynamics. The City's attorneys have reviewed this study and believe that it presents sufficient evidence for the Board of Aldermen to make a blight finding. Pursuant to the CID Act, the blight finding will give the CID certain additional powers, including the ability to reimburse the Developer for costs associated with demolition of the existing buildings on the site. Without the blight finding, the CID would only be allowed to finance public improvements, such as streets and sidewalks.

**NOTIFICATION TO DEPARTMENT OF ECONOMIC DEVELOPMENT:**

The CID Act requires the City Clerk to report the creation of the CID to the Department of Economic Development. The attached ordinance will authorize the City Clerk to make such notification.

**REDEVELOPMENT AGREEMENT:**

The Redevelopment Agreement covers the following key business terms:

- The CID will reimburse the Developer for up to \$1,500,000 of eligible project costs.
- The reimbursement will be structured in the form of a CID Note issued by the CID to the Developer. The revenues from the CID sales tax and the City sales taxes will be used to pay the principal of and interest on the CID Note as such revenues are generated. The term of the CID Note will be 20 years from the date of its issuance.
- The CID will terminate after the CID Note (and any bonds issued to refinance the CID Note) are paid off, but in no event later than 20 years after the initial issuance of the CID Note.
- The City will purchase the parking lot from the Developer for an amount not to exceed \$900,000. The Development Agreement gives the Developer the right to purchase a license for exclusive use of up to 30 parking stalls within the parking lot at the prevailing market rate for monthly users.
- The Developer will cover the City's costs associated with establishing the CID and negotiating the Development Agreement.
- The Developer will provide a broad indemnification of the City.

**Recommendation:** To approve the attached ordinance.

**BILL NO. 6502**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF CLAYTON, MISSOURI, APPROVING A PETITION REQUESTING THE CREATION OF THE 25 NORTH CENTRAL COMMUNITY IMPROVEMENT DISTRICT; DECLARING THE PROPERTY WITHIN SAID DISTRICT TO BE A BLIGHTED AREA UNDER THE COMMUNITY IMPROVEMENT DISTRICT ACT; ESTABLISHING THE DISTRICT AS A POLITICAL SUBDIVISION OF THE STATE OF MISSOURI; DIRECTING THE CITY CLERK TO NOTIFY THE MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT OF THE CREATION OF THE DISTRICT; APPROVING A DEVELOPMENT AGREEMENT AMONG THE CITY, THE DISTRICT AND OPUS DEVELOPMENT COMPANY, L.L.C.; AUTHORIZING CERTAIN ACTIONS IN CONNECTION THEREWITH; AND CONTAINING A SEVERABILITY CLAUSE**

**WHEREAS**, the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended (the “**Act**”), authorizes the governing body of any municipality, upon a proper petition requesting the formation and after a public hearing, to adopt an ordinance establishing a community improvement district; and

**WHEREAS**, on May 14, 2015, 25 NC, LLC filed a petition (the “**Petition**”), a copy of which is set forth as **Exhibit A**, attached hereto and incorporated herein by reference, with the City Clerk of the City of Clayton, Missouri (the “**City**”) pursuant to the Act, which proposed the formation of the 25 North Central Community Improvement District (the “**District**”) to pay for certain costs associated with (a) the construction, reconstruction, installation, repair, and maintenance of various public improvements, including, without limitation, installation of a double-wide sidewalk on Central Avenue in the District, burial of utility lines and widening of an alley and (b) the demolition and removal of existing buildings and structures and related environmental remediation and site work within District (collectively, the “**District Project**”); and

**WHEREAS**, a blighting study (the “**Blighting Study**”) of the real property included within the District has been prepared by Development Dynamics, LLC, to assist the Board of Aldermen in determining whether the District is located in a blighted area pursuant to the requirements of the Act; and

**WHEREAS**, on May 15, 2015, the City Clerk verified that the Petition complied with the Act and set a public hearing with all proper notice being given in accordance with the Act; and

**WHEREAS**, on June 9, 2015, the Board of Aldermen held a public hearing at which all persons interested in the formation of the District were allowed an opportunity to speak and at which time the Board of Aldermen heard all protests and received all endorsements; and

**WHEREAS**, following closure of the public hearing and upon due consideration of the testimony presented, the Board of Aldermen has determined that it is necessary and in the interest of the public health, safety, morals and general welfare of the people of the City that the

Board of Aldermen take appropriate official action respecting the findings and determinations set forth in the Blighting Study; and

**WHEREAS**, the Board of Aldermen finds that notice of the establishment of the District has been duly given and the public hearing thereon has been held in which all reasonable protests, objections and endorsements have been heard, all in accordance with Section 67.1431 of the Act; and

**WHEREAS**, the Board of Aldermen further finds that the Petition to establish the District is proper in that it meets all of the requirements of Section 67.1421 of the Act; and

**WHEREAS**, in conjunction with the District Project, Opus Development Company, L.L.C. (the “**Developer**”) anticipates that it will acquire the real property located in the District and the real property located at 111 North Central Avenue in the City (the “**Parking Lot Site**”) and undertake (a) the development of the real property within the District as a six-story, mixed-use project involving approximately 121 market rate apartments on levels 2 through 6 with an amenities area and a residential guest suite on level 2, restaurant, retail and/or service uses totaling approximately 13,297 square feet on level 1 and surface and structured parking to be located on two levels below grade and totaling approximately 145 parking stalls (the “**Mixed-Use Project**”), and (b) the demolition and removal of existing, obsolete improvements from the Parking Lot Site and construction of significant improvements to the Parking Lot Site to result in an at-grade, surface parking lot consisting of approximately 30 parking stalls, a security gate and exterior lighting (the “**Parking Lot**” and, together with the Mixed-Use Project, the “**Developer Project**”); and

**WHEREAS**, the Board of Aldermen finds it necessary and desirable to enter into a development agreement (the “**Agreement**”) with the Developer and the District in substantially the form of **Exhibit B**, attached hereto and incorporated herein by reference, to memorialize the terms of agreement regarding the implementation of the District Project and the Developer Project.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:**

**SECTION 1. Establishment of District.** There is hereby created within the City the 25 North Central Community Improvement District as a political subdivision of the State of Missouri, having the powers and purposes set forth in the Petition. The District shall include the contiguous tract of real estate described in the Petition, shall be governed by a board of directors consisting of five (5) members appointed by the City and shall have authority to impose a sales and use tax not exceeding one percent (1%). The City hereby appoints the initial Board of Directors of the District to initial terms of office, as follows:

Matthew W. Geekie	4 year term
Randall R. Harwood	4 year term
Jason Casey	2 year term
Joe Downs	2 year term
Ryan Carlie	2 year term

**SECTION 2. Declaration of Blight.** Upon due consideration of the Blighting Study and the testimony presented at the public hearing, it is hereby found, determined and declared that the real property within the District is a “blighted area” as that term is used and defined in Section 67.1401.2(3)(a) of the Act.

**SECTION 3. Term.** The District shall be in existence for such period of time as is required to repay any notes, bonds or other obligations it issues, but not to exceed 23 years from the date of this Ordinance.

**SECTION 4. Missouri Department of Economic Development Report.** The City Clerk is hereby directed to prepare and file with the Missouri Department of Economic Development the report specified in Section 67.1421.6 of the Act.

**SECTION 5. Development Agreement.** The Board of Aldermen hereby approves the Agreement in substantially the form of **Exhibit B**, attached hereto and incorporated herein by reference, with such changes therein as shall be approved by the officers of the City executing the Agreement, such officers’ signatures thereon being conclusive evidence of their approval and the Board of Aldermen’s approval thereof. The Mayor of the City is hereby authorized and directed to execute the Agreement on behalf of the City and the City Clerk is hereby authorized and directed to attest to the Agreement and to affix seal of the City thereto.

**SECTION 6. Further Actions Authorized.** The officers and agents of the City 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.

**SECTION 7. Severability Clause.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

**SECTION 8.** Effective Date. This ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

**SECTION 9.** Passed by the Board of Aldermen this 9th day of June, 2015.

---

Mayor

Attest:

---

City Clerk



**EXHIBIT A**

**PETITION**

[On file with the Office of the City Clerk]

**EXHIBIT B**

**FORM OF DEVELOPMENT AGREEMENT**

[On file with the Office of the City Clerk]

---

**DEVELOPMENT AGREEMENT**

among the

**CITY OF CLAYTON, MISSOURI,**

the

**25 NORTH CENTRAL COMMUNITY IMPROVEMENT DISTRICT,**

and

**OPUS DEVELOPMENT COMPANY, L.L.C.**

dated as of

\_\_\_\_\_, 2015

---

**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE I</b>	<b>DEFINITIONS, RECITALS AND EXHIBITS..... 2</b>
Section 1.1.	Recitals and Exhibits..... 2
Section 1.2.	Definitions..... 2
<b>ARTICLE II</b>	<b>REPRESENTATIONS OF PARTIES ..... 7</b>
Section 2.1.	Representations by the District ..... 7
Section 2.2.	Representations by the City ..... 8
Section 2.3.	Representations by the Developer..... 8
<b>ARTICLE III</b>	<b>COLLECTION OF FUNDS..... 9</b>
Section 3.1.	Imposition of the District Sales Tax ..... 9
Section 3.2.	Administration and Collection of the District Sales Tax ..... 9
Section 3.3.	Collection Fee for the District Sales Tax ..... 9
Section 3.4.	Operating Costs..... 9
Section 3.5.	Enforcement of the District Sales Tax ..... 10
Section 3.6.	Records of the District Sales Tax..... 10
Section 3.7.	Repeal of the District Sales Tax..... 10
Section 3.8.	Transfer of Municipal Contribution..... 10
<b>ARTICLE IV</b>	<b>FINANCING DISTRICT PROJECTS ..... 11</b>
Section 4.1.	Acquisition of Property; Design and Construction of District Project and Parking Lot..... 11
Section 4.2.	Application of Prevailing Wage, Public Bidding and Other Laws ..... 11
Section 4.3.	Payment of City’s Costs; Financing of the District Project ..... 12
Section 4.4.	Reimbursements Limited to Reimbursable Project Costs; Developer’s Right to Substitute ..... 12
Section 4.5.	Certificate of Substantial Completion..... 13
Section 4.6.	Insurance ..... 13
Section 4.7.	Annual Budget; Annual Financial Statements ..... 14
<b>ARTICLE V</b>	<b>DISTRICT OBLIGATIONS..... 15</b>
Section 5.1.	Reimbursement of Costs; Issuance of District Obligations ..... 15
Section 5.2.	Limited Obligations ..... 15
Section 5.3.	Cooperation in the Issuance of District Obligations ..... 15
Section 5.4.	No Other Obligations or Uses of Net Revenues ..... 15
Section 5.5.	District Notes ..... 16
Section 5.6.	Application of Net Revenues and Municipal Contribution..... 16
Section 5.7.	Conditions Precedent to Issuance of District Notes..... 17
Section 5.8.	District Bonds ..... 17
Section 5.9.	Pledge of Net Revenues and Municipal Contribution..... 17
Section 5.10.	Covenant to Request Annual Appropriation ..... 17
Section 5.11.	Governance of the District ..... 18
<b>ARTICLE VI</b>	<b>SPECIAL COVENANTS ..... 18</b>
Section 6.1.	Records of the District ..... 18
Section 6.2.	Developer’s Covenants Related to the District ..... 19
Section 6.3.	Developer’s Obligations to the City Under Bond or Surety ..... 20
Section 6.4.	Governmental Approvals ..... 20
Section 6.5.	City’s Covenants Related to the District..... 20

Section 6.6.	Federal Work Authorization Program .....	21
<b>ARTICLE VII</b>	<b>DEFAULTS AND REMEDIES .....</b>	<b>21</b>
Section 7.1.	Events of Default .....	21
Section 7.2.	Remedies on Default.....	21
Section 7.3.	Rights and Remedies Cumulative .....	22
Section 7.4.	Waiver of Breach .....	22
Section 7.5.	Excusable Delays .....	22
<b>ARTICLE VIII</b>	<b>MISCELLANEOUS .....</b>	<b>22</b>
Section 8.1.	Effective Date .....	22
Section 8.2.	Release and Indemnification .....	22
Section 8.3.	Immunities .....	23
Section 8.4.	Modification.....	24
Section 8.5.	Notices .....	24
Section 8.6.	Applicable Law .....	25
Section 8.7.	Validity and Severability .....	25
Section 8.8.	Successors and Assigns.....	25
Section 8.9.	Mortgagee’s Protection.....	26
Section 8.10.	Limited Recourse .....	27
Section 8.11.	Mutual Assistance.....	27
Section 8.12.	Execution of Counterparts .....	27
Exhibit A – Description of District Project and Estimated Reimbursable Project Costs		
Exhibit B – Form of Certificate of Reimbursable Project Costs		
Exhibit C – Form of Certificate of Substantial Completion		
Exhibit D – Form of Monthly Report of Net Revenues Derived from District Sales Tax		
Exhibit E – Legal Description of the District		
Exhibit F – Legal Description of the Parking Lot Site		

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT (“Agreement”)**, entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015 (“**Effective Date**”), among the **CITY OF CLAYTON, MISSOURI**, a home-rule city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri (the “**City**”), the **25 NORTH CENTRAL COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision duly organized and existing under the laws of the State of Missouri (the “**District**”), and **OPUS DEVELOPMENT COMPANY, L.L.C.**, a Delaware limited liability company, or its permitted successors or assigns (the “**Developer**”) (the City, the District and the Developer being collectively referred to herein as the “**Parties**,” and individually as a “**Party**,” as the context so requires).

### WITNESSETH:

**WHEREAS**, on May 14, 2015, 25 NC, LLC (the “**Current Property Owner**”) filed a Petition for the Creation of a Community Improvement District (the “**Petition**”) with the City Clerk of the City pursuant to the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended (the “**CID Act**”), which proposed the formation of the District to pay for certain costs associated with (a) the construction, reconstruction, installation, repair, maintenance and equipping of various public improvements on or adjacent to the District, including, without limitation, creation of a double-wide sidewalk on Central Avenue, burial of utility lines, and widening of the alley adjacent to the southern boundary of the District (the “**Infrastructure Improvements**”), and (b) the demolition and removal, renovation, reconstruction and rehabilitation of buildings and structures, including, without limitation, the demolition and removal of existing buildings and structures and related environmental remediation and site work within the boundaries of the District (the “**Demolition and Site Work**” and, together with the Infrastructure Improvements, the “**District Project**”, as more particularly described on **Exhibit A**, attached hereto and incorporated herein by reference), all of which will be located on or adjacent to the real property within the District, which is located at 25 North Central Avenue in the City; and

**WHEREAS**, in conjunction with the District Project, the Developer anticipates it will acquire the real property in the District and the real property comprising the Parking Lot Site (as herein defined) from the Current Property Owner and undertake (a) the development of the real property within the District as a six-story, mixed-use project involving approximately 121 market rate apartments on levels 2 through 6 with an amenities area and a residential guest suite on level 2, restaurant, retail and/or service uses totaling approximately 13,297 square feet on level 1 and surface and structured parking to be located on two levels below grade and totaling approximately 145 parking stalls (the “**Mixed-Use Project**”), and (b) the demolition and removal of existing, obsolete improvements from the real property located at 111 North Central Avenue in the City and the construction of significant improvements to the Parking Lot Site to result in an at-grade, surface parking lot consisting of approximately 30 parking stalls, security gate, and exterior lighting (the “**Parking Lot**” and, together with the Mixed-Use Project, the “**Developer Project**”); and

**WHEREAS**, pursuant to Ordinance No. \_\_\_\_ passed and approved on \_\_\_\_\_, 2015 (the “**Ordinance**”), the City created the District in accordance with the CID Act and found that the District is a “blighted area”, as defined in Section 67.1401.2(3)(a) of the CID Act; and

**WHEREAS**, the District is authorized under the CID Act to undertake the District Project and to impose the District Sales Tax (as defined herein), which will be used to reimburse the Developer for Reimbursable Project Costs (as defined herein) related to the District Project; and

**WHEREAS**, the City is authorized under Section 70.220.1 of the Revised Statutes of Missouri, as amended, to contract and cooperate with the District and the Developer for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, provided that the subject and purposes of any such contract or cooperative action made and entered into by the City shall be within the scope of the powers of the City; and

**WHEREAS**, the City is authorized to make available the Municipal Contribution (as defined herein), which will be used to reimburse the Developer for Reimbursable Project Costs related to the Infrastructure Improvements; and

**WHEREAS**, the Parties desire to enter into this Agreement to provide for the process by which the District and the City will reimburse the Developer for Reimbursable Project Costs and provide assurances to the City regarding the implementation of the District Project and the Developer Project; and

**WHEREAS**, the Board of Aldermen of the City has determined that the action to be taken pursuant to this Agreement is reasonably anticipated to remediate the blighting conditions within the District and will serve a public purpose.

**NOW, THEREFORE**, for and in consideration of the premises, and the mutual covenants herein contained, the Parties agree as follows:

## **ARTICLE I**

### **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:

**“Agreement”** shall mean this Development Agreement, as amended from time to time in accordance with its terms.

**“Annual Operating Fund Deposit”** shall mean (a) for the fiscal year ending December 31, 2015, an amount not to exceed \$20,000; and (b) for each fiscal year of the District thereafter, an amount not to exceed the amount for the immediately preceding fiscal year plus two percent (2%).

**“Authorized City Representative”** means the Mayor or City Manager or such other person or persons from time to time designated by the Board of Aldermen as the person or persons authorized to act on behalf of the City under this Agreement.

**“Authorized District Representative”** means the Chair or Executive Director or such other person or persons designated by the Board of Directors of the District as the persons or persons authorized to act on behalf of the District under this Agreement.

**“Board of Aldermen”** means the governing body of the City of Clayton, Missouri.

**“Board of Directors”** means the Board of Directors of the District, as appointed by the Mayor with the consent of the Board of Aldermen, in accordance with the CID Act, the Petition and the Ordinance.

**“Bond Counsel”** means Armstrong Teasdale LLP, St. Louis, Missouri, or an attorney or firm of attorneys having nationally recognized standing in the field of tax-exempt municipal bonds approved by the District’s Board of Directors.

**“Certificate of Reimbursable Project Costs”** means a certificate identifying Reimbursable Project Costs substantially in the form of **Exhibit B**, attached hereto and incorporated herein by this reference. The aggregate amount of approved Reimbursable Project Costs pursuant to one or more Certificates of Reimbursable Project Costs shall not exceed \$1,500,000, plus Costs of Issuance, the sum advanced by the Developer pursuant to **Section 4.3(a)** of this Agreement and the sum advanced by the Developer to pay Operating Costs pursuant to **Section 3.4** of this Agreement.

**“Certificate of Substantial Completion”** means a document substantially in the form of **Exhibit C**, attached hereto and incorporated herein by this reference, delivered by the Developer to the District and the City in accordance with this Agreement and which, upon the District’s and the City’s acceptance thereof, will evidence the Developer’s satisfaction of all obligations and covenants to perform the District Project in accordance with this Agreement.

**“CID Act”** means the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended.

**“City”** means the City of Clayton, Missouri, a home-rule city and political subdivision of the State of Missouri.

**“City Code”** means the municipal code of the City, as amended.

**“City Parking Lot Site”** means certain real property located at 103 North Central Avenue and adjacent to the Parking Lot Site, which is currently owned by the City and upon which is located an existing City parking lot.

**“Construction Inspector”** means the engineer or architect, who may be an employee of the City, or firm of engineers or architects appointed by the City with the consent of the District, which consent shall not be unreasonably withheld or delayed.

**“Costs of Issuance”** means all costs reasonably incurred by the District or the City in furtherance of the issuance of the District Obligations, including, but not limited to, the fees and expenses of financial advisors and consultants, the District’s attorneys (including issuer’s counsel and Bond Counsel), the City’s attorneys (including special and finance counsels), the City’s administrative fees and expenses (including fees and costs of planning consultants and other advisors), underwriters’ discounts and fees, the costs of printing any District Obligations and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any District Obligations.



**“County Recorder”** means the St. Louis County Recorder of Deeds.

**“Debt Service Reserve Fund”** means the fund established with the Trustee to fund the repayment of the District Obligations in accordance with this Agreement.

**“Demolition and Site Work”** means that portion of the District Project related to the demolition and removal, renovation, reconstruction and rehabilitation of buildings and structures, including without limitation the demolition and removal of existing buildings and structures and related environmental remediation and site work within the boundaries of the District.

**“Developer”** means Opus Development Company, L.L.C., a Delaware limited liability company, or its permitted successors or assigns.

**“Developer Project”** means the development of (a) the Mixed-Use Project on the real property within the District, and (b) the Parking Lot on the real property located at 111 North Central Avenue.

**“District”** means the 25 North Central Community Improvement District, a political subdivision of the State of Missouri.

**“District Bonds”** means the sales tax revenue bonds issued by or on behalf of the District under a Trust Indenture and in accordance with this Agreement. The form of District Bonds shall be attached to and incorporated as part of a Trust Indenture.

**“District Notes”** means the sales tax revenue notes issued by or on behalf of the District under a Trust Indenture and in accordance with this Agreement. The form of District Notes shall be attached to and incorporated as part of a Trust Indenture.

**“District Obligations”** means any District Bonds, District Notes or other obligations issued by or on behalf of the District to pay or otherwise reimburse Reimbursable Project Costs.

**“District Project”** means the Infrastructure Improvements and the Demolition and Site Work, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference, all of which will be located on or adjacent to the real property within the District.

**“District Revenues Account”** means the account of Revenue Fund into which the Net Revenues are deposited from time to time in accordance with this Agreement.

**“District Sales Tax”** means the sales and use tax levied by the District on the receipts from the sale at retail of all eligible tangible personal property or taxable services at retail within its boundaries pursuant to the CID Act at the rate of one percent (1%).

**“Event of Default”** means any event specified in **Section 7.1** 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 a Party and not caused by any Party’s 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 obligations

hereunder in a timely manner. Excusable Delays shall extend the time of performance for the period of such delay.

**“Governmental Approvals”** means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, or other subdivision, zoning, or similar approvals required for implementation and construction of the District Project.

**“Infrastructure Improvements”** means that portion of the District Project related to the construction, reconstruction, installation, repair, maintenance and equipping of various public improvements on or adjacent to the District, including without limitation creation of a double-wide sidewalk on Central Avenue, burial of utility lines, and widening of the alley adjacent to the southern boundary of the District.

**“Mayor”** means the Mayor of the City.

**“Mixed-Use Project”** means a six-story, mixed-use project involving approximately 121 market rate apartments on levels 2 through 6 with an amenities area and a residential guest suite on level 2, restaurant, retail and/or service uses totaling approximately 13,297 square feet on level 1 and surface and structure parking to be located on two levels below grade and totaling approximately 145 parking stalls.

**“Municipal Contribution”** means an amount equal to 50% of the sales tax revenues generated from taxable sales in the District and actually received by the City from its 2.5% cumulative sales tax, which amount shall be remitted by the City to the Trustee in accordance with **Section 5.6** of this Agreement.

**“Municipal Contribution Account”** means the account of the Revenue Fund into which the Municipal Contribution will be deposited from time to time in accordance with this Agreement.

**“Net Revenues”** means the moneys remitted to the District pursuant to this Agreement as a result of the District Sales Tax. Net Revenues shall not include (a) the amount retained by the Missouri Department of Revenue for the cost of collecting such taxes, (b) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, and (c) any sum received by the District which is the subject of a suit or other claim communicated to the District which suit or claim challenges the collection of such sum.

**“Operating Costs”** means fees, costs and expenses incurred in connection with the administration, supervision and operation of the District, including without limitation: (a) reimbursement to the City for actual expenditures by the City in connection with its review of the District’s activities pursuant to Section 67.1461.3 and Section 67.1511.2(3) of the CID Act and **Section 4.7** of this Agreement; (b) expenses incurred in the exercise of the contractual powers of the District for such managerial, engineering, legal, technical, clerical, accounting or other assistance as it deems advisable pursuant to Section 67.1461.1(5) of the CID Act; (c) reimbursement to the Developer for the costs of filing and defending the Petition and all publication and incidental costs incurred in obtaining the Ordinance; (d) costs related to any authorized indebtedness of the District, including the Costs of Issuance and repayment of District Obligations pursuant to Section 67.1461.1(12) and Section 67.1491 of the CID Act; (e) the cost of insurance obtained by the District; (f) the cost of any audit obtained by the District; and (g) expenses incurred by the District in the exercise of the powers granted under Section 67.1461.1(29) of the CID Act, which consist of paying the costs of compensating employees or contractors, paying the costs of suits by or against the District, the cost of purchasing personal property necessary or convenient for the District’s activities, the costs of conducting economic, planning, marketing or other studies and the costs of collection and disbursement of funds for District activities.

**“Operating Fund”** means the fund established with the Trustee from which Operating Costs shall be paid. The Operating Fund shall be funded from Net Revenues on deposit in the District Sales Tax Account of the Revenue Fund in an amount equal to the Annual Operating Fund Deposit.

**“Ordinance”** means Ordinance No. \_\_\_\_ passed and approved on \_\_\_\_\_, 2015, by the City’s Board of Aldermen creating the District in accordance with the CID Act and finding that the District is a “blighted area”, as defined in Section 67.1401.2(3)(a) of the CID Act.

**“Parking Lot”** means the demolition and removal of existing, obsolete improvements from the real property located at 111 North Central Avenue in the City and the construction of significant improvements to the Parking Lot Site to result in an at-grade, surface parking lot consisting of approximately 30 parking stalls, security gate, and exterior lighting.

**“Parking Lot License”** means the irrevocable license granted by the City to the Developer to use the Parking Lot Site in accordance with **Section 6.5** of this Agreement.

**“Parking Lot Site”** means the real property located at 111 North Central Avenue in the City, as legally described in **Exhibit F**, attached hereto and incorporated herein by reference.

**“Payment Date”** means any date on which the principal of or interest on any District Obligation is payable.

**“Petition”** means the Petition for the Creation of a Community Improvement District filed with the City Clerk on May 14, 2015.

**“Reimbursable Project Costs”** means all actual and reasonable costs and expenses that are incurred by or at the direction of the Developer with respect to construction of the District Project, including, without limitation, the actual and reasonable cost of labor and materials payable to contractors, builders, suppliers, vendors and materialmen in connection with the construction contracts awarded for the District Project that is constructed or undertaken by the Developer, plus all actual and reasonable costs to plan, finance, develop, design and acquire the District Project, including, without limitation:

- (a) all actual and reasonable costs of the District Project as set forth in **Exhibit A**, attached hereto and incorporated herein by reference;
- (b) all Costs of Issuance incurred in connection with the issuance of the District Obligations;
- (c) all planning, legal, administrative and other costs of the City associated with the District Project including without limitation legal and administrative costs incurred or charged by the City in connection with the creation of the District and the negotiation of this Agreement;
- (d) all Operating Costs of the District advanced by the Developer pursuant to the terms of this Agreement; and
- (e) 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 Project and which may lawfully be paid or incurred by the District under the CID Act.

**“Revenue Fund”** means the fund established with the Trustee pursuant to the Trust Indenture into which Net Revenues and the Municipal Contribution shall be deposited, which fund shall contain a District Revenues Account and a Municipal Contribution Account.

**“State”** means the State of Missouri.

**“Trust Fund”** means the “25 North Central Community Improvement District Revenue Trust Fund” established by the District pursuant to **Section 3.2** of this Agreement.

**“Trust Indenture”** means a trust indenture or trust indentures entered into by and between the District and the Trustee in connection with the issuance of the District Obligations, in form and substance mutually acceptable to all Parties hereto.

**“Trustee”** shall mean the trustee under a Trust Indenture entered in connection with the issuance of the District Obligations.

## ARTICLE II

### REPRESENTATIONS OF PARTIES

**Section 2.1. Representations by the District.** As of the Effective Date, 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, 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 its Board of Directors, the District has been duly authorized to execute and deliver this Agreement and to carry out its obligations hereunder, acting by and through its duly authorized officers.

(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 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.

(d) There is no litigation or proceeding pending or, to the District’s knowledge, 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.

(e) Construction of the District Project is of significant value to the District, the property within the District and the general public. The District Project will promote the economic welfare and the development of the City and the State through: (i) the creation of temporary and permanent jobs; (ii)

stimulating additional development within the District; and (iii) increasing local and state tax revenues. Further, the District finds that the District Project conforms to the purposes of the CID Act.

**Section 2.2. Representations by the City.** As of the Effective Date, the City represents that:

(a) The City is duly organized and existing under its charter and the Constitution and laws of the State as a home-rule city.

(b) The City is authorized to enter into this Agreement and to carry out its obligations under this Agreement and the City Manager 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 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.

(d) There is no litigation or proceeding pending or, to the City's knowledge, 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

(e) Construction of the District Project is of significant value to the City, the property within the District and the general public. The District Project will promote the economic welfare and the development of the City and the State through: (i) the creation of temporary and permanent jobs; (ii) stimulating additional development within the City; and (iii) increasing local and State tax revenues.

**Section 2.3. Representations by the Developer.** As of the Effective Date, 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, except to the extent that such enforceability is limited by (i) applicable reorganization, insolvency, receivership, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally, as such laws may be applied in the event of reorganization, insolvency, receivership, liquidation, readjustment of debt, moratorium applicable to the Developer, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof by the Developer do not and will not conflict with or result in a breach of any of the terms or conditions of any 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 or any member or owners of the Developer which would have a material adverse effect on the District Project or the Developer Project. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which 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 of the terms and provisions of this Agreement.

(d) To its knowledge, the Developer is in material compliance with all laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, or operations as contemplated by this Agreement.

### ARTICLE III

#### COLLECTION OF FUNDS

**Section 3.1. Imposition of the District Sales Tax.** Prior to the issuance of District Obligations, the District shall approve a resolution imposing the District Sales Tax (subject to qualified voted approval). The District shall use the Net Revenues to pay the Operating Costs of the District and to make debt service payments on District Obligations issued to reimburse the Developer for Reimbursable Project Costs. The District shall not issue or cause to be issued the District Obligations except in accordance with **Article V** of this Agreement and shall not otherwise reimburse the Developer for Reimbursable Project Costs unless and until the District has approved a Certificate of Reimbursable Project Costs in accordance with **Section 4.4** of this Agreement.

**Section 3.2. Administration and Collection of the District Sales Tax.**

(a) The Parties expect the District Sales Tax to be collected by the Missouri Department of Revenue, as provided in the CID Act. The Parties shall cooperate with the Missouri Department of Revenue in all respects and as necessary for the collection by the Missouri Department of Revenue of the District Sales Tax.

(b) Upon receipt of Net Revenues, the District shall deposit the same into a special trust account to be known as the “25 North Central Community Improvement District Revenue Trust Fund” and shall transfer, subject to annual appropriation by the Board of Directors, the money in the Trust Fund to the Trustee for application as contemplated in **Sections 3.4** and **5.6** of this Agreement.

(c) Upon the earlier of the payment in full of all District Obligations or 20 years following the initial issuance of the District Obligations, the Board of Directors shall take such actions as may be necessary to repeal the District Sales Tax and to cause the District to be dissolved as further described in **Section 3.7** of this Agreement.

**Section 3.3. Collection Fee for the District Sales Tax.** The Parties hereby acknowledge that the Missouri Department of Revenue may deduct from the District Sales Tax its own collection and administrative fee as provided for in the CID Act and other applicable statutes.

**Section 3.4. Operating Costs.** Money in the Operating Fund shall be used to pay Operating Costs, to pay the principal of or interest on District Obligations, or for any other lawful purpose of the

District, as determined by the Board of Directors. The expected Operating Costs shall be included in the District's annual budget, as provided in **Section 4.7** of this Agreement, but shall not exceed the Annual Operating Fund Deposit. If Net Revenues are not sufficient to fund the Annual Operating Fund Deposit in any given year, such unfunded amount shall be paid by the Developer. All funds advanced by the Developer pursuant to this Section shall be considered Reimbursable Project Costs.

**Section 3.5. Enforcement of the District Sales Tax.**

(a) The District shall take all actions necessary for enforcement of the District Sales Tax. The District may prosecute or defend any action, lawsuit or proceeding or take any other action involving third persons that the District deems reasonably necessary to secure the payment of the District Sales Tax. The Developer covenants to cooperate and take all reasonable actions necessary to assist the District in the enforcement of the District Sales Tax.

(b) The District shall report all violations of the Sales Tax Law, Sections 144.010 to 144.525 of the Revised Statutes of Missouri, as amended, to the Missouri Department of Revenue for enforcement to the extent that such violations result in the District's inability to collect the District Sales Tax in a timely manner as provided for under Missouri law. If the Missouri Department of Revenue notifies the District that it refuses to undertake enforcement of the District Sales Tax, the District shall promptly initiate an action to enforce collection. Notwithstanding anything to the contrary in this Agreement, the District is not obligated to undertake any enforcement action if the cost of such enforcement is reasonably expected to exceed the amount of revenues sought to be collected.

**Section 3.6. Records of the District Sales Tax.** The District shall keep accurate records of the Net Revenues. Any District records pertaining to the District Sales Tax shall be provided to any person upon written request, to the extent permitted by law.

**Section 3.7. Repeal of the District Sales Tax.** Upon the payment in full of all District Obligations or 20 years following the initial issuance of District Obligations, whichever is earlier, the District shall implement the procedures in the CID Act for repeal of the District Sales Tax and abolishment of the District. The District shall not implement the procedures for repeal or modification of the District Sales Tax and abolishment of the District if the District, with the prior written consent of the City, has approved another project pursuant to the CID Act. Upon repeal of the District Sales Tax, the District shall:

- (i) Pay all outstanding Operating Costs;
- (ii) Retain any remaining Net 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; and
- (iii) Request that the City, pursuant to Section 67.1481.5 of the CID Act, adopt an ordinance setting forth a plan of dissolution for the District, which plan of dissolution will provide, to the extent permitted by law, that all remaining Net Revenues at the time of abolishment be transferred to the City for use by the City in maintaining any public improvements serving the real property within the District.

**Section 3.8. Transfer of Municipal Contribution.** Upon the issuance of the District Obligations and receipt of each monthly report from the District in accordance with **Section 4.8** of this Agreement, the City shall transfer the Municipal Contribution on a semi-annual basis to the Municipal Contribution Account to be applied in accordance with **Section 5.6** of this Agreement. The City shall

transfer each Municipal Contribution to the Municipal Contribution Account not later than each March 15 and September 15 (or the next business day thereafter if such date is not a business day); provided, however, that the City may withhold from transfer any portion of the Municipal Contribution attributable to a month for which the City did not receive a monthly report from the District in accordance with **Section 4.8** of this Agreement until such time as the District has provided such monthly report.

## **ARTICLE IV**

### **FINANCING DISTRICT PROJECTS**

#### **Section 4.1. Acquisition of Property; Design and Construction of District Project and Parking Lot.**

Within nine months following the Effective Date, the Developer shall acquire all real property within the District, as legally described in **Exhibit E**, attached hereto and incorporated herein by reference, and the Parking Lot Site. The Developer shall notify the District and the City within 15 days of acquisition of such real property. The Developer, as the District's agent, shall design and construct the District Project on behalf of the District. The Developer, as the City's agent, shall design and construct the Parking Lot on behalf of the City. The Developer will design and commence construction of the District Project and the Parking Lot substantially in accordance with plans submitted to and approved by the City on or before June 30, 2016, subject to Excusable Delays, and will substantially complete the District Project and the Developer Project on or before June 30, 2018, subject to Excusable Delays. The Developer shall advance all costs and expenses necessary for completion of the District Project, in accordance with **Section 4.3** of this Agreement and shall advance all costs and expenses necessary for completion of the Parking Lot. The City agrees to employ reasonable and good faith efforts to cooperate with the Developer and the District and to process and timely consider and respond to all submittals of plans for the District Project and the Developer Project made by the Developer in accordance with the provisions of the City Code. Notwithstanding anything to the contrary in this Agreement, if the Developer fails to acquire the real property within the District and to acquire the Parking Lot Site in accordance with this Section, the City or the Developer may terminate this Agreement on 30 days' notice. Furthermore, notwithstanding anything to the contrary in this Agreement, the Developer shall not be considered in breach or default of this Agreement if it fails to acquire the real property within the District or to acquire the Parking Lot Site in accordance with this Section.

**Section 4.2. Application of Prevailing Wage, Public Bidding and Other Laws.** To the extent that prevailing wage, public bidding or other requirements of State and local laws, codes and regulations apply to any portion of the District Project or the Parking Lot, the Developer covenants and agrees to take all such actions as are necessary to comply with such laws, regulations or requirements, and the District shall cooperate with the Developer to the extent required to comply with the foregoing requirements. The Developer shall indemnify and hold harmless the City and the District from any liability resulting to either of them from failure of either the Developer or any contractor or subcontractor to pay prevailing wages or to otherwise comply with any public bidding or other requirements of State and local laws, codes and regulations that apply to any portion of the District Project or the Parking Lot, provided that the City or the District, as the case may be, tenders defense of any claim subject to the Developer's indemnity in sufficient time to avoid prejudice to the Developer for handling by counsel of the Developer's selection (provided, however, that the Developer may not select counsel that the City, in its sole determination, reasonably believes would have a potential conflict of interest under the Missouri Rules of Professional Conduct governing legal ethics, unless the City, in its sole discretion, elects to waive such conflict of interest).



**Section 4.3. Payment of City's Costs; Financing of the District Project.**

(a) On the Effective Date, the Developer agrees to pay to the City an amount sufficient to pay or reimburse the City for payment of reasonable and customary planning, legal, administrative and other costs associated with the District Project, including, but not limited to, reasonable legal and administrative costs and expenses incurred or charged by the City in connection with the creation of the District and the negotiation of this Agreement, provided that such amount shall not exceed \$\_\_\_\_\_. All sums advanced to the City under this Section shall constitute Reimbursable Project Costs and may be reimbursed to the Developer solely as provided for in this Agreement.

(b) If the Developer elects to proceed with the Developer Project, then the Developer agrees to advance all costs of design, construction and installation of the District Project. All such funds so advanced shall be subject to reimbursement as a Reimbursable Project Cost solely as provided for in this Agreement.

(c) Reimbursable Project Costs shall not exceed the total amount set forth on **Exhibit A**, attached hereto and incorporated herein by reference, plus Costs of Issuance, the sum advanced by the Developer pursuant to subsection (a) above and the sum advanced by the Developer to pay Operating Costs pursuant to **Section 3.4** of this Agreement.

**Section 4.4. Reimbursements Limited to Reimbursable Project Costs; Developer's Right to Substitute.** Costs incurred by the Developer in connection with the District Project will be eligible for reimbursement upon submission by the Developer, and acceptance by the City and the District, of a Certificate of Reimbursable Project Costs, as set forth below:

(a) The Developer may submit to the City and the District, no more frequently than once per quarter, a Certificate of Reimbursable Project Costs in substantially the form attached as **Exhibit B**, attached hereto and incorporated herein by reference. Said certificate shall be accompanied by itemized invoices, receipts or other information that will demonstrate to the reasonable satisfaction of the District and the City that any cost has been incurred and qualifies for reimbursement pursuant to this Agreement.

(b) The District and the City shall notify the Developer in writing within 30 days after each submission of its respective approval or disapproval of the costs identified in each Certificate of Reimbursable Project Costs. If the District or the City determines that any cost identified as a Reimbursable Project Cost is not a Reimbursable Project Cost under this Agreement or the CID Act, the District or the City shall so notify the Developer in writing within 30 days after the submission, identifying the ineligible cost and the basis for determining the cost to be ineligible. If the District or the City fails to notify the Developer in writing within said 30-day period of any such ineligible cost, then all costs identified in such Certificate of Reimbursable Project Costs shall be deemed to be Reimbursable Project Costs. If the District or the City determine that any cost identified as a Reimbursable Project Costs is not a Reimbursable Project Cost, the Developer shall then have the right to identify and substitute other costs as Reimbursable Project Costs, which shall be included with a supplemental application for payment submitted within 30 days after the District's or City's notification of any ineligible costs. The District and the City shall then review and notify the Developer in writing within 30 days after submission of its approval or disapproval of the costs identified in the supplemental application for payment. The Developer shall be entitled to reimbursement for Reimbursable Project Costs up to the total amount shown on **Exhibit A**, plus Costs of Issuance, the sum advanced by the Developer pursuant to **Section 4.3(a)** of this Agreement and the sum advanced by the Developer to pay Operating Costs pursuant to **Section 3.4** of this Agreement.

(c) The Developer shall provide such information as the District or the City may reasonably request, and shall make its books and records available to the District or the City upon reasonable advance written request, as applicable, in order for the District or the City, as applicable, to confirm that any cost qualifies under this Agreement and has been incurred and paid by the Developer. The District or the City may retain such consultants as each deems necessary in connection with such review. Notwithstanding anything to the contrary in this Agreement, the City may withhold the cost of any such consultant from the Municipal Contribution otherwise due pursuant to **Section 3.8** of this Agreement, provided that the amount withheld shall not exceed \$7,500 for the review of each Certificate of Reimbursable Project Costs.

#### **Section 4.5. Certificate of Substantial Completion.**

(a) Promptly after substantial completion of the District Project or the Developer Project (or the Parking Lot as a functional portion thereof) in accordance with the provisions of this Agreement, the Developer will furnish to the Construction Inspector a Certificate of Substantial Completion so certifying. The Construction Inspector shall, within 30 days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the Construction Inspector unless, prior to the end of such 30-day period after delivery to the Construction Inspector of the Certificate of Substantial Completion, the Construction Inspector furnishes the Developer with specific written objections to the status of the Developer Project, the District Project or the Parking Lot, as applicable, describing such objections and the measures required to correct such objections in reasonable detail.

(b) Upon acceptance of the Certificate of Substantial Completion by the Construction Inspector or upon the lapse of 30 days after delivery thereof to the Construction Inspector without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the County Recorder, and the same shall constitute evidence of the completion by the Developer of the Developer Project, the District Project or the Parking Lot, as applicable. Each Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit C**, attached hereto and incorporated herein by reference.

(c) The City's acceptance or deemed acceptance of a Certificate of Substantial Completion shall not require the City to issue any temporary or final occupancy permits (which shall only be issued in accordance with the applicable provisions of the City Code). Likewise, any issuance of a temporary or final occupancy permit by the City shall not require the City to accept any Certificate of Substantial Completion (which shall only be accepted by the City in accordance with the provisions of this Agreement).

#### **Section 4.6. Insurance.**

(a) *Liability Insurance.* Not less than ten (10) days prior to commencement of construction of the District Project, the Developer and/or its general contractor shall provide the District and the City with a certificate of insurance evidencing a commercial general liability insurance policy with coverages of not less than the current absolute statutory waivers of sovereign immunity as set forth in Sections 537.600 and 537.610 of the Revised Statutes of Missouri, as amended. Further, the policy shall be adjusted upward annually, to remain at all times not less than the inflation-adjusted sovereign immunity limits as published in the Missouri Register on an annual basis by the Department of Insurance pursuant

to Section 537.610 of the Revised Statutes of Missouri, as amended. The policy shall provide that it may not be cancelled, terminated, allowed to lapse or be substantially modified without at least thirty (30) days prior written notice to the City and the District. The City and the District shall be listed as an additional insured on such certificate. Such policy may be part of a blanket policy, shall include a severability of interests clause and the insurance shall be primary with respect to any applicable insurance maintained by the City or the District. Notwithstanding anything to the contrary contained herein, so long as coverage obtained pursuant hereto is "occurrence based," the requirements of this subsection shall terminate upon acceptance or deemed acceptance of the Certificate of Substantial Completion for the Developer Project pursuant to **Section 4.5** of this Agreement.

(b) *Contractual Liability Insurance.* The Developer shall provide evidence of contractual liability insurance (in form and substance reasonably acceptable to the City) covering the Developer's obligations to indemnify the City, as provided in this Agreement, by an insurance company with a rating by a reputable rating agency indicating excellent or superior financial strength (i.e., an A.M. Best rating of "A-" or better). Notwithstanding anything to the contrary contained herein, the requirements of this subsection shall terminate upon acceptance or deemed acceptance of the Certificate of Substantial Completion for the Developer Project pursuant to **Section 4.5** of this Agreement.

#### **Section 4.7. Annual Budget; Annual Financial Statements.**

(a) The District shall approve and submit its budget for its first fiscal year to the City within 90 days following the Effective Date and shall provide a copy of the same to the Developer. For each subsequent fiscal year, the District shall, no earlier than 180 days and no later than 90 days prior to the first day of each fiscal year, submit a proposed budget for the upcoming fiscal year to the City and shall provide a copy of the same to the Developer, which proposed budget shall be approved by the Board of Directors no later than 30 days prior to the first day of each fiscal year. Each budget for the District shall generally be prepared in accordance with all applicable state statutes including Section 67.010 Revised Statutes of Missouri, as amended. The fiscal year of the District shall be the same as that of the City, which shall be a fiscal year beginning October 1 and ending September 30.

(b) The District shall promptly, and in any event within 120 days after the end of each fiscal year, provide to the Developer and the City copies of the annual audited financial statements of the District performed by an independent certified public accounting firm.

(c) The District shall annually reimburse the City for the reasonable and actual expenses incurred by the City to review annual budgets and reports of the District required pursuant to this section upon receipt of an invoice therefor, provided that such annual reimbursement shall not exceed one and one-half percent of the Net Revenues in such year.

**Section 4.8. Monthly Reports Regarding District Sales Tax.** To assist the City in its determination of the Municipal Contribution, the District shall furnish to the City monthly reports of Net Revenues derived from the District Sales Tax along with copies of any documents received from the Missouri Department of Revenue or other applicable governmental entity as proof of receipt of such Net Revenues derived from the District Sales Tax. The monthly reports shall be in substantially the form of **Exhibit D**, attached hereto and incorporated herein by reference, and shall be submitted to the City no later than the 15th calendar day of each month (or the next business day thereafter if the 15th day is not a business day). The monthly reports shall be sent to the attention of the City's Director of Finance. To the extent permitted by law, the City shall maintain the confidentiality of the information contained in such monthly reports (provided, however, that (a) the Developer shall obtain waivers of confidentiality from businesses in the District in order to include applicable sales tax data in the monthly reports and (b) the

District shall authorize the City's Director of Finance to review District sales tax information by filing the applicable forms with the Missouri Department of Revenue or other applicable governmental entity). At the request of the District or the City, the Developer agrees to obtain sales tax returns, sales tax reports, amendments, proof of payment or other sales tax information from its tenants, and to provide such information to the District and the City to assist in the determination of the Municipal Contribution in accordance with this Section. Notwithstanding anything in this Agreement to the contrary, the parties hereto acknowledge that the Developer shall not be required to provide such information for any business for which it does not receive such information as contemplated herein.

## **ARTICLE V**

### **DISTRICT OBLIGATIONS**

**Section 5.1. Reimbursement of Costs; Issuance of District Obligations.** The District shall reimburse the Developer for Reimbursable Project Costs by issuing or causing the issuance of District Obligations as provided herein. Nothing in this Agreement shall obligate the District to issue or cause to be issued or endorse or cause to be further endorsed District Obligations for any cost that is not a Reimbursable Project Cost. The District Obligations shall be issued pursuant to a Trust Indenture. Notwithstanding anything to the contrary contained herein, the District shall not issue any tax-exempt District Obligations without the City's prior written consent.

**Section 5.2. Limited Obligations.** The District Obligations issued by or on behalf of the District for reimbursement of Reimbursable Project Costs shall be payable solely from the Net Revenues and the Municipal Contribution or from the proceeds of the District Obligations and not from any other source. The District Obligations shall be the exclusive responsibility of the District, and shall not constitute a debt or liability or general obligation of the District, the City, the State or any agency or political subdivision thereof.

**Section 5.3. Cooperation in the Issuance of District Obligations.**

(a) The Developer covenants to cooperate and take all reasonable actions necessary to assist the District and its Bond Counsel, underwriters and financial advisors in the preparation of offering statements, private placement memoranda or other disclosure documents and all other documents necessary to market and sell District Obligations, as appropriate. The Developer will not be required to disclose to the general public or any investor any proprietary or confidential financial information pertaining to the Developer or any tenant, but upon the execution of a confidentiality agreement reasonably acceptable to the Developer, the Developer shall provide such information to the District and its Bond Counsel, financial advisors, underwriter and their counsel to enable such parties to satisfy their due diligence obligations. Such compliance obligation shall be a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

(b) If either the proceeds of the District Obligations or the Net Revenues are insufficient to fund Costs of Issuance, such unfunded amount shall be paid by the Developer. All funds advanced by the Developer pursuant to this Section shall be considered Reimbursable Project Costs.

**Section 5.4. No Other Obligations or Uses of Net Revenues.** The District shall not issue or cause to be issued any indebtedness or obligations secured by the Net Revenues other than the District Obligations provided for under this Agreement.

**Section 5.5. District Notes.** Subject to the requirements of this Agreement, the District shall issue the District Notes in the form and substance as dictated by a Trust Indenture and the resolution approved by the Board of Directors approving the issuance of the District Notes. The District Notes shall be issued in an aggregate principal amount not to exceed the maximum amount of Reimbursable Project Costs provided for in **Section 4.4(b)** of this Agreement. The District Notes shall bear interest at 5.5% per annum if, in the opinion of Bond Counsel, the interest on the District Notes is exempt from federal income taxation or at 7.5% per annum if the interest on the District Notes is not exempt from federal income taxation. Interest on the District Notes shall be payable semi-annually. The District Notes shall have a final maturity that is not later than 20 years from the date of issuance of such District Notes.

**Section 5.6. Application of Net Revenues and Municipal Contribution.**

(a) From and after the issuance of the District Obligations, the District shall transfer to the Trustee, not later than the 15th calendar day of each month (or the next business day thereafter if the 15th day is not a business day) for deposit in the District Revenues Account of the Revenue Fund, all Net Revenues on deposit in the Trust Fund, to the extent appropriated by the District.

(b) From and after the issuance of the District Obligations, the City, subject to **Section 4.4(c)**, shall transfer the Municipal Contribution to the Trustee, as provided in **Section 3.8** of this Agreement, for deposit in the Municipal Contribution Account of the Revenue Fund.

(c) Pursuant to the Trust Indenture entered into in connection with the issuance of the District Notes, the moneys in the Revenue Fund shall be applied by the Trustee on each semi-annual payment date to the extent necessary for the purposes and in the amounts as follows:

*First*, to the payment of any arbitrage rebate due and payable with respect to any of the District Notes, or to pay any rebate analyst to perform rebate services as required;

*Second*, to the payment of any reimbursement due to the City pursuant to **Section 6.3(b)** of this Agreement;

*Third*, for transfer to the Operating Fund, one-half of the Annual Operating Fund Deposit (said funds to be applied in accordance with **Section 3.4** of this Agreement), but solely from Net Revenues;

*Fourth*, for payment to the Trustee or any paying agent for the District Notes, an amount sufficient for payment of any fees, charges, costs and expenses which are due and owing to the Trustee or any paying agent;

*Fifth*, to payment of interest due and payable on the District Notes;

*Sixth*, to payment of principal of and premium, if any, due and payable on any District Notes; and

*Seventh*, to the special mandatory redemption of any District Notes as more specifically provided for in the Trust Indenture.

Notwithstanding the foregoing, if the District has issued District Bonds to refund only a portion of the District Notes, then no money shall be applied to the payment of any District Notes so long as any District Bonds remain outstanding.

**Section 5.7. Conditions Precedent to Issuance of District Notes.**

(a) No District Notes shall be issued until such time as (1) the District and the City have received and accepted a Certificate of Reimbursable Project Costs for the District Project from the Developer, and (2) the District and the City have received and approved a Certificate of Substantial Completion for the Developer Project, the District Project and the Parking Lot from the Developer.

(b) Within 30 days after the receipt of such items set forth in subsection (a) above, the District shall issue District Notes for the District Project. Upon the satisfaction of subsection (a) above, and the issuance of the District Notes as provided herein, the Developer shall be deemed to have advanced funds necessary to purchase such District Notes and the District shall be deemed to have deposited such funds in a project fund created under the Trust Indenture and shall be deemed to have reimbursed the Developer in full for such costs of the District Project from the amounts deemed to be on deposit in such project fund from time to time.

**Section 5.8. District Bonds.** The District may issue or cause to be issued on its behalf District Bonds in an amount sufficient to refund all or a portion of the outstanding District Notes and all or any portion of the Reimbursable Project Costs not previously financed by the issuance of District Notes, provided that the conditions precedent to the issuance of the District Notes set forth in **Section 5.7(a)** of this Agreement have been satisfied. If the District is unable for any reason to refund all of the outstanding District Notes or issue or cause to be issued District Bonds to finance all Reimbursable Project Costs, the District may issue or cause to be issued District Bonds to refund only a portion of the District Notes or finance only a portion of the Reimbursable Project Costs, but only to the extent that the Developer consents to the subordination of any remaining District Notes to such District Bonds.

**Section 5.9. Pledge of Net Revenues and Municipal Contribution.**

(a) Upon the issuance of District Obligations, the District shall, subject to annual appropriation by the Board of Directors, pledge all Net Revenues on deposit in the Trust Fund to the payment of debt service on the District Obligations in accordance with this Agreement, the Trust Indenture and the resolution approved by the Board of Directors approving the issuance of the District Obligations.

(b) Upon the issuance of District Obligations, the City shall, subject to annual appropriation by the Board of Aldermen, pledge the Municipal Contribution on deposit in the Municipal Contribution Account to the payment of debt service on the District Obligations in accordance with this Agreement, as contemplated by and subject to this Agreement.

**Section 5.10. Covenant to Request Annual Appropriation.** The District covenants and agrees to cause the officer of the District at any time charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the Board of Directors for each fiscal year that the District Obligations are outstanding, a request for an appropriation of Net Revenues for application to the payment of District Obligations in accordance with this Agreement. Subject to the provisions of this Agreement, the City covenants and agrees to cause the officer of the City at any time charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the Board of Aldermen for each fiscal year that the District Obligations are outstanding, a request for an appropriation of the Municipal Contribution for application to the payment of District Obligations in accordance with this Agreement.

**Section 5.11. Governance of the District.**

(a) The District's Board of Directors shall consist of five members appointed by the Mayor with the consent of the Board of Aldermen pursuant to the CID Act, the Petition and the Ordinance. The initial Board of Directors was appointed pursuant to the Ordinance. Successor directors shall be appointed in the same manner and shall serve for a term of four years. The number of persons constituting the Board of Directors shall not be increased by the District without the consent of both the Developer and the City.

(b) Each director must have all of the following characteristics:

- (i) be a citizen of the United States;
- (ii) be a Missouri resident for at least one year prior to appointment to the Board of Directors;
- (iii) be at least eighteen (18) years of age; and
- (iv) be either:
  - (A) an owner as defined in Section 67.1401.2(11) of the CID Act of real property located within the District (or a legally authorized representative thereof);
  - (B) a business operating within the District (or a legally authorized representative thereof); or
  - (C) a registered voter residing within the District.

(c) In addition to the foregoing qualifications, until such time as the Developer acquires all real property within the District in accordance with **Section 4.1** of this Agreement, at least three of the five directors shall be legally authorized representatives of the Current Property Owner. From and after such time as the Developer acquires such real property within the District and continuing for so long as the Developer owns any real property within the District, at least three of the five directors shall be legally authorized representatives of the Developer.

(d) The City may designate an advisory member to the Board of Directors, who may attend all open and closed meetings of the Board of Directors, but shall have no voting power.

**ARTICLE VI**

**SPECIAL COVENANTS**

**Section 6.1. Records of the District.**

(a) 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. The District shall, within 120 days after the end of each fiscal year, submit a report to the City and the Missouri Department of Economic Development and shall provide a copy of the same to the Developer stating the services provided,

revenues collected and expenditures made by the District during such fiscal year, and copies of written resolutions approved by the Board of Directors during the fiscal year.

(b) The District shall make its books and records available to the City and the Developer and will furnish to the City and the Developer 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 determine whether the covenants, terms and provisions of this Agreement have been met. The City may retain such consultants as it deems necessary in connection with such review, the cost of which shall be an Operating Cost payable by the District or the Developer in accordance with this Agreement. For that purpose, all pertinent books, documents and vouchers relating to the District's business, affairs and properties shall at all times during regular business hours be open to the inspection of such consultants (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 the District reasonably requires).

**Section 6.2. Developer's Covenants Related to the District.** The Developer covenants and agrees as follows:

(a) The Developer shall in good faith cooperate and assist in obtaining approval for and levying of the District Sales Tax contemplated by this Agreement by voting to approve the District Sales Tax at an election held in accordance with Section 67.1545 of the CID Act.

(b) The Developer shall in good faith cooperate and assist the District by taking all reasonable actions necessary to cause Net Revenues to be paid and deposited into the Trust Fund, including its cooperation with the District and the Missouri Department of Revenue or the Authorized District Representative in the enforcement and collection of all such payments through all reasonable and ordinary means of enforcement.

(c) The Developer waives the right to file suit to set aside the District Sales Tax or otherwise question the validity of the proceedings relating thereto.

(d) The Developer shall notify the District in writing of any sale, lease, transfer or other disposition of any real property within the District that is owned by the Developer or a related entity, which notice shall be given within 15 days after the date of said sale, lease, transfer or other disposition. Said notice shall specify the name and address of the person or entity that acquired any or all of the real property located within the District and shall identify the real property sold, leased, transferred or otherwise disposed, whether by voluntary transfer or otherwise.

(e) The Developer shall cooperate with the District to obtain approval of any proposal for the abolishment of the District pursuant to the CID Act.

(f) Upon execution of this Agreement and so long as any District Obligations are outstanding, the Developer shall, in the development and selling, leasing or transferring of any real property owned by the Developer within the District, use reasonable efforts to select purchasers, tenants or transferees that will produce a higher volume of District Sales Tax, all other economic terms and conditions being equal, provided, however, that the Developer shall not be in breach of or default under this Agreement if the Developer fails to do so.

The Developer's covenants in this Section shall run with the land to any purchaser, tenant or transferee of any of the Developer's real property within the District and the Developer shall record or



cause to be recorded a memorandum of such covenants with the County Recorder. Upon execution of this Agreement, the Developer shall use reasonable efforts to specifically include the covenants in this Section in all deeds, leases and other instruments by which the Developer conveys an interest in real property within the District; provided that, the Developer shall have no obligation to include such covenants in any deeds, leases or other instruments by which the Developer has conveyed an interest in real property within the District prior to the execution of this Agreement.

**Section 6.3. Developer's Obligations to the City Under Bond or Surety.** The Parties agree that:

(a) The District Project, or any portion thereof, which the Developer is or becomes obligated to the City to construct pursuant to any City Code provision or ordinance, does not diminish the consideration to the District as recited in **Section 2.1** of this Agreement and shall be a Reimbursable Project Cost that may be reimbursed in accordance with this Agreement.

(b) If the City constructs or causes to be constructed any portion of the District Project pursuant to any action on a bond or other form of surety that is provided to the City by the Developer pursuant to the City Code or ordinance, then the City shall be entitled to reimbursement from the District for such Reimbursable Project Costs that are not paid or reimbursed to the City under such bond or surety. The City shall complete a Certificate of Reimbursable Project Costs in substantial compliance with **Exhibit B**, attached hereto and incorporated herein by reference, to receive such reimbursement, which shall be approved by the District in accordance with **Section 4.4** of this Agreement.

(c) If the City constructs or causes to be constructed the Parking Lot pursuant to any action on a bond or other form of surety that is provided to the City by the Developer pursuant to the City Code or ordinance, then the City shall be entitled to reimbursement from the Developer for any costs of the Parking Lot that are not paid or reimbursed to the City under such bond or surety. The City shall provide written confirmation of any such costs to be reimbursed to the Developer.

**Section 6.4. Governmental Approvals.** The City agrees to employ reasonable and good faith efforts to cooperate with the Developer and the District and to process and timely consider and respond to all applications for Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State. The City shall cooperate with the Developer and the District in their efforts to obtain all approvals for the construction of the Developer Project, the District Project and the Parking Lot and to provide the Developer and the District with all reasonable assistance in expediting any and all permits necessary to proceed with the Developer Project, the District Project and the Parking Lot.

**Section 6.5. City's Covenants Related to the District.** The City covenants and agrees as follows:

(a) At Developer's request, the City shall acquire the Parking Lot Site including the Parking Lot from the Developer within 120 days after the District and the City have received and approved a Certificate of Substantial Completion for the Developer Project. Upon the Developer's request, the City shall acquire the Parking Lot Site for an amount equal to the sum of (i) the Developer's actual cost of acquisition of the Parking Lot Site in accordance with **Section 4.1(a)** of this Agreement, not to exceed \$513,000 and (ii) the Developer's actual cost of construction of the Parking Lot, not to exceed \$387,000. The City's acquisition of the Parking Lot Site shall be subject to any permitted encumbrances, including without limitation a deed restriction in favor of the owner of 34 North Meramec Avenue (currently Graybar Electric

Company, Inc.), which limits the height of any buildings or improvements on the Parking Lot Site to a height that is generally equivalent to the ceiling of the parking garage currently located on 34 North Meramec Avenue.

(b) In connection with the City's acquisition of the Parking Lot Site, the City will grant to the Developer the Parking Lot License. The Parking Lot License shall provide the Developer with exclusive use of up to 30 parking stalls at the prevailing market rate for monthly users, which parking stalls will initially be located on the Parking Lot. The initial term of the Parking Lot License shall be 50 years with one 49-year renewal at the option of the Developer or the then-current owner of the Developer Project. If, in the future, the City eliminates the Parking Lot from the Parking Lot Site in order to construct a new project on the Parking Lot Site, the City shall provide the Developer or the then-current owner of the Developer Project with a temporary license that provides the Developer or the then-current owner of the Developer Project with exclusive use of up to 30 parking stalls at the prevailing market rate for monthly users as replacement parking, which replacement parking shall be located within two blocks of the Developer Project. The temporary license shall expire at such time as any new project on the Parking Lot Site is completed, provided that the City shall use best efforts to complete any such new project on the Parking Lot Site within two years of its elimination of the Parking Lot. Upon completion of any new project on the Parking Lot Site, the City shall amend the Parking Lot License as necessary to provide the Developer or the then-current owner of the Developer Project with exclusive use of up to 30 parking stalls at the prevailing market rate for monthly users, which parking stalls may be located either on the Parking Lot Site or on the City Parking Lot Site. Notwithstanding any amendment of the Parking Lot License with regard to the location of the parking stalls, the term of the Parking Lot License shall remain the same.

(c) To the extent that the City undertakes a new project on the Parking Lot Site or on the City Parking Lot Site, the City shall provide Opus Design Build, L.L.C. with the opportunity to submit a proposal to serve as a contractor for such new project.

**Section 6.6. Federal Work Authorization Program..** Prior to commencing construction of the District Project, the Developer will provide a sworn affidavit and supporting documentation affirming participation in a qualified work authorization program to the District and the City as evidence of its compliance with Section 285.530 of the Revised Statutes of Missouri with respect to the employees of the Developer working in connection with the District Project.

## ARTICLE VII

### DEFAULTS AND REMEDIES

**Section 7.1. Events of Default.** If any Party fails in the performance of any covenant, agreement or obligation imposed or created by this Agreement, and such default continues for 60 days after a non-defaulting Party has given written notice to the defaulting Party specifying such default, such event shall constitute an Event of Default under this Agreement, provided, however, if such failure cannot be reasonably cured within said 60-day period, then such failure shall not constitute an Event of Default if the defaulting Party commences to cure its failure within said 60-day period and thereafter diligently pursues the cure to completion.

**Section 7.2. Remedies on Default.** 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 may require and compel duties and obligations required by the provisions of this Agreement.

**Section 7.3. Rights and Remedies Cumulative.** The rights and remedies reserved by the Parties 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 Parties 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 each Party hereby waives the right to raise such defense in any proceeding in equity.

**Section 7.4. 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 7.5. Excusable Delays.** No Party shall be deemed to be in default of this Agreement because of Excusable Delays, provided that an Excusable Delay shall not be deemed to exist (a) as to any matter that could have been avoided by the exercise of due care, (b) as to any matter initiated or unreasonably sustained by the Party claiming the Excusable Delay, and (c) unless the Party claiming the Excusable Delay provides written notice to the other Parties within 30 days after such Party has actual notice of the claimed event.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.1. Effective Date.** This Agreement shall become effective on the Effective Date set forth herein following the passage of an ordinance by the Board of Aldermen approving the same and the passage of a resolution of the District's Board of Directors approving the same.

**Section 8.2. Release and Indemnification.** The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement.

(a) Notwithstanding any other provision of this Agreement to the contrary, the City and its governing body members, officers, agents, servants, employees and independent contractors shall not be liable to the District or the Developer for damages or otherwise if all or any part of the CID Act or any resolution or ordinance adopted in connection with the finding of "blight" within the District pursuant to Section 67.1401.2(3)(a), the creation of the District, the imposition of the District Sales Tax, the District Project or this Agreement, 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, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the District or the Developer are prevented from enjoying the rights and privileges hereof.

(b) Each of the District and the Developer (only for itself and not jointly) releases from and covenants and agrees that the City, its governing body members, officers, employees, agents and independent contractors shall not be liable for, and agrees (only for itself and not

jointly), to the extent permitted by law, to hold harmless and indemnify the City, its governing body members, officers, employees, agents and independent contractors, from and against all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, including court costs and attorney's fees and expenses, resulting from, arising out of, or in any way connected with: (1) the finding of "blight" within the District pursuant to Section 67.1401.2(3)(a) of the CID Act, (2) the creation of the District, (3) the imposition of the District Sales Tax, (4) the construction of the District Project, (5) the negligence or willful misconduct of the District or the Developer, their respective employees, agents or independent contractors in connection with the design management, development, redevelopment and construction of the District Project, and (6) the District's or the Developer's failure to comply with any state, federal or local laws, regulations and ordinances applicable to the District Project or the Developer Project. The City shall tender defense of any claim subject to the foregoing indemnity to the District and the Developer, as the case may be, in sufficient time to avoid prejudice to the District and the Developer, as the case may be, for handling by counsel of the indemnifying Party's selection (provided, however, that the indemnifying Party may not select counsel that the City, in its sole determination, reasonably believes would have a potential conflict of interest under the Missouri Rules of Professional Conduct governing legal ethics, unless the City, in its sole discretion, elects to waive such conflict of interest). The foregoing release and indemnification shall not apply in the case of such liability to the extent arising directly out of the negligence or willful misconduct of the City or its authorized governing body members, officers, employees, agents and independent contractors or which arises out of matters undertaken by the City following termination of this Agreement as to the District Project or any portion thereof.

(c) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its governing body members, officers, agents, servants or employees in their individual capacities.

(d) No official, employee or representative of the City shall be personally liable to the District or the Developer (1) in an Event of a Default or breach by any Party under this Agreement or (2) for any amount or any District Obligations which may become due to any Party under the terms of this Agreement.

**Section 8.3. Immunities.** No recourse shall be had for any claim based upon any representation, obligation, covenant or agreement in this Agreement maintained against any past, present or future elected official, officer, member, employee, director or agent of the City or the District, or of any successor thereto, as such, either directly or through the City or the District, or any successor 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 elected officials, 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. The District, as a separate political subdivision of the State, is responsible for compliance with all applicable State laws and agrees to hold harmless and indemnify the City from and against all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, including court costs and attorney's fees and expenses, resulting from, arising out of, or in any way connected with the District's failure to comply with any applicable State law. Neither the City nor the District nor the Developer shall be liable to any Party for any claim by such Party for special, consequential, punitive, incidental and similar type damages arising from any representation, obligation, covenant or agreement in this Agreement.

**Section 8.4. Modification.** The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement among the Parties. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

**Section 8.5. Notices.** All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (i) mailed by registered or certified mail, postage prepaid, or (ii) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

(a) In the case of the District to:

25 North Central Community Improvement District

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: Chair

With copy to:

Armstrong Teasdale LLP  
7700 Forsyth Boulevard  
Suite 1800  
St. Louis, Missouri 63105  
Attention: Robert Klahr

(b) In the case of the Developer to:

Opus Development Company, L.L.C.  
7733 Forsyth Boulevard, Suite 1100  
St. Louis, Missouri 63105  
Attention: Joe Downs

With copy to:

Opus Holding, L.L.C.  
10350 Bren Road West  
Minnetonka, Minnesota 55343  
Attention: Thomas J. Hoben

And with copy to:

Armstrong Teasdale LLP  
7700 Forsyth Boulevard  
Suite 1800  
St. Louis, Missouri 63105  
Attention: Robert Klahr

(c) In the case of the City to:

City of Clayton  
10 North Bemiston Avenue  
Clayton, Missouri 63105  
Attention: City Manager

With copy to:

Curtis, Heinz, Garrett & O'Keefe, P.C.  
130 South Bemiston Avenue  
Clayton, Missouri 63105  
Attention: Kevin O'Keefe

or to such other address with respect to any Party as that Party may, from time to time, designate in writing and forward to the other. All such notices, certificates or other communications shall be deemed given three business days following deposit in the United States mail with respect to registered or certified letters or earlier upon receipt, and one business day following deposit if delivered to an overnight courier guaranteeing next day delivery. Attorneys for each Party shall be authorized to give and receive notices for each such Party.

**Section 8.6. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State. The District and the Developer agree that the engagement of common special legal counsel among such Parties does not materially limit the representation of those Parties and will not adversely affect the relationship among such Parties. To the extent that such common legal representation presents a conflict of interest, the District and the Developer hereby consent to common representation.

**Section 8.7. 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, 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 is 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 8.8. Successors and Assigns.**

**8.8.1 Binding Effect.** Subject to the provisions of **Section 8.9** of this Agreement, this Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective heirs, administrators, executors, personal representatives, successors and assigns.

**8.8.2 Assignment or Sale.** Without limiting the generality of the foregoing, all or any part of the Developer Project, the District Project and the Parking Lot or any interest therein may be sold, transferred, encumbered, leased or otherwise disposed of any time, and the rights of the Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time, whereupon the party disposing of its interest therein or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although any such property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement), provided, however, until

acceptance of the Certificate of Substantial Completion for each of the District Project and the Developer Project (and the Parking Lot as a functional portion thereof), the Developer named herein (Opus Development Company, L.L.C.) shall remain liable hereunder notwithstanding the provisions of **Section 8.10** of this Agreement, unless the Developer obtains the prior written approval of the City for a release of liability, which approval shall not be unreasonably withheld or delayed upon a reasonable demonstration by the Developer of the proposed transferee's or assignee's experience and financial capability to undertake and complete the Developer Project, the District Project and the Parking Lot and perform the Developer's obligations under this Agreement, all in accordance with this Agreement. Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with: (i) the right of the Developer to encumber or collaterally assign its interest in the Developer Project, the District Project and the Parking Lot, or any portion thereof, to secure loans, advances or extensions of credit to finance all or any part of the Developer Project, the District Project and the Parking Lot, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment; or (ii) the right of the Developer to sell or lease individual portions of the Developer Project in the ordinary course of the Development Project; provided that in all events (A) the Developer named herein (Opus Development Company, L.L.C.) shall remain liable hereunder (subject to the limitations of this Agreement, including without limitation **Section 8.10** of this Agreement) for the substantial completion of the District Project and the Parking Lot and shall be released from such liability hereunder only upon the issuance of a Certificate of Substantial Completion for the District Project and the Parking Lot, and (B) the Developer provides the City with written notice of the proposed assignment or transfer.

**8.8.3 Notification of Sale, Lease, Transfer or Other Disposition.** The Developer shall notify the District and the City in writing of any sale, lease, transfer or other disposition of any real property owned by the Developer within the District or on the Parking Lot Site, which notice shall be given within 15 days following the date of said sale, lease, transfer or other disposition. Said notice shall specify the name and address of the person or entity that acquired any or all of the real property and shall identify real property sold, leased, transferred or otherwise disposed, whether by voluntary transfer or otherwise.

**Section 8.9. Mortgagee's Protection.** The obligations of the Developer and its successors under this Agreement shall not be binding upon any mortgagee, ground lessor, sale-leaseback lessor and/or trust deed holders (collectively, "**Mortgagee**") that acquire title to all or any portion of the Developer Project, the District Project or the Parking Lot by trustee's sale, foreclosure, or deed-in-lieu of foreclosure or otherwise, but any such Mortgagee shall not be entitled to proceed with development of the Developer Project, the District Project or the Parking Lot, or portion thereof, unless and until such Mortgagee has consented in writing to be bound by all the terms, covenants and conditions of this Agreement. The City and/or the District, as the case may be, agrees to give any Mortgagee, by registered or certified mail, a copy of any notice of default served upon the Developer, provided that prior to such notice the City and the District have been notified, in writing (by way of notice of any assignment of rents and leases or otherwise) of the address of the Mortgagee. The City further agrees that, except in instances where there is an imminent likelihood that public health or safety would be materially and adversely affected by such default, if the Developer shall fail to cure such default within the time provided in this Agreement, then the Mortgagee shall have an additional 30 days within which to cure such default or, if such default cannot be cured within such 30-day time period, then such additional time as may be necessary if within such 30-day period, such Mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default (including without limitation commencement of foreclosure proceedings, if necessary to effect such cure) in which event this Agreement shall not be terminated nor

shall the City or the District exercise any rights or remedies hereunder while such remedies are being so diligently pursued. The Developer may collaterally assign its interest in this Agreement in connection with any financing transaction.

**Section 8.10. Limited Recourse.** Subject to the provisions of **Section 8.8.2** of this Agreement, whenever a transfer occurs in the ownership of all or any portion of the Developer Project, the District Project or the Parking Lot, the transferor shall have no further liability for any breach of covenants occurring thereafter under this Agreement.

**Section 8.11. Mutual Assistance.** The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications supplemental hereto, and the obtaining of grants of access to and easements over public property as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and which do not impair the rights of the affected Party as such rights exist under this Agreement, and to aid and assist the Parties in carrying out said terms, provisions and intent; provided that nothing herein shall be construed to obligate the City, acting as a Party hereto, to grant municipal permits or other approvals it would not otherwise be obligated to grant, absent this Agreement.

**Section 8.12. 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.

(The remainder of this page is intentionally left blank.)



**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year first above written.

**CITY OF CLAYTON, MISSOURI**

By: \_\_\_\_\_  
Craig Owens, City Manager

[SEAL]

**ATTEST:**

\_\_\_\_\_  
June Frazier, City Clerk

**ACKNOWLEDGMENT**

**STATE OF MISSOURI**        )  
  ) **SS.**  
**COUNTY OF ST. LOUIS**    )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared Craig Owens, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the **CITY OF CLAYTON, MISSOURI**, a Missouri home-rule city, and that said instrument was signed in behalf of said city by authority of its Board of Aldermen, and said officer acknowledged said instrument to be the free act and deed of said city.

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

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in St. Louis County

(SEAL)

My commission expires: \_\_\_\_\_

**25 NORTH CENTRAL COMMUNITY  
IMPROVEMENT DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF MISSOURI        )  
  ) **SS.**  
COUNTY OF ST. LOUIS    )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that s/he is the Chair of the **25 NORTH CENTRAL COMMUNITY IMPROVEMENT DISTRICT**, a Missouri community improvement district, and that said instrument was signed in behalf of said district by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said district.

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

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in St. Louis County

(SEAL)

My commission expires: \_\_\_\_\_



**EXHIBIT A**

**DESCRIPTION OF DISTRICT PROJECT  
AND ESTIMATED REIMBURSABLE PROJECT COSTS**

The District Project consists generally of the CID Project as described in the Petition and approved in the Ordinance. Specifically, the District Project includes without limitation (1) the construction, reconstruction, installation, repair, maintenance and equipping of various public improvements on or adjacent to the District, including without limitation creation of a double-wide sidewalk on Central Avenue, burial of utility lines, and widening of the alley adjacent to the southern boundary of the District (the “**Infrastructure Improvements**”), (2) the demolition and removal, renovation, reconstruction and rehabilitation of buildings and structures, including without limitation the demolition and removal of existing buildings and structures and related environmental remediation and site work within the boundaries of the District (the “**Demolition and Site Work**”), (3) any public improvements, services or activities as outlined in the Petition or as otherwise necessary for the District to carry out any other powers set forth in the CID Act, to the extent that such public improvements, services or activities are related to the Infrastructure Improvements or the Demolition and Site Work.

The estimated cost of the District Project referenced above is \$1,500,000, as further outlined below:

Uses		
	Demolition and Site Work	\$ 567,300
	Infrastructure Improvements	883,400
	Professional Fees (architectural, legal, engineering, planning)	<u>49,300</u>
Total		\$1,500,000

**EXHIBIT B**

**FORM OF CERTIFICATE OF REIMBURSABLE PROJECT COSTS**

To: 25 North Central Community Improvement District  
Attention: Chair

City of Clayton, Missouri  
Attention: City Manager

**Re: 25 North Central Community Improvement District (City of Clayton, Missouri),  
Certificate of Reimbursable Project Costs**

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement dated as of \_\_\_\_\_, 2015 (the “*Agreement*”), among the City of Clayton, Missouri (the “*City*”), the 25 North Central Community Improvement District (the “*District*”), and Opus Development Company, L.L.C. (the “*Developer*”), as amended from time to time. In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on Schedule 1, attached hereto and incorporated herein by reference, is a Reimbursable Project Cost and was incurred in connection with the construction of the District Project and attached hereto and incorporated herein by reference are itemized invoices, receipts or other information evidencing such costs.
2. The Reimbursable Project Costs identified in this Certificate have been incurred or paid by the undersigned and are reimbursable under the Agreement.
3. Each item listed on **Schedule 1** has not been previously paid or reimbursed from Net Revenues derived from the District Sales Tax or from the Municipal Contribution, and no part thereof has been included in any other certificate previously filed with the District.
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 portion of the work for which this certificate 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 Certificate of Reimbursable Project Costs is deemed not to constitute a Reimbursable Project Cost within the meaning of the Agreement and the CID Act, the Developer shall have the right to substitute other eligible Reimbursable Project Costs for payment hereunder.

8. Part or all of the costs to be reimbursed under this Certificate constitute Reimbursable Project Costs related to the Infrastructure Improvements, as more particularly identified on **Schedule 1** and, as such, constitute advances that qualify for reimbursement from the Municipal Contribution:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

9. The Developer is not in default or breach of any material term or condition of the Agreement beyond the applicable cure period, if any.

10. 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\_\_.

**OPUS DEVELOPMENT COMPANY, L.L.C.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved for Payment this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

**25 NORTH CENTRAL COMMUNITY IMPROVEMENT DISTRICT**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF CLAYTON, MISSOURI**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1 TO CERTIFICATE OF REIMBURSABLE PROJECT COSTS**

The Developer has incurred the following Reimbursable Project Costs related to the Demolition and Site Work:

<b>Payee</b>	<b>Amount</b>	<b>Description of Reimbursable Project Costs</b>
--------------	---------------	--

**Total:**

The Developer has incurred the following Reimbursable Project Costs related to the Infrastructure Improvements:

<b>Payee</b>	<b>Amount</b>	<b>Description of Reimbursable Project Costs</b>
--------------	---------------	--

**Total:**

**EXHIBIT C**

**FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION**

To: 25 North Central Community Improvement District  
Attention: Chair

City of Clayton, Missouri  
Attention: City Manager

**Re: 25 North Central Community Improvement District (City of Clayton, Missouri),  
Certificate of Substantial Completion**

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement dated as of \_\_\_\_\_, 2015 (the “*Agreement*”), among the City of Clayton, Missouri (the “*City*”), the 25 North Central Community Improvement District (the “*District*”), and Opus Development Company, L.L.C. (the “*Developer*”), as amended from time to time. In connection with said Agreement, the undersigned hereby states and certifies that:

1. As of \_\_\_\_\_, 20\_\_\_\_, the [Developer Project][, the District Project][and the Parking Lot] (as such term[s] [is][are] defined in the Agreement) [has][have] been substantially completed in accordance with the Agreement.
2. All work associated with the [Developer Project][, the District Project][and the Parking Lot] [has][have] been performed in a workmanlike manner and in accordance with the construction plans.
3. Lien waivers for applicable portions of the work associated with the [Developer Project][, the District Project][and the Parking Lot] have been obtained.
4. This Certificate of Substantial Completion is accompanied by the project architect’s or owner’s representative’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 [Developer Project], [the District Project][and the Parking Lot] [has][have] been substantially completed in accordance with the Agreement.
5. This Certificate of Substantial Completion is being issued by the Developer to the District in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the [Developer Project][, the District Project][and the Parking Lot].
6. The District’s and the City’s acceptance (below) or the District’s and the City’s failure to object in writing to this Certificate within 30 days of the date of delivery of this Certificate to the District and 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 with the County Recorder, shall evidence the satisfaction of the Developer’s agreements and covenants to perform the [Developer Project][, the District Project][and the Parking Lot].



This Certificate shall be recorded in the office of the County Recorder. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

All certifications or statements made or set forth in this Certificate of Substantial Completion are made solely for the benefit of the District and shall not be relied upon or used for any purpose by any third party in any proceeding, claim or contest of any kind, nature or character.

**IN WITNESS WHEREOF**, the undersigned has hereunto set his/her hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**OPUS DEVELOPMENT COMPANY, L.L.C.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTED:**

**25 NORTH CENTRAL COMMUNITY IMPROVEMENT DISTRICT**

By: \_\_\_\_\_  
Authorized District Representative

**ACCEPTED:**

**CITY OF CLAYTON, MISSOURI**

By: \_\_\_\_\_  
Authorized City Representative

(Insert Notary Form(s) and Legal Description)

**EXHIBIT D**

**FORM OF MONTHLY REPORT OF NET REVENUES  
DERIVED FROM DISTRICT SALES TAX**

25 North Central Transportation Development District  
Monthly Report of Net Revenues Derived from District Sales Tax

To: City of Clayton  
Attn: City Finance Director  
10 North Bemiston Avenue  
Clayton, MO 63105

From: 25 North Central Community Improvement District  
Attn: Executive Director  
c/o Opus Development Company, L.L.C.  
7733 Forsyth Boulevard, Suite 1100  
Clayton, MO 63105

MONTHLY REPORT:       [MONTH/YEAR]      

District Sales Tax collected by the District for the prior  
calendar month \$                   -

125%

Multiplier for Municipal Contribution

**TOTAL MUNICIPAL CONTRIBUTION**       \$                   -

Pursuant to Section 4.8 of the Development Agreement dated as of June 1, 2015, among the City of Clayton, Missouri, the 25 North Central Community Improvement District and Opus Development Company, L.L.C., as may be amended from time to time.

Dated: \_\_\_\_\_

Prepared by: 25 North Central Community Improvement District

\_\_\_\_\_  
Executive Director

cc: Robert Klahr, Armstrong Teasdale LLP (via email)

## **EXHIBIT E**

### **LEGAL DESCRIPTION OF THE DISTRICT**

#### **PARCEL 1:**

A tract of land being Lots 10, 11, 12 and part of Lots 13 and 14 in Block 5 of the "Town (Now City) of Clayton", according to plat thereof recorded in Plat Book 1 page 7 of the St. Louis County Records and being more particularly described as:

Beginning at the intersection of the South line of Maryland Avenue, 80 feet wide, with the West line of Central Avenue, 80 feet wide; said point being also the Northeast corner of said lot 10; thence Southwardly along the East line of said Lot 10, being also along said West line of Central Avenue South 06 degrees 40 minutes 05 seconds East 212.71 feet to the Southeast corner thereof; said point being also the Northeast corner of an Alley, 20 feet wide; thence Westwardly along the North line of said Alley, being also along the South line of aforesaid Lots 10, 11, 12, 13, and 14 of the "Town (Now City) of Clayton", South 83 degrees 25 minutes 08 seconds West 200.00 feet to the Southwest corner of said Lot 14; said point being also the Southeast corner of property now or formerly of SGI Hotel, LLC, as described in deed recorded in Book 17238 page 2875 of the St. Louis County Records; thence Northwardly along the East line of said last mentioned property, being also along the West line of said Lot 14, North 06 degrees 40 minutes 05 seconds West 90.21 feet to the Northeast corner of said SGI Hotel, LLC, property, said point being also a point in the South line of property now or formerly of Graybar Electric Company, Inc. as described in deed recorded in Book 7301 page 127 of the St. Louis County Records; thence Eastwardly along the South line of said Graybar Electric Company, Inc. property North 83 degrees 25 minutes 08 seconds East 80.00 feet to the Southeast corner thereof; thence Northwardly along the East line of said last mentioned property, being also along the West line of aforesaid Lot 12 North 06 degrees 40 minutes 05 seconds West 122.50 feet to the Northwest corner of said Lot 12, said point being also a point in the aforementioned South line of Maryland Avenue, 80 feet wide; thence Eastwardly along said South line of Maryland Avenue North 83 degrees 25 minutes 08 seconds East 120.00 feet to the point of beginning, according to a survey and calculations by Volz Incorporated, dated October 27, 2006.

#### **PARCEL 2:**

A tract of land being part of Lot 2 in Block G of "Bemiston," a subdivision according to the plat thereof recorded in Plat Book 3 page 64 of the St. Louis County records, in Township 45 North Range 6 East, City of Clayton, St. Louis County, Missouri and being more particularly described as:

Beginning at a point in the West line of Central Avenue, 80 feet wide, being the Southeast corner of said Lot 2; thence Westwardly along the South line of said Lot 2 South 83 degrees 25 minutes 08 seconds West 160.00 feet to the Southwest corner thereof, being also a point in the East line of Lot 24 of "Bemis Addition to the Town of Clayton," a subdivision according to the plat thereof recorded in Plat Book 2 page 30 of the St. Louis County records; thence Northwardly along the West line of said Lot 2 in Block G of "Bemiston," being also the East line of said Lot 24 and the East line of Lot 23 of said "Bemiston Addition to the Town of Clayton" North 6 degrees 32 minutes 37 seconds West 75.00 feet to a point; thence North 83 degrees 25 minutes 08 seconds East 160.00 feet to a point in the aforesaid West line of Central Avenue, 80 feet wide; thence Southwardly along said West line of Central Avenue, 80 feet wide, South 6 degrees 32 minutes 37 seconds East 75.00 feet to the point of beginning, according to a survey and calculations by Volz Incorporated dated September 20, 2007, Job. No. 9220.

**EXHIBIT F**

**LEGAL DESCRIPTION OF THE PARKING LOT SITE**

111 N. Central

A tract of land being part of Lot 2 in Block G of "Bemiston," a subdivision according to the plat thereof recorded in Plat Book 3, Page 64 of the St. Louis County, Missouri Records and being more particularly described as follows:

BEGINNING at a point in the West line of Central Avenue, 80 feet wide, being the Southeast corner of Lot 2 in Block G of "Bemiston," thence along the Southern line of said Lot 2 South 83 degrees 25 minutes 08 seconds West 160.00 feet to the Southwest corner thereof, being also the East line of Lot 24 of the "Bemiston Addition to the Town of Clayton," a subdivision according to the plat thereof recorded in Plat Book 2, Page 30 of the St. Louis County, Missouri Records; thence Northwardly along the West line of the aforesaid Lot 2 and the East line of said Lot 24 and Lot 23 of said "Bemiston Addition to the Town of Clayton" North 06 degrees 32 minutes 37 seconds East 75.00 feet to a point; thence North 83 degrees 25 minutes 08 seconds East 160.00 feet to a point in the aforesaid West line of Central Avenue, 80 feet wide, thence Southwardly along said West line of Central Avenue South 06 degrees 32 minutes 37 seconds East 75.00 feet to the point of beginning.



City Manager  
 10 N. Bemiston Avenue  
 Clayton, MO 63105

## REQUEST FOR BOARD ACTION

**TO:** MAYOR SANGER; BOARD OF ALDERMEN  
**FROM:** CRAIG S. OWENS, CITY MANAGER (CSO)  
 JANET K. WATSON, DIRECTOR OF FINANCE AND ADMINISTRATION  
**DATE:** JUNE 9, 2015  
**SUBJECT:** ORDINANCE – 2ND QUARTER AMENDMENT TO THE FISCAL YEAR 2015 BUDGET

The City of Clayton reviews and makes adjustments to its budgeted revenues and expenditures on a quarterly basis to respond to changes as the fiscal year progresses and to update the Board regarding budgetary issues. As part of the quarterly budget review, staff is presenting for your consideration the second amendment to the Fiscal Year 2015 (FY15) budget. The reductions in this amendment help offset approximately \$270,000 in safe demonstration costs for this year. As a reminder, the 2<sup>nd</sup> Quarter Financial Report will be on the following agenda. The proposed amendment is summarized in the table below:

<u>ALL FUNDS</u>	FY 2015	Amendments	FY 2015	FY 2015	%
	Original Budget	Previously Approved	2nd Quarter Amendment Requested	Budget After This Amendment	
<b>Beginning Fund Balance</b>	\$88,111,335			\$88,111,335	
<b>Revenues</b>	\$49,958,405	(\$121,230)	\$300,000	\$50,137,175	0.4%
<b>Expenditures</b>	<u>\$54,748,818</u>	<u>\$877,590</u>	<u>\$29,074</u>	<u>\$55,655,482</u>	1.7%
<b>Net Change</b>		(\$998,820)	\$270,926		
<b>Ending Fund Balance</b>	\$83,320,922			\$82,593,028	

Below are further explanations, presented by fund, of the items included in this amendment.

### General Fund

Revenue – No change

Expenditures – Net Decrease of \$270,926

- Public Works - This savings of \$60,000 in salaries and benefits occurred due to the vacancy of two positions in the Engineering division.
- Events – Changes in planned events will result in a savings of \$38,000 for direct event costs, as well as the necessary overtime to support the events.
- Fire Department Savings – Several areas will result in savings of \$22,726 from the planned budget. These include savings in supplies and commodities that would have been spent if the

department had needed to hire new employees; less purchases of fire hose and training equipment were needed; and accreditation fees were less than planned.

- Police Department Savings - This savings of \$57,400 includes salary and benefit savings from two vacant positions, a reduction in training costs and a savings from the reduction in ECDC quarterly charges beginning with the last quarter of this year.
- Information Technology - This savings of \$43,500 includes a reduction in software maintenance due to the timing of new systems, and savings in other projects which came in less than budgeted or will not be purchased this year.
- Finance – This small savings of \$4,300 is due to the ability to locate a free investment tracking tool instead of purchasing one, and a reduction in planned training.
- Parks & Recreation – These savings of \$45,000 include a staff vacancy, reduced normal maintenance and repair on the ice rink which did not include the replacement of compressors, and savings on travel and training due to the timing of planned training which will occur in next fiscal year.

### **Capital Improvement Fund**

Revenue – Net Increase of \$300,000

- The Newman Green Project was approved by the BOA and this project includes a \$100,000 donation from CCF to offset costs of the project. The Shaw Park North Project (Chapman Plaza) was approved by the BOA with a \$200,000 donation from CCF to offset costs of the project in FY15.

Expenditures – Net Increase of \$300,000

- Newman Green Project expenditures were added of \$100,000 which is supported with a CCF donation of the same amount. The Shaw Park North Project (Chapman Plaza) was also approved by the BOA and there will be approximately \$200,000 in project costs in this fiscal year which is fully supported by a donation from CCF.

An ordinance is attached incorporating the recommended amendments to the FY15 budget. Exhibit 1-1 provides a fund summary of the effect of the recommended amendments and the percentage effect of the accumulated amendment on each fund. Exhibit 1-2 lists the individual budget line items in this quarter's amendment.

**Recommendation:** To approve the attached ordinance adopting an amendment to the FY15 budget with a net effect on the City's fund balances of an increase of \$270,926.

BILL NO. 6503

ORDINANCE NO. \_\_\_\_\_

---

**AN ORDINANCE AMENDING THE FISCAL YEAR 2015 BUDGET  
AND APPROPRIATING FUNDS PURSUANT THERETO**

---

WHEREAS, the Board of Aldermen on September 9, 2014, adopted the annual budget for Fiscal Year 2015 commencing October 1, 2014; and

WHEREAS, the Fiscal Year 2015 budget was amended on February 24, 2015 for significant changes in revenue and expenditures on a fund basis that may affect the budget by year end; and

WHEREAS, the Fiscal Year 2015 budget is to be amended in the 2nd quarter to account for significant changes in revenue and expenditures on a fund basis that may affect the budget by year end; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:

Section 1. The annual Fiscal Year 2015 (FY15) budget for the City of Clayton, Missouri commencing on October 1, 2014, is hereby amended as reported in Exhibit 1 and summarized below:

	<b>FY 2015 Original Budget</b>	<b>Amendments Previously Approved</b>	<b>FY 2015 2nd Quarter Amendment Requested</b>	<b>FY 2015 Budget After This Amendment</b>
<b>Revenues</b>	\$49,958,405	(\$121,230)	\$300,000	\$50,137,175
<b>Expenditures</b>	\$54,748,818	\$877,590	\$29,074	\$55,655,482

Section 2. Funds are hereby appropriated as set forth in said Exhibit 1. The expenditure of the funds so appropriated shall be subject to the control of the City Manager.

Section 3. This ordinance shall be in full force and effect from and after its passage by the Board of Aldermen.

Passed this 9<sup>th</sup> day of June, 2015.

\_\_\_\_\_  
Mayor

ATTEST:

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

2nd Quarter Fiscal Year (FY) 2015 Budget Amendment

Fund Name	Type	FY 15 Original Budget	1st Quarter Amendment	2nd Quarter Amendment	FY 2015 Budget After Amendments	% Change
10	General	<b>Beginning Fund Balance</b>	16,339,148		16,339,148	
		Revenues	25,140,401	109,478	0	25,249,879 0.4%
		Expenditures	25,136,624	580,099	(270,926)	25,445,797 1.2%
		<b>Ending Fund Balance</b>	16,342,925	(470,621)	270,926	16,143,230 -1.2%
12	Sewer Lateral	<b>Beginning Fund Balance</b>	136,790			136,790
		Revenues	93,436	0	0	93,436 0.0%
		Expenditures	125,899	0	0	125,899 0.0%
		<b>Ending Fund Balance</b>	104,327	0	0	104,327 0.0%
45	Special Business District	<b>Beginning Fund Balance</b>	165,721			165,721
		Revenues	434,385	0	0	434,385 0.0%
		Expenditures	412,476	0	0	412,476 0.0%
		<b>Ending Fund Balance</b>	187,630	0	0	187,630 0.0%
50	Equipment Replacement	<b>Beginning Fund Balance</b>	2,621,045		0	2,621,045
		Revenues	1,494,265	0	0	1,494,265 0.0%
		Expenditures	1,419,355	12,000	0	1,431,355 0.8%
		<b>Ending Fund Balance</b>	2,695,955	(12,000)	0	2,683,955 -0.4%
60	Capital Improvement	<b>Beginning Fund Balance</b>	3,508,591		0	3,508,591
		Revenues	12,397,354	(274,605)	300,000	12,422,749 0.2%
		Expenditures	13,014,850	109,898	300,000	13,424,748 3.1%
		<b>Ending Fund Balance</b>	2,891,095	(384,503)	0	2,506,592 -13.3%
All	Debt Service	<b>Beginning Fund Balance</b>	15,616,448			15,616,448
		Revenues	5,067,104	(13,120)	0	5,053,984 -0.3%
		Expenditures	11,831,414	175,593	0	12,007,007 1.5%
		<b>Ending Fund Balance</b>	8,852,138	(188,713)	0	8,663,425 -2.1%
30	Uniformed Pension	<b>Beginning Fund Balance</b>	35,837,022			35,837,022
		Revenues	3,721,431	0	0	3,721,431 0.0%
		Expenditures	2,193,800	0	0	2,193,800 0.0%
		<b>Ending Fund Balance</b>	37,364,653	0	0	37,364,653 0.0%
40	Non-uniformed Pension	<b>Beginning Fund Balance</b>	13,886,570			13,886,570
		Revenues	1,610,029	57,017	0	1,667,046 3.5%
		Expenditures	614,400	0	0	614,400 0.0%
		<b>Ending Fund Balance</b>	14,882,199	57,017	0	14,939,216 0.4%
		<b>Beginning Fund Balance</b>	88,111,335			88,111,335
		<b>TOTAL REVENUES</b>	49,958,405	(121,230)	300,000	50,137,175 0.4%
		<b>TOTAL EXPENDITURES</b>	54,748,818	877,590	29,074	55,655,482 1.7%
		<b>Ending Fund Balance</b>	83,320,922	(998,820)	270,926	82,593,028 -0.9%



**City of Clayton  
2nd Quarter Budget Amendment - FY 2015**

**EXHIBIT 1-2**

<b>Account #</b>	<b>Account Name</b>	<b>2nd Quarter Amendment</b>	<b>Description</b>
------------------	---------------------	------------------------------	--------------------

**Revenue**

<b>CAPITAL IMPROVEMENTS FUND</b>			
60R00003580002	Other Grants & Donations	300,000	Newman Green Project was approved by the BOA which includes a \$100,000 donation from CCF to offset costs of the project; Shaw Park North Project was approved by the BOA with \$200,000 donation from CCF to offset costs of the project in FY15.

**Total Revenue Amendment                                 \$300,000**

**Expenditures**

<b>GENERAL FUND</b>			
10X1401 Various	Salaries & Benefits - Public Works	(60,000)	Savings due to staff vacancies in Public Works Engineering.
10X15114110000	Community Events	(28,000)	Changes in planned events allowed for savings.
10X15111020000	Overtime for Events	(10,000)	
10X13002030000	Medical Services - Fire Department	(8,250)	Various savings in the Fire Department were from not needing to hire any new positions, fewer medical exams and less fire hose were needed than planned, accreditation fees were less and a reduction in necessary medical equipment replacement occurred.
10X13003010000	Office Supplies	(1,600)	
10X13003070000	Operating Supplies	(3,000)	
10X13003160000	Clothing & Uniforms	(7,376)	
10X13003200000	Medical Supplies	(2,500)	
10X1200 Various	Salaries & Benefits - Police	(45,000)	Savings from Police staff vacancies, reduction in training costs, and savings in ECDC costs over planned amounts.
10X12002130000	Travel & Training	(3,400)	
10X12002700000	Contractual Services	(9,000)	
10X11022370000	Maintenance of Systems - IT	(36,000)	Information Technology savings from timing of new software and other small savings on a variety of items that came in less than budgeted or were not purchased for other reasons.
10X11022700000	Contractual Services	(7,500)	
10X11012700000	Contractual Services - Finance	(1,800)	Finance was able to find a free investment tracking tool instead of purchasing one, and will have less travel and training than planned.
10X11012130000	Travel & Training	(2,500)	
10X1610 Various	Salaries & Benefits - Park Maint.	(17,500)	Parks & Recreation saved costs through a staff vacancy, less repair on the ice rink partially due to the current rink evaluation, and travel savings due to the timing of panned travel.
10X16042370000	Maintenance & Repair - Ice Rink	(25,000)	
10X16012130000	Travel & Training	(2,500)	

<b>CAPITAL IMPROVEMENT FUND</b>			
60X16006530000	Shaw Park Projects	300,000	Newman Green Project was approved by the BOA which includes a \$100,000 donation from CCF to offset costs of the project; Shaw Park North Project was approved by the BOA with \$200,000 donation from CCF to offset costs of the project in FY15.

**Total Expenditure Amendment                                 29,074**



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

---

---

## REQUEST FOR BOARD ACTION

---

**TO:** MAYOR SANGER; BOARD OF ALDERMEN  
**FROM:** CRAIG S. OWENS, CITY MANAGER (CSO)  
KEVIN MURPHY, ACTING CHIEF OF POLICE  
**DATE:** JUNE 9, 2015  
**SUBJECT:** ORDINANCE –REVISION OF SECTION 605.280, ENTITLED PARADE  
AND ASSEMBLY PROHIBITIONS

---

The proposed ordinance would amend the City's existing parade and assembly regulations to include the addition of Subsections A(11) and (12), which make it unlawful:

- For any person to ride, drive or cause to be ridden any animal drawn vehicle upon any public street as part of a parade or public assembly unless such transportation is specifically authorized by the permit for the event. The purpose is to ensure that the City is aware of the kinds of activities proposed so both police and public works can make appropriate arrangements for contingencies before, during and after the event (e.g. cleanup) and so the police can have appropriate control and respond to any situation and in the event animals might used to block the streets, or otherwise obstruct police and first responders engaged in the performance of their duties. for any person to breach lawfully erected barricades and/or police lines erected in association with a parade or assembly event in order to ensure that the event takes place where and as permitted, that areas cordoned off for specific purposes (demonstrators and counter-demonstrators, for instance) are respected, and to maintain safety and public order.

**STAFF RECOMMENDATION:** To approve the proposed Ordinance.

BILL NO. 6504

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 605.280 OF THE CODE OF ORDINANCES OF THE CITY OF CLAYTON, MISSOURI, RELATING TO PARADES AND ASSEMBLIES**

---

**WHEREAS**, the City of Clayton wishes to allow parades and assemblies in a manner that promotes a reasonable opportunity for protected speech while ensuring the health, safety and well being of its residents; and

**WHEREAS**, the City wishes to ensure that all those wishing to organize a parade or an assembly comply with the necessary requirements, prescribed by the City, to ensure the health, safety and well being of its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:**

**Section 1.**

Section 605.280 of Article IV of Chapter 605 of the Code of Ordinances of the City of Clayton, Missouri, is hereby repealed and a new Section 605.280 is hereby enacted in lieu thereof to read as follows:

**CHAPTER 605. BUSINESS AND OCCUPATIONAL LICENSES AND REGULATIONS**

**ARTICLE IV. PARADES AND ASSEMBLIES**

**SECTION 605.280: PARADE AND ASSEMBLY PROHIBITIONS**

A. The following prohibitions shall apply to all parades and public assemblies:

1. It shall be unlawful for any person at any parade or public assembly to carry or possess any weapon as defined below. For purposes of this Chapter and notwithstanding any other provision of this Code, "weapon" means any pistol, rifle, shotgun or other firearm of any kind, whether loaded or unloaded, air rifle, air pistol, paintball gun, paintball rifle, explosive, blasting cap(s), knife, hatchet, ax, slingshot, blackjack, metal knuckles, mace, iron buckle, ax handle, chains, crowbar, hammer, shovel or any club or bludgeon or any other instrumentality used or intended for use as a dangerous weapon.

2. It shall be unlawful for any person to carry or possess any sign, poster, plaque or notice unless such sign, plaque or notice is constructed solely of a cloth, paper, flexible or cardboard material no greater than one-quarter ( $1/4$ ) inch in thickness.
3. It shall be unlawful for any person to carry or possess any length of lumber, wood or wood lath unless it is one-fourth ( $1/4$ ) inch or less in thickness and two (2) inches or less in width or if not generally rectangular in shape, such object shall not exceed three-quarters ( $3/4$ ) inch in its thickest dimension. Both ends of the length of lumber, wood or lath shall be blunt and shall not be pointed. Exceptions from this Section include:
  - a. Lumber or wood used to support or control puppets, so long as the lumber or wood is not detached from the puppets, and
  - b. Stilts, defined as two (2) poles with footrests off the ground on which someone balances or walks so long as each stilt does not exceed fifteen (15) feet in length and two (2) by two (2) inches in width.
4. It shall be unlawful for any person to carry or possess any length of metal, plastic or other similar hard or stiff material, whether hollow or solid; provided that the hollow plastic does not exceed three-quarter ( $3/4$ ) inch in its thickest dimension, does not exceed one-eighth ( $1/8$ ) inch in wall thickness and is not filled with any material, liquid, gas or solid, may be used to support a sign, banner, placard or other similar display; however, both ends of the length of plastic material shall be blunt and not pointed.
5. It shall be unlawful for any person to carry or possess glass bottles, glass jars or glass containers of any kind unless such glass container is a vial required to hold medication customarily stored in a glass vial.
6. It shall be unlawful for any person to carry or possess balloons filled with any material or substance other than air, oxygen or helium. Such materials and substances include, but are not limited to, water, paint or any other liquid, solid or other gas.
7. It shall be unlawful for any person to carry or possess bricks, stones, rocks or pieces of asphalt or concrete. No person may carry or possess with the intent to unlawfully use any hard materials or substances or pieces of hard materials or substances that are capable of being thrown or projected.

8. It shall be unlawful for any person to carry or possess spray paint cans.
  9. It shall be unlawful for any person to carry or possess any projectile launcher or other device which is commonly used for the purpose of launching, hurling or throwing any object, liquid, material or other substance, including but not limited to, super soakers and water cannons. Nothing in this Subsection is intended to prohibit or restrict those participating in parades, demonstrations, rallies or assemblies from possessing sufficient amount of water or other liquids designed and intended for human consumption during such an event.
  10. It shall be unlawful for any person to carry or possess any so called sleeping dragon device with the intent to use the device to deny or obstruct the public's ability to freely move about on roadways, sidewalks or into or out of buildings. For purposes of this Subsection, a "*sleeping dragon device*" shall mean a section of pipe or a container filled with weighted material, handcuffs, chains, carabineers or other locking devices used to lock a person or persons to another person or persons or other objects.
  11. It shall be unlawful for any person to ride, drive or cause to be ridden or driven any animal drawn vehicle upon any public street as a part of a parade or public assembly unless such transportation is specifically authorized by the permit.
  12. No person shall cross or breach a lawfully erected barricade or police line.
- B. Nothing in this Section shall prohibit a disabled person from carrying, possessing or using a wheelchair, cane, walker or similar device necessary for providing mobility so that the person may participate in a parade.
- C. Nothing in this Section is intended to authorize the possession or use of materials, weapons or devices that are otherwise prohibited by any other local, State or Federal ordinance, Statute or regulation. The purpose of this Section is to prohibit the carrying or possession of items and materials that have the potential to be used as weapons to cause physical or personal damage and whose possession might not otherwise be prohibited by local, State or Federal law.

## **Section 2.**

The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered in the process of recodifying or

servicing the City's Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

**Section 3.**

It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

**Section 4.**

This Ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

Passed by the Board of Aldermen this 9th day of June, 2015.

\_\_\_\_\_  
Mayor

Attest:

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

BILL NO. \_\_\_\_\_  
ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 605.280 OF THE CODE OF ORDINANCES OF THE CITY OF CLAYTON, MISSOURI, RELATING TO PARADES AND ASSEMBLIES**

---

**WHEREAS**, the City of Clayton wishes to allow parades and assemblies in a manner that promotes a reasonable opportunity for protected speech while ensuring the health, safety and well being of its residents; and

**WHEREAS**, the City wishes to ensure that all those wishing to organize a parade or an assembly comply with the necessary requirements, prescribed by the City, to ensure the health, safety and well being of its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:**

**Section 1.**

Section 605.280 of Article IV of Chapter 605 of the Code of Ordinances of the City of Clayton, Missouri, is hereby repealed and a new Section 605.280 is hereby enacted in lieu thereof to read as follows:

**CHAPTER 605. BUSINESS AND OCCUPATIONAL LICENSES AND REGULATIONS**

**ARTICLE IV. PARADES AND ASSEMBLIES**

**SECTION 605.280: PARADE AND ASSEMBLY PROHIBITIONS**

A. The following prohibitions shall apply to all parades and public assemblies:

1. It shall be unlawful for any person at any parade or public assembly to carry or possess any weapon as defined below. For purposes of this Chapter and notwithstanding any other provision of this Code, "weapon" means any pistol, rifle, shotgun or other firearm of any kind, whether loaded or unloaded, air rifle, air pistol, paintball gun, paintball rifle, explosive, blasting cap(s), knife, hatchet, ax, slingshot, slingshot, blackjack, metal knuckles, mace, iron buckle, ax handle, chains, crowbar, hammer, shovel or any club or bludgeon or any other instrumentality used or intended for use as a dangerous weapon.

2. It shall be unlawful for any person to carry or possess any sign, poster, plaque or notice unless such sign, plaque or notice is constructed solely of a cloth, paper, flexible or cardboard material no greater than one-quarter (1/4) inch in thickness.
3. It shall be unlawful for any person to carry or possess any length of lumber, wood or wood lath unless it is one-fourth (1/4) inch or less in thickness and two (2) inches or less in width or if not generally rectangular in shape, such object shall not exceed three-quarters (3/4) inch in its thickest dimension. Both ends of the length of lumber, wood or lath shall be blunt and shall not be pointed. Exceptions from this Section include:
  - a. Lumber or wood used to support or control puppets, so long as the lumber or wood is not detached from the puppets, and
  - b. Stilts, defined as two (2) poles with footrests off the ground on which someone balances or walks so long as each stilt does not exceed fifteen (15) feet in length and two (2) by two (2) inches in width.
4. It shall be unlawful for any person to carry or possess any length of metal, plastic or other similar hard or stiff material, whether hollow or solid; provided that the hollow plastic does not exceed three-quarter (3/4) inch in its thickest dimension, does not exceed one-eighth (1/8) inch in wall thickness and is not filled with any material, liquid, gas or solid, may be used to support a sign, banner, placard or other similar display; however, both ends of the length of plastic material shall be blunt and not pointed.
5. It shall be unlawful for any person to carry or possess glass bottles, glass jars or glass containers of any kind unless such glass container is a vial required to hold medication customarily stored in a glass vial.
6. It shall be unlawful for any person to carry or possess balloons filled with any material or substance other than air, oxygen or helium. Such materials and substances include, but are not limited to, water, paint or any other liquid, solid or other gas.
7. It shall be unlawful for any person to carry or possess bricks, stones, rocks or pieces of asphalt or concrete. No person may carry or possess with the intent to unlawfully use any hard materials or substances or pieces of hard materials or substances that are capable of being thrown or projected.



8. It shall be unlawful for any person to carry or possess spray paint cans.
9. It shall be unlawful for any person to carry or possess any projectile launcher or other device which is commonly used for the purpose of launching, hurling or throwing any object, liquid, material or other substance, including but not limited to, super soakers and water cannons. Nothing in this Subsection is intended to prohibit or restrict those participating in parades, demonstrations, rallies or assemblies from possessing sufficient amount of water or other liquids designed and intended for human consumption during such an event.
10. It shall be unlawful for any person to carry or possess any so called sleeping dragon device with the intent to sue the device to deny or obstruct the public's ability to freely move about on roadways, sidewalks or into or out of buildings. For purposes of this Subsection, a "*sleeping dragon device*" shall mean a section of pipe or a container filled with weighted material, handcuffs, chains, carabineers or other locking devices used to lock a person or persons to another person or persons or other objects.
11. It shall be unlawful for any person to ride, drive or cause to be ridden or driven any animal drawn vehicle upon any public street as a part of a parade or public assembly unless such transportation is specifically authorized by the permit.
12. No person shall cross or breach a lawfully erected barricade or police line.

B. Nothing in this Section shall prohibit a disabled person from carrying, possessing or using a wheelchair, cane, walker or similar device necessary for providing mobility so that the person may participate in a parade.

C. Nothing in this Section is intended to authorize the possession or use of materials, weapons or devices that are otherwise prohibited by any other local, State or Federal ordinance, Statute or regulation. The purpose of this Section is to prohibit the carrying or possession of items and materials that have the potential to be used as weapons to cause physical or personal damage and whose possession might not otherwise be prohibited by local, State or Federal law.

## **Section 2.**

The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered in the process of recodifying or servicing the City's Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

**Section 3.**

It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

**Section 4.**

This Ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

Passed by the Board of Aldermen this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Mayor

Attest:

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



City Manager  
10 N. Bemiston Avenue  
Clayton, MO 63105

---

---

## REQUEST FOR BOARD ACTION

---

**TO:** MAYOR SANGER; BOARD OF ALDERMEN  
**FROM:** CRAIG S. OWENS, CITY MANAGER (CSO)  
KEVIN MURPHY, ACTING CHIEF OF POLICE  
**DATE:** JUNE 9, 2015  
**SUBJECT:** ORDINANCE – REVISION OF CHAPTER 215, SECTION 215.156, ENTITLED  
BREACHING BARRICADE OR POLICE LINE

---

Chapter 215, of the Code of Ordinances, would be amended to include Section 215.156, entitled Breaching Barricade or Police Line. The purpose of this ordinance is to ensure that people do not enter into a secured area that is being controlled by public safety personnel. There are numerous reasons for establishing a secure perimeter, and this list is not to be considered exhaustive.

Examples would be a crime scene, an accident scene, a fire scene, or to ensure a secure perimeter during protest situations such as were encountered with the Michael Brown Grand Jury decision.

**STAFF RECOMMENDATION:** To approve the proposed Ordinance.

**AN ORDINANCE AMENDING CHAPTER 215 OF THE CODE OF ORDINANCES OF THE CITY OF CLAYTON, MISSOURI, RELATING TO BREACHING POLICE BARRICADES AND POLICE LINES**

---

**WHEREAS**, lawfully erected barricades and police cordons protect public health and safety and enable law enforcement authorities to properly preserve, document, and investigate areas where illegal activities or accidents have taken place; and

**WHEREAS**, persons who breach lawfully erected barricades or police lines disrupt public order, expose themselves and others to danger, distract and divert police and EMS personnel from rendering aid, and compromise the integrity of police investigations and the eventual prosecution of wrongdoing;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF CLAYTON, MISSOURI, AS FOLLOWS:**

**Section 1.**

Article III of Chapter 215 of the Code of Ordinances of the City of Clayton, Missouri, is hereby amended by the addition of one new Section, initially to be designated as Section 215.156, to read as follows:

**CHAPTER 215. OFFENSES**

**ARTICLE III. OFFENSES CONCERNING ADMINISTRATION OF JUSTICE**

**SECTION 215.156. BREACHING BARRICADE OR POLICE LINE**

It shall be unlawful for any person to breach or go over, under or around any barricade, cordon, visible line or other sign of demarcation or prohibition against unauthorized entry, or to enter any area enclosed or set off against unauthorized access or entry by any barricade, cordon or visible line, unless authorized to do so by a law enforcement officer having responsibility for the area.

**Section 2.**

The Chapter, Article, Division and/or Section assignments designated in this Ordinance may be revised and altered in the process of recodifying or servicing the City's Code of Ordinances upon supplementation of such code if, in the discretion of the editor, an alternative designation would be more reasonable. In adjusting such designations the editor may also change other designations and numerical assignment of code sections to accommodate such changes.

**Section 3.**

It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect.

**Section 4.**

This Ordinance shall be in full force and effect both from and after its passage by the Board of Aldermen.

Passed by the Board of Aldermen this 9th day of June, 2015.

\_\_\_\_\_  
Mayor

Attest:

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