

**Board Members:**

Charley Bible  
Shannon Coleman Egle  
Paul Fortunato  
Tiffany Gardner  
Bill Fox  
Terry Henley  
J. Ford Little  
Lou Moran, III  
Alvin Nance  
Lisa Rottmann  
L. Anthony Wise, Jr.



**The Industrial Development Board of the County of Knox**

Regular Meeting  
Tuesday, March 19, 2024, 4:00 p.m.  
17 Market Square, #201  
Knoxville, Tennessee 37902

**AGENDA**

- I. Call to Order
- ACTION** II. Approval of Minutes from Previous Meeting
  - a) Regular Meeting – February 13, 2024
- ACTION** III. Finance Report – Further Education
- ACTION** IV. Review and Consideration of a resolution of the Board of Directors of the Industrial Development Board of the County of Knox approving a utility easement between the Industrial Development Board of the County of Knox and the Knoxville Utilities Board to obtain a utility easement across certain property located at 2330 Holston Bend Dr. in Eastbridge Business Park
- ACTION** V. Review and Consideration of a resolution of the Board of Directors of the Industrial Development Board of the County of Knox Relating to the Amendment of Revenue Bond (The Change Center Project), Series 2017 (TEFRA)
- ACTION** VI. Review and Consideration of a resolution of the Board of Directors of the Industrial Development Board of the County of Knox authorizing signatories to approve certain standard contracts related to the operation of the business parks owned by the Industrial Development Board of the County of Knox
- ACTION** VII. Review and Consideration of a resolution of the Board of Directors of the Industrial Development Board of the County of Knox authorizing acceptance of real property and a real estate exchange agreement with Wheeler Properties, LLC, a memorandum of understanding with the County of Knox, Tennessee, and a Standard Design-Build Agreement and General Conditions with Merit Construction, Inc.

- VIII. Old Business
- IX. New Business
  - a) Solution to smaller packets
- X. Adjourn



**MINUTES OF THE REGULAR MEETING OF  
THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX**

February 13, 2024, 4:00 p.m.

The regular meeting of the Board of Directors of The Industrial Development Board of the County of Knox (the “Industrial Development Board” or “Board”) was held on Tuesday, February 13, 2024, at 4:00 p.m., pursuant to notice duly provided to the Directors and the public. The meeting was held at the offices of the Knoxville Chamber located at 17 Market Square, #201, Knoxville, Tennessee, 37902.

The following Directors were present at the meeting, Paul Fortunato (Chair), Tiffany Gardner (Vice Chair), Dr. Anthony Wise, Alvin Nance, Terry Henley, Lou Moran, III, J. Ford Little, and Dr. Bill Fox.

Also, in attendance were Mike Odom (Knoxville Chamber), Karen Kakanis (Knoxville Chamber), Caroline Bailey (Knoxville Chamber), R. Christopher Trump (Legal Counsel – Egerton, McAfee, Armistead & Davis, P.C.), Katrina Vargas (Paralegal – Egerton, McAfee, Armistead & Davis, P.C.), Soriya Gast (Public Observer), Emily Moran (Public Observer), James P. Moneyhun, Jr. (Bass Berry & Sims), Mike Cohen (Consultant), Steve Maddox (Maddox) and Michael Grider (Chief of Staff – Rep. Tim Burchett).

I. Paul Fortunato, the Board’s Chair, called the Industrial Development Board meeting to order. The Agenda of the Industrial Development Board meeting is attached hereto as Exhibit A.

The Industrial Development Board then discussed the following matters and took the following actions as noted:

II. Review/Approve Minutes from Previous Meeting. The Chair of the meeting asked if there were any changes to the Minutes of the regular meeting held on December 12, 2023.

Upon a motion by J. Ford Little and a second by L. Anthony Wise, the Minutes of the December 12, 2023, meeting were unanimously approved. A copy of the Minutes is attached hereto as Exhibit B.

III. Finance Report. The Chair recognized Karen Kakanis who presented the financial report (“Financial Report”), reviewing with the Board the Balance Sheet with Prior Year Comparison, and Income Statement of the Board with Prior Year Comparison. Mike Odom gave information and clarification. During discussion, special emphasis was placed on the influx of new money from the TDC, including distribution of the TDC financials. The Board Chair requested extra time and consideration for discussion at the next meeting of the Board.

Upon a motion by Terry Henley, and a second by Bill Fox, the Financial Report, as presented, was unanimously accepted. A copy of the financial statements presented during the report is collectively attached as Exhibit C.

IV. Review and Consideration of a resolution of the Board of Directors of The Industrial Development Board of the County of Knox approving an Economic Impact Plan and Related Documents for the Tax Increment Financing of I-40/75 Business Park, LLC concerning the financing of public infrastructure for the proposed “Prosperity Crossing” project to be located at 13115 El Camino Lane, 0 El Camino Lane, 0 Everett Road, 0 Buttermilk Road. The Chair recognized Mike Odom and Chris Trump who addressed the Board regarding the proposed Resolution. Mr. Trump provided background including that the economic impact plan was submitted to the County Commission. The IDB’s internal policies require letters from adjoining property owners to sign letters of consent to include them in the planning area. Two have submitted their approvals with the third yet to be received. The third property owner originally agreed without objection, but has since been non-responsive as of the Board’s decision at the time of this meeting.

Upon a motion by L. Anthony Wise and a second by Terry Henley, the Resolution approving an Economic Impact Plan and Related Documents for the Tax Increment Financing of I-40/75 Business Park, LLC concerning the financing of public infrastructure for the proposed “Prosperity Crossing” project to be located at 13115 El Camino Lane, 0 El Camino Lane, 0 Everett Road, 0 Buttermilk Road was unanimously approved. A copy of the Resolution is attached hereto as Exhibit D.

V. Review and Consideration of a resolution approving the MOU between Knox County and The Industrial Development Board of the County of Knox for the real property exchange of Karns Valley Business Park site 2 for the Regional Forensics Center. The Chair recognized Mike Odom who addressed the Board regarding the proposed Resolution. Mr. Odom explained that the Knox County Forensic Center serves 16 counties and houses the morgue. The Forensic Center has outgrown its current facility. The Forensic Center also handles cold cases and UT Research utilizes much of the space as well. The Forensic Center has been hoping to expand its facilities for years, including occupying additional space at Cherokee Farm. The Forensic Center recently approached the Chamber regarding the space in the Karns Valley Business Park. They would like to use the land for a new forensic center and records storage. Appraised at approximately \$1.2 million, the Karns Valley Business Park has been a challenge to use and market, having no purchaser for some time. If the Forensic Center were to relocate to the Karns Valley Business Park, the Forensic Center would have the location staffed 24 hours a day, which would generally help provide stability and security to the Karns Valley Business Park.

The MOU proposes a swap of property between the IDB, which owns in fee the Karns Valley Business Park located at 0 Production Lane (Parcel ID 09010201), and Knox County, which owns the Knox County Regional Forensic Center located at 2761 Sullins Street (Parcel ID 108BD004). The proposed MOU is not binding, and approval from the County of the swap is necessary.

The Board discussed the tax implications of the swap. After further discussion, the Board agreed that certain edits to the MOU should be made as discussed in the meeting. The specific revisions pertained to providing the IDB with a mechanism to terminate the MOU under certain circumstances. Mr. Trump explained that the suggested edits could be incorporated into the

definitive agreements once the basic terms of the MOU were agreed upon by the IDB and the County.

Upon a motion by Bill Fox and a second by Alvin Nance, the Resolution approving the MOU between Knox County and The Industrial Development Board of the County of Knox for the real property exchange of Karns Valley Business Park site 2 for the Regional Forensics Center was unanimously approved. A copy of the Resolution is attached hereto as Exhibit E.

VI. Review and Consideration of a resolution approving a lease between Knox County and the Industrial Development Board of the County of Knox for Fairview Technology Center located at 11020 Solway School Rd. The Chair recognized Chris Trump who addressed the Board regarding the proposed Resolution. This was formerly an elementary school managed by TDC. It is now with the County. The lease agreement names TDC. It is necessary to name the IDB as a party and change insurance requirements.

Upon a motion by Lou Moran and a second by Tiffany Gardner, the Resolution approving a lease between Knox County and the Industrial Development Board of the County of Knox for Fairview Technology Center located at 11020 Solway School Rd was unanimously approved. A copy of the Resolution is attached hereto as Exhibit F.

VII. Old Business. None.

(a) Introduction of new Board member, Bill Fox

VIII. New Business. None. The Chair asked for a solution to the amount of paper generated.

IX. Next Meeting. The next regular meeting of The Industrial Development Board of the County of Knox is scheduled for March 19, 2024, at 4:00 p.m. at the offices of the Knoxville Chamber located at 17 Market Square, #201, Knoxville, Tennessee.

X. Adjournment. No further business having come before the Board and upon motion duly made and seconded, the Board voted unanimously to adjourn the meeting at 5:15 p.m.

---

Dated

---

Shannon Coleman Egle, Secretary

## EXHIBITS

- Exhibit A      Agenda – February 13, 2024
- Exhibit B      Minutes – December 12, 2023
- Exhibit C      Finance Report
- Exhibit D      Resolution approving an Economic Impact Plan and Related Documents for the Tax Increment Financing of I-40/75 Business Park, LLC concerning the financing of public infrastructure for the proposed “Prosperity Crossing” project to be located at 13115 El Camino Lane, 0 El Camino Lane, 0 Everett Road, 0 Buttermilk Road
- Exhibit E      Resolution approving the MOU between Knox County and The Industrial Development Board of the County of Knox for the real property exchange of Karns Valley Business Park site 2 for the Regional Forensics Center
- Exhibit F      Resolution approving a lease between Knox County and the Industrial Development Board of the County of Knox for Fairview Technology Center located at 11020 Solway School Rd





**TDC**  
**Balance Sheet**  
As of November 30, 2023

	As of Nov 30, 2023	As of Nov 29, 2023 (PP)	Change
<b>ASSETS</b>			
<b>Current Assets</b>			
<b>Bank Accounts</b>			
100-000 Operating Account	-	333,393.97	(333,393.97)
105-000 First Bank Checking	-	1,000.00	(1,000.00)
107-000 TIIP Account	-	22,702.31	(22,702.31)
108-000 ST Money Market Account	-	73,135.17	(73,135.17)
138-000 Asset-Limited Use-Fairview Funds	-	115,920.31	(115,920.31)
138-100 Asset Limited Use - K.C. Scholars	-	141,694.79	(141,694.79)
<b>Total 108-000 ST Money Market Account</b>	<b>\$ -</b>	<b>\$ 330,750.27</b>	<b>\$ (330,750.27)</b>
116-000 First Bank ICS Investment Account	-	2,726,468.85	(2,726,468.85)
<b>Total Bank Accounts</b>	<b>\$ -</b>	<b>\$ 3,414,315.40</b>	<b>\$ (3,414,315.40)</b>
<b>Accounts Receivable</b>			
125-000 Accounts Receivable (A/R)	-	49,687.30	(49,687.30)
<b>Total Accounts Receivable</b>	<b>\$ -</b>	<b>\$ 49,687.30</b>	<b>\$ (49,687.30)</b>
<b>Other Current Assets</b>			
127-000 Prepaid Insurance	-	8,233.51	(8,233.51)
128-000 Prepaid Expenses	-	14,138.00	(14,138.00)
<b>Total Other Current Assets</b>	<b>\$ -</b>	<b>\$ 22,371.51</b>	<b>\$ (22,371.51)</b>
<b>Total Current Assets</b>	<b>\$ -</b>	<b>\$ 3,486,374.21</b>	<b>\$ (3,486,374.21)</b>
<b>Fixed Assets</b>			
<b>FF&amp;E</b>			
140-000 Equipment and Furniture	-	54,656.91	(54,656.91)
141-000 Telephone Equipment	-	598.50	(598.50)
143-000 Computer Equipment	-	21,201.40	(21,201.40)
145-000 Leasehold Improvements - FV	-	27,040.82	(27,040.82)
146-000 Fixed Asset Software	-	25,847.25	(25,847.25)
170-000 Accumulated Equipment Depreciation	-	(129,344.88)	129,344.88
<b>Total FF&amp;E</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Land</b>			
151-000 Land - Eastbridge	-	2,684,541.28	(2,684,541.28)
152-000 Land - Centerpoint	-	397,061.50	(397,061.50)
155-000 Land - Hardin Business Park	-	1,051,045.29	(1,051,045.29)
157-000 Land - Pellissippi	-	4,472,421.57	(4,472,421.57)
160-000 Land - Karns Valley Business Park	-	6,941,167.05	(6,941,167.05)
161-000 Land - Midway Business Park	-	23,542,068.85	(23,542,068.85)
<b>Total Land</b>	<b>\$ -</b>	<b>\$ 39,088,305.54</b>	<b>\$ (39,088,305.54)</b>
<b>Total Fixed Assets</b>	<b>\$ -</b>	<b>\$ 39,088,305.54</b>	<b>\$ (39,088,305.54)</b>
<b>TOTAL ASSETS</b>	<b>\$ -</b>	<b>\$ 42,574,679.75</b>	<b>\$ (42,574,679.75)</b>

**LIABILITIES AND EQUITY****Liabilities****Current Liabilities****Other Current Liabilities**

220-000 Refundable Deposits - FV - 4,228.53 (4,228.53)

244-000 K.C. Scholars - 141,694.79 (141,694.79)

245-000 Deferred Revenue - 59,701.20 (59,701.20)

**Total Other Current Liabilities** \$ - \$ **205,624.52** \$ **(205,624.52)**

**Total Current Liabilities** \$ - \$ **205,624.52** \$ **(205,624.52)**

**Long-Term Liabilities**

250-000 KCIDB Note Payable - 450,000.00 (450,000.00)

**Total Long-Term Liabilities** \$ - \$ **450,000.00** \$ **(450,000.00)**

**Total Liabilities** \$ - \$ **655,624.52** \$ **(655,624.52)**

**Equity**

305-000 Cumulative Proceeds - Land Sales 39,702,811.69 39,702,811.69 -

306-000 Cumulative Cost of Land Sold (25,078,178.16) (25,078,178.16) -

320-000 Retained Earnings 20,467,614.49 20,467,614.49 -

321-000 Cumulative Retained Earnings 162,881.61 162,881.61 -

322-000 Contributed Capital - Land Fund 6,650,854.00 6,650,854.00 -

325-000 Allocated Net Income (39,355.67) (39,355.67) -

**Net Income** (41,866,627.96) 52,427.27 (41,919,055.23)

**Total Equity** \$ - \$ **41,919,055.23** \$ **(41,919,055.23)**

**TOTAL LIABILITIES AND EQUITY** \$ - \$ **42,574,679.75** \$ **(42,574,679.75)**

**TDC**  
**Profit and Loss**  
July - November, 2023

	Jul - Nov, 2023	Jul 1 - Nov 29, 2023 (PP)	Change
<b>Income</b>			
406-000 Chamber Contribution	130,938.81	130,938.81	-
410-000 Interest Revenue - General	0.76	0.76	-
416-000 Business Park CAM Fee Collections	29,725.76	29,725.76	-
420-000 Rent Revenue	5,120.66	5,120.66	-
Fairview Technology Center Revenue			-
400-003 FV Rent Revenue	18,375.76	18,375.76	-
<b>Total Fairview Technology Center Revenue</b>	<b>\$ 18,375.76</b>	<b>\$ 18,375.76</b>	<b>\$ -</b>
<b>Total Income</b>	<b>\$ 184,161.75</b>	<b>\$ 184,161.75</b>	<b>\$ -</b>
<b>Gross Profit</b>	<b>\$ 184,161.75</b>	<b>\$ 184,161.75</b>	<b>\$ -</b>
<b>Expenses</b>			
<b>Administrative Expenses</b>			
502-001 Operating Expense	590.41	590.41	-
507-001 Liability & Other Insurance Expense	21,582.51	13,349.00	8,233.51
512-001 Legal Expense	5,806.50	5,806.50	-
515-001 Professional Service Expense	9,059.00	9,059.00	-
540-001 IT Equipment, Service & Subscriptions	7,021.90	7,021.90	-
<b>Total Administrative Expenses</b>	<b>\$ 44,060.32</b>	<b>\$ 35,826.81</b>	<b>\$ 8,233.51</b>
<b>Business Park Operating Expenses</b>			
522-101 CenterPoint Maintenance & Utility Expense	5,779.85	5,779.85	-
522-102 Eastbridge Maintenance & Utility Expense	28,252.14	28,252.14	-
522-103 FORIP Maint.& Util. Exp.	2,312.00	2,312.00	-
522-104 WestBridge Maintenance & Utility Expense	5,832.00	5,832.00	-
522-106 PCC Maintenance & Utility Expense	7,423.50	7,423.50	-
522-107 Hardin Maintenance & Utility Expense	6,359.20	6,359.20	-
522-108 Midway Maintenance & Utility Expense	41,697.78	41,697.78	-
522-109 Karns Valley Maintenance & Utility Expense	22,048.90	22,048.90	-
<b>Total Business Park Operating Expenses</b>	<b>\$ 119,705.37</b>	<b>\$ 119,705.37</b>	<b>\$ -</b>
<b>Fairview Technology Center Operating Expenses</b>			
502-003 Con. Services - Bldg. & Grounds	\$ 8,185.96	\$ 8,185.96	\$ -
516-003 Utilities - Fairview	\$ 226.83	\$ 226.83	\$ -
542-003 Fairview Contingency	\$ 420.00	\$ 420.00	\$ -
<b>Total Fairview Technology Center Operating Expenses</b>	<b>\$ 8,832.79</b>	<b>\$ 8,832.79</b>	<b>\$ -</b>
<b>Total Expenses</b>	<b>\$ 172,598.48</b>	<b>\$ 164,364.97</b>	<b>\$ 8,233.51</b>
<b>Net Operating Income</b>	<b>\$ 11,563.27</b>	<b>\$ 19,796.78</b>	<b>\$ (8,233.51)</b>

**Other Income**

<b>401-000 Land Sales Revenue</b>				
<b>411-000 Interest Revenue - Property</b>	32,630.49		32,630.49	-
<b>Total 401-000 Land Sales Revenue</b>	<b>\$ 32,630.49</b>	<b>\$</b>	<b>32,630.49</b>	<b>\$ -</b>
<b>409-001 IDB Loan Forgiveness</b>	450,000.00		-	450,000.00
<b>Total Other Income</b>	<b>\$ 482,630.49</b>	<b>\$</b>	<b>32,630.49</b>	<b>\$ 450,000.00</b>
<b>Other Expenses</b>				
<b>554-001 Cash Transfer to IDB</b>	3,222,828.88		-	3,222,828.88
<b>554-002 Land Transfer to IDB</b>	39,088,305.54		-	39,088,305.54
<b>554-003 A/R Transfer to IDB</b>	49,687.30		-	49,687.30
<b>Total Other Expenses</b>	<b>\$ 42,360,821.72</b>	<b>\$</b>	<b>-</b>	<b>\$ 42,360,821.72</b>
<b>Net Other Income</b>	<b>\$ (41,878,191.23)</b>	<b>\$</b>	<b>32,630.49</b>	<b>\$ (41,910,821.72)</b>
<b>Net Income</b>	<b>\$ (41,866,627.96)</b>	<b>\$</b>	<b>52,427.27</b>	<b>\$ (41,919,055.23)</b>

**The Industrial Development Board of the County of Knox**  
**Balance Sheet**  
As of December 31, 2023

	<u>As of Dec 31, 2023</u>	<u>As of Dec 31, 2022</u>	<u>Change</u>	<u>% Change</u>
<b>ASSETS</b>				
<b>Current Assets</b>				
<b>Bank Accounts</b>				
100-000 Cash - Regions Bank	386,644.41	120,638.98	266,005.43	220.50%
100-700 CGI Grant Pass-through	-	43,000.00	(43,000.00)	-100.00%
100-800 Workforce Training Funds	-	75,000.00	(75,000.00)	-100.00%
<b>Total 100-000 Cash - Regions Bank</b>	<b>\$ 386,644.41</b>	<b>\$ 238,638.98</b>	<b>\$ 148,005.43</b>	<b>62.02%</b>
101-000 First Horizon Checking	42,384.90	-	42,384.90	
100-700 CGI Grant Pass-through	43,000.00	-	43,000.00	
100-800 Workforce Training Funds	47,500.00	-	47,500.00	
101-200 Fairview Reserve	115,920.31	-	115,920.31	
101-300 Innovation Funds	141,694.79	-	141,694.79	
<b>Total 101-000 First Horizon Checking</b>	<b>\$ 390,500.00</b>	<b>\$ -</b>	<b>\$ 390,500.00</b>	
112-000 Grassy Creek - TIF Fund	384.64	409.65	(25.01)	-6.11%
114-000 Northshore TC TIF Fund - County	10,112.61	77,077.06	(66,964.45)	-86.88%
117-000 ICS Account	2,738,728.74	-	2,738,728.74	
<b>Total Bank Accounts</b>	<b>\$ 3,526,370.40</b>	<b>\$ 316,125.69</b>	<b>\$ 3,210,244.71</b>	<b>1015.50%</b>
<b>Accounts Receivable</b>				
125-000 Accounts Receivable (A/R)	444,340.58	445,198.00	(857.42)	-0.19%
<b>Total Accounts Receivable</b>	<b>\$ 444,340.58</b>	<b>\$ 445,198.00</b>	<b>\$ (857.42)</b>	<b>-0.19%</b>
<b>Other Current Assets</b>				
127-000 Prepaid Insurance	34,025.14	715.30	33,309.84	4656.76%
<b>Total Other Current Assets</b>	<b>\$ 34,025.14</b>	<b>\$ 715.30</b>	<b>\$ 33,309.84</b>	<b>4656.76%</b>
<b>Total Current Assets</b>	<b>\$ 4,004,736.12</b>	<b>\$ 762,038.99</b>	<b>\$ 3,242,697.13</b>	<b>425.53%</b>
<b>Fixed Assets</b>				
<b>Land</b>				
151-000 Land - Eastbridge Business Park	2,684,541.28	-	2,684,541.28	
152-000 Land - Centerpoint Business Park	397,061.50	-	397,061.50	
155-000 Land - Hardin Business Park	1,051,045.29	-	1,051,045.29	
157-000 Land - Pellissippi Corporate Center	4,472,421.57	-	4,472,421.57	
160-000 Land - Karns Valley Business Park	6,941,167.05	-	6,941,167.05	
161-000 Land - Midway Business Park	23,542,163.15	-	23,542,163.15	
<b>Total Land</b>	<b>\$ 39,088,399.84</b>	<b>\$ -</b>	<b>\$ 39,088,399.84</b>	
<b>Total Fixed Assets</b>	<b>\$ 39,088,399.84</b>	<b>\$ -</b>	<b>\$ 39,088,399.84</b>	
<b>Other Assets</b>				
170-000 Loan to TDC	-	450,000.00	(450,000.00)	-100.00%
<b>Total Other Assets</b>	<b>\$ -</b>	<b>\$ 450,000.00</b>	<b>\$ (450,000.00)</b>	<b>-100.00%</b>
<b>TOTAL ASSETS</b>	<b>\$ 43,093,135.96</b>	<b>\$ 1,212,038.99</b>	<b>\$ 41,881,096.97</b>	<b>3455.42%</b>

**LIABILITIES AND EQUITY**

**Liabilities**

**Current Liabilities**

**Accounts Payable**

200-000 Accounts Payable	386,637.64	438,825.49	(52,187.85)	-11.89%
--------------------------	------------	------------	-------------	---------

<b>Total Accounts Payable</b>	<b>\$ 386,637.64</b>	<b>\$ 438,825.49</b>	<b>\$ (52,187.85)</b>	<b>-11.89%</b>
-------------------------------	----------------------	----------------------	-----------------------	----------------

**Other Current Liabilities**

220-000 Fairview Refundable Deposits	4,228.53	-	4,228.53	
--------------------------------------	----------	---	----------	--

245-000 Deferred Revenue	44,838.32	-	44,838.32	
--------------------------	-----------	---	-----------	--

246-000 Northshore TC TIF - Liability	10,112.61	77,077.06	(66,964.45)	-86.88%
---------------------------------------	-----------	-----------	-------------	---------

247-000 Grassy Creek TIF - Liability	384.64	409.65	(25.01)	-6.11%
--------------------------------------	--------	--------	---------	--------

251-000 CGI Reimbursement Liability	43,000.00	43,000.00	-	0.00%
-------------------------------------	-----------	-----------	---	-------

252-000 Workforce Training Liability	47,500.00	75,000.00	(27,500.00)	-36.67%
--------------------------------------	-----------	-----------	-------------	---------

255-000 Innovation Funds	141,694.79	-	141,694.79	
--------------------------	------------	---	------------	--

<b>Total Other Current Liabilities</b>	<b>\$ 291,758.89</b>	<b>\$ 195,486.71</b>	<b>\$ 96,272.18</b>	<b>49.25%</b>
--	----------------------	----------------------	---------------------	---------------

<b>Total Current Liabilities</b>	<b>\$ 678,396.53</b>	<b>\$ 634,312.20</b>	<b>\$ 44,084.33</b>	<b>6.95%</b>
----------------------------------	----------------------	----------------------	---------------------	--------------

<b>Total Liabilities</b>	<b>\$ 678,396.53</b>	<b>\$ 634,312.20</b>	<b>\$ 44,084.33</b>	<b>6.95%</b>
--------------------------	----------------------	----------------------	---------------------	--------------

**Equity**

300-000 Opening Balance Equity	18,400.68	18,400.68	-	0.00%
--------------------------------	-----------	-----------	---	-------

320-000 Retained Earnings	537,875.85	591,668.41	(53,792.56)	-9.09%
---------------------------	------------	------------	-------------	--------

Net Income	41,858,462.90	(32,342.30)	41,890,805.20	129523.27%
------------	---------------	-------------	---------------	------------

<b>Total Equity</b>	<b>\$ 42,414,739.43</b>	<b>\$ 577,726.79</b>	<b>\$ 41,837,012.64</b>	<b>7241.66%</b>
---------------------	-------------------------	----------------------	-------------------------	-----------------

<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$ 43,093,135.96</b>	<b>\$ 1,212,038.99</b>	<b>\$ 41,881,096.97</b>	<b>3455.42%</b>
-------------------------------------	-------------------------	------------------------	-------------------------	-----------------

**The Industrial Development Board of the County of Knox**  
**Income Statement with Prior Year Comparison**  
For the 9 Periods Ended December 31, 2023

	<u>Apr - Dec, 2023</u>	<u>Apr - Dec, 2022 (PY)</u>	<u>Change</u>	<u>% Change</u>
<b>Income</b>				
410-000 Interest Revenue	18.74	30.53	(11.79)	-38.62%
415-000 Chamber Funding	60,183.86	-	60,183.86	
416-000 Business Park CAM Fee Revenue	14,862.88	-	14,862.88	
420-000 Base Rent Revenue	8,600.00	10,700.00	(2,100.00)	-19.63%
421-000 Rent Revenue	1,030.22	-	1,030.22	
435-000 Application Revenue	-	10,000.00	(10,000.00)	-100.00%
446-000 Assignment Fee	-	12,771.02	(12,771.02)	-100.00%
448-000 Fairview Rent Revenue	5,215.43	-	5,215.43	
<b>Total Income</b>	<b>\$ 89,911.13</b>	<b>\$ 33,501.55</b>	<b>\$ 56,409.58</b>	<b>168.38%</b>
<b>Gross Profit</b>	<b>\$ 89,911.13</b>	<b>\$ 33,501.55</b>	<b>\$ 56,409.58</b>	<b>168.38%</b>
<b>Expenses</b>				
502-001 Operating Expenses	816.30	1,475.41	(659.11)	-44.67%
503-001 Advertising Expense	617.74	1,026.94	(409.20)	-39.85%
507-001 Insurance Expense	9,908.94	3,219.03	6,689.91	207.82%
511-001 Accounting Expense	11,700.00	9,600.00	2,100.00	21.88%
512-001 Legal Expense	56,544.07	13,772.50	42,771.57	310.56%
519-001 Administrative Expense	12,249.99	36,749.97	(24,499.98)	-66.67%
<b>Business Park Operating Expenses</b>				
522-101 Centerpoint Maintenance & Utility	5,703.79	-	5,703.79	
522-102 Eastbridge Maintenance & Utility Expense	7,057.99	-	7,057.99	
522-103 FORIP Maintenance & Utility Expense	1,156.00	-	1,156.00	
522-104 WestBridge Maintenance & Utility Expense	2,916.00	-	2,916.00	
522-106 PCC Maintenance & Utility Expense	3,630.53	-	3,630.53	
522-107 Hardin Maintenance & Utility Expense	3,141.53	-	3,141.53	
522-108 Midway Maintenance & Utility Expense	13,095.25	-	13,095.25	
522-109 Karns Valley Maintenance & Utility Expense	10,558.70	-	10,558.70	
<b>Total Business Park Operating Expenses</b>	<b>\$ 47,259.79</b>	<b>\$ -</b>	<b>\$ 47,259.79</b>	
<b>Fairview Technology Center Operating Expenses</b>				
523-100 Building & Grounds Maintenance	14,138.00	-	14,138.00	
523-101 Fairview Utilities	45.01	-	45.01	
<b>Total Fairview Technology Center Operating Expenses</b>	<b>\$ 14,183.01</b>	<b>\$ -</b>	<b>\$ 14,183.01</b>	
<b>Total Expenses</b>	<b>\$ 153,279.84</b>	<b>\$ 65,843.85</b>	<b>\$ 87,435.99</b>	<b>132.79%</b>
<b>Net Operating Income</b>	<b>\$ (63,368.71)</b>	<b>\$ (32,342.30)</b>	<b>\$ (31,026.41)</b>	<b>-95.93%</b>

**Other Income**

<b>400-100 Interest Revenue - ICS</b>	11,259.89	-	11,259.89	
<b>430-000 PILOT Revenue</b>	404,304.25	426,993.25	(22,689.00)	-5.31%
<b>449-000 Oakwood Rent- Restricted</b>	-	77,000.00	(77,000.00)	-100.00%
<b>450-000 Grant Revenue</b>	-	500,000.00	(500,000.00)	-100.00%
<b>460-000 Grassy Creek Construction Revenue</b>	-	8,111.55	(8,111.55)	-100.00%
<b>470-000 Workforce Training Funds</b>	-	75,000.00	(75,000.00)	-100.00%
<b>480-000 TDC Land Transfer Revenue</b>	39,088,305.54	-	39,088,305.54	
<b>485-000 TDC Funds Transfer Revenue</b>	3,222,828.88	-	3,222,828.88	
<b>487-000 TDC Accounts Receivable</b>	49,687.30	-	49,687.30	
<b>Total Other Income</b>	<b>\$ 42,776,385.86</b>	<b>\$ 1,087,104.80</b>	<b>\$ 41,689,281.06</b>	<b>3834.89%</b>
<b>Other Expenses</b>				
<b>550-000 Grant Expense</b>	-	500,000.00	(500,000.00)	-100.00%
<b>560-000 Grassy Creek Construction Expense</b>	-	8,111.55	(8,111.55)	-100.00%
<b>561-000 Axle Logistics Parking</b>	250.00	-	250.00	
<b>570-000 Workforce Training Expense</b>	-	75,000.00	(75,000.00)	-100.00%
<b>587-001 PILOT Payment Expense</b>	404,304.25	426,993.25	(22,689.00)	-5.31%
<b>587-003 TDC Loan Forgiveness</b>	450,000.00	-	450,000.00	
<b>950-001 Transfer to TDC - Restricted Funds</b>	-	77,000.00	(77,000.00)	-100.00%
<b>Total Other Expenses</b>	<b>\$ 854,554.25</b>	<b>\$ 1,087,104.80</b>	<b>\$ (232,550.55)</b>	<b>-21.39%</b>
<b>Net Other Income</b>	<b>\$ 41,921,831.61</b>	<b>\$ -</b>	<b>\$ 41,921,831.61</b>	
<b>Net Income</b>	<b>\$ 41,858,462.90</b>	<b>\$ (32,342.30)</b>	<b>\$ 41,890,805.20</b>	<b>129523.27%</b>



**THE DEVELOPMENT CORPORATION  
OF KNOX COUNTY**

**FINANCIAL STATEMENTS AND  
SUPPLEMENTARY INFORMATION**

**YEARS ENDED JUNE 30, 2023 AND 2022**

THE DEVELOPMENT CORPORATION OF KNOX COUNTY

Table of Contents

	<u>Page</u>
BOARD MEMBERS.....	ii
INDEPENDENT AUDITOR’S REPORT.....	1
MANAGEMENT’S DISCUSSION AND ANALYSIS (UNAUDITED).....	5
FINANCIAL STATEMENTS	
Statements of Net Position.....	9
Statements of Revenue, Expenses, and Changes in Net Position.....	10
Statements of Cash Flows.....	11
Notes to Financial Statements .....	12
SUPPLEMENTARY INFORMATION	
Schedule of Changes in Long-Term Debt by Individual Issue.....	21
Detail of Statement of Net Position .....	22
Detail of Statement of Revenue, Expenses, and Changes in Net Position .....	23
Note to Supplementary Information .....	24
INTERNAL CONTROL AND COMPLIANCE	
Independent Auditor’s Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i> .....	25 - 26
Schedule of Findings and Responses.....	27
Schedule of Prior Year Audit Findings.....	28

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
BOARD MEMBERS  
AT JUNE 30, 2023

Officers

Mike Odom

Interim President & CEO

Board Members

George H. Heins, III

Chairman

M. Douglas Campbell, Jr.

Vice Chairman

Terry Hill

Vice Chairman

Carolyn Fairbank

Secretary/Treasurer

Other Board Members

Louise Frazier

William F. Fox

Nancy Barger

Glenn Jacobs

Indya Kincannon

Charles Morris

Courtney Durrett

Larsen Jay

Terry Mosley

Non-voting Member

Ron Williams



## Independent Auditor's Report

To the Board of Directors of  
The Development Corporation of Knox County  
Knoxville, Tennessee

### **Report on the Audit of the Financial Statements**

#### ***Opinion***

We have audited the accompanying financial statements of The Development Corporation of Knox County ("TDC"), which comprise the statements of net position as of June 30, 2023 and 2022, and the related statements of revenue, expenses, and changes in net position, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of TDC as of June 30, 2023 and 2022, and the changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

#### ***Basis for Opinions***

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of TDC and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

#### ***Responsibilities of Management for the Financial Statements***

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about TDC's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.



### ***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of TDC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about TDC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audits.



### ***Required Supplementary Information***

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 5 - 8 be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

### **Supplementary Information**

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise TDC's basic financial statements. The accompanying schedule of changes in long-term debt by individual issue, as required by the State of Tennessee, and detailed financial statements and notes to supplementary information are presented for purposes of additional analysis and are not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the schedule of changes in long-term debt by individual issue, and the detail financial statements and notes to supplementary information are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

### ***Other Information***

Management is responsible for the other information included in the annual report. The other information comprises the schedule of board members, as required by the State of Tennessee, but does not include the basic financial statements and our auditor's report thereon. Our opinions on the basic financial statements do not cover the other information, and we do not express an opinion or any form of assurance thereon.



To the Board of Directors of  
The Development Corporation of Knox County

In connection with our audit of the basic financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the basic financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

**Other Reporting Required by *Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated November 29, 2023 on our consideration of TDC's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of TDC's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering TDC's internal control over financial reporting and compliance.

Nashville, Tennessee  
November 29, 2023

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED)  
JUNE 30, 2023

This section of The Development Corporation of Knox County's ("TDC") annual financial report presents a discussion and analysis of TDC's financial performance during the fiscal year ended June 30, 2023. Please read it in conjunction with TDC's financial statements following this section. The 2022 and 2021 information is provided for comparative purposes.

**Financial Highlights**

- The assets of TDC exceeded its liabilities at the close of the most recent fiscal year, June 30, 2023, by \$41,866,629 (net position). Net position amounted to \$43,352,883 and \$42,668,823 at June 30, 2022 and 2021, respectively. Net position has included \$115,920, \$135,397, and \$115,902 in restricted net position for use at Fairview Technology Center as of June 30, 2023, 2022 and 2021 respectively.
- TDC's total liabilities decreased by \$35,004 and \$924,445 in 2023 and 2022, respectively. This decrease is primarily related to fluctuations in ending trade accounts payable levels at the end of the year.
- TDC's net position decreased by \$1,486,254 in 2023 and increased by \$684,060 in 2022. The change in net position in 2023, in relation to 2022, decreased by \$2,170,314, which was primarily related to the transfer of the Eastbridge wastewater facilities to the Knoxville Utilities Board (KUB), as well as no land sales occurring in 2023. The change in net position in 2022, in relation to 2021, increased by \$350,113, which was primarily related to increased land sales, which led to a higher gross margin.

**Overview of the Financial Statements**

This discussion and analysis is intended to serve as an introduction to TDC's financial statements.

The *Statements of Net Position* present information on all TDC's assets, liabilities, and deferred interest of resources, with the difference reported as net position.

The *Statements of Revenues, Expenses and Changes in Net Position* present information showing how net position changed during the most recent fiscal year. Revenues are recognized when earned and expenses are recorded when liabilities are incurred without regard to receipt or disbursement of cash. The principal operating revenues of TDC include rental and management income, land sales revenue/incentive forfeitures, and contributions from the Knoxville Chamber. Operating expenses include the cost of the land sold, land maintenance costs, contractual services, and professional fees.

The *Statements of Cash Flows* present cash receipts and cash payments for the fiscal year.

*Notes to the Financial Statements* are an integral part of the statements and should be read in conjunction with the financial statements and the Management's Discussion and Analysis.



THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED) (CONTINUED)  
JUNE 30, 2023

**Financial Analysis**

At the close of the 2023 fiscal year, TDC's assets exceeded liabilities and deferred inflows of resources by \$41,866,629. At the close of the 2022 and 2021 fiscal year, TDC's assets exceeded liabilities and deferred inflows of resources by \$43,352,883 and \$42,668,823 respectively. The table below provides a summary of TDC's net position as of June 30, 2023, 2022, and 2021.

**Statements of Net Position**

	<u>2023</u>	<u>2022</u>	<u>2021</u>
<b>ASSETS</b>			
Current Assets			
Cash and cash equivalents	\$ 3,045,694	\$ 2,952,237	\$ 4,164,062
Restricted cash and cash equivalents	257,615	277,092	257,597
Accounts receivable	106,192	257,210	92,741
Prepaid expenses	<u>22,196</u>	<u>32,340</u>	<u>30,892</u>
Total current assets	3,431,697	3,518,879	4,545,292
Capital assets, net	-	1,009	2,018
Land held for resale	<u>39,084,453</u>	<u>40,518,004</u>	<u>39,730,483</u>
Total assets	<u>\$ 42,516,150</u>	<u>\$ 44,037,892</u>	<u>\$ 44,277,793</u>
<b>LIABILITIES</b>			
Current Liabilities			
Accounts payable and accrued expenses	<u>\$ 57,826</u>	<u>\$ 92,830</u>	<u>\$ 1,017,275</u>
Total current liabilities	<u>57,826</u>	<u>92,830</u>	<u>1,017,275</u>
Long-Term Liabilities			
Grant payable	141,695	141,695	141,695
Note payable	<u>450,000</u>	<u>450,000</u>	<u>450,000</u>
Total long-term liabilities	<u>591,695</u>	<u>591,695</u>	<u>591,695</u>
Total liabilities	649,521	684,525	1,608,970
<b>DEFERRED INFLOWS OF RESOURCES</b>			
Unearned revenue	<u>-</u>	<u>484</u>	<u>-</u>
Total liabilities and deferred inflows of resources	<u>649,521</u>	<u>685,009</u>	<u>1,608,970</u>
<b>NET POSITION</b>			
Unrestricted	41,750,709	43,216,477	42,550,903
Investment in capital assets	-	1,009	2,018
Restricted	<u>115,920</u>	<u>135,397</u>	<u>115,902</u>
Total net position	<u>41,866,629</u>	<u>43,352,883</u>	<u>42,668,823</u>
Total liabilities, deferred inflows of resources and net position	<u>\$ 42,516,150</u>	<u>\$ 44,037,892</u>	<u>\$ 44,277,793</u>

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED) (CONTINUED)  
JUNE 30, 2023

**Financial Analysis - Continued**

The following table provides a summary of the changes in net position for fiscal year 2023, 2022, and 2021:

	2023	2022	2021
<b><u>Statements of Revenues, Expenses and Changes in Net Position</u></b>			
Revenue and Other Support			
Sale of land, net of commissions and cost of land sold	\$ -	\$ 850,000	\$ 398,425
Cost of land sold and related incentives	-	(389,652)	(592,688)
	-	460,348	(194,263)
Gross margin	-	460,348	(194,263)
Revenue from City of Knoxville and Knox County	-	794,799	831,800
Revenue from Knoxville Chamber	333,548	-	-
Rental, management and other income	215,483	334,427	478,101
	549,031	1,589,574	1,115,638
Total revenue and other support	549,031	1,589,574	1,115,638
Expenses			
General and administrative	606,744	1,009,283	956,628
	(57,713)	580,291	159,010
Operating (loss) income	(57,713)	580,291	159,010
Non-Operating (expense) income			
Transfer of investments from outside entity	77,000	77,000	77,000
Investment Income	6,727	26,769	97,937
Conveyance of wastewater facilities to KUB	(1,512,268)	-	-
	(1,428,541)	103,769	174,937
Total non-operating (expense) income, net	(1,428,541)	103,769	174,937
Change in net position	(1,486,254)	684,060	333,947
Net position at the beginning of the year	43,352,883	42,668,823	42,334,876
Net position at the end of the year	\$ 41,866,629	\$ 43,352,883	\$ 42,668,823

TDC's net position as of June 30, 2023 totaled \$41,866,629 of which \$115,920 is restricted net position. TDC's net position decreased by \$1,486,254, primarily due to the transfer of the Eastbridge wastewater facilities totaling \$1,512,268 to the Knoxville Utilities Board. The unrestricted balance may be used to meet the ongoing objectives and obligations of promoting economic development in Knox County, Tennessee.

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
MANAGEMENT'S DISCUSSION AND ANALYSIS (UNAUDITED) (CONTINUED)  
JUNE 30, 2023

**Financial Analysis - Continued**

TDC's operating revenue was generated from primarily two sources in 2023: Contributions from the Knoxville Chamber and rental and management income.

The following table provides a summary of cash receipts and disbursements for fiscal years 2023, 2022, and 2021:

	2023	2022	2021
<b><u>Statements of Cash Flows</u></b>			
Cash Flows from Operating Activities			
Cash received from land sales, incentive forfeitures, grants, Knox Chamber, Knox County, City of Knoxville, and other	776,565	1,892,241	1,701,471
Cash paid to suppliers and employees	(709,312)	(3,111,340)	(5,725,180)
Net cash provided by (used in) operating activities	67,253	(1,219,099)	(4,023,709)
Cash Flows from Investing Activities			
Interest received	6,727	26,769	97,937
Net cash provided by Investing activities	6,727	26,769	97,937
Net change in cash and cash equivalents	73,980	(1,192,330)	(3,925,772)
Cash and cash equivalents at the beginning of the year	3,229,329	4,421,659	8,347,431
Cash and cash equivalents at the end of the year	\$ 3,303,309	\$ 3,229,329	\$ 4,421,659

As of June 30, 2023, TDC's cash and cash equivalents saw an increase of \$73,980. This improvement contrasts sharply with the previous years, where TDC experienced notable decreases in cash reserves due to significant investments in developing land held for sale. However, in 2023, TDC did not have significant land purchases, leading to the increase in cash and cash equivalents.

**Request for Information**

This financial report is designed to provide a general overview of TDC's finances for all of those with an interest in the TDC's finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Chair, The Development Corporation of Knox County, 17 Market Square, #201, Knoxville, Tennessee 37902-1405.

**THE DEVELOPMENT CORPORATION OF KNOX COUNTY**  
**STATEMENTS OF NET POSITION**  
**JUNE 30, 2023 AND 2022**

	2023	2022
<b>ASSETS</b>		
Current Assets		
Cash and cash equivalents	\$ 3,045,694	\$ 2,952,237
Restricted cash and cash equivalents	257,615	277,092
Accounts receivable	106,192	257,210
Prepaid expenses	22,196	32,340
Total current assets	3,431,697	3,518,879
Capital assets, net	-	1,009
Land held for resale	39,084,453	40,518,004
Total assets	\$ 42,516,150	\$ 44,037,892
<b>LIABILITIES</b>		
Current Liabilities		
Accounts payable and accrued expenses	\$ 57,826	\$ 92,830
Total current liabilities	57,826	92,830
Long-Term Liabilities		
Grant payable	141,695	141,695
Notes payable	450,000	450,000
Total long-term liabilities	591,695	591,695
Total liabilities	649,521	684,525
<b>DEFERRED INFLOWS OF RESOURCES</b>		
Unearned revenue	-	484
Total liabilities and deferred inflows of resources	649,521	685,009
<b>NET POSITION</b>		
Unrestricted	41,750,709	43,216,477
Investment in capital assets	-	1,009
Restricted	115,920	135,397
Total net position	41,866,629	43,352,883
Total liabilities, deferred inflows of resources, and net position	\$ 42,516,150	\$ 44,037,892

The accompanying notes are an integral part of the financial statements.

**THE DEVELOPMENT CORPORATION OF KNOX COUNTY**  
**STATEMENTS OF REVENUE, EXPENSES, AND CHANGES IN NET POSITION**  
**YEARS ENDED JUNE 30, 2023 AND 2022**

	2023	2022
Revenue and Other Support		
Sale of land, net of commissions	\$ -	\$ 850,000
Cost of land sold and related incentives	-	(389,652)
Gross margin	-	460,348
Revenue from City of Knoxville and Knox County	-	794,799
Revenue from Knoxville Chamber	333,548	-
Rental, management and other income	215,483	334,427
Total revenue and other support, net	549,031	1,589,574
General and Administrative Expenses		
Payroll and benefits	45,473	204,435
Legal and professional	51,507	66,075
Repairs and maintenance	374,035	256,031
Insurance	34,142	59,994
Development expense and IT services	16,814	241,281
General operating	63,869	146,009
Business and professional development	-	588
Rent	19,691	18,174
Management expenses	204	15,687
Depreciation	1,009	1,009
Total general and administrative expenses	606,744	1,009,283
Operating (loss) income	(57,713)	580,291
Non-Operating (expense) income		
Revenues of investments from outside entity	77,000	77,000
Investment Income	6,727	26,769
Conveyance of wastewater facilities to KUB	(1,512,268)	-
Total non-operating (expense) income, net	(1,428,541)	103,769
Change in net position	(1,486,254)	684,060
Net position at the beginning of the year	43,352,883	42,668,823
Net position at the end of the year	\$ 41,866,629	\$ 43,352,883

The accompanying notes are an integral part of the financial statements.

**THE DEVELOPMENT CORPORATION OF KNOX COUNTY**  
**STATEMENTS OF CASH FLOWS**  
**YEARS ENDED JUNE 30, 2023 AND 2022**

	2023	2022
Cash Flows from Operating Activities		
Cash received from Knox County	\$ 246,625	\$ 446,874
Cash received from City of Knoxville	-	101,300
Cash received from Knoxville Chamber	333,548	-
Cash received from other sources	119,392	417,067
Cash received from outside entity	77,000	77,000
Cash received from land sales and incentives	-	850,000
Cash paid for land held for sale	(78,717)	(1,177,173)
Cash paid to employees	(66,348)	(199,427)
Cash paid to suppliers	(564,247)	(1,734,740)
Net cash provided by (used in) operating activities	67,253	(1,219,099)
Cash Flows from Investing Activities		
Interest received	6,727	26,769
Net cash provided by investing activities	6,727	26,769
Net change in cash and cash equivalents	73,980	(1,192,330)
Cash and cash equivalents at the beginning of the year	3,229,329	4,421,659
Cash and cash equivalents at the end of the year	\$ 3,303,309	\$ 3,229,329
Reconciliation of operating (loss) income		
to net cash provided by (used in) operating activities		
Operating (loss) income	\$ (57,713)	\$ 580,291
Adjustments to reconcile change in net assets to net cash flows		
used in operating activities:		
Depreciation	1,009	1,009
Cost of land sold	-	389,652
Transfer in from outside entity	77,000	77,000
(Increase) decrease in assets:		
Accounts receivable	151,018	(164,469)
Prepaid expenses	10,144	(1,448)
Land held for resale	(78,717)	(1,177,173)
(Decrease) increase in liabilities:		
Accounts payable and accrued expenses	(35,004)	(924,445)
Unearned revenue	(484)	484
Net cash provided by (used in) operating activities	\$ 67,253	\$ (1,219,099)

The accompanying notes are an integral part of the financial statements.

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
NOTES TO THE FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022

**NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Nature of the Entity

The Development Corporation of Knox County (“TDC”) is a non-profit Tennessee corporation organized on January 23, 1991 for the primary purpose of promoting and encouraging community and economic development within the boundaries of Knox County, Tennessee (the “County”). TDC’s primary operations are land acquisition and development, and staff services to the County Industrial Development Boards.

TDC’s Board is composed of four designated members and nine appointed members. The designated members serve by virtue of elected office: Mayor of Knox County, Mayor of the City of Knoxville, Chair of the Knox County Commission, and Vice Chair of the Knox County Commission. The nine appointed members are composed of seven citizens of Knox County, one member of the Knox County Commission as appointed by the Knox County Commission, and one citizen of the City of Knoxville appointed by the mayor of the City of Knoxville and confirmed by City Council.

By agreement dated March 12, 2001, renewed on December 31, 2007 and December 31, 2012 between the County, the City of Knoxville (the “City”), and TDC, TDC is designated to act as the Joint Economic and Community Development Board.

On October 21, 2021, the Board of Directors unanimously approved the transition plan for The Development Corporation of Knox County. Upon final execution of the agreements, Knox County will dissolve The Development Corporation, turn recruitment and the management of business parks over to the Knoxville Chamber and transfer all remaining net assets, including land owned by TDC to the county’s Industrial Development Board (IDB).

Basis of Accounting

TDC’s operations are accounted for as a proprietary fund. The proprietary fund is used to account for the activities of TDC which charge fees relating to rental and management income and / or acquire, develop, and sell land.

The financial statements are presented on the accrual basis of accounting, using the economic resources measurement focus. Under this method of accounting, revenues are recognized when earned and expenses are recorded when liabilities are incurred without regard to receipt or disbursement of cash. Proprietary funds distinguish operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services in connection with a proprietary fund’s principal ongoing operations.

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
NOTES TO THE FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022

**NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued**

The principal operating revenues of TDC include fee income associated with the programs, contributions, and sale of land. Operating expenses include contractual services costs, professional fees, and the cost of land sold. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

Use of Estimates

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements. Estimates also affect the reported amounts of revenue and expenses during the reporting period. Actual results could differ from these estimates.

Cash and Cash Equivalents

Cash and cash equivalents include amounts on hand as well as amounts on deposit in banks and money market accounts. Certificates of deposit with contractual maturities of less than ninety days when purchased are included as cash and cash equivalents.

Deposits

Custodial credit risk is the risk that in the event of a bank failure, TDC's deposits may not be returned to it. TDC has formally adopted an investment policy regarding collateralization of deposits.

Accounts Receivable

Accounts receivable primarily include amounts due under agreements with the County and other various agreements. An allowance for uncollectible accounts is recorded, when necessary, based on management's evaluation of the receivables. At June 30, 2023 and 2022, management does not consider an allowance for uncollectible accounts necessary. TDC's policies do not require collateral for receivables. Receivables are due when billed and are generally settled within 30 days.



THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
NOTES TO THE FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022

**NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued**

Land Held for Resale and Cost of Land Sold

Land held for resale is stated at the lower of cost or estimated market value less estimated selling costs and includes infrastructure and other improvements to such land. Management's estimated market values are subject to change in the near term although the amount of change, if any, is not known.

The cost of land held for resale (and related improvements) is allocated to specific parcels within each development based on acreage, management's estimates of relative value of parcels and specific improvements associated with each parcel. Such cost is evaluated whenever events or changes in circumstances indicate the carrying amount of land held for resale may not be recoverable. When it is determined that a test for recoverability is necessary, such cost is evaluated by management for impairment based upon third-party appraisals utilizing future estimated cash flows (undiscounted) from each parcel (primarily sales proceeds). In the event future estimated cash flows are less than the carrying value, a parcel is designated as impaired. A discounted cash flow analysis or market appraisal is utilized to recognize the amount of any impairment. No impairment was recorded during 2023 or 2022.

Property and Equipment

Property and equipment is stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the respective assets. Expenditures for maintenance and repairs are charged to expense as incurred, whereas major betterments are capitalized. The amortization of leased assets is included in depreciation expense. Estimated useful lives on fixed assets are as follows:

Office equipment	7 years
Computer equipment	3 years
Computer software	2 - 3 years
Other equipment	5 years
Leasehold improvements	5 years

Depreciation expense related to property and equipment for each of the years ended June 30, 2023 and 2022 was \$1,009.

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
NOTES TO THE FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022

**NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued**

Income Taxes

TDC is classified as an exempt entity (other than a private foundation) under Federal income tax regulations and Section 501(c)(3) of the Internal Revenue Code, as amended. Accordingly, there is no provision for income taxes in the accompanying financial statements. TDC did not identify any significant uncertain tax positions resulting in any unrecognized tax benefits as of and for the fiscal years ended June 30, 2023 or 2022. In addition, TDC was not assessed and did not recognize any interest or penalties related to taxes for the fiscal years ended June 30, 2023 or 2022.

TDC recognizes a tax contingency when it is probable that a liability has been incurred as of the date of the financial statements and the amount of the loss can be reasonably estimated. The amount recognized is subject to estimates and management's judgment with respect to the likely outcome of any uncertain tax position. The amount that is ultimately sustained for an individual uncertain tax position or for all uncertain tax positions in the aggregate could differ from the amount recognized. Although the tax years ending June 30, 2020 through June 30, 2023 remain open for examination, it is management's opinion that no significant uncertain tax positions exist at June 30, 2023.

Net Position

Net position is classified into three components as defined below:

- Unrestricted net position - This component of net position consists of net positions that do not meet the definition of "investment in capital assets" or "restricted." These net positions are available for current use by TDC.
- Investment in capital assets - This component of net position consists of capital assets, net of accumulated depreciation and reduced by the outstanding balances of any bonds, mortgages, notes, or other borrowings attributable to the acquisition, construction, or improvement of those assets. At June 30, 2023 and 2022, TDC has no debt directly related to its capital assets.
- Restricted net position - This component of net position consists of amounts earned under contracts related to the management of Fairview Technology Center and restricted to its maintenance and repair. Net positions are released from restrictions by incurring expenses satisfying the restricted purpose. If restricted net position is received and related in the same year, it is classified as unrestricted for financial statement purposes.

When both restricted and unrestricted net position are available for use, it is TDC's policy to use restricted net position balance first, then use unrestricted net position balance.

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
NOTES TO THE FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022

**NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued**

Fair Value Measurement

TDC defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles and has included applicable disclosures about fair value measurement in accordance with Government Accounting Standards Board (“GASB”) Statement No. 40 *Deposit and Investment Risk Disclosures*.

**NOTE B - LAND HELD FOR RESALE**

Land held for resale, including capitalized improvements, valued at lower of cost or market, consists of the following at June 30:

	2023	2022
Midway Property	\$ 23,540,716	\$ 23,525,627
Hardin Business Park	1,051,045	1,051,045
Eastbridge Business Park	2,684,541	2,684,541
EB Sanitary Sewer System	-	1,465,247
Karns Valley Business Park	6,938,667	6,922,060
Pellissippi Business Park	4,472,422	4,472,422
Centerpoint Business Park	397,062	397,062
Total Land Available for Resale	\$ 39,084,453	\$ 40,518,004

During the year ended June 30, 2023, TDC transferred the Eastbridge wastewater facilities totaling \$1,512,268, of which \$47,021 were improvements during fiscal 2023, to the Knoxville Utilities Board (KUB), resulting in the disposal of the EB Sanitary Sewer System. During the year, TDC also made additional improvements to Midway Business Park and Karns Valley Business Park in the amounts of \$15,089 and \$16,607, respectively.

During the year ended June 30, 2022, TDC had land sales within the WestBridge Business Park totaling \$850,000, net of commissions. Associated costs to sell the properties were \$60,994, and the land had a cost of \$328,658. During 2022, TDC also made improvements to Midway Business Park, EB Sanitary Sewer System, and Karns Valley Business Park in the amounts of \$656,843, \$196,262, and \$263,074, respectively.

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
NOTES TO THE FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022

**NOTE C - RELATED PARTY TRANSACTIONS**

TDC provides certain economic development support services related to the County and is paid for those services by the County on a performance basis. During the years ended June 30, 2023 and 2022, TDC recognized \$-0- and \$693,499, respectively, in support payments from the County. During each of the fiscal years 2023 and 2022, TDC recognized revenue of \$-0-, and \$101,300 respectively, from the City of Knoxville for TDC's operating budget. During fiscal years 2023 and 2022, TDC recognized revenue of \$333,548, and \$-0-, respectively, from the Knoxville Chamber for TDC's operating budget.

TDC previously received funds from the County for the sole purpose of awarding educational grants. Under this arrangement, TDC acted as an intermediary for these funds and does not recognize any revenue or related expense. In fiscal 2023 and 2022, there were no funds received or awarded. At June 30, 2023 and 2022, the outstanding balance in grants payable totaled \$141,695.

During fiscal 2023 and 2022, the Industrial Development Board of the County of Knox (the "KCIDB") received an annual lease payment of \$77,000 from Oakwood Senior Living. These funds were originally restricted by TDC and were requested by TDC from the KCIDB.

**NOTE D - RETIREMENT PLAN**

TDC's 401(k) plan was terminated effective December 31, 2022. Formerly, TDC offered employees a 401(k) plan under which employees may elect to contribute up to 15% of their compensation. TDC would match employees' contributions up to a maximum of 6% of their salary. The Board of Directors was authorized to establish and amend these terms. Employees were required to complete three months of service to become eligible and were immediately vested upon achieving eligibility. The plan administrator was TDC. The expense for the 401(k) plan during fiscal 2023 and 2022 was \$2,024 and \$4,592, respectively.

**NOTE E - CONCENTRATIONS OF RISK**

During fiscal 2023 TDC received approximately 53% of their revenue from the Chamber and during fiscal 2022, TDC received approximately 47% of their revenue from the County and the City. Accounts receivable from the Chamber represented 96% of the accounts receivable as of June 30, 2023, and accounts receivable from the County and City represented 88% as of June 30, 2022. Such amounts subject TDC to a concentration of risk.

In accordance with its investment policy, TDC's funds are invested in United States treasuries and other United States securities. In addition, management performs ongoing evaluations of the financial stability of the financial institutions and does not believe that significant financial risk exists at June 30, 2023.

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
NOTES TO THE FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022

**NOTE E - CONCENTRATIONS OF RISK - Continued**

Tennessee Code Annotated, Section 9-4-105, requires TDC to secure deposits by having banks pledge governmental securities as collateral. The state statute requires collateral whose market value is equal to 105% of the deposit, less the amount protected by the Federal Deposit Insurance Corporation (“FDIC”). In lieu of pledged collateral, the bank may participate in the bank collateral pool as administered by the Tennessee State Treasurer. Banks that participate in the bank collateral pool may use one of three different security pledge levels (90%, 100% or 105%) depending on the specific bank holding the deposit. Participating banks determine the aggregate balance of their public funds accounts for TDC.

Collateral securities required to be pledged by the participating banks to protect their public fund accounts are pledged to the State Treasurer on behalf of the bank collateral pool. The securities pledged to protect these accounts are pledged in the aggregate rather than against each individual account. The members of the pool may be required by agreement to pay an assessment to cover any deficiency.

**NOTE F- LEASES**

TDC rents office space on a monthly basis from the Knoxville Chamber under an agreement, which is renewable annually. Total rental expense for fiscal 2023 and 2022 was \$19,691 and \$18,174, respectively.

**NOTE G - CAPITAL ASSETS**

Capital asset activity for the year ended June 30, 2023 was as follows:

	<u>June 30, 2022</u>	<u>Additions</u>	<u>Disposals</u>	<u>June 30, 2023</u>
Office equipment	\$ 54,657	\$ -	\$ -	\$ 54,657
Computer equipment	21,201	-	-	21,201
Computer software	25,847	-	-	25,847
Other equipment	599	-	-	599
Leasehold improvements	27,041	-	-	27,041
Less accumulated depreciation	<u>(128,336)</u>	<u>(1,009)</u>	<u>-</u>	<u>(129,345)</u>
Total net capital assets	<u>\$ 1,009</u>	<u>\$ (1,009)</u>	<u>\$ -</u>	<u>\$ -</u>

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
NOTES TO THE FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022

**NOTE G - CAPITAL ASSETS - Continued**

Capital asset activity for the year ended June 30, 2022 was as follows:

	<u>June 30, 2021</u>	<u>Additions</u>	<u>Disposals</u>	<u>June 30, 2022</u>
Office equipment	\$ 54,657	\$ -	\$ -	\$ 54,657
Computer equipment	21,201	-	-	21,201
Computer software	25,847	-	-	25,847
Other equipment	599	-	-	599
Leasehold improvements	27,041	-	-	27,041
Less accumulated depreciation	<u>(127,327)</u>	<u>(1,009)</u>	<u>-</u>	<u>(128,336)</u>
Total net capital assets	<u>\$ 2,018</u>	<u>\$ (1,009)</u>	<u>\$ -</u>	<u>\$ 1,009</u>

**NOTE H – NOTES PAYABLE**

In June 2019, TDC entered into an agreement to borrow \$450,000 from the Industrial Development Board of the County of Knox, the proceeds of which were utilized to partially fund the acquisition of the Karns Valley Business Park (the “Property”). The loan does not bear interest and is due upon the sale of the Property. The outstanding amount of the loan was \$450,000 as of June 30, 2023 and 2022.

**NOTE I - INCENTIVE AGREEMENTS**

In connection with the sale of its land held for resale, TDC may include certain incentives for the purchaser. These incentives are often contingent upon property investment, property development, and job creation. In the event these targets are not met by the purchaser, TDC may repurchase property previously sold at a discount, extend the timeframes for the incentives within the agreements, or receive additional consideration for the sale of the property, as outlined in the specific agreement. As these incentives are contingent upon the action of the purchaser and cannot be predicted, TDC records any additional sales proceeds when determined such amounts are due to TDC. No incentive payments were received during 2023 or 2022.

**NOTE J - MANAGEMENT AGREEMENTS**

TDC maintains Administrative Services Agreements with the KCIDB and the Health, Educational, and Housing Facility Board of the County of Knox that stipulate the provision of administrative services by TDC to these entities. Administrative revenue recognized totaled \$58,000 and \$72,400 for fiscal year June 30, 2023 and 2022, respectively.

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
NOTES TO THE FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022

**NOTE K - RISKS AND UNCERTAINTIES**

TDC is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; and natural disasters. TDC's risks of loss are covered by a commercial package insurance policy. Settled claims resulting from these risks have not exceeded commercial insurance coverage in any of the past three years.

**NOTE L – SUBSEQUENT EVENTS**

The Development Corporation of Knox County (TDC) and The Industrial Development Board of the County of Knox (IDB) have entered into an Asset Transfer Agreement. This agreement facilitated the transfer of substantially all assets from TDC to IDB, including real property, business parks, development rights, contracts, intellectual properties, and various licenses and permits. This transaction represents a pivotal change in the asset composition of both entities, likely influencing their financial position and performance. The transfer is expected to have significant implications on asset valuation, potential liabilities, and future revenue streams for TDC and IDB. This strategic move aligns with the entities' objectives to stimulate economic growth and development in Knox County and the City of Knoxville, with IDB's government structure playing a key role in the effective management of these developments. The closing for the transfer of assets is scheduled for November 17, 2023.

Management has evaluated subsequent events through November 29, 2023, the date the financial statements were available for issuance, and has determined there were no other subsequent events requiring disclosure.

**SUPPLEMENTARY INFORMATION**



**THE DEVELOPMENT CORPORATION OF KNOX COUNTY**  
**SCHEDULE OF CHANGES IN LONG-TERM DEBT BY INDIVIDUAL ISSUE**  
**JUNE 30, 2023**

Description of Indebtedness	Original Amount of Issue	Interest Rate	Date of Issue	Final Maturity Date	Outstanding July 1, 2022	Issued During Period	Paid and/or Matured During Period	Forgiven During Period	Outstanding June 30, 2023
Industrial Development Board of County of Knox Note Payable	\$ 450,000	0%	6/1/2019	Sale of Property	\$ 450,000	\$ -	\$ -	\$ -	\$ 450,000
Total notes payable					<u>\$ 450,000</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 450,000</u>

NOTES PAYABLE

The accompanying notes are an integral part of the financial statements.

**THE DEVELOPMENT CORPORATION OF KNOX COUNTY**  
**Detail of Statement of Net Position**  
**June 30, 2023**

	General Fund	Property Investment Fund	Total
<b>ASSETS</b>			
Current Assets			
Cash and cash equivalents	\$ 545,818	\$ 2,499,876	\$ 3,045,694
Restricted cash and cash equivalents	141,695	115,920	257,615
Accounts receivable	106,192	-	106,192
Prepaid expenses	22,196	-	22,196
Total current assets	815,901	2,615,796	3,431,697
Land held for resale	-	39,084,453	39,084,453
Total assets	<u>\$ 815,901</u>	<u>\$ 41,700,249</u>	<u>\$ 42,516,150</u>
<b>LIABILITIES</b>			
Current Liabilities			
Accounts payable and accrued expenses	\$ 21,662	\$ 36,164	\$ 57,826
Total current liabilities	21,662	36,164	57,826
Long-Term Liabilities			
Grant payable	141,695	-	141,695
Notes payable	-	450,000	450,000
Total long-term liabilities	141,695	450,000	591,695
Total liabilities	163,357	486,164	649,521
<b>DEFERRED INFLOWS OF RESOURCES</b>			
Unearned revenue	-	-	-
Total liabilities and deferred inflows of resources	163,357	486,164	649,521
<b>NET POSITION</b>			
Unrestricted	652,544	41,098,165	41,750,709
Investment in capital assets	-	-	-
Restricted	-	115,920	115,920
Total net position	652,544	41,214,085	41,866,629
Total liabilities, deferred inflows of resources, and net position	<u>\$ 815,901</u>	<u>\$ 41,700,249</u>	<u>\$ 42,516,150</u>

The accompanying notes are an integral part of the financial statements.

**THE DEVELOPMENT CORPORATION OF KNOX COUNTY**  
**Detail of Statement of Revenues, Expenses, and Changes in Net Position**  
**Year Ended June 30, 2023**

	General Fund	Property Investment Fund	Total
Revenue and Other Support			
Sale of land, net of commissions	\$ -	\$ -	\$ -
Cost of land sold and related incentives	-	-	-
Gross margin	-	-	-
Revenue from Knoxville Chamber	333,548	-	333,548
Rental and management income	215,483	-	215,483
Total revenue and other support, net	<u>549,031</u>	<u>-</u>	<u>549,031</u>
General and Administrative Expenses			
Payroll and benefits	45,473	-	45,473
Legal and professional	51,507	-	51,507
Repairs and maintenance	374,035	-	374,035
Insurance	34,142	-	34,142
Development expense and IT services	16,814	-	16,814
General operating	63,869	-	63,869
Business and professional development	-	-	-
Rent	19,691	-	19,691
Management expenses	204	-	204
Depreciation	1,009	-	1,009
Total general and administrative expenses	<u>606,744</u>	<u>-</u>	<u>606,744</u>
Operating loss	<u>(57,713)</u>	<u>-</u>	<u>(57,713)</u>
Non-Operating Income			
Revenues of investments from outside entity	77,000	-	77,000
Investment Income	336	6,391	6,727
Conveyance of wastewater facilities to KUB	(146,306)	(1,365,962)	(1,512,268)
Total non-operating (expense) income, net	<u>(68,970)</u>	<u>(1,359,571)</u>	<u>(1,428,541)</u>
Change in net position	(126,683)	(1,359,571)	(1,486,254)
Net position at the beginning of the year	<u>779,227</u>	<u>42,573,656</u>	<u>43,352,883</u>
Net position at the end of the year	<u>\$ 652,544</u>	<u>\$ 41,214,085</u>	<u>\$ 41,866,629</u>

The accompanying notes are an integral part of the financial statements.

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
NOTE TO SUPPLEMENTARY INFORMATION  
JUNE 30, 2023

**NOTE A - PROPERTY INVESTMENT FUND**

In accordance with a resolution by the Board of Directors, TDC has established a Property Investment Fund in which all land held for resale and any associated debt and contributed capital are recorded. Proceeds from sales or other dispositions of land, and the related gains and losses, are retained and reported in this fund. An allocation of investment income between the General Fund and the Property Investment Fund is based on an estimate of the relative investment balances in the funds during the year.

Transfers to or from this fund shall be effected by a majority vote of the Board of Directors. However, in accordance with accounting principles generally accepted in the United States of America, such fund is unrestricted.

## **INTERNAL CONTROL AND COMPLIANCE**



Independent Auditor's Report On Internal Control Over Financial Reporting And On  
Compliance And Other Matters Based On An Audit Of Financial Statements Performed In  
Accordance With *Government Auditing Standards*

To the Board of Directors of  
The Development Corporation of Knox County  
Knoxville, Tennessee

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the statements of net position of The Development Corporation of Knox County ("TDC"), as of and for the year ended June 30, 2023, and the related statements of revenues, expenses, and changes in net position and cash flows for the years then ended, and the related notes to the financial statements, which collectively comprise TDC's basic financial statements, and have issued our report thereon dated November 29, 2023.

### **Internal Control over Financial Reporting**

In planning and performing our audit of the financial statements, we considered TDC's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of TDC's internal control. Accordingly, we do not express an opinion on the effectiveness of TDC's internal control.

*A deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.



To the Board of Directors of  
The Development Corporation of Knox County

### **Compliance and Other Matters**

As part of obtaining reasonable assurance about whether TDC's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

### **Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Nashville, Tennessee  
November 29, 2023

THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
SCHEDULE OF FINDINGS AND RESPONSES  
JUNE 30, 2023

None reported.



THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
SUMMARY OF PRIOR YEAR AUDIT FINDINGS  
JUNE 30, 2023

TDC did not have any reported findings for the fiscal year ended June 30, 2022.

## PROPERTY TRANSFER AGREEMENT

This **PROPERTY TRANSFER AGREEMENT** (the “Assignment”) is made effective as of June 30, 2023, by and between **THE DEVELOPMENT CORPORATION OF KNOX COUNTY**, a Tennessee public benefit corporation (“TDC”), and **THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX**, a public body nonprofit corporate and politic and an instrument of Knox County, Tennessee (“IDB”).

### RECITALS

TDC is a nonprofit corporation and component unit of Knox County, Tennessee which was formed to acquire, develop and sell parcels to facilitate business development and expansion in the City of Knoxville and Knox County, Tennessee, including, without limitation, the development, operation and management of certain business parks owned by TDC (“Business Parks”).

IDB is an instrumentality formed by Knox County, Tennessee under Tenn. Code Ann. §§7-53-101, *et seq.* and is authorized thereunder to acquire, own, lease and dispose of certain real and personal properties, in order to (i) maintain and increase employment, (ii) promote and develop trade, new industry, and commerce, and (iii) induce manufacturing, industrial, governmental and commercial ventures to remain or locate in the State of Tennessee.

The applicable governing bodies have agreed that it is in the best interest of the City of Knoxville and Knox County, Tennessee for TDC to transfer certain assets of TDC to IDB and for IDB to assume the liabilities of TDC, and for IDB to facilitate continued programs for business development and expansion consistent with the purposes for which IDB was formed.

The Board of Directors of TDC, after due consideration and deliberation, determined the following: (i) TDC was organized as a nonprofit, public benefit corporation for the purposes of, among other things, promoting and stimulating economic and community development in Knox County; (ii) that for reasons presented and considered by the Board of Directors of TDC, it now appears that these purposes may best be accomplished through a government instrumentality and public corporation and not a non-profit corporation; (iii) the support of Knox County and the City of Knoxville are essential to TDC’s ability to fulfill its nonprofit purposes, and both Knox County and the City of Knoxville have requested that TDC transfer substantially all of its assets and properties as set forth in this Agreement; and (iv) the Board of Directors of TDC has determined that it is in the best interest of Knox County, Tennessee, the City of Knoxville and the general public for TDC to enter into this Agreement and consummate the transactions contemplated herein, and that by being in the best interest of the public said transactions are and will be in the best interests of TDC and consistent with the purposes for which TDC was originally formed.

### ARTICLE 1 TRANSFER OF ASSETS

**1.1 Assets to be Transferred.** Upon the terms and subject to the conditions set forth in this Agreement, effective as of the Closing Date, TDC shall sell, convey, assign, transfer and deliver to IDB, and IDB shall purchase and acquire from TDC, subject to all recorded and unrecorded liens, encumbrances and title exceptions (collectively, “the Encumbrances”), all of TDC’s right, title, and interest in and to the following assets (but excluding the Excluded Assets):

(a) each of the Business Parks and the other real property more particularly described in Schedule 1.1(a), and any and all other tracts of real property owned by TDC and located in Knox County, Tennessee, together with any and all improvements located thereon owned by TDC, and all rights and

appurtenances pertaining to such real property, including any right, title, and interest of TDC in and to adjacent streets, easements, alleys, and rights-of-way (all of such improvements, rights and appurtenances being hereinafter included within the term "Real Property"), and together with any and all rights of TDC under any title policies insuring TDC's title to such Real Property;

(b) any and all development rights, rights to approve plans and to manage each Business Park and other property of TDC arising under any and all declarations, covenants, and restrictions of record and applicable thereto;

(c) all existing surveys, blueprints, drawings, plans and specifications, environmental reports, appraisals, and other documentation for or with respect to the Real Property or any part thereof; files related to vendors, suppliers, utility companies and other third parties; financial information and records related to the operation of the Business Parks; stationery; brochures, booklets, manuals and promotional, marketing and advertising materials concerning the Real Property and such other existing books, records and documents used or useful in connection with the operation of the Real Property ("Real Property Documentation");

(d) all rights, benefits, and obligations arising under the development agreements listed on Schedule 1.1(d) ("Development Agreements"), including, but not limited to all rights, title and interest of TDC in any letters of credit, cash deposits, deeds of trust or other instruments evidencing or securing the covenants and obligations of other parties under such Development Agreements;

(e) all trade names, trademarks, copyrights, service marks, logos, designs, plans, drawings, specifications, goodwill and going concern value proprietary software (and documentation thereof), books and records, guaranties, warranties and other agreements from contractors, sub-contractors, vendors, suppliers and others regarding the construction, installation, repair and maintenance of the improvements to the Real Property and other intellectual and intangible property used by TDC in connection with the development, ownership, operation and maintenance of the Real Property;

(f) all governmental licenses, permits, and authorizations related to the Real Property and all pending applications therefor or renewals thereof, in each case, to the extent transferable to IDB;

(g) all cash balances, cash equivalents and certificates of deposit, including, without limitation, that on deposit or otherwise held in the deposit, money market, investment and other accounts listed on Schedule 1.1(g) ("Deposit Accounts");

(h) the contracts of TDC listed on Schedule 1.1(h) ("Contracts"), including, without limitation, the leases of real property, whether TDC is listed as landlord or tenant thereunder, more particularly described in such Schedule 1.1(h);

(i) [Reserved];

(j) the insurance policies and rights thereunder pertaining to any of the above assets listed on Schedule 1.1(j);

(k) all insurance benefits, including rights and proceeds, arising from or relating to any of the above assets, unless expended in accordance with this Agreement; and

(l) All rights relating to deposits and prepaid expenses and claims for refunds and rights to offset in respect of any of the above assets.

All of the property and assets to be transferred to IDB hereunder are herein referred to collectively as the “Assets.”

**1.2 Excluded Assets.** Notwithstanding anything to the contrary contained in 1.1 or elsewhere in this Agreement, IDB is not acquiring the assets listed on Schedule 1.2 (collectively, the “Excluded Assets”), and such Excluded Assets are not part of the transfer and conveyance contemplated hereunder, are excluded from the Assets, and shall remain the property of TDC after the Closing.

**1.3 Consideration.** In consideration for the transfer of the Assets by TDC to the IDB, effective as of the Closing Date, IDB will assume and pay all of TDC’s liabilities, as hereafter defined, and will release, forgive and cancel the indebtedness owing from TDC to the IDB pursuant to that certain Promissory Note dated June 30, 2019, from TDC to IDB in the original principal amount of \$450,000 (“Karns Valley Indebtedness”).

**1.4 Assumed Liabilities.** Effective as of the Closing Date, IDB shall assume and agrees to pay and discharge all of the obligations and liabilities of TDC, whether (i) fixed or contingent, (ii) liquidated or unliquidated, (iii) known or unknown, or (iv) presently asserted or asserted in the future (collectively, “the TDC Liabilities”).

**1.5 Closing.** The closing of the transactions (the “Closing”) provided for in this Agreement will take place on or before June 30, 2023, at such time and place as agreed to by the parties (the “Closing Date”), or in the alternative, the Closing documents may be transmitted from the parties by mail, e-mail or express courier. Notwithstanding the foregoing, the parties may elect to close the conveyances of one or more parcels of the Real Property in separate and individual Closings, and in such event the term “Closing Date” as respects this applicability of the terms of this Agreement to such Real Property and related Assets shall mean the applicable Closing Date.

(a) Documents Delivered by TDC. At the Closing, TDC shall deliver the following instruments and documents and, as applicable, fully executed by TDC:

(i) for each parcel of Real Property listed in Schedule 1.1(d), a Special Warranty Deed (the “Deeds”) in form and substance satisfactory to IDB, which shall convey to IDB title to the Real Property, subject to Encumbrances;

(ii) for each parcel of Real Property listed in Schedule 1.1(d), an Assignment and Sale of Leases, Development Agreements, Contracts and Other Rights in form and substance satisfactory to IDB, pursuant to which TDC will assign to the IDB all right, title and interest in and to each Lease, Development Agreement, Contract and certain other rights, in each case, respecting such Real Property, to the IDB, and the IDB will assume all obligations and liabilities arising thereunder;

(iii) a quitclaim deed from TDC to IDB pursuant to which TDC quitclaims to IDB any and all real property not listed in Schedule 1.1(d) that is owned by TDC and located in Knox County, Tennessee;

(iv) One or more assignments of all of the Assets that are tangible or intangible personal property, which assignment shall also contain IDB’s undertaking, assumption and agreement to pay the TDC Liabilities (the “Assignment and Assumption Agreement”);

(v) at the request and with the consent of IDB, a quitclaim bill of sale from TDC to Knoxville County Chamber Partnership (“Knoxville Chamber”) pursuant to which TDC will convey all

right, title and interest of TDC to all equipment and other tangible personal property owned by TDC;

(vi) such other duly executed bills of sale and other instruments of assignment covering the Assets as IDB or its counsel may deem necessary or convenient to vest title of such Assets in IDB, subject to the Encumbrances;

(vii) [Reserved];

(viii) an assignment agreement (“Assignment of Administrative Services Agreements”) from TDC to the Knoxville Chamber, pursuant to which TDC shall assign to the Knoxville Chamber, all obligations arising under those certain First Amended and Restated Administrative Services Agreements dated April 1, 2018, by and between TDC and each of IDB and The Health, Educational and Housing Facility Board of the County of Knox (“HEB”) (collectively, “Administrative Services Agreements”);

(ix) documentation evidencing TDC’s authority to enter into this Agreement and transfer the Assets to IDB, in each case, acceptable to IDB and its counsel;

(x) documents reasonably required by the Title Company (as defined below) for the issuance of each of the Title Policy Endorsements (as defined below); and

(xi) such other certificates and other instruments as may be deemed necessary by IDB and its counsel to consummate the transactions herein contemplated or fulfill the conditions as herein described each to be in form and substance reasonably satisfactory to IDB and its counsel.

(b) Documents Delivered by IDB. At the Closing, IDB shall deliver the following instruments and documents and, as applicable, fully executed by IDB:

(i) each Assignment and Sale of Leases, Development Agreements, Contracts and Other Rights;

(ii) the Assignment and Assumption Agreement;

(iii) a release in form and substance satisfactory to TDC and its counsel pursuant to which IDB will release, forgive and cancel the Karns Indebtedness, together with a release of the deed of trust securing the repayment of the same;

(iv) a consent of IDB and HEB to the Assignment of Administrative Services Agreements;

(v) documentation evidencing IDB’s authority to enter into this Agreement and accept transfer of the Assets to IDB, in each case, acceptable to TDC and its counsel; and

(vi) such other certificates and other instruments as may be deemed necessary by TDC and its counsel to consummate the transactions herein contemplated or fulfill the conditions as herein described each to be in form and substance reasonably satisfactory to TDC and its counsel.

(c) Documents Delivered by Title Company. At the Closing, for each parcel of Real Property, Tennessee Valley Title Insurance Company (“Title Company”) shall issue and deliver to IDB an endorsement to each title insurance policy insuring TDC’s title to the Real Property which will name IDB as the insured under such title insurance policy effective as the Closing Date (“Title Policy Endorsements”).

**ARTICLE 2**  
**REPRESENTATIONS AND WARRANTIES OF TDC**

TDC hereby represents and warrants to IDB as follows:

**2.1 Organization and Good Standing.** TDC is a public nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Tennessee, with full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all of its obligations hereunder.

**2.2 Enforceability; Authority; No Conflict.**

(a) This Agreement constitutes the legal, valid and binding obligation of TDC, enforceable against it in accordance with its terms. Upon the execution and delivery by TDC of each agreement to be executed or delivered by TDC at the Closing (collectively, the “TDC Closing Documents”), each of the TDC Closing Documents will constitute a legal, valid and binding obligation of TDC enforceable against it in accordance with its terms. Subject to any consent that must be obtained from the Attorney General of the State of Tennessee, TDC has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and each of the TDC Closing Documents to which it is a party and to perform their obligations under this Agreement and such TDC Closing Documents, and such action has been duly authorized by all necessary action by TDC’s board of directors.

(b) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the transactions contemplated hereby will, directly or indirectly (with or without notice or lapse of time): (i) result in a breach or default in (A) any provision of any of the charter or bylaws of TDC or (B) any resolution adopted by the board of directors of TDC; or (ii) subject to any consent that must be obtained from the Attorney General of the State of Tennessee, result in breach or default in, or give any governmental authority or other individual or entity the right to challenge, any of the transactions contemplated hereby or to exercise any remedy or obtain any relief under any law, regulation or rule.

(c) TDC is not required to give any notice to, or obtain any consent from, any individual or entity in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated hereby, except for any consent that must be obtained from the Attorney General of the State of Tennessee.

**2.3 Title to Assets; Encumbrances.** To TDC’s Knowledge, TDC owns good and marketable title to all of Assets free and clear of any Encumbrances, except those items listed on the title reports that IDB has received with respect to each parcel of Real Property.

**2.4 Legal Proceedings; Orders.** There is no pending or, to TDC’s Knowledge, threatened legal proceeding by or against TDC that otherwise relates to or may affect the Assets, or that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated hereby. To TDC’s Knowledge, except as set forth in Schedule 2.4, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such proceeding. The Assets are not subject to order, injunction, judgment, decree, ruling, assessment or arbitration award of any governmental authority or arbitrator.

**2.5 Environmental Matters.**

(a) To TDC’s Knowledge, TDC is, and at all times has been, in material compliance with, and

has not been and is not in violation of or liable under, any Environmental Law affecting the Assets. To TDC's Knowledge, TDC has no basis to expect, nor has it or any other individual or entity for whose conduct it is or may be held to be responsible received, any actual or threatened order, notice or other communication from (i) any governmental authority or private citizen acting in the public interest or (ii) the current or prior owner or operator of the Real Property, of any actual or potential violation or failure to comply with any environmental law, regulation or rule, or of any actual or threatened obligation to undertake or bear the cost of any liabilities in connection with the failure to comply with any environmental law, regulation or rule with respect to any Real Property or any facility or other asset (whether real, personal or mixed) in which TDC has or had an interest. To TDC's Knowledge, there are no pending or threatened claims, liens, encumbrances, or other restrictions of any nature resulting from any such liability or arising under or pursuant to any such environmental law, regulation or rule with respect to or affecting TDC. To TDC's Knowledge, there has been no release or threat of release of any hazardous materials at or from the Real Property or at any other locations where any hazardous materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by the Real Property, or from or by any other properties and assets (whether real, personal, or mixed) in which TDC has or had an interest, or any geologically or hydrologically adjoining property, whether by TDC or any other entity or individual.

(b) TDC has delivered to IDB true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by TDC pertaining to hazardous materials or activities involving hazardous material in, on, or under the Real Property, or concerning compliance by TDC with environmental laws, regulations or rules.

**2.6 Contracts; No Defaults.** Schedules 1.1(h) contains a complete and accurate list of each agreement or contract to which TDC is a party (other than the Development Agreements and the Administrative Services Agreements), and TDC has delivered to IDB true and complete copies, of each Contract. Schedule 1.1(d) contains a complete and accurate list of each development agreement to which TDC is a party, and TDC has delivered to IDB true and complete copies, of each Development Agreement. To TDC's Knowledge, each Contract and Development Agreement is in full force and effect and is valid and enforceable in accordance with its terms, and no default or breach has occurred thereunder on the part of TDC or any other party thereto.

**2.7 Real Property.** To TDC's Knowledge, the Real Property listed in Schedule 1.1(d) constitutes all real property owned by TDC. TDC has delivered to IDB true and complete copies of all Real Property Documentation to the extent such is within its possession.

**2.8. Insurance.** Schedule 2.8(j) contains a true and complete list of all policies of insurance to which TDC is a party or under which TDC is covered as respects the Assets. TDC has delivered to IDB accurate and complete copies of all such policies of insurance.

**2.9 TDC's Knowledge.** As used in this Agreement, the term "to TDC's Knowledge" means the actual knowledge of Mike Odom and Mac McWhorter, with no duty or obligation to investigate.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF IDB**

IDB represents and warrants to TDC as follows:

**3.1 Organization and Good Standing.** IDB is a public nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Tennessee with full corporate power and authority to conduct its business as it is now conducted.

### **3.2 Authority; No Conflict.**

(a) This Agreement constitutes the legal, valid and binding obligation of IDB, enforceable against IDB in accordance with its terms. Upon the execution and delivery by IDB of each other agreement to be executed or delivered by IDB at Closing (collectively, the “IDB Closing Documents”), each of the IDB Closing Documents will constitute the legal, valid and binding obligation of IDB, enforceable against IDB in accordance with its respective terms. Except for any consent that must be obtained from the Attorney General of the State of Tennessee, IDB has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the IDB Closing Documents and to perform its obligations under this Agreement and the IDB Closing Documents, and such action has been duly authorized by all necessary corporate action.

(b) Neither the execution and delivery of this Agreement by IDB nor the consummation or performance of any of the Contemplated Transactions by IDB will give any Person the right to prevent, delay or otherwise interfere with any of the Contemplated Transactions pursuant to (i) any provision of IDB’s Governing Documents; (ii) any resolution adopted by the board of directors of IDB; (iii) except for any consent that must be obtained from the Attorney General of the State of Tennessee, any Legal Requirement or Order to which IDB may be subject; or (iv) any Contract to which IDB is a party or by which IDB may be bound.

(c) IDB is not and will not be required to obtain any consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions, except for any consent that must be obtained from the Attorney General of the State of Tennessee.

**3.3 Certain Proceedings.** There is no pending legal proceeding that has been commenced against IDB that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions. To IDB’s knowledge, no such proceeding has been threatened.

## **ARTICLE 4 CONDITIONS PRECEDENT TO IDB’S OBLIGATION TO CLOSE**

IDB’s obligation to purchase the Assets and to take the other actions required to be taken by IDB at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by IDB, in whole or in part):

**4.1 Accuracy of Representations.** All of TDC’s representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all respects as of the date of this Agreement, and shall be accurate in all respects as of the time of the Closing as if then made.

**4.2 TDC’s Performance.** All of the covenants and obligations that TDC is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all respects.

**4.3 Additional Documents.** TDC shall have caused the documents described in Section 1.5(a) and the following documents to be delivered (or tendered subject only to Closing) to IDB:



- (a) [Reserved];
- (b) Certificates dated as of a date not earlier than the third business day prior to the Closing as to the good standing of TDC, executed by the appropriate officials of the State of Tennessee and each jurisdiction in which TDC is licensed or qualified to do business as a foreign corporation; and
- (c) Such other documents as IDB may reasonably request for the purpose of:
  - (i) evidencing the accuracy of any of TDC's representations and warranties;
  - (ii) evidencing the performance by TDC of, or the compliance by TDC with, any covenant or obligation required to be performed or complied with by TDC;
  - (iii) evidencing the satisfaction of any condition referred to in this Article 4; or
  - (iv) otherwise facilitating the consummation or performance of any of the transactions contemplated hereby.

**4.4 No Proceedings.** Since the date of this Agreement, there shall not have been commenced or threatened against IDB or TDC, or against any officer or director of IDB or TDC, any legal proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the transactions contemplated hereby or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on or otherwise interfering with any of such transactions.

**4.5 No Conflict.** Neither the consummation nor the performance of any of the transactions contemplated hereby will, directly or indirectly (with or without notice or lapse of time), contravene or conflict with or result in a violation of or cause IDB to suffer any adverse consequence under (a) any applicable law, regulation or rule or order, injunction, judgment, decree, or ruling of any governmental authority or arbitrator (b) any law, regulation or rule or order, injunction, judgment, decree, or ruling of any governmental authority or arbitrator that has been published, introduced or otherwise proposed by or before any governmental authority.

**4.6 Board Approvals.** TDC and IDB shall have received approval of the IDB's and TDC's board of directors of the transactions contemplated hereby and, with respect to the IDB, the IDB's ownership and use the Assets from and after the Closing.

**4.7 Satisfactory Diligence.** IDB shall be satisfied with the results of any and all diligence conducted by IDB concerning the Assets, including, without limitation, the conduct of physical inspections, surveys, tests, title examinations, and environmental assessments with respect to the Real Property.

**4.8 Attorney General Approval or Waiver.** To the extent required by law, TDC shall have received either an approval of the Attorney General of the State of Tennessee to the consummation of the transactions contemplated hereby or a waiver of any requirements to obtain such approval.

**4.9 Recording of Certain Plats.** TDC shall have received approval of, and has recorded the plats for, the Karns Valley Business Park and the Midway Business Park, such plats to be in a form and substance satisfactory to IDB.

**ARTICLE 5**  
**CONDITIONS PRECEDENT TO TDC'S OBLIGATION TO CLOSE**

TDC's obligation to purchase the Assets and to take the other actions required to be taken by TDC at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by TDC, in whole or in part):

**5.1 Accuracy of Representations.** All of IDB's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all respects as of the date of this Agreement, and shall be accurate in all respects as of the time of the Closing as if then made.

**5.2 IDB's Performance.** All of the covenants and obligations that IDB is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all respects.

**5.3 Additional Documents.** IDB shall have caused the documents described in Section 1.5(b) and the following documents to be delivered (or tendered subject only to Closing) to TDC:

- (a) [Reserved];
- (b) Certificates dated as of a date not earlier than the third business day prior to the Closing as to the good standing of IDB, executed by the appropriate officials of the State of Tennessee and each jurisdiction in which IDB is licensed or qualified to do business as a foreign corporation; and
- (c) Such other documents as TDC may reasonably request for the purpose of:
  - (i) evidencing the accuracy of any of IDB's representations and warranties;
  - (ii) evidencing the performance by IDB of, or the compliance by IDB with, any covenant or obligation required to be performed or complied with by IDB;
  - (iii) evidencing the satisfaction of any condition referred to in this Article 4; or
  - (iv) otherwise facilitating the consummation or performance of any of the transactions contemplated hereby.

**5.4 No Proceedings.** Since the date of this Agreement, there shall not have been commenced or threatened against TDC or IDB, or against any officer or director of TDC or IDB, any legal proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the transactions contemplated hereby or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on or otherwise interfering with any of such transactions.

**5.5 No Conflict.** Neither the consummation nor the performance of any of the transactions contemplated hereby will, directly or indirectly (with or without notice or lapse of time), contravene or conflict with or result in a violation of or cause TDC to suffer any adverse consequence under (a) any applicable law, regulation or rule or order, injunction, judgment, decree, or ruling of any governmental authority or arbitrator (b) any law, regulation or rule or order, injunction, judgment, decree, or ruling of any

governmental authority or arbitrator that has been published, introduced or otherwise proposed by or before any governmental authority.

**5.6 Board Approvals.** IDB and TDC shall have received approval of TDC's and IDB's board of directors of the transactions contemplated hereby.

**5.7 Attorney General Approval or Waiver.** To the extent required by law, TDC and IDB shall have received either an approval of the Attorney General of the State of Tennessee to the consummation of the transactions contemplated hereby or a waiver of any requirements to obtain such approval.

## ARTICLE 6 SURVIVAL; AS IS, WHERE IS

**6.1 Survival.** The representations, warranties, covenants and obligations of TDC shall not survive the Closing and the consummation of the contemplated transactions.

**6.2 Indemnification and Reimbursement by IDB.** To the extent permitted by applicable law, IDB will indemnify and hold harmless TDC, and its officers, directors, representatives, agents and attorneys (collectively, the "TDC Indemnified Persons"), and will reimburse the TDC Indemnified Persons for any loss, liability, claim, damage, or expense (including costs of investigation and defense and reasonable attorneys' fees and expenses), arising from or in connection with IDB's breach of this Agreement or its failure to pay any of the TDC Liabilities.

## ARTICLE 7 GENERAL PROVISIONS

**7.1 Expenses.** Except as otherwise provided in this Agreement, each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of its attorneys.

**7.2 Notices.** All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed effectively given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses and marked to the attention of the person (by name or title) designated below (or to such other address or person as a party may designate by notice to the other parties):

TDC:  
17 Market Square #201  
Knoxville, Tennessee 37902  
Attention: Mike Odom

with a mandatory copy to counsel for TDC:  
Morris Kizer  
Gentry, Tipton & McLemore, P.C.  
900 South Gay Street, Suite 2300  
Knoxville, Tennessee 37902

IDB:  
17 Market Square #201  
Knoxville, Tennessee 37902  
Attention: Chair of Board

with a mandatory copy to:  
R. Christopher Trump  
Egerton, McAfee, Armistead & Davis, P.C.  
1400 Riverview Tower  
900 S. Gay Street  
Knoxville, TN 37902

Any party may from time to time change the address to which such notices or communications may be delivered or sent by giving the other party written notice of such change.

**7.3 Further Assurances.** The parties shall cooperate reasonably with each other and with their respective legal counsel in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the transactions contemplated hereby.

**7.4 Jurisdiction; Service Of Process.** Any legal proceeding arising out of or relating to this Agreement or any of the transactions contemplated hereby may be brought in the courts of the State of Tennessee, County of Knox, or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of Tennessee in Knoxville, Tennessee, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court and agrees not to bring any proceeding arising out of or relating to this Agreement or the contemplated transactions in any other court.

**7.5 Waiver; Remedies Cumulative.** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

**7.6 Entire Agreement and Modification.** This Agreement, together with the TDC Closing Documents and the IDB Closing Documents, supersede all prior agreements, whether written or oral, between the parties with respect to its subject matter and constitutes (along with the Schedules and other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended,

supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

**7.7 Assignments, Successors and No Third-Party Rights.** No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any persons other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section.

**7.8 Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

**7.9 Governing Law.** This Agreement will be governed by and construed under the laws of the State of Tennessee without regard to conflicts-of-laws principles that would require the application of any other law.

**7.10 Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

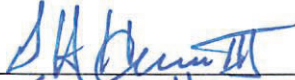
**7.11 Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile or email transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

*[Signature Page Follows]*

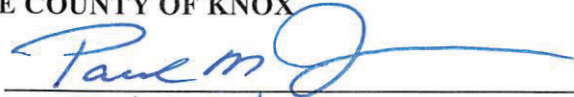
[Signature Page to Property Transfer Agreement]

IN WITNESS WHEREOF, the parties have executed this Asset Purchase Agreement as of the date first written above.

**THE DEVELOPMENT CORPORATION OF  
KNOX COUNTY**

By:   
Name: George Hems, III  
Title: Chair

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE COUNTY OF KNOX**

By:   
Name: Paul M. Fortunato  
Title: Chair

## *Exhibit A*

### Transaction Documents

For the transcript of all executed transaction documents, please see the link that was provided separately with this transmission (due to the large size of the file).

The next 13 pages are marked as Exhibit A.1 through Exhibit A.8. For additional context as to each of the additional exhibits provided, see below.

1. **Exhibit A.1 (1 page):** This is an account statement from Regions Bank for customer, The Industrial Development Board of the County of Knox (the “IDB”), showing a check deposit package totaling \$686,846.55. The check deposit package was comprised of three separate checks, which are further detailed below.
2. **Exhibit A.2 (1 page):** This is a copy of a check in the amount of \$330,750.27 made out to The Development Corp. (a/k/a The Development Corporation of Knox County (“TDC”)) for the closeout of its account with Truist (account #\*\*\*\*\*5510). This check was endorsed to The Industrial Development Board of the County of Knox.
3. **Exhibit A.3 (1 page):** This is a copy of the account closeout receipt for the aforementioned TDC account with Truist (account #\*\*\*\*\*5510).
4. **Exhibit A.4 (1 page):** This is a copy of a check in the amount of \$333,393.97 made out to The Knox County Industrial Development Board (a/k/a the IDB) for the closeout of another of TDC’s accounts with Truist (account #\*\*\*\*\*6031). This check was endorsed to The Industrial Development Board of the County of Knox.
5. **Exhibit A.5 (1 page):** This is a copy of the account closeout receipt for the aforementioned TDC account with Truist (account #\*\*\*\*\*6031).
6. **Exhibit A.6 (1 page):** This is a copy of a check in the amount of \$22,702.31 made out to The Development Corp. (a/k/a TDC) for the closeout of its account with Truist (account #\*\*\*\*\*1205). This check was endorsed to The Industrial Development Board of the County of Knox.
7. **Exhibit A.7 (1 page):** This is a copy of the account closeout receipt for the aforementioned TDC account with Truist (account #\*\*\*\*\*1205).
8. **Exhibit A.8 (1 page):** This is a copy of the account statement for the TDC checking account with FirstBank (account #\*\*\*\*\*8556) showing a transfer of \$1,000.00 to the IDB checking account (account #\*\*\*\*7405).
9. **Exhibit A.9 (2 pages):** This is a copy of an account statement from FirstBank for the TDC checking account (account #\*\*\*\*\*941) showing the total withdrawal and liquidation of the account of \$2,726,468.85.
10. **Exhibit A.10 (3 pages):** This is a copy of an account statement from FirstBank for the IDB checking account (account #\*\*\*\*\*7405) showing (1) the transfer of \$1,000.00 from the TDC checking account with FirstBank (account #\*\*\*\*\*8556) to the IDB checking account (account #\*\*\*\*7405), (2) the deposit of \$2,719,754.83 into the IDB checking account (account #\*\*\*\*7405), and (3) the transfer of \$6,714.02 from the TDC checking account with FirstBank (account #\*\*\*\*\*9402) to the IDB checking account (account #\*\*\*\*7405).





**RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX AUTHORIZING THE EXECUTION OF DOCUMENTS RELATING TO EASEMENTS BENEFITTING THE KNOXVILLE UTILITIES BOARD**

**March 19, 2024**

**WHEREAS**, THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX (“Board”) is a nonprofit public corporation organized by Knox County as an industrial development board pursuant to Tenn. Code Ann. §§7-53-301 et seq. (the “Act”) and as such is a public instrumentality of Knox County performing a public function; and

**WHEREAS**, the Board’s statutory purposes include financing, owning, and leasing certain real and personal properties, which will have the effect of maintaining and increasing employment and otherwise promoting new industry, commerce and trade in Tennessee and Knox County, in particular; and

**WHEREAS**, pursuant to an Assignment and Assumption of Leases, Development Rights, Contracts and Other Rights dated November 17, 2023, the Board acquired from The Development Corporation of Knox County, Tennessee, property located at 2330 Holston Bend Drive, Knoxville, Knox County, Tennessee, CLT 042, Parcel 195.49 (the “Real Property”);

**WHEREAS**, pursuant to an Offer Letter dated January 22, 2024, the Knoxville Utilities Board (“KUB”) requests that the Board sign a utility easement (the “Utility Easement”) to grant utility easement access to the Real Property owned by the Board, which KUB believes is necessary for KUB to provide improved utility service and reliability to the Real Property;

**WHEREAS**, KUB has offered the Board monetary compensation for the utility easement and damages;

**WHEREAS**, the Board hereby agrees to enter into the Utility Easement and the Offer Letter, in order to allow KUB to place an easement on the Real Property, and to promptly execute any and all documents reasonably requested by KUB to grant such easement.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX:**

1. The Chair or Vice Chair of the Board is hereby authorized and directed to execute the Offer Letter and the Utility Easement.
2. 2. The Chair, Vice Chair, and Secretary/Treasurer of the Board hereby are, and each of them acting individually hereby is, authorized and directed to execute and deliver all documents and instruments and to take all such further action as they may consider necessary or desirable in connection with the consummation of the transactions described above, and as otherwise may be reasonably requested by KUB, including without limitation, any and all contracts, easements, closing statements, affidavits, certificates, declarations, plats, and other documents or instruments of any type or kind, provided that, in the opinion of legal counsel to the Board, the Board and its agents will not incur any additional obligations or liabilities as a result of granting such easement or otherwise entering into such documents or instruments.
3. Any such request must be received in writing to the Board by KUB, and the form and content of any such documents or instruments must be acceptable to the Board’s staff and legal counsel.
4. Any authorization herein to execute any document shall include authorization to record such document where appropriate.

5. All other acts of the officers of the Board which are in conformity with the purposes and intent of this resolution are hereby approved and confirmed.

I, \_\_\_\_\_, \_\_\_\_\_ of The Industrial Development Board of the County of Knox, and keeper of the official minutes of the Board of Directors thereof, do hereby certify that this Resolution was duly and lawfully adopted by its Board of Directors on March 19, 2024, at a duly called meeting at which a quorum was acting throughout, and I furthermore certify that such Resolution has not been amended or modified in any respect. Public notice of said meeting was given pursuant to and in compliance with all provisions of law.

The Industrial Development Board  
of the County of Knox

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

Dated: \_\_\_\_\_, 2024





January 22, 2024

*Reference: Property Address*

**2330 Holston Bend Dr**

**CLT # 042 Parcel # 195.49**

Hi, my name is Marlana, and I work for KUB in the easement department and there is utility work coming to your area.

I have included documents pertaining to an easement that we need to get on your property. If you could review and sign the documents included and mail back using the enclosed prepaid envelope, we would greatly appreciate it.

**Documents included:**

- Offer Letter – This contains an offer for the work that we will be doing on your property.
- Easement Document – This specifies the Easement Agreement.
- Notary Sheet – These documents will need to be notarized.
- Easement Drawing/Description – This shows the Easement as it will be laid out on the property.

**If you have any questions, please feel free to contact me at the information listed below:**

**Marlana Hutsell**

*Business Associate / Admin - Procurement Dept.*

**Phone:** 865-558-2501

4505 Middlebrook Pike

Knoxville, TN, 37921

**Email:** [Marlana.Hutsell@kub.org](mailto:Marlana.Hutsell@kub.org)



January 22, 2024

Industrial Development Board of the County of Knox  
17 Market Square # 207  
Knoxville, TN 37902

**Re: Utility Easement Purchase**  
CLT 042, Parcel 195.49

The Knoxville Utilities Board has a need to obtain a utility easement across your property at **2330 Holston Bend Dr.** The easement is necessary in order for KUB to provide improved utility service and reliability in your area. The proposed easement is shown on the attached Easement document "Exhibit A."

KUB will provide compensation in the amount of \$23,200.00 for the referenced permanent easement and damages. KUB and/or its Contractors will restore all areas disturbed during construction as described in the "Utility Easement" document at no cost to you. Upon completion of the work on your property, KUB and its Contractors will provide a one-year warranty for the site restoration.

KUB greatly appreciates your willingness to assist in providing improved utility service to you and your neighbors.

Payment will be made in full to the Owner within 30 days after acceptance of this offer by both the Owner and KUB. Once KUB records the documents with Knox County, a copy of the recorded documents will be mailed to the Owner.

This offer is made by:

M. Peleena Hutsell Date 1-22-24  
KUB Representative

\_\_\_\_\_ Date \_\_\_\_\_

This offer is accepted by:

\_\_\_\_\_ Date \_\_\_\_\_  
Industrial Development Board of the County  
of Knox

\_\_\_\_\_ Date \_\_\_\_\_



attachments

### UTILITY EASEMENT

This Utility Easement is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Industrial Development Board of the County of Knox, (the "Owner") and the KNOXVILLE UTILITIES BOARD ("KUB"), an independent agency of the City of Knoxville, Tennessee.

**FACTS:** The Owner owns the property described in the deed book and page or instrument number shown below which includes the property shown on Exhibit "A" (the "Easement Tract") and described on Exhibit "B". KUB desires to install utility facilities and lines on the Easement Tract. The Owner has agreed to grant KUB an easement across the Easement Tract for its utility facilities and lines owned and/or licensed by KUB. By executing this Utility Easement, Owner acknowledges that KUB shall compensate the Owner an amount that the Owner agrees is a reasonable payment for the easement granted to KUB under this Utility Easement. Based on all of the above, the Owner agrees as follows:

1. The Owner grants to KUB a permanent utility easement over, under and across the Easement Tract and agrees that KUB has the perpetual right to enter on the Easement Tract and to do those things that are necessary to place, construct, operate, repair, maintain, remove and replace on the Easement Tract one or more utility lines and related equipment and facilities that are owned and/or licensed by KUB. Unless noted otherwise on the Easement Tract, it is agreed that the Easement Tract shall include an additional temporary construction easement as required and necessary to install, replace and maintain the facilities and lines beyond the permanent easement as shown on Exhibit "A". The Owner agrees, in addition, that KUB shall have reasonable access across Owner's property to reach the Easement Tract as may be needed.

2. The Owner understands and agrees that:  
a. KUB has agreed that it will restore the Easement Tract and Temporary Construction Easement after it installs the utility lines. Trees, shrubbery and other vegetation located in the Easement Tract and Temporary Construction Easement may be removed by KUB during construction and KUB is not obligated to replace trees, shrubbery or other vegetation (other than grass) within the Easement Tract and Temporary Workspace that is removed or disturbed.

b. KUB has the right to keep the Easement Tract free and clear of buildings, trees, and anything else that interferes with the installation, maintenance and use of the utility lines on the Easement Tract.

c. The Easement Tract will not be used for anything that will interfere with or endanger the use and operation of the utility lines that are placed on the Easement Tract. No permanent structure will be erected on the Easement Tract.

d. The ground level of the Easement Tract will not be changed without KUB's written approval in advance. Approval shall not be unreasonably withheld by KUB.

3. The Owner will have the right to use and enjoy the Easement Tract for lawns, gardens, pastures, roads, parking lots, and any purpose that does not interfere with or endanger

the use and operation of the utility lines installed on the Easement Tract by KUB. The Owner is only granting KUB an easement over, under and across the Easement Tract. The Easement Tract will continue to be owned by the Owner.

4. This Utility Easement is intended to be binding on and to benefit KUB and its successors and assigns and the Owner and its heirs, successors, and assigns. In this Utility Easement, the singular shall include the plural, the plural the singular and the use of any gender is meant to refer to all genders.

5. Ownership of the property was determined by review of warranty deeds and tax records, and no title opinion nor any subordination of liens was obtained for this property. The Owner, by executing this Utility Easement, represents that he/she/it is (or they are) the owner of the Easement Tract and has the exclusive right to receive the compensation paid by KUB and to grant the rights to KUB as set forth in this Utility Easement. The Owner agrees to defend and hold KUB harmless in the event of any legal or financial claim by any third party to such compensation or otherwise involving KUB's rights as set forth in this Utility Easement.

IN WITNESS WHEREOF, the Owner(s) has executed this instrument as of the day and year first written above.  
"OWNER(s) "



\_\_\_\_\_  
Industrial Development Board of the County of Knox

\_\_\_\_\_

(If an entity)

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

Its: \_\_\_\_\_

Property Reference:  
Deed Book  
Page  
Instrument 202311210026345

**KNOXVILLE UTILITIES BOARD STANDARD ACKNOWLEDGMENT:**

1. **Acknowledgment for One or More Persons**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned authority, of the state and county aforesaid, personally appeared

\_\_\_\_\_  
with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he/she signed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public



My commission expires:

2. **Acknowledgment for One or More Persons**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned authority, of the state and county aforesaid, personally appeared

\_\_\_\_\_  
with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he/she signed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

3. **Acknowledgment for One or More Persons**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned authority, of the state and county aforesaid, personally appeared

\_\_\_\_\_  
with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he/she signed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

MATCH LINE (SEE SHEET A-2)

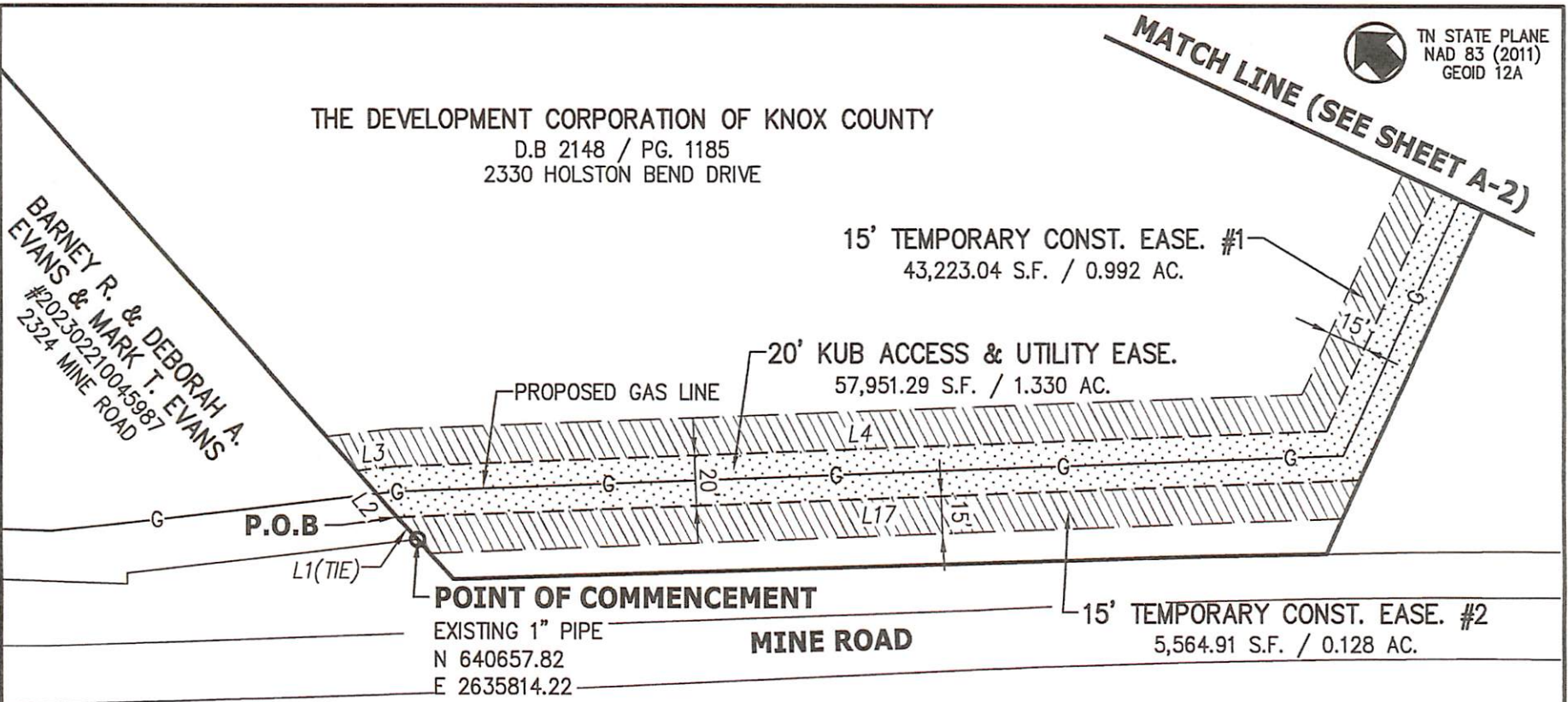
THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
D.B 2148 / PG. 1185  
2330 HOLSTON BEND DRIVE

15' TEMPORARY CONST. EASE. #1  
43,223.04 S.F. / 0.992 AC.

20' KUB ACCESS & UTILITY EASE.  
57,951.29 S.F. / 1.330 AC.

15' TEMPORARY CONST. EASE. #2  
5,564.91 S.F. / 0.128 AC.

BARNEY R. & DEBORAH A. EVANS & MARK T. EVANS  
#202302210045987  
2324 MINE ROAD



POINT OF COMMENCEMENT

EXISTING 1" PIPE  
N 640657.82  
E 2635814.22



EASEMENT NOTES:

1. Knoxville Utilities Board has the right to install and operate on the Easement Tract utility lines and related equipment and facilities only for the utility services that Knoxville Utilities Board provides.
2. This easement document was prepared by Cannon & Cannon, Inc., 10025 Investment Dr. Suite 120, however, it is not intended to be a Boundary Survey compliant with the minimum standard detail requirements of the State of Tennessee.
3. This document does not warrant title or ownership. Owners and property addresses are shown in accordance with Knox County Property Assessors Records.

LINE TABLE

LINE	LENGTH	BEARING
L1(TIE)	12.21'	N 00°22'50" E
L2	24.39'	N 00°22'50" E
L3	15.14'	S 54°34'54" E
L4	368.98'	S 50°13'56" E
L17	380.93'	N 50°13'56" W

Prepared By: Cannon & Cannon, Inc.  
Address: 10025 Investment Dr. Suite 120  
Knoxville, Tennessee 37932  
Date: 11/14/2023 W.O. No: \_\_\_\_\_  
Appd. By: RGL Chkd. By: RGL

Exhibit "A-1"  
(PARCEL 195.49)  
Scale: 1"=60'

County of Knox Map No.: \_\_\_\_\_  
Tax Map No. 42 Parcel No. 195.49  
Deed Book: 2148 Page: 1185  
District 8 Ward N/A City Block N/A  
Field Book: N/A Page: N/A



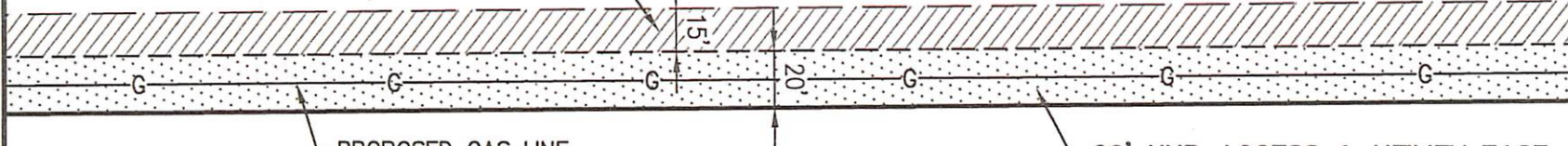


THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
D.B 2148 / PG. 1185  
2330 HOLSTON BEND DRIVE

MATCH LINE (SEE SHEET A-1)

MATCH LINE (SEE SHEET A-3)

15' TEMPORARY CONST. EASE. #1  
43,223.04 S.F. / 0.992 AC.



PROPOSED GAS LINE

20' KUB ACCESS & UTILITY EASE.  
57,951.29 S.F. / 1.330 AC.

LIFETIME PRODUCTS, INC.  
#201903280056591  
0 MINE ROAD



EASEMENT NOTES:

1. Knoxville Utilities Board has the right to install and operate on the Easement Tract utility lines and related equipment and facilities only for the utility services that Knoxville Utilities Board provides.
2. This easement document was prepared by Cannon & Cannon, Inc., 10025 Investment Dr. Suite 120, however, it is not intended to be a Boundary Survey compliant with the minimum standard detail requirements of the State of Tennessee.
3. This document does not warrant title or ownership. Owners and property addresses are shown in accordance with Knox County Property Assessors Records.

Prepared By: Cannon & Cannon, Inc.  
Address: 10025 Investment Dr. Suite 120  
Knoxville, Tennessee 37932  
Date: 11/14/2023 W.O. No: \_\_\_\_\_  
Appd. By: RGL Chkd. By: RGL

Exhibit "A-2"  
(PARCEL 195.49)  
Scale: 1"=60'

County of Knox Map No.: \_\_\_\_\_  
Tax Map No. 42 Parcel No. 195.49  
Deed Book: 2148 Page: 1185  
District 8 Ward N/A City Block N/A  
Field Book: N/A Page: N/A





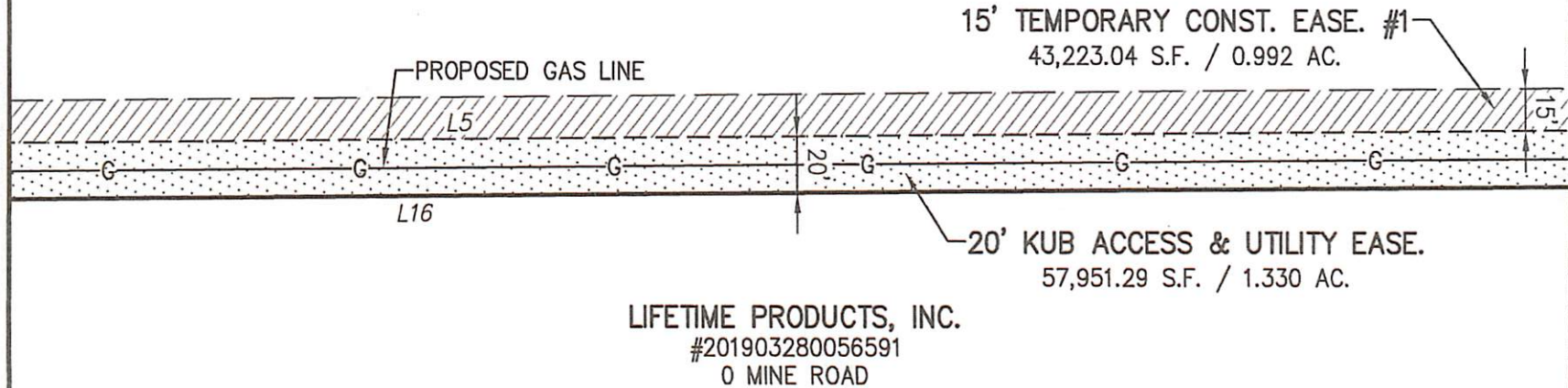
TN STATE PLANE  
NAD 83 (2011)  
GEOID 12A

THE DEVELOPMENT CORPORATION OF KNOX COUNTY

D.B 2148 / PG. 1185  
2330 HOLSTON BEND DRIVE

MATCH LINE (SEE SHEET A-2)

MATCH LINE (SEE SHEET A-4)



LIFETIME PRODUCTS, INC.  
#201903280056591  
0 MINE ROAD



EASEMENT NOTES:

1. Knoxville Utilities Board has the right to install and operate on the Easement Tract utility lines and related equipment and facilities only for the utility services that Knoxville Utilities Board provides.
2. This easement document was prepared by Cannon & Cannon, Inc., 10025 Investment Dr. Suite 120, however, it is not intended to be a Boundary Survey compliant with the minimum standard detail requirements of the State of Tennessee.
3. This document does not warrant title or ownership. Owners and property addresses are shown in accordance with Knox County Property Assessors Records.

LINE TABLE

LINE	LENGTH	BEARING
L5	1637.25'	N 66°28'37" E
L16	1629.57'	S 66°28'37" W

Prepared By: Cannon & Cannon, Inc.  
Address: 10025 Investment Dr. Suite 120  
Knoxville, Tennessee 37932  
Date: 11/14/2023 W.O. No: \_\_\_\_\_  
Appd. By: RGL Chkd. By: RGL

Exhibit "A-3"  
(PARCEL 195.49)  
Scale: 1"=60'

County of Knox Map No.: \_\_\_\_\_  
Tax Map No. 42 Parcel No. 195.49  
Deed Book: 2148 Page: 1185  
District 8 Ward N/A City Block N/A  
Field Book: N/A Page: N/A



CCI# 00309-0455

THE DEVELOPMENT CORPORATION OF KNOX COUNTY

D.B 2148 / PG. 1185  
2330 HOLSTON BEND DRIVE



MATCH LINE (SEE SHEET A-3)

MATCH LINE (SEE SHEET A-5)

15' TEMPORARY CONST. EASE. #1

43,223.04 S.F. / 0.992 AC.

20' KUB ACCESS & UTILITY EASE.

57,951.29 S.F. / 1.330 AC.

EXISTING 1/2" IRON ROD

LIFETIME PRODUCTS, INC.

#201903280056591  
0 MINE ROAD

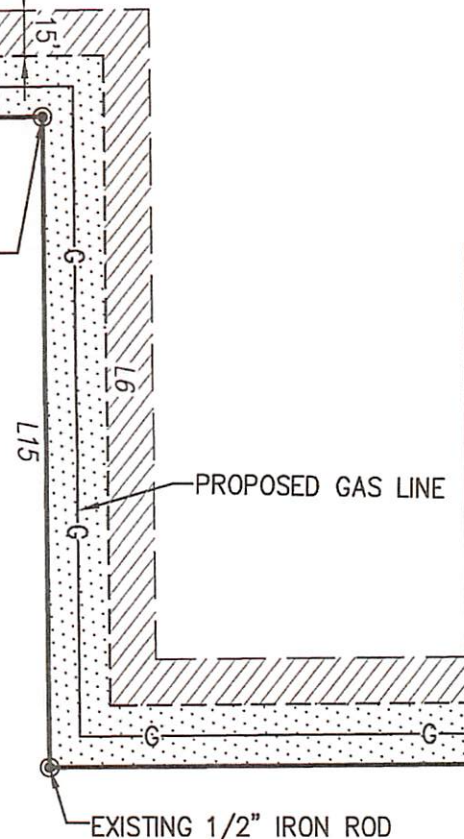


EASEMENT NOTES:

1. Knoxville Utilities Board has the right to install and operate on the Easement Tract utility lines and related equipment and facilities only for the utility services that Knoxville Utilities Board provides.
2. This easement document was prepared by Cannon & Cannon, Inc., 10025 Investment Dr. Suite 120, however, it is not intended to be a Boundary Survey compliant with the minimum standard detail requirements of the State of Tennessee.
3. This document does not warrant title or ownership. Owners and property addresses are shown in accordance with Knox County Property Assessors Records.

LINE TABLE

LINE	LENGTH	BEARING
L6	212.31'	S 23°30'17" E
L15	212.30'	N 23°30'17" W



Prepared By: Cannon & Cannon, Inc.  
Address: 10025 Investment Dr. Suite 120  
Knoxville, Tennessee 37932  
Date: 11/14/2023 W.O. No: \_\_\_\_\_  
Appd. By: RGL Chkd. By: RGL

Exhibit "A-4"  
(PARCEL 195.49)  
Scale: 1"=60'

County of Knox Map No.: \_\_\_\_\_  
Tax Map No. 42 Parcel No. 195.49  
Deed Book: 2148 Page: 1185  
District 8 Ward N/A City Block N/A  
Field Book: N/A Page: N/A

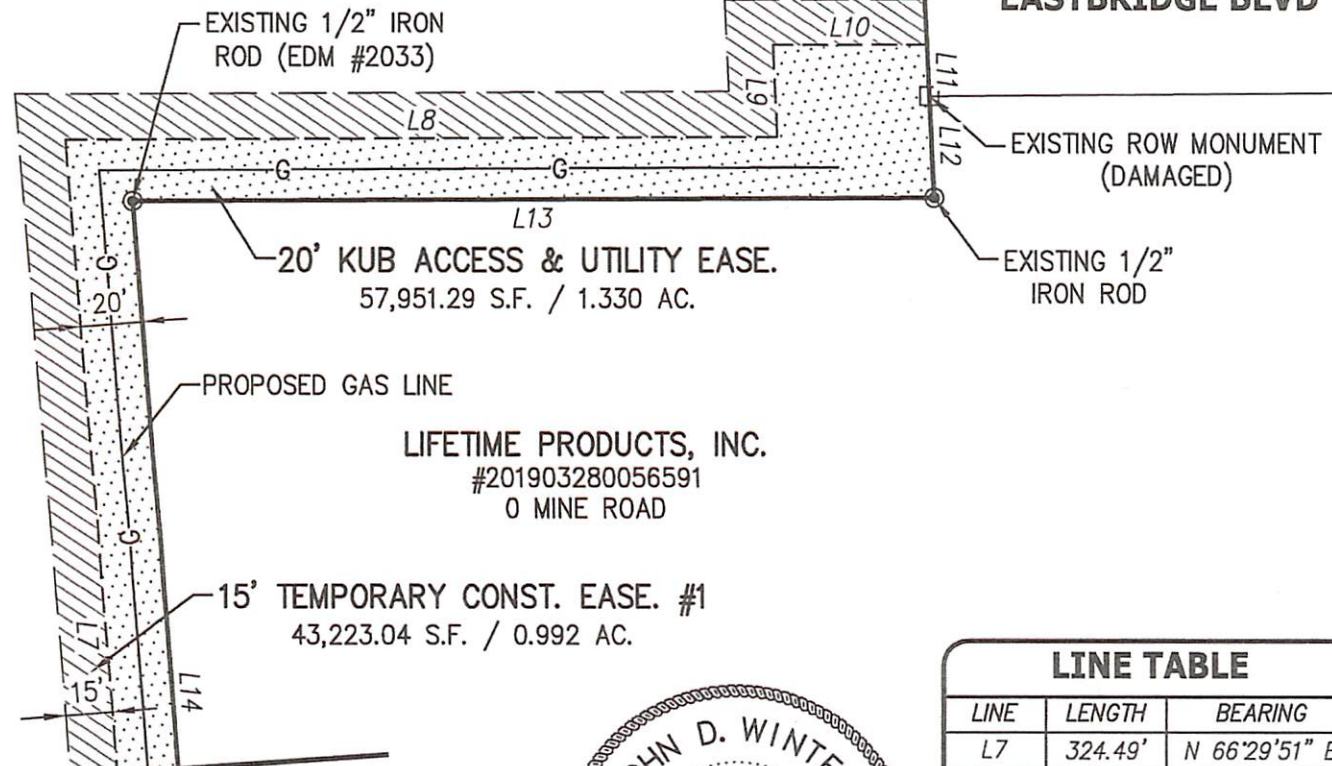


CCI# 00309-0455

EXEDY AMERICA CORPORATION  
 #201303150060504  
 2121 HOLSTON BEND DR.



EASTBRIDGE BLVD



THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
 D.B 2148 / PG. 1185  
 2330 HOLSTON BEND DRIVE

LIFETIME PRODUCTS, INC.  
 #201903280056591  
 0 MINE ROAD

MATCH LINE (SEE SHEET A-4)

LINE TABLE

LINE	LENGTH	BEARING
L7	324.49'	N 66°29'51" E
L8	230.86'	S 19°15'18" E
L9	30.03'	N 68°21'52" E
L10	50.04'	S 19°15'18" E
L11	16.88'	S 68°21'52" W
L12	33.17'	S 68°21'52" W
L13	260.20'	N 19°15'18" W
L14	322.95'	S 66°29'51" W



EASEMENT NOTES:

1. Knoxville Utilities Board has the right to install and operate on the Easement Tract utility lines and related equipment and facilities only for the utility services that Knoxville Utilities Board provides.
2. This easement document was prepared by Cannon & Cannon, Inc., 10025 Investment Dr. Suite 120, however, it is not intended to be a Boundary Survey compliant with the minimum standard detail requirements of the State of Tennessee.
3. This document does not warrant title or ownership. Owners and property addresses are shown in accordance with Knox County Property Assessors Records.

Prepared By: Cannon & Cannon, Inc.  
 Address: 10025 Investment Dr. Suite 120  
Knoxville, Tennessee 37932  
 Date: 11/14/2023 W.O. No: \_\_\_\_\_  
 Appd. By: RGL Chkd. By: RGL

Exhibit "A-5"  
 (PARCEL 195.49)  
 Scale: 1"=60'

County of Knox Map No.: \_\_\_\_\_  
 Tax Map No. 42 Parcel No. 195.49  
 Deed Book: 2148 Page: 1185  
 District 8 Ward N/A City Block N/A  
 Field Book: N/A Page: N/A



CCI# 00309-0455

**EXHIBIT "B"**

**LEGAL DESCRIPTION  
THE DEVELOPMENT CORPORATION OF KNOX COUNTY  
2330 HOLSTON BEND DRIVE**

**Situated** in the Eighth (8th) Civil District of Knox County, Tennessee, without the corporate limits of the City of Knoxville and being a 20' KUB Access and Utility Easement with associated 15' Temporary Construction Easements crossing a portion of Tax Parcel 195.49 on Tax Map 42 (Deed Book 2148, Page 1185), more particularly described as follows:

**20' KUB ACCESS AND UTILITY EASEMENT**

**Commencing** on an existing 1-inch pipe in the northeastern right-of-way line of Mine Road, corner to Barney R. and Deborah A. Evans, and Mark T. Evans (Instrument Number 202302210045987), said point bearing Tennessee State Plane, NAD 83 (2011) grid coordinates of Northing 640,657.82 Easting 2,635,814.22;

Thence leaving the northeastern right-of-way line of Mine Road and with the eastern line of Evans and Evans, N 00° 22' 50" E, 12.21 feet to a point, said point being the Point of **BEGINNING**;

Thence continuing with the eastern line of Evans and Evans, N 00° 22' 50" E, 24.39 feet to a point;

Thence leaving the eastern line of Evans and Evans, and with the remaining lands of the subject tract, the following eight (8) calls:

1. S 54° 34' 54" E, 15.14 feet to a point;
2. S 50° 13' 56" E, 368.98 feet to a point;
3. N 66° 28' 37" E, 1,637.25 feet to a point;
4. S 23° 30' 17" E, 212.31 feet to a point;
5. N 66° 29' 51" E, 324.49 feet to a point;
6. S 19° 15' 18" E, 230.86 feet to a point;
7. N 68° 21' 52" E, 30.03 feet to a point;
8. S 19° 15' 18" E, 50.04 feet to a point in the northwestern right-of-way line of Eastbridge Boulevard;

Thence with the northwestern right-of-way line of Eastbridge Boulevard, S 68° 21' 52" W, 16.88 feet to an existing ROW monument (damaged), corner to Lifetime Products, Inc. (Instrument Number 201903280056591);

Thence leaving the northwestern right-of-way line of Eastbridge Boulevard and with the northern lines of Lifetime Products, Inc., the following five (5) calls:

1. S 68° 21' 52" W, 33.17 feet to an existing 1/2 inch iron rod;
2. N 19° 15' 18" W, 260.20 feet to an existing 1/2 inch iron rod (EDM #2033);
3. S 66° 29' 51" W, 322.95 feet to an existing 1/2 inch iron rod;
4. N 23° 30' 17" W, 212.30 feet to an existing 1/2 inch iron rod;
5. S 66° 28' 37" W, 1,629.57 feet to a point;

Thence leaving the northern lines of Lifetime Products, Inc. and with the remaining lands of the subject tract, N 50° 13' 56" W, 380.93 feet to the Point of **BEGINNING**.

**Containing** 57,951.29 square feet or 1.330 acres, more or less.

#### **15' TEMPORARY CONSTRUCTION EASEMENTS**

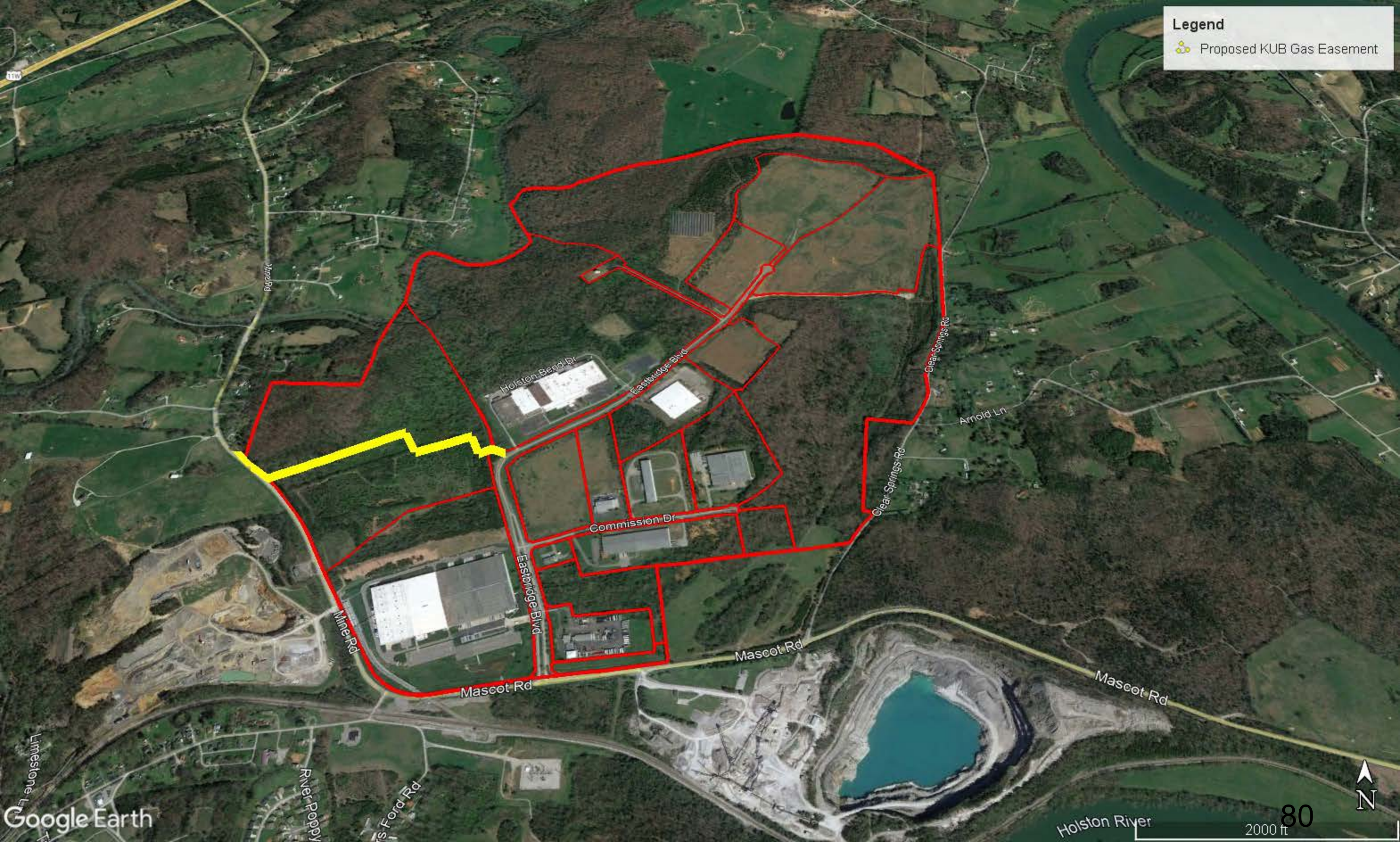
**BEING** Temporary Construction Easements lying immediately adjacent to the KUB Access and Utility Easement as described above and as depicted by Exhibits "A-1", "A-2", "A-3", "A-4" and "A-5", said easements contain a total of 48,787.95 square feet or 1.120 acres, more or less.

These descriptions were prepared November 14, 2023 by Cannon & Cannon, Inc., 10025 Investment Drive, Suite 120, Knoxville, Tennessee 37932. Reference CCI project number 309-0455.





**Legend**  
Proposed KUB Gas Easement







**RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX RELATING TO THE AMENDMENT OF REVENUE BOND (THE CHANGE CENTER PROJECT), SERIES 2017**

WHEREAS, the Board of Directors of The Industrial Development Board of the County of Knox (the “Issuer”), has met pursuant to proper notice; and

WHEREAS, the Issuer has issued its Revenue Bond (The Change Center Project), Series 2017 in the original principal amount of \$2,300,000, as amended and restated pursuant to that certain Amended and Restated Revenue Bond (The Change Center Project) Series 2017 dated as of July 31, 2022 in the original principal amount of \$855,000 (as amended, the “Bond”); and

WHEREAS, the proceeds of the Bond were loaned to The Change Center, a Tennessee non-profit corporation (the “Borrower”), pursuant to a Loan Agreement dated as of July 31, 2017; and

WHEREAS, the proceeds of the Bond were used by the Borrower to finance the building out of a youth recreational facility (the “Project”) in Knox County, Tennessee; and

WHEREAS, the Bond was originally purchased by Home Federal Bank of Tennessee (the “Bondholder”) and is still held by the Bondholder; and

WHEREAS, the Borrower has requested that the Issuer approve an amendment to the Bond and the documents related thereto to postpone a scheduled principal payment; and

WHEREAS, there has been submitted to the Issuer the form of a Second Amendment of Bond Documents (the “Amendment”) among the Borrower, the Issuer and the Bondholder, to carry out the transactions described above, a copy of which instrument shall be filed with the records of the Issuer.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX:

1. The Chair or Vice Chair of the Issuer is hereby authorized and directed to execute and either is authorized and directed to deliver the Amendment to the other parties thereto.
2. The Amendment shall be in substantially the form submitted, which is hereby approved, with such completions, omissions, insertions and changes as may be approved by the officer executing it, his or her execution to constitute conclusive evidence of his or her approval of any such omissions, insertions and changes.
3. The officers of the Issuer are hereby authorized and directed to execute, deliver and file such other certificates and instruments and to take all such further action as they may consider necessary or desirable in connection with the consummation of the transactions described above, including, without limitation, an amended and restated bond to reflect the amendments described herein and in the Amendment.
4. Any authorization herein to execute any document shall include authorization to record such document where appropriate.
5. All other acts of the officers of the Issuer which are in conformity with the purposes and intent of this resolution are hereby approved and confirmed.

The undersigned Secretary hereby certifies that the foregoing resolution was duly adopted at a meeting of the Board of Directors of The Industrial Development Board of the County of Knox held on September 12, 2023.

---

Secretary

36259340.1



SECOND AMENDMENT OF BOND DOCUMENTS

THIS SECOND AMENDMENT OF BOND DOCUMENTS effective as of the \_\_\_ day of \_\_\_\_\_, 2023 by and among The Industrial Development Board of the County of Knox (the “Board”), The Change Center, a Tennessee nonprofit corporation (the “Borrower”), and Home Federal Bank of Tennessee (the “Bank”).

WITNESSETH:

WHEREAS, the Board has heretofore issued and sold its Revenue Bond (The Change Center Project) Series 2017 in the original principal amount of \$2,300,000, as amended and restated pursuant to that certain Amended and Restated Revenue Bond (The Change Center Project) Series 2017 dated as of July 31, 2022 in the original principal amount of \$855,000 (as amended, the "Existing Bond"); and

WHEREAS, the Board loaned the proceeds of the Existing Bond to the Borrower pursuant to a Promissory Note dated July 31, 2017 from the Borrower in favor of the Board, as amended and restated pursuant to that certain Amended and Restated Promissory Note dated as of July 31, 2022 from the Borrower in favor of the Board (as amended, the “Existing Note”) and a Loan Agreement dated as of July 31, 2017 between the Board and the Borrower (as previously amended, the “Loan Agreement”; capitalized terms used but not otherwise defined in this Amendment shall have the meanings assigned to such terms in the Loan Agreement); and

WHEREAS, in order to induce the Bank to purchase the Existing Bond, the Board entered into an Assignment and Security Agreement with the Bank dated as of July 31, 2017 pursuant to which the Board assigned to the Bank the Existing Note and the Loan Agreement (other than certain reserved rights); and

WHEREAS, the Borrower has requested the Board to make certain additional changes to the Existing Bond, the Existing Note and the other Bond Documents (as defined in the Loan Agreement) in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the premises, the parties hereby agree as follows:

1. The parties hereto acknowledge that the outstanding principal balance under the Existing Bond and Existing Note is equal to \$855,000. The Bank hereby agrees that the principal payment that was due under the Existing Bond and Existing Note on July 31, 2023 is hereby postponed until January 31, 2024. The second sentence of Section 4 of the Existing Bond and Existing Note is hereby amended and restated as follows: “Principal payments shall be made such that the outstanding principal balance hereunder shall be no greater than \$570,000 on January 31, 2024 and no greater than \$285,000 on July 31, 2024.”

2. All references in the Loan Agreement and the other Bond Documents to the Existing Bond and the Existing Note shall be deemed to mean the Existing Bond and the Existing Note, respectively, as amended hereunder.

3. The Borrower hereby covenants and agrees to execute and deliver, or cause to be executed and delivered, and to do or make, or cause to be done or made, upon the request of the Bank, any and all instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be required by the Bank for the purpose of effecting the modifications described herein.

4. The representations and warranties of the Borrower in the Bond Documents, as modified, are true and correct on and as of the date hereof as though made on this date.

5. Except as expressly modified by or provided for in this Amendment, the terms and provisions of the Bond Documents, as modified, shall remain in full force and effect as originally executed.

6. Except as described herein, as of the date hereof, the Borrower is in full compliance with all of the terms and provisions set forth in the Bond Documents, as modified, and no default nor any event which, upon notice, lapse of time, or both, would constitute a default, has occurred or is continuing.

7. The liens providing security for the Loan shall continue as before the execution of this Amendment and the security provided thereby shall remain in full force and effect. This Amendment does not constitute a discharge or novation of the Existing Note, the Existing Bond or any other Bond Documents.

8. Borrower hereby acknowledges and stipulates that it has no claims or causes of action of any kind whatsoever against Bank, its affiliates, officers, directors, employees or agents. Borrower hereby releases Bank, its affiliates, officers, directors, employees and agents, from any and all claims, causes of action, demands and liabilities of any kind whatsoever whether direct or indirect fixed or contingent, liquidated or unliquidated, disputed or undisputed, known or unknown, which Borrower has or may acquire in the future relating in any way to any event, circumstance, action or failure to act to the date of this Amendment. The release by Borrower herein, together with the other terms and provisions of this Amendment, are executed by Borrower advisedly and without coercion or duress from Bank, Borrower having determined that the execution of this Amendment, and all its terms and provisions are in Borrower's economic best interest.

9. This Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

10. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

11. No covenant, agreement or obligation contained in this Amendment shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Board in his or her individual capacity, and neither the directors of the Board nor any officer thereof executing this Amendment shall be liable personally hereon or be subject to any personal liability or accountability by reason of the execution and delivery hereof. No director, officer, employee or agent of the Board shall incur any personal liability with respect to any other action taken by him pursuant to this Amendment or any of the transactions contemplated hereby.

12. The obligations of the Board under this Amendment are not general obligations of the Board but are limited obligations payable solely out of the revenues and receipts pledged under the Bond Documents, as amended hereby. None of the agreements or obligations of the Board under this Amendment shall be construed to constitute any indebtedness of Knox County, Tennessee, within the meaning of any constitutional or statutory provision whatsoever, and Knox County, Tennessee, shall not in any event be liable for the performance of any pledge, mortgage, obligation, or agreement of any kind whatsoever which may be undertaken by the Board, under this Amendment or otherwise.

*[signatures follow]*

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE COUNTY OF KNOX

Attest:

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

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

THE CHANGE CENTER

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

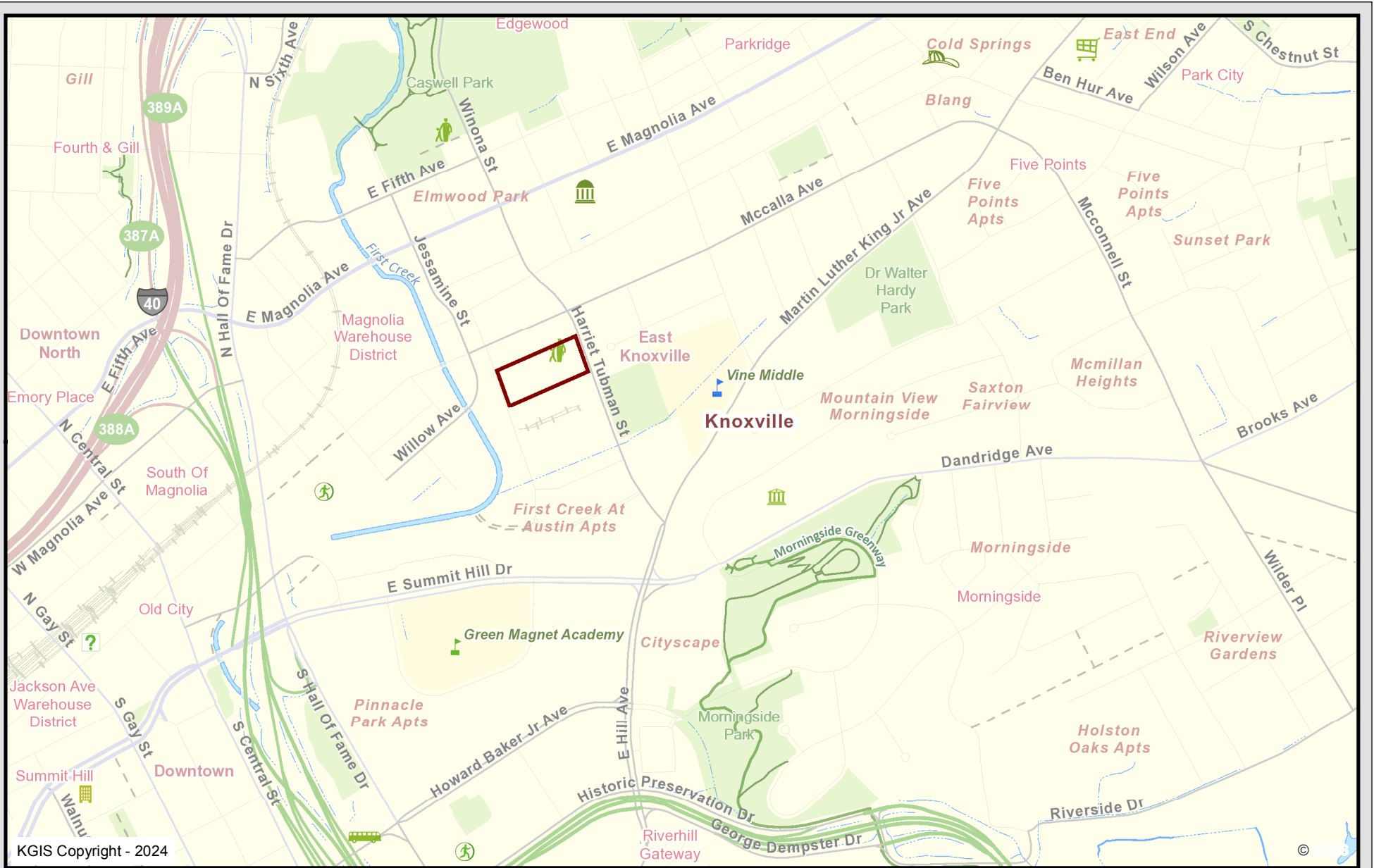
HOME FEDERAL BANK OF TENNESSEE

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

36259217.1







KGIS Copyright - 2024

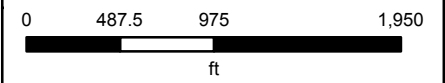
© KGIS

## The Change Center

### Knoxville - Knox County - KUB Geographic Information System



Printed: 3/15/2024 at 10:42:45 AM



KGIS makes no representation or warranty as to the accuracy of his map and its information nor to its fitness for use. Any user of this map product accepts the same AS IS ,WITH ALL FAULTS, and assumes all responsibility for the use thereof, and futher covenants and agrees to hold KGIS harmless from any and all damage, loss, or liability arising from any use of this map product.



**RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX  
AUTHORIZING CERTAIN PERSONS TO SIGN CERTAIN DOCUMENTS RELATED TO THE  
OPERATION OF THE BUSINESS PARKS OWNED BY THE IDB**

March 19, 2024

**WHEREAS**, the Board of Directors (the “Board”) of The Industrial Development Board of the County of Knox (the “IDB”) desires to grant signing and authority to certain person(s) described hereunder;

**WHEREAS**, the IDB is an instrumentality formed by Knox County, Tennessee under Tenn. Code Ann. §§7-53-101, et seq. and is authorized thereunder to acquire, own, lease and dispose of certain real and personal properties, including, but not limited to, the development, operation and management of certain business parks (“Business Parks”);

**WHEREAS**, from time to time, the IDB enters into certain contracts for the maintenance, operation and use of the Business Parks;

**NOW, THEREFORE**, the following resolutions are hereby adopted:

**RESOLVED**, that the Board is hereby authorized to empower the individuals named below (each an “Authorized Person” and collectively, the “Authorized Persons”) to make, execute, endorse, and deliver certain documents in the name of and on behalf of the Board:

Paul M. Fortunato, Chair of the Board, or his successor, and  
Tiffany E. Gardner, Vice Chair of the Board, or her successor;

**RESOLVED**, that the Authorized Persons are hereby authorized, approved, and designated to make, execute, endorse, and deliver in the name of and benefit of the IDB, without requiring further approval, any documents relating to the day-to-day operation of any Business Park owned by the IDB, including, but not limited to, leases and easements in connection therewith (the “Transaction Documents”);

**RESOLVED**, that the Authorized Persons shall be authorized to sign such Transaction Documents on all matters where the total consideration in such matters is less than \$25,000 and, in the case of any leases, the term of which is less than eighteen (18) months;

**RESOLVED**, that the Authorized Persons shall be authorized to sign such Transaction Documents beneficial to the IDB after review by legal counsel;

**RESOLVED**, this resolution shall remain in effect until expressly revoked or amended by a subsequent resolution of the Board.

I, \_\_\_\_\_, \_\_\_\_\_ of The Industrial Development Board of the County of Knox, and keeper of the official minutes of the Board of Directors thereof, do hereby certify that this Resolution was duly and lawfully adopted by its Board of Directors on March 19, 2024, at a duly called meeting at which a quorum was acting throughout, and I furthermore certify that such Resolution has not been amended or modified in any respect. Public notice of said meeting was given pursuant to and in compliance with all provisions of law.

The Industrial Development Board  
of the County of Knox

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

Dated: \_\_\_\_\_, 2024



**RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX  
AUTHORIZING ACCEPTANCE OF REAL PROPERTY AND A REAL ESTATE EXCHANGE  
AGREEMENT WITH WHEELER PROPERTIES, LLC, A MEMORANDUM OF  
UNDERSTANDING WITH THE COUNTY OF KNOX, TENNESSEE, AND A STANDARD  
DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS WITH MERIT  
CONSTRUCTION, INC.**

March 19, 2024

**WHEREAS**, The Industrial Development Board of the County of Knox (“IDB”) is an instrumentality formed by Knox County, Tennessee under Tenn. Code Ann. §§7-53-101, et seq. and is authorized thereunder to acquire, own, lease and dispose of certain real and personal properties, in order to (i) maintain and increase employment, (ii) promote and develop trade, new industry, and commerce, and (iii) induce manufacturing, industrial, governmental and commercial ventures to remain or locate in the State of Tennessee.

**WHEREAS**, the County of Knox, Tennessee (“County”) has requested that the IDB facilitate the exchange of certain real property currently owned by the County and located at 514 Bernard Ave., Knox County, Tennessee for certain real property owned or to be owned by Wheeler Properties, LLC (“WP”), and located at 0 Wheeler St and 2325 Wheeler Street (aka 2339 Wheeler Street), Knoxville, Tennessee (“Wheeler Property”), in accordance with and subject to the terms of a Memorandum of Understanding between the County and the IDB, the form of which has been delivered to the Board of Directors in connection with its consideration of this resolution (the “MOU”).

**WHEREAS**, in connection therewith, the County has requested that the IDB accept title to the Bernard Property, such real property currently being used by the Knox County Sheriff’s Office (“Sheriff’s Office”) principally as an impound lot and as the headquarters for the Sheriff’s Office’s Hazardous Devices Unit (“Hazardous Device Unit”), and convey the Bernard Property to WP in exchange for the Wheeler Property, to which the impound lot of the Sheriff’s Office and the headquarters for the Hazardous Device Unit will be subsequently relocated.

**WHEREAS**, pursuant to the MOU, the County will agree to fund in part the improvements to the Wheeler Property in an amount equal to \$1,400,000.00, and will agree to make certain other improvements to the Bernard Property and the Wheeler Property at its sole cost and expense, as further described in the MOU.

**WHEREAS**, the transfer of the Wheeler Property to the IDB, and the funding of the subsequent improvements by WP in an amount equal to \$2,564,285.00, are to be consummated in accordance with and subject to the terms of a Real Estate Exchange Agreement, the form of which has been delivered to the Board of Directors in connection with its consideration of this resolution (the “Exchange Agreement”).

**WHEREAS**, the exchange of such real property by the IDB and WP is to be conditioned upon the IDB making certain improvements to the Wheeler Property while holding title thereto, such improvements to be made solely with funds provided by the County and WP in accordance with and pursuant to a Standard Design-Build Agreement and General Conditions pertaining to the improvements to the Wheeler Property by and between the IDB and Merit Construction, Inc., the form of which has been delivered to the Board of Directors in connection with its consideration of this resolution (the “Construction Contract”), and some of which improvements will be performed by the County at its sole cost and expense, as further described in the MOU.

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX AS FOLLOWS:**

1. The Board finds that the consummation of the transactions described above and the improvements to the Wheeler Property will have the effect of maintaining and increasing employment and otherwise promoting new industry, commerce and trade in Tennessee and Knox County, in particular.

2. The IDB is hereby authorized and directed to accept title from the County of the Bernard Property pursuant to such deeds, assignments, assumptions, bills of sale and other documents of transfer, assignment and assumption deemed necessary or convenient by legal counsel to the IDB.

3. The IDB is hereby authorized and directed to accept title from WP of the Wheeler Property pursuant to such deeds, assignments, assumptions, bills of sale and other documents of transfer, assignment and assumption deemed necessary or convenient by legal counsel to the IDB.

4. The form, content, and provisions of the Real Estate Exchange Agreement, the MOU, and the Construction Contract as presented in this meeting of the Board of Directors, are in all particulars approved. Each of the Real Estate Exchange Agreement, the MOU, and the Construction Contract is to be in substantially the form now before this meeting of the Board of Directors, or with such changes therein as shall be approved by the officer or officers executing the Real Estate Exchange Agreement, the MOU, and the Construction Contract, and legal counsel to the Board. The execution of the Real Estate Exchange Agreement, the MOU, or the Construction Contract by the authorized officer or officers shall constitute evidence of his, her or their approval and approval of legal counsel of any and all such changes or revisions.

5. Each of the officers of the Board is hereby authorized and directed to execute and deliver and accept on behalf of the IDB the Real Estate Exchange Agreement, the MOU, and the Construction Contract. Such officers are, and each of them is, furthermore, hereby authorized to do all acts and things and execute all documents, from time to time, referenced therein, or as may be necessary or convenient to effect the transactions described herein and to carry out such transactions and to comply with the provisions of the Real Estate Exchange Agreement, the MOU, and the Construction Contract, and such other documents deemed necessary by legal counsel to the IDB.

6. The approvals contained herein are subject to the IDB receiving funds (or a commitment to provide funds) from the County and WP as may be necessary to pay for any and all improvements to the Wheeler Property required to be made by the IDB pursuant to the Real Estate Exchange Agreement, it being the intent of the Board of Directors that the IDB will not be required to use any of its own funds for such purposes.

7. All other acts of the officers which are in conformity with the purposes and intent of this resolution and in furtherance of consummating the Transactions are hereby approved and confirmed.

[The Remainder of this Page Intentionally Left Blank]

**STATE OF TENNESSEE  
COUNTY OF KNOX**

I, \_\_\_\_\_, \_\_\_\_\_ of The Industrial Development Board of the County of Knox (the "IDB"), do hereby certify that the foregoing is a true and complete extract of the minutes of the Board of Directors of the IDB at a meeting duly called and held on March 19, 2024, and sets forth so much of said minutes as in any way relates to the introduction, consideration and passage of the resolution therein set forth. Public notice of said meeting was given pursuant to and in compliance with all provisions of law.

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE COUNTY OF KNOX**

---

Chair

Dated: March 19, 2024





**MEMORANDUM OF UNDERSTANDING AND AGREEMENT**  
**Concerning Contribution of Costs relating to**  
**the Exchange and Development of certain Real Property**

This Memorandum of Understanding and Agreement (“Agreement”) is made and entered into in Knoxville, Knox County, Tennessee on the \_\_\_ day of \_\_\_\_\_, 2024, by and between the **County of Knox** (the “County”), a political subdivision of the State of Tennessee, a Home Rule Public Corporation and Charter Government, and the **Industrial Development Board of the County of Knox** (the “IDB”), a public nonprofit corporation, duly chartered and organized under the laws of the State of Tennessee, pursuant to applicable provisions of Tennessee law and the Knox County Code, including but not limited to Tennessee Code Annotated (“TCA”) Sections 7-53-101 *et seq.*

**WHEREAS**, a purpose of the IDB is to promote industrial development and to provide additional job opportunities in Knox County and the surrounding area and to pursue the statutory objectives for industrial development corporations authorized under the Act, and in connection therewith, is authorized to acquire, improve, and lease projects, including, without limitation, public buildings for any city, county or metropolitan government, or any public authority, agency or instrumentality of the state of Tennessee or of the United States of America;

**WHEREAS**, the County owns that certain tract of land located at 514 Bernard Ave, Knox County, Tennessee tax parcel 094EA021 (the “Bernard Property”), which the Knox County Sheriff’s Office currently uses as an impound lot and as the headquarters for the Knox County Sheriff’s Office Hazardous Devices Unit;

**WHEREAS**, Wheeler Properties, LLC (“Wheeler”) owns or will acquire those certain tracts of land located in Knoxville, Knox County, Tennessee, currently known as 0 Wheeler St and 2325 Wheeler Street (aka 2339 Wheeler Street), though a portion of the 2325 Wheeler Street (referred to as the Cell Tower Site) is to be subdivided prior to the acquisition by Wheeler and retained by a third party (collectively, the “Wheeler Property”);

**WHEREAS**, Wheeler, who is affiliated with Axle Logistics, LLC (“Axle”), desires to own and use the Bernard Property to provide additional parking facilities for Axle’s headquarters located in the vicinity of the Bernard Property, subject to further improvements being made thereon by the County, including, but not limited to, certain site work (the “Bernard Improvements”), for a total estimated cost of \$370,000.00;

**WHEREAS**, the County shall further make and perform certain improvements on the Wheeler property, including the purchase and placement of rock on site, for a total estimated cost of \$100,000 (the “County Wheeler Improvements”);

**WHEREAS**, the County desires to acquire and use the Wheeler Property for the relocation of (1) the impound lot currently located on the Bernard Property and (2) the headquarters for the Knox County Sheriff’s Office Hazardous Devices Unit, subject to further improvements being made thereon, including, but not limited to the paving of the property as a parking lot, striping and stormwater improvements (the “Wheeler Improvements”, and together with the Bernard Improvements and the County Wheeler Improvements, collectively, the “Projects”);

**WHEREAS**, Wheeler and the County have requested the IDB to serve as an intermediary in order to effect a land exchange, whereby (a) County will convey the Bernard Property to the IDB; (b) Wheeler will convey the Wheeler Property to the IDB and Wheeler will pay \$2,564,285.00 to the IDB, plus the total cost of the Performance Bond (defined herein), plus any closing costs related to the Wheeler Construction Contract (as defined herein) or otherwise related to the Wheeler Improvements or the Bernard Improvements; (c) County will perform the Bernard Improvements and the County Wheeler Improvements, and the IDB will perform the Wheeler Improvements; and (d) IDB will convey the Bernard Property to Wheeler and the Wheeler Property to the County;

**WHEREAS**, Wheeler and the IDB will enter into a Real Estate Exchange Agreement (the “Exchange Agreement”) with respect to the obligations of Wheeler in relation to exchange of the Bernard Property and the Wheeler Property;

**WHEREAS**, to facilitate the development of the Projects, the IDB would enter into certain agreements (“Project Documents”) pursuant to which:

- (i) the County would transfer the Bernard Property to the IDB;

(ii) the IDB shall have entered into a construction contract pertaining to the Wheeler Improvements with a general contractor satisfactory to the IDB having terms which are satisfactory to IDB in its sole discretion (“Wheeler Construction Contract”), and the County shall assume the amount of construction in excess of the Contract Price as agreed to in the Wheeler Construction Contract; and

(iii) the IDB shall have received a payment and performance bond from a surety acceptable to the IDB in its sole and absolute discretion respecting all of the general contractor’s obligations under the Wheeler Construction Contract (“Performance Bond”), paid for by Wheeler;

**WHEREAS**, the IDB desires to obtain administrative and technical assistance from the County Sheriff’s Office’s Department of Financing and Procurement for purposes of administering, and to otherwise enable the IDB to perform its duties under, the Project Documents and any and all other documents or agreements entered into in connection with the development of the Projects;

**WHEREAS**, the County is willing to cooperate with the IDB and provide the services of the County Sheriff’s Office’s Department of Financing and Procurement for this purpose;

**WHEREAS**, the IDB does not have its own proprietary funds as all such funds held or received by the IDB are dedicated to specific projects or are restricted pursuant to various agreements; and

**WHEREAS**, the County is willing to contribute \$1,400,000.00 and such other funds pursuant to TCA § 6-54-118 and other provisions of law to the IDB for the payment of all costs, expenses, obligations or liabilities incurred in connection with the Project Documents and the development of the Projects, exclusive of such payment for the Wheeler Improvements and the Bernard Improvements made by Wheeler in accordance with the Exchange Agreement.

**NOW THEREFORE**, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The County will transfer the Bernard Property to the IDB.
2. The County will make the County Wheeler Improvements and the Bernard Improvements.
3. The County will, as the IDB may require, provide administrative and technical services related to the administration of the Projects, the performance of the IDB’s duties under the Project Documents and the development of the Projects.
4. The County and the IDB, through their duly authorized employees and representatives, shall consult and cooperate with each other in all respects to coordinate the administration of the Wheeler Construction Contract and the development of the Projects.
5. In order to promote economic development in the County and pursuant to T.C.A. § 6-54-118, the County agrees to contribute \$1,400,000.00, plus sufficient funds to IDB to pay any and all costs, expenses, obligations or liabilities associated with the administering of the Construction Contract, the performance of the IDB’s duties under the Project Documents and the development of the Projects, including, without limitation, any and all costs, expenses, obligations or liabilities associated with (a) third party surveys, title examinations, environmental testing, soil testing or other due diligence concerning the development of the Projects and the real property upon which the Projects are located, (b) any accounting, legal or other technical advisors hired by the IDB in connection with the development of the Projects or in the enforcement or defense of any claims related to the Project Documents or the development of the Projects, and (c) any additional insurance obtained by IDB in connection with the development of the Projects.
6. In the event the IDB incurs any costs, expenses, obligations, or liabilities pursuant hereto for which the County has agreed to pay hereunder, upon notice from the IDB to the County thereof, the County (a) shall promptly make any payments owing to vendors, suppliers, contractors or other service providers (professional or otherwise) with respect thereto, or (b) if previously paid by the IDB, shall promptly reimburse the IDB for such amounts actually paid by the IDB with respect thereto.

7. This Agreement shall remain in full force and effect for the maximum period allowed by law, and shall only be terminated earlier upon the mutual agreement of the parties hereto, provided that the obligations of the County under paragraphs 3 and 4 hereof shall survive any such termination indefinitely.

*[Signature page follows]*

*[Signature page to Memorandum of Understanding]*

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Memorandum of Understanding and Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

KNOX COUNTY, TENNESSEE

BY: \_\_\_\_\_  
Glenn Jacobs (Date)  
Knox County Mayor

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
KNOX COUNTY LAW DIRECTOR

THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX

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



RESOLUTION

**A RESOLUTION OF THE COMMISSION OF KNOX COUNTY, TENNESSEE, REGARDING THE TRANSFER OF THE REAL PROPERTY LOCATED AT 514 BERNARD AVE TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX, TENNESSEE IN EXCHANGE FOR CERTAIN REAL PROPERTY LOCATED AT 0 WHEELER ST AND 2325 WHEELER STREET, AND THE EXECUTION AND DELIVERY OF A MEMORANDUM OF UNDERSTANDING IN CONNECTION WITH THE EXCHANGE AND DEVELOPMENT OF SAID REAL PROPERTY**

**RESOLUTION:** \_\_\_\_\_

**REQUESTED BY:** \_\_\_\_\_

**PREPARED BY:** KNOX COUNTY LAW  
DIRECTOR'S OFFICE

**APPROVED AS TO FORM AND CORRECTNESS:** \_\_\_\_\_  
DIRECTOR OF LAW

**APPROVED:** \_\_\_\_\_  
DATE

**VETOED:** \_\_\_\_\_  
DATE

**VETO OVERRIDE:** \_\_\_\_\_  
DATE

**MINUTE BOOK** \_\_\_\_\_ **PAGE** \_\_\_\_\_

**WHEREAS, the County of Knox (the "County") owns that certain tract of land located at 514 Bernard Ave, Knox County, Tennessee tax parcel 094EA021 (the "Bernard Property"), which the Knox County Sheriff's Office currently uses as an impound lot and as the headquarters for the Knox County Sheriff's Office Hazardous Devices Unit;**

**WHEREAS, Wheeler Properties, LLC (“Wheeler”) owns or will acquire those certain tracts of land located in Knoxville, Knox County, Tennessee, currently known as 0 Wheeler St and 2325 Wheeler Street (aka 2339 Wheeler Street), though a portion of the 2325 Wheeler Street (referred to as the Cell Tower Site) is to be subdivided prior to the acquisition by Wheeler and retained by a third party (collectively, the “Wheeler Property”);**

**WHEREAS, Wheeler, who is affiliated with Axle Logistics, LLC (“Axle”), desires to own and use the Bernard Property to provide additional parking facilities for Axle’s headquarters located in the vicinity of the Bernard Property, subject to further improvements being made thereon by the County, including, but not limited to, certain site work (the “Bernard Improvements”), for a total estimated cost of \$370,000.00;**

**WHEREAS, the County shall further make and perform certain improvements on the Wheeler property, including the purchase and placement of rock on site, for a total estimated cost of \$100,000 (the “County Wheeler Improvements”);**

**WHEREAS, the County desires to acquire and use the Wheeler Property for the relocation of (1) the impound lot currently located on the Bernard Property and (2) the headquarters for the Knox County Sheriff’s Office Hazardous Devices Unit, subject to further improvements being made thereon, including, but not limited to the paving of the property as a parking lot, striping and stormwater improvements (the “Wheeler Improvements”, and together with the Bernard Improvements and the County Wheeler Improvements, collectively, the “Projects”);**

**WHEREAS, Wheeler and the County have requested the IDB to serve as an intermediary in order to effect a land exchange, whereby (a) County will convey the Bernard Property to the IDB; (b) Wheeler will convey the Wheeler Property to the IDB and Wheeler will pay \$2,564,285.00 to the IDB, plus the total cost of the Performance Bond (defined herein), plus any closing costs related to the Wheeler Construction Contract (as defined herein) or otherwise related to the Wheeler Improvements or the Bernard Improvements; (c) County will perform the Bernard Improvements and the County Wheeler Improvements, and the IDB will perform the Wheeler Improvements; and (d) IDB will convey the Bernard Property to Wheeler and the Wheeler Property to the County;**

**WHEREAS, Wheeler and the IDB will enter into a Real Estate Exchange Agreement (the “Exchange Agreement”) with respect to the obligations of Wheeler in relation to exchange of the Bernard Property and the Wheeler Property;**

**WHEREAS, The Industrial Development Board of the County of Knox (“IDB”) is a nonprofit public corporation organized by Knox County as an industrial development board pursuant to Tenn. Code Ann. §7-53-301 et seq. (the “Act”) and as such is a public instrumentality of Knox County performing a public function; and**

**WHEREAS, to facilitate the development of the Projects, the IDB would enter into certain agreements (“Project Documents”) pursuant to which:**



**(i) the County would transfer the Bernard Property to the IDB;**

**(ii) the IDB shall have entered into a construction contract pertaining to the Wheeler Improvements with a general contractor satisfactory to the IDB having terms which are satisfactory to IDB in its sole discretion (“Wheeler Construction Contract”), and the County shall assume the amount of construction in excess of the Contract Price as agreed to in the Wheeler Construction Contract; and**

**(iii) the IDB shall have received a payment and performance bond from a surety acceptable to the IDB in its sole and absolute discretion respecting all of the general contractor’s obligations under the Wheeler Construction Contract (“Performance Bond”), paid for by Wheeler;**

**WHEREAS, the IDB (i) desires to obtain administrative and technical assistance from the County Sheriff’s Office’s Department of Financing and Procurement for purposes of administering, and to otherwise enable the IDB to perform its duties under, the Project Documents and (ii) does not have its own proprietary funds as all such funds held or received by the IDB are dedicated to specific projects; and**

**WHEREAS, the County is willing to cooperate with IDB and provide the services of the County Sheriff’s Office’s Department of Financing and Procurement and to contribute \$1,400,000.00 and such other funds pursuant to TCA § 6-54-118 and other provisions of law to the IDB for the payment of all costs, expenses, obligations or liabilities incurred in connection with the Project Documents and the development of the Projects, exclusive of such payment for the Wheeler Improvements and the Bernard Improvements made by Wheeler in accordance with the Exchange Agreement, all in accordance with a Memorandum of Understanding between the IDB and the County, the form of which has been submitted to the Commission of Knox County, Tennessee (the “Commission”) with this resolution (“Memorandum of Understanding”); and**

**WHEREAS, the Commission will designate the County Mayor to approve the Projects and to execute and deliver certain Project Documents.**

**NOW THEREFORE BE IT RESOLVED BY THE COMMISSION OF KNOX COUNTY AS FOLLOWS:**

**That the Commission adopts the Recitals to this Resolution in their entirety, as set forth above.**

**BE IT FURTHER RESOLVED, the Commission hereby finds that the IDB is a nonprofit public IDB organized by Knox County as an industrial development board pursuant to the Act and as such is a public instrumentality of Knox County performing certain public functions.**

**BE IT FURTHER RESOLVED, the Commission hereby authorizes the County to transfer, convey and assign all right, title and interest of the County in and to the Bernard Property to the IDB pursuant to such deeds of conveyance and assignments deemed necessary or**

appropriate by the County Mayor and his staff to accomplish such transfer and to facilitate the development of the Projects.

**BE IT FURTHER RESOLVED**, the form of Memorandum of Understanding is hereby approved, and the County is hereby authorized to enter into, execute and deliver such Memorandum of Understanding and to perform all obligations of the County specified thereunder.

**BE IT FURTHER RESOLVED**, the County Mayor is hereby authorized and directed to execute and deliver the aforementioned documents on behalf of the County in the form submitted to the County, or with such changes therein as shall be approved by the County Mayor, and to take such actions, from time to time, as he considers necessary or appropriate to carry out the purposes and intentions of this Resolution.

**BE IT FURTHER RESOLVED**, if any notifications are to be made to effectuate this Resolution, then the County Clerk is hereby requested to forward a copy of this Resolution to the proper authority.

**BE IT FURTHER RESOLVED**, this Resolution is to take effect from and after its passage, as provided by the Charter of Knox County, Tennessee, the public welfare requiring it.

\_\_\_\_\_  
Presiding Officer of the Commission          Date

\_\_\_\_\_  
County Clerk    Date

Approved: \_\_\_\_\_  
                                County Mayor                  Date

Vetoed: \_\_\_\_\_  
                                County Mayor                  Date



## REAL ESTATE EXCHANGE AGREEMENT

**THIS REAL ESTATE EXCHANGE AGREEMENT** (this “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024, by **THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX** (“IDB”) and **WHEELER PROPERTIES, LLC**, a Tennessee limited liability company, or assigns (“Wheeler”).

### RECITALS:

WHEREAS, the IDB has or will acquire from the County of Knox (the “County”) that certain tract of land located at 514 Bernard Ave., Knox County, Tennessee tax parcel 094EA021 which is described on **Exhibit A** attached hereto (the “Bernard Property”), which the Knox County Sheriff’s Office currently uses as an impound lot and as the headquarters for the Knox County Sheriff’s Office’s Hazardous Devices Unit;

WHEREAS, Wheeler is under those certain contracts (collectively the “Wheeler Contracts”) with Amageo, LLC and with Daniel J. Harber to acquire those certain tracts of land located in Knoxville, Knox County, Tennessee, currently known as 0 Wheeler St and 2325 Wheeler Street (aka 2339 Wheeler Street). A portion of the 2325 Wheeler Street (referred to as the Cell Tower Site) is to be subdivided prior to the acquisition by Wheeler and retained by the sellers of that property. The property to be acquired by Wheeler is described on **Exhibit B** attached hereto (the “Wheeler Property”). It being intended that Wheeler will convey to the IDB the Wheeler Property, substantially as described in **Exhibit B** after such subdivision (which for avoidance of doubt shall exclude the property described as the Cell Tower Site);

WHEREAS, the parties agree that the Bernard Property has a fair market value of \$1,225,000.00 and that the Wheeler Property has a fair market value of \$360,000;

WHEREAS, Wheeler, who is affiliated with Axle Logistics, LLC (“Axle”), desires to own and use the Bernard Property to provide additional parking facilities for Axle’s headquarters located in the vicinity of the Bernard Property, subject to further improvements being made thereon by the County pursuant to the MOU (defined herein), including, but not limited to, certain site work (the “Bernard Improvements”), for a total estimated cost of \$370,000.00;

WHEREAS, pursuant to the MOU (defined herein) between the IDB and the County, the County shall further make and perform certain improvements on the Wheeler Property, including the purchase and placement of rock on site, for a total estimated cost of \$100,000 (the “County Wheeler Improvements”);

WHEREAS, the IDB and the County are negotiating an interlocal agreement pursuant to which the County (1) will agree to fund in part the Wheeler Improvements (defined herein) in an amount equal to \$1,400,000.00, and (2) will agree to make the Bernard Improvements and the County Wheeler Improvements at its sole cost and expense (the “MOU”);

WHEREAS, the County desires to acquire and use the Wheeler Property for the relocation of (1) the impound lot currently located on the Bernard Property and (2) the headquarters for the Knox County Sheriff's Office's Hazardous Devices Unit, subject to further improvements being made thereon, including, but not limited to paving the property as a parking lot, striping and stormwater improvements (the "Wheeler Improvements");

WHEREAS, Wheeler and the County have requested the IDB to serve as an intermediary in order to effect a land exchange, pursuant to which (a) Wheeler conveys the Wheeler Property to the IDB at the Wheeler Property Closing; and (b) Wheeler pays \$2,564,285.00 to the IDB, plus the total cost of the Performance Bond (defined herein), plus any closing costs related to the Wheeler Construction Contract (as defined herein) or otherwise related to the Wheeler Improvements or the Bernard Improvements; (c) pursuant to the MOU, County will perform the Bernard Improvements and the County Wheeler Improvements; (d) the IDB will perform the Wheeler Improvements; and (e) the IDB will convey the Bernard Property to Wheeler and the Wheeler Property to the County.

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE ONE**

### **CONSIDERATION AND EXCHANGE**

The parties agree to an exchange of the properties, subject to the terms of this Agreement, as follows:

**Section 1.1** Bernard Property. Subject to the terms, conditions and provisions set forth below, IDB agrees to transfer and convey to Wheeler, and Wheeler agrees to acquire from the IDB all of IDB's right, title and interest in and to the Bernard Property, together with the Bernard Improvements and all other improvements thereon, and all easements, rights and appurtenances thereto together with all of the IDB's right, title and interest in licenses, agreements or other rights and interests relating to the Bernard Property, and Wheeler agrees to pay to the IDB the sum of \$2,564,285.00 to the IDB, plus the total cost of the Performance Bond (defined herein), plus any closing costs related to the Wheeler Construction Contract (as defined herein) or otherwise related to the Wheeler Improvements or the Bernard Improvements ("Purchase Cash"). The Purchase Cash shall be payable as follows: (i) at the Wheeler Closing the closing costs and any Performance Bond shall be paid into the IDB in full; and (ii) the balance of the Purchase Cash shall be payable to the IDB concurrently with the draw schedule (the "Draw Schedule") for the IDB with respect to the Wheeler Construction Contract with Merit Construction, Inc. ("Merit"), such that all payments of Purchase Cash due hereunder shall be made by Wheeler to the IDB at least five (5) business days in advance of when due pursuant to the Draw Schedule. The IDB will forward the Wheeler Construction Contract to Wheeler upon the IDB's receipt of the same from Merit. Except for a Change Order (as defined in the Wheeler Construction Contract) to which Wheeler consents, Wheeler's monetary obligations under this Agreement, shall not exceed the Purchase Cash

amount. If Wheeler is late making any payment of Purchase Cash due to be made hereunder, such payment(s) shall accrue interest at a rate equal to five percent (5%) per month until paid.

**Section 1.2** Wheeler Property. Subject to the terms, conditions and provisions set forth below, Wheeler agrees to transfer and convey to the IDB, and the IDB agrees to acquire from Wheeler all of Wheeler's right, title and interest in and to the Wheeler Property, together with all improvements thereon, and all easements, rights and appurtenances thereto together with all of Wheeler's right, title and interest in any licenses, agreements or other rights and interests relating to the Wheeler Property at the Wheeler Closing (defined herein).

**Section 1.2** Indemnification. Wheeler will indemnify, defend, and hold harmless the IDB, and its representatives, members, and subsidiaries (collectively, the "Indemnified Persons"), and will reimburse the Indemnified Persons for any action, suit, proceeding, hearing, investigation, charge, complaint, demand, injunction, judgment, order, decree, ruling, dues, penalties, fines, obligation, tax, lien, cost, fee, loss, liability, claim, damage, or expense (including costs of investigation and defense and reasonable attorneys' fees and expenses), arising from or related to any failure of Wheeler to pay any amount of Purchase Cash when due in accordance with the Draw Schedule.

## **ARTICLE TWO**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 2.1:** IDB's Representations. The IDB represents, warrants and covenants as follows:

(a) Title to Bernard Property. The IDB will convey at the Bernard Closing good, fee simple, marketable title to the Bernard Property, subject to Permitted Encumbrances.

(b) No Liens. To the knowledge of the IDB, there are no liens, claims, actions, suits or proceedings (including, without limitation, any condemnation or similar proceeding) relating to the Bernard Property or the transaction contemplated by this Agreement or any pending or to the best of IDB's knowledge, threatened liens, claims, actions, suits or proceedings (including, without limitation, any condemnation or similar proceeding) against the IDB or the Bernard Property, other than the Permitted Encumbrances.

(c) Status of IDB. The IDB has the full and unrestricted authority to enter into and carry out the terms of this Agreement and the person signing this Agreement on behalf of the IDB has the authority to do so.

**Section 2.2:** Wheeler's Representations. Wheeler represents, warrants and covenants as follows:

(a) Title to the Wheeler Property. Pursuant to the Wheeler Contracts, Wheeler is under contract to acquire good, fee simple, marketable title to the Wheeler Property, subject to Permitted Encumbrances.

(b) Not a Foreign Person. Wheeler is not a “Foreign Person” as defined in the Internal Revenue Service Code Withholding Section.

(c) Wheeler Contracts. The Wheeler Contracts are in full force and effect and Wheeler is not in default under any of its obligations under the Wheeler Contracts.

(d) No Liens. Except for real property taxes for 2024 and subsequent years, and mortgage liens to be released at Closing, there will not be liens, claims, actions, suits or proceedings (including, without limitation, any condemnation or similar proceeding) relating to the Wheeler Property or the transaction contemplated by this Agreement or any pending or to the best of Wheeler’s knowledge, threatened liens, claims, actions, suits or proceedings (including, without limitation, any condemnation or similar proceeding) against Wheeler or the Wheeler Property, other than the Permitted Encumbrances.

(e) Status of Wheeler. Wheeler has the full and unrestricted company authority to enter into and carry out the terms of this Agreement and the person signing this Agreement on behalf of Wheeler has the authority to do so.

**Section 2.3: Survival.** All of the representations, warranties and agreements of the parties set forth in Sections 2.1 and 2.2 and elsewhere in this Agreement shall be true upon the execution of this Agreement in all material respects, shall be deemed to be repeated at and as of the Closing Date (except as set forth in written notice delivered from one party to the other prior to the Closing Date, provided that there is a material adverse change in the representations, warranties and agreements of either party, the other party may terminate this Agreement). However, all representations, warranties and covenants contained in this Agreement shall expire and terminate as of the applicable Closing Date.

### **ARTICLE THREE**

#### **EXCHANGE**

At the Wheeler Closing, Wheeler shall convey the Wheeler Property to the IDB. Wheeler shall also pay the Purchase Cash to the IDB (in accordance with Section 1.1) to fund the Wheeler Improvements by the IDB. At the Bernard Closing, the IDB shall convey the Bernard Property to Wheeler. The Bernard Closing and the Wheeler Closing shall occur in separate closings as set forth in Article VI below.

### **ARTICLE FOUR**

#### **PRE-CLOSING EXAMINATIONS, INSPECTIONS, STUDIES AND TESTS AND IMPROVEMENTS TO BE MADE**

##### **Section 4.1. Physical Tests and Studies.**

(a) Wheeler has delivered to the IDB copies of all title insurance policies, surveys,

environmental reports, geotechnical reports and real estate tax bills, related to the Wheeler Property which are available to Wheeler. The IDB and its representatives shall have the right (but not the obligation), at IDB's sole cost, expense and risk, at any time after the date of this Agreement to conduct such physical tests and studies of the Wheeler Property and obtain such samples thereof as the IDB may deem appropriate, including without limitation intended, soils tests, groundwater tests, waste water system tests and inspections, engineering inspections, hazardous substances tests and inspections and air quality tests, subject however, to Wheeler's rights to obtain access for the same under the respective Wheeler Contracts. The IDB shall take reasonable efforts so that the IDB and the parties conducting physical studies on its behalf under this Section 4.1(a) shall not damage the Wheeler Property. The IDB shall promptly repair any damage to the Wheeler Property which may result from the exercise of the IDB's rights under this Section 4.1(a) to the condition substantially similar to that as of the date hereof and shall indemnify and save Wheeler and the seller under the Wheeler Contracts harmless from and against any claims relating to personal injury, property damage and mechanics liens arising from the IDB's activities under this Section 4.1(a) and shall be responsible for any indemnity obligations, insurance or other obligations for due diligence under the Wheeler Contracts. The foregoing indemnity shall survive Closing or the termination of this Agreement.

(b) The IDB will, as available, deliver to Wheeler copies of all title insurance policies, surveys, environmental reports, geotechnical reports and real estate tax bills, related to the Bernard Property which are available to the IDB. Wheeler and its representatives shall have the right, at Wheeler's sole cost, expense and risk, at any time after the date of this Agreement to conduct such physical tests and studies of the Bernard Property and obtain such samples thereof as Wheeler may deem appropriate, including without limitation intended, soils tests, groundwater tests, waste water system tests and inspections, engineering inspections, hazardous substances tests and inspections and air quality tests. Wheeler shall take reasonable efforts so that Wheeler and the parties conducting physical studies on its behalf under this Section 4.1(b) shall not damage the Bernard Property. Wheeler shall promptly repair any damage to the Bernard Property which may result from the exercise of Wheeler's rights under this Section 4.1(b) to the condition substantially similar to that as of the date hereof and shall indemnify and save the IDB harmless from and against any claims relating to personal injury, property damage and mechanics liens arising from Wheeler's activities under this Section 4.1(b). The foregoing indemnity shall survive Closing or the termination of this Agreement. Notwithstanding the right of the IDB to conduct such tests, the IDB acknowledges that any applicable inspection period has expired.

**Section 4.2. Inspection Period.** The parties acknowledge that each has received due diligence documents from the other with respect to the properties and any applicable inspection period has expired.

**Section 4.3. Property Status and Improvements for the Properties.**

(a) The IDB acknowledges and agrees that the IDB has had a full right of inspection with respect to the Wheeler Property full opportunity to satisfy itself as to the condition of the Wheeler Property and agrees that, except as otherwise expressly set forth herein, or in the documents to be executed and delivered by Wheeler at Closing, Wheeler has not made and will not make any representations or warranties, express or implied, pertaining to the Wheeler Property,



its condition, suitability for a particular purpose, or any other matters whatsoever, and that the IDB will be relying solely on its own inspections and investigations with respect to the Wheeler Property, its condition, suitability for a particular purpose, and all other matters whatsoever. IN ADDITION, THE IDB ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR REPRESENTATIONS AND WARRANTIES EXPRESSLY INCLUDED HEREIN, THE WHEELER PROPERTY IS BEING ACQUIRED AND WILL BE CONVEYED “AS IS, WHERE IS,” WITH ALL FAULTS AND DEFECTS, WHETHER PATENT OR LATENT, AS OF THE CLOSING DATE; PROVIDED, HOWEVER, WHEELER SHALL NOT BE RELIEVED FROM ANY LIABILITY WHEELER MAY HAVE TO THE IDB UNDER THE SPECIFIC TERMS OF THIS AGREEMENT IF ANY WARRANTY MADE BY WHEELER IN THIS AGREEMENT OR ANY OF THE CLOSING DOCUMENTS IS UNTRUE IN ANY MATERIAL RESPECT, SUBJECT TO THE LIMITATIONS CONTAINED HEREIN.

(b) After the Closing of the Wheeler Property, the IDB shall effect the Wheeler Improvements using the Purchase Cash to fund the cost of the Wheeler Improvements; provided, however, that should the IDB effect any change order in connection with the scope, size or style of the Wheeler Improvements, then the IDB shall bear all costs associated with such change orders. If a change order is effected with Wheeler’s consent in connection with the scope, size or style of the Wheeler Improvements, then Wheeler shall bear all costs associated with such change orders.

(c) Prior to the Closing of the Wheeler Property, the IDB has contracted with the County pursuant to the MOU for the County, at the County’s expense, to cause those certain improvements including the paving of the property as a parking lot, striping and stormwater improvements to be made to the Bernard Property as further depicted on Exhibit C, for a total estimated cost of \$370,000.00 (the “Bernard Improvements”).

(d) WHEELER ACKNOWLEDGES AND AGREES THAT THE BERNARD PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY AND ALL BERNARD IMPROVEMENTS, IS BEING ACQUIRED AND WILL BE CONVEYED “AS IS, WHERE IS”, WITH ALL FAULTS AND DEFECTS, WHETHER PATENT OR LATENT, AS OF THE CLOSING DATE.

## ARTICLE FIVE

### SURVEY, TITLE, HAZARDOUS SUBSTANCE REPORT, ACCESS

**Section 5.1. Title Insurance Commitment/Policies.** Wheeler has obtained, at Wheeler’s expense, and delivered to the IDB, a current title insurance commitment (the “Bernard Property Commitment”) for an owner’s extended coverage policy of title insurance (the “Bernard Property Title Policy”), on an ALTA Form acceptable to Wheeler from an agent for a nationally recognized title insurance company acceptable to the parties (the “Title Insurance Company”), in an amount to be established, insuring Wheeler as the owner of fee simple title to the Bernard Property subject only to the Permitted Encumbrances (as defined below). The IDB has waived objections to the Bernard Property Commitment. Wheeler shall obtain, at Wheeler’s expense, a current title insurance commitment (the “Wheeler Property Commitment”) for an owner’s extended coverage policy of title insurance (the “Wheeler Property Title Policy”) with respect to the Wheeler

Property, on an ALTA Form acceptable to the IDB from an agent for a nationally recognized title insurance company acceptable to the parties (the “Title Insurance Company”), in an amount equal to the purchase price of the Wheeler Property under the Wheeler Contracts, insuring the IDB as the owner of fee simple title to the Wheeler Property subject only to the Permitted Encumbrances. Wheeler has waived any objections to the Wheeler Property Commitment. The term “Permitted Encumbrances” as respects the Bernard Property shall mean (a) any and all items referenced as Schedule B, Section II, of the Bernard Property Commitment, (b) any and all items which would be ordinarily be depicted on a true and accurate survey of the Bernard Property, (c) liens for real property taxes for 2024 and subsequent years, and (d) any and all encumbrances arising after the date of the Bernard Property Title Commitment to which Wheeler consents in writing. The term “Permitted Encumbrances” as respects the Wheeler Property shall mean (a) any and all items referenced in Schedule B, Section II, of the Wheeler Property Commitment, (b) any and all items which would ordinarily be depicted on a true and accurate survey of the Wheeler Property, and (c) liens for real property taxes for 2024 and subsequent years.

**Section 5.2. Survey; Plat.** Within five (5) business days after the date of this Agreement, each party shall deliver to the other party a copy of its most recent survey(s) of its Property. Wheeler may obtain, at Wheeler’s expense, a survey of the Bernard Property (the “Bernard Survey”). The IDB may obtain, at Wheeler’s expense, a survey of the Wheeler Property (the “Wheeler Survey”).

**Section 5.3. Hazardous Materials and Geotechnical Report.**

(a) Wheeler has obtained a Phase I Environmental Survey of each of the Bernard Property and the Wheeler Property addressed to both the IDB and Wheeler and has delivered true and correct copies thereof to the IDB. The IDB and Wheeler have waived any objections as to the same.

(b) Wheeler has obtained a geotechnical report of the Wheeler Property addressed to both the IDB and Wheeler and has delivered a true and correct copy thereof to the IDB. The IDB will use reasonable efforts to obtain the County’s consent to waive any objections to the same.

**ARTICLE SIX**

**CLOSING**

**Section 6.1. Closing Date.** The consummation of the exchange of the Wheeler Property and the Bernard Property herein contemplated (such consummation being herein referred to as the “Closing” and the date thereof being referred to as the “Closing Date”) shall take place as follows: (a) the Closing of the transfer of the Wheeler Property to the IDB shall occur within 5 days of the acquisition of the Wheeler Property by Wheeler but no later than [REDACTED], 2024 (“Wheeler Closing” and the date thereof, the “Wheeler Closing Date”); (b) the Closing of the transfer of the Bernard Property to Wheeler shall occur within 21 days following the later of the (i) the date of the final completion of the Bernard Improvements to the Bernard Property and (ii) the date of the final completion of the Wheeler Improvements (“Bernard Closing”, and the date

thereof, the “Bernard Closing Date”). In no event shall the Bernard Closing occur later than [REDACTED], 2024].

**Section 6.2. Place of Closing.** The Closings shall take place in Knoxville, Tennessee in such manner (including exchange of documents via the mail), as may be mutually agreed upon by the parties.

## **ARTICLE SEVEN**

### **CONSUMMATION OF EXCHANGE AND CONDITIONS TO CLOSING**

The Closings shall be consummated as follows:

**Section 7.1. Wheeler Property Closing Deliverables.**

(a) Wheeler shall deliver to the IDB at the Wheeler Closing the following documents dated as of the Wheeler Closing Date, the delivery, content and accuracy of which shall be a condition to the IDB’s obligation to consummate the exchange herein contemplated:

(i) Special Warranty Deed. A special warranty deed, in form and substance satisfactory to the IDB, with full covenants of title, in recordable form duly executed by Wheeler and conveying to the IDB good, fee simple, and insurable marketable title to the Wheeler Property with the legal description provided in the Wheeler Survey, subject only to the Permitted Encumbrances (“Wheeler Deed”);

(ii) Owner’s Affidavit. An Affidavit in form satisfactory to the Title Company, stating that all bills have been paid for any improvements to the Wheeler Property and sufficient to allow the Title Company to remove any “standard” exceptions contained in the Commitment;

(iii) Authority of Wheeler. Documentation (including resolutions, if applicable) in form and substance satisfactory to the IDB evidencing the fact that Wheeler has the full and unrestricted lawful power to enter into and carry out the terms of this Agreement and execute and deliver the documents described herein;

(iv) Non-Foreign Statement. A sworn statement that Wheeler is not a “foreign person”, or a non-resident alien as defined by the Internal Revenue Code and the regulations promulgated thereunder in the form required by Treas. Regs. Section 1445;

(v) Releases. Releases of any deeds of trust or liens on the Wheeler Property; and

(vi) Assignment of Wheeler Contracts. Wheeler will execute and deliver to the IDB an assignment of all rights to enforce representations and warranties of Wheeler under the Wheeler Contracts.

(b) IDB Closing Deliverables. None.

**Section 7.2 Bernard Property Closing Deliverables**.

(a) At the Bernard Closing, the IDB shall deliver to Wheeler at the Bernard Closing the following documents dated as of the Bernard Closing Date, the delivery, content and accuracy of which shall be a condition to Wheeler's obligation to consummate the exchange herein contemplated:

(i) Quitclaim Deed. A quitclaim deed, in form and substance satisfactory to Wheeler, with full covenants of title, in recordable form duly executed by the IDB and conveying to Wheeler title to the Bernard Property with the legal description provided in the Bernard Survey, subject only to the Permitted Encumbrances;

(ii) Owner's Affidavit. An Affidavit in form satisfactory to the Title Company, stating that all bills have been paid for any improvements to the Bernard Property and sufficient to allow the Title Company to remove any "standard" exceptions contained in the Commitment;

(iii) Authority of the IDB. Documentation (including resolutions, if applicable) in form and substance satisfactory to Wheeler evidencing the fact that the IDB has the full and unrestricted lawful power to enter into and carry out the terms of this Agreement and execute and deliver the documents described herein;

(iv) Non-Foreign Statement. A sworn statement that the IDB is not a "foreign person" or a non-resident alien as defined by the Internal Revenue Code and the regulations promulgated thereunder in the form required by Treas. Regs. Section 1445;

(v) Releases. Releases of any deeds of trust or liens on the Bernard Property; and

(vi) Bernard Improvements. The Bernard Improvements shall be complete and paid in full as of the Closing Date.

(b) Wheeler Closing Deliverables. None.

**Section 7.3. Further Conditions to Obligations**. The following conditions must occur and/or be satisfied as an additional condition precedent to each party's obligation to consummate the transactions herein contemplated by the applicable Closing Date (unless waived by such party) and if such conditions are not met to the satisfaction of either party, it may terminate this Agreement.

(a) Each party shall be able to obtain the applicable Title Policy as described in

Section 5.1;

(b) There shall be no condemnation or eminent domain proceedings pending or threatened against the Wheeler Property or the Bernard Property or any part thereof and neither party shall have received any notice, written or oral, of the desire of any public authority or other entity to take or use the Wheeler Property (other than the County's interest pursuant to the MOU) or the Bernard Property or any part thereof;

(c) There shall be no material damage to the Bernard Property or the Wheeler Property by fire or other casualty; provided that as it relates to the Bernard Property at the Bernard Property Closing, the Bernard Improvements shall be complete and paid in full by the IDB, with all proper lien waivers and notice of completion achieved;

(d) Each party shall have complied, in all material respects, with all covenants and provisions required by this Agreement to be complied with by it before, on, or as of the Closing Date;

(e) The representations and warranties of each party in this Agreement shall be true and correct in all material respects on and as of the Closing Date.

(f) Wheeler shall have acquired the Wheeler Property to the Wheeler Contracts such that Wheeler is ready, willing and able to deliver good, insurable and indefeasible fee simple title to the Property to Purchaser, as contemplated herein. If Wheeler has not obtained fee simple as of the Wheeler Closing Date, either party may terminate this Agreement without any obligation or damages owed to the other party, other than indemnification provisions which survive closing.

(g) With respect to the IDB's obligation to acquire the Wheeler Property,

(i) the IDB shall have entered into a construction contract pertaining to the Wheeler Improvements with a general contractor satisfactory to the IDB having terms which are satisfactory to the IDB in its sole discretion ("Wheeler Construction Contract");

(ii) the IDB shall have received a payment and performance bond from a surety acceptable to the IDB in its sole and absolute discretion respecting all of the general contractor's obligations under the Wheeler Construction Contract ("Performance Bond"); and

(iii) the IDB and the County shall have entered into the MOU.

If any closing condition shall not have been satisfied by the applicable Closing Date, then each party shall have the option to (1) extend the applicable Closing Date for additional periods of thirty (30) days each to permit additional time for such closing condition to be satisfied, or (2) at the applicable Closing Date (as such may be so extended pursuant to the immediately preceding clause) if a closing condition has not been satisfied. Upon such termination, the parties shall be relieved from all of their respective obligations under this Agreement.

**Section 7.4. Title Insurance Premiums; Documentary Transfer Fees and Taxes; Survey Cost.**

(a) Wheeler shall pay all state transfer fees and taxes and recording costs imposed on or in connection with the conveyance of the Bernard Property. Wheeler shall pay all premiums and other costs associated with the IDB Title Policy and the IDB Commitment, and the costs of the Bernard Survey.

(b) Wheeler shall pay all state transfer fees and taxes and recording costs imposed on or in connection with the conveyance of the Wheeler Property. Wheeler shall pay all premiums and other costs associated with the Wheeler Title Policy and the Wheeler Commitment, and the costs of the Wheeler Survey.

(c) Wheeler will pay the cost of any closing escrow fee.

**Section 7.5. Real Estate Commission.** Wheeler and the IDB each warrant to the other that they shall be responsible for any broker that either engages directly (but not for the other party), and each hereby indemnifies and holds the other harmless from and against any and all claims of any broker or agent so claiming.

**Section 7.6. Costs of the Parties.** All costs or expenses of performance of the obligations hereunder and the consummation of the transactions contemplated herein which have not been specifically assumed by either party under the terms hereof shall be borne by the party incurring such cost or expense, except that any legal fees of the IDB shall be paid by Wheeler.

## **ARTICLE EIGHT**

### **CLOSING ADJUSTMENTS AND APPORTIONMENTS.**

All of the items of income and expense related to the Wheeler Property and the Bernard Property (the "Properties"), including, without limitation, ad valorem taxes payable for the tax year in which the closing takes place, shall be apportioned or adjusted between Wheeler and the IDB. All apportionments and adjustments shall be made as of 11:59 P.M. on the applicable Closing Date, except those items which are not susceptible of determination on the Closing Date, which shall be apportioned or adjusted after the Closing, but computed as of the Closing Date. To the extent that the apportionments and adjustments at the Closing are not based upon final figures or there are any errors or omissions in the calculation or determination thereof, promptly after notice of such final figures or errors or omissions, the parties shall readjust or reapportion and make the payment required as a result thereof.

The provisions of this Article 8 shall survive Closing. The following shall be prorated:

**Section 8.1. Real Estate Taxes.** All taxes and assessments (general and special, ordinary and extraordinary, foreseen and unforeseen), excises, levies and permit fees (collectively, "Impositions"), levied, charged, confirmed, imposed or assessed against or payable out of or which

have become a lien against the Properties or any part thereof and any taxes hereafter imposed in lieu of or in addition thereto; provided, however, that definition of the term Impositions shall not include any income, profits, revenues, gross receipts, franchise, capital stock or levy, estate, inheritance, succession, transfer or gains taxes imposed upon the Seller.

## ARTICLE NINE

### DEFAULT; REMEDIES ON DEFAULT

**Section 9.1. Default.** If a breach or default by either party (each a “Party”) in the performance of their respective obligations hereunder or if a representation or warranty proves to be untrue in any respect, the Party claiming that such a breach has occurred shall give written notice to the breaching Party designating such default. The breaching Party shall have a period of sixty (60) days following the effective date of said notice within which to correct the default, or in the case of a default which is of a nature that cannot reasonably be corrected within such sixty (60)-day period, within which to commence action to correct the default. In the event that the breaching Party shall fail to correct such default within said sixty (60)-day period or, if applicable, to commence action to correct such default within said sixty (60)-day period and thereafter diligently to pursue the same to completion, the non-breaching Party shall have the following rights: (a) if such default occurs prior to the Wheeler Closing Date, to terminate this Agreement and all rights, duties, and obligations of the Parties by giving written notice thereof to the defaulting Party, and in such instance, the Parties shall each be relieved from any and all further obligations arising under this Agreement, and if Wheeler is the defaulting Party, then the IDB shall be entitled to recover from Wheeler all out of pocket costs, including reasonable attorney’s fees, incurred by the IDB in connection with this Agreement or the enforcement thereof; or (b) by legal action to compel specific performance by the non-breaching Party of its obligations hereunder and/or to recover damages from the breaching Party resulting from said breach. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any Party aggrieved as against the other Party for a breach or threatened breach of any provisions hereof. Neither party shall require a bond or other surety in any proceeding brought by the other party to specifically enforce this Agreement.

**Section 9.2. Effect of Termination.** If this Agreement is terminated for any reason, each party shall deliver to the other party within ten (10) days after such termination all copies and originals of documents delivered by such party before, on or after the date hereof with respect to the Properties, together with all copies and originals of all surveys, engineering reports, inspection reports, cost estimates, site plans and all documentation obtained by or on behalf of such party with respect to the Properties. The foregoing requirement to deliver such documents, surveys, engineering reports, inspection reports, cost estimates, site plans and documentation shall survive such termination.

## ARTICLE TEN

### MISCELLANEOUS PROVISIONS

**Section 10.1. Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior understandings or agreements between the parties.

**Section 10.2. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and assigns.

**Section 10.3. Waiver; Modification.** Failure by either party to insist upon or enforce any of their rights shall not constitute a waiver thereof, and nothing shall constitute a waiver of such party's rights to insist upon strict compliance with the provisions hereof. Either party hereto may waive the benefit of any provision or condition for its benefit contained in this Agreement. No oral modification hereof shall be binding upon the parties, and any modification shall be in writing and signed by the parties.

**Section 10.4. Governing Law.** This Agreement shall be governed by and construed under the laws of Tennessee.

**Section 10.5. Article Headings.** The article headings as herein used are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth or limit the provisions or scope of any Article.

**Section 10.6. Date Hereof.** For purposes of this Agreement, the date hereof shall mean the latest date of execution of this Agreement by all parties hereto.

**Section 10.7. Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be required. All such counterparts shall collectively constitute a single agreement.

**Section 10.8. Time of Essence.** TIME IS OF THE ESSENCE OF THIS AGREEMENT.

**Section 10.9. Subsequent Documentation.** The parties agree that they will, at any time, prior to, at or after Closing, duly execute and deliver to the other any additional documents and instruments which are customary and which must necessarily be executed in order to consummate the exchange contemplated herein, and the failure of either party to demand such documents or instruments at or before the Closing shall not alleviate the obligation of the parties to execute and deliver same at any time, upon the demand.

**Section 10.10. Assignment.** Either party may freely assign the rights and delegate the duties assumed by it as a result hereof to (a) an entity in which such party or one or more of its principals holds more than a 33% ownership interest (the "Permitted Assignee") but to no other person or entity. No further assignment of this Agreement shall be permitted by either party or the Permitted Assignee without other party's prior written approval. Any such assignment or delegation shall not release or excuse the assigning party from its liability under this Agreement. Upon the written assignment by one party delivered to the other, such party agrees to accept the



performance of the Permitted Assignee and to perform this Agreement for the benefit of the Permitted Assignee.

**Section 10.11 Guaranty.** By its signature below, Axle hereby joins in this agreement for the purpose of guaranteeing the payment and performance of all obligations of Wheeler pursuant to this Agreement.

## ARTICLE ELEVEN

### NOTICES

All notices, requests, consents and other communications hereunder shall be in writing and shall be personally delivered or mailed by first class registered or certified mail, return receipt requested, postage prepaid:

(a) If to the IDB: The Industrial Development Board  
of the County of Knox  
17 Market Square #201  
Knoxville, Tennessee 37902  
Attn: Mac McWhorter

With copy to: Samuel C. Louderback  
Egerton, McAfee, Armistead & Davis, P.C.  
900 S. Gay Street, Ste. 1400  
Knoxville, TN 37902

or to such other address as may have been furnished to Wheeler in writing by the IDB.

(b) If to Wheeler: Lawler Wood, LLC  
900 S. Gay Street, Ste. 1600  
Knoxville, TN 37902  
Attn: Joe Petre

With copy to: Lee A. Popkin, Esq.  
Long, Ragsdale & Waters, P.C.  
1111 Northshore Drive  
Suite S-700  
Knoxville, Tennessee 37919

or to such other address as may have been furnished to the IDB in writing by Wheeler.

Any such notice, request, consent or other communication shall be deemed to be sufficiently given or served for all purposes when presented personally or when sent by national recognized overnight courier service or by registered or certified U.S. Mail, postage prepaid, to any party hereto at the address set forth above or at such other address as any party shall subsequently designate in writing. Notwithstanding the foregoing, no change of address from the

addresses set forth above shall be effective until notice of such change of address is actually received by the parties to whom said notice has been sent.

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

**“IDB”**

THE INDUSTRIAL DEVELOPMENT BOARD OF THE  
COUNTY OF KNOX

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

Its: \_\_\_\_\_

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

**“WHEELER”**

WHEELER PROPERTIES, LLC

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

Its: \_\_\_\_\_

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

AXLE LOGISTICS, LLC

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

Its: \_\_\_\_\_

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

**EXHIBIT A**  
**BERNARD PROPERTY**  
**EXHIBIT A**

TRACT NO. 1

SITUATED in District Three (3) of Knox County, Tennessee, within the Sixth (6th) Ward of the City of Knoxville, Tennessee, being part of Lots 406, 407, 408 and 409 in the Dameron's Addition to Knoxville, Tennessee, as shown by map of said addition on record in the Register's Office for Knox County, Tennessee, and being more particularly described as follows:

BEGINNING at a point in the northwest line of Jennings Street and in the southeast line of said Lot 406, said point also being 15 feet measured northeastwardly along a radial line from a point in the center line of the main track of the Second Creek Spur of the Louisville and Nashville Railroad Company; thence northwestwardly along a line 15 feet northeastwardly from and parallel to said center line of main track of the Second Creek Spur, a distance of 413 feet to a point in the northwest line of said Lot 409; thence northwestwardly along said northwest line of Lot 409, a distance of 285 feet to a point in the northeast corner of said Lot 409; thence southeastwardly along the northeast line of Lots 409, 408, 407 and 406, a distance of 382 feet to a point in the southeast corner of Lot 406, said point being in the northwest line of said Jennings Street; thence southwestwardly along said southeast line of Lot 406 and the northwest line of Jennings Street, a distance of 261 feet to the POINT OF BEGINNING, containing 2.548 acres, more or less.

TRACT NO. 2

SITUATED in District Three (3) of Knox County, Tennessee, within the Sixth (6th) Ward of the City of Knoxville, Tennessee, and being known and designated as Lots 410 and 411, Block 41, of Dameron's Addition to the City of Knoxville, Tennessee, a map or plat of which addition is of record in the Register's Office for Knox County, Tennessee in Book O, Volume 3, page 502 (sic), to which reference is made and said property being particularly described as follows:

BEGINNING at a stake in the southern line of Munson Street at its point of intersection with the western line of the right of way of the Knoxville & Ohio RR, now Southern Railway Company; thence southerly with the western line of said Southern Railway Company's right of way, 200 feet to a stake; thence westwardly at right angles to said right of way line, 296 feet, more or less, to Van Street; thence northerly with Van Street, 172 feet to the southern line of Munson Street; thence eastwardly with the south line of Munson Street, 296 feet, more or less, to the POINT OF BEGINNING. (Munson Street is now known as Bernard Avenue, Southern Railway Company is now Norfolk and Southern Railway, and Van Street is now closed.)

TRACTS 1 AND 2 BEING the same property conveyed to Knox County, Tennessee, a political subdivision of the State of Tennessee, by Quit Claim Deed from Knoxville Utilities Board, dated May 2, 2014, filed for record as Instrument No. 201405020062407 in the Knox County Register of Deeds Office.

**EXHIBIT B**  
**WHEELER PROPERTY**

(JOE DO WE HAVE THE REVISED PLAT PROPERTY)

**EXHIBIT C**  
**BERNARD IMPROVEMENTS**





**ConsensusDocs® 415**  
**STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS**  
**BETWEEN OWNER AND DESIGN-BUILDER (Lump Sum Price)**



This page is solely for the information and convenience of ConsensusDocs users, and is not a part of the contract. Gray boxes indicate where you should click and type in your project information. The yellow shading is a Word® default function that displays editable text. Shading can be turned off by going to the Review tab, select “Restrict Editing” button and uncheck “Highlight the regions I can edit”. In Word 2003 you will find this option under the Tools tab, Options, Security tab, Protect Document button.

**EMBEDDED INSTRUCTIONS** are provided solely to help you complete the document. To display or hide instructions select the “¶” button under the “Home” tab to show all formatting marks.

- Red Boxes:** Instructions for fields that are typically required to complete contract.
- Blue Boxes:** Instructions for fields that may or may not be required for a complete contract.
- Green Boxes:** Provide general instructions or ConsensusDocs Coalition Guidebook comments, which can be found at [www.ConsensusDocs.org/guidebook](http://www.ConsensusDocs.org/guidebook).

This document was developed through a collaborative effort of organizations representing a wide cross-section of the design and construction industry. This document has important legal and insurance consequences, and it is not intended as a substitute for competent professional services and advice. This document must be reviewed and adapted to meet your project-specific needs. Federal, State and Local laws may vary with respect to the applicability or enforceability of specific provisions in this document. **CONSENSUSDOCS SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASER ASSUMES ALL LIABILITY WITH RESPECT TO THE USE OF THIS DOCUMENT, AND CONSENSUSDOCS AND ANY OF THE ORGANIZATIONS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM SUCH USE.** For additional information, please contact ConsensusDocs, 2300 Wilson Blvd, Suite 300, Arlington, VA 22201, 866-925-DOCS (3627), [support@consensusdocs.org](mailto:support@consensusdocs.org) or [www.ConsensusDocs.org](http://www.ConsensusDocs.org).



**ConsensusDocs® 415**

**STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS  
BETWEEN OWNER AND DESIGN-BUILDER (Lump Sum Price)**

**TABLE OF ARTICLES**

1. AGREEMENT
2. GENERAL PROVISIONS
3. DESIGN-BUILDER'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. CONTRACT TIME
7. CONTRACT PRICE
8. CHANGES IN THE WORK
9. PAYMENT
10. INDEMNITY, INSURANCE, AND BONDS
11. SUSPENSION, NOTICE TO CURE, AND TERMINATION
12. DISPUTE MITIGATION OR RESOLUTION
13. MISCELLANEOUS
14. CONTRACT DOCUMENTS

**ARTICLE 1 AGREEMENT**

Job Number: [ ]

Account Code: [ ]

This Agreement is made this [ ] Day of [ ] in the year [ ], by and between the

OWNER: The Industrial Development Board of the County of Knox  
17 Market Street, Suite 201  
Knoxville, TN 37902

and the

DESIGN-BUILDER: Merit Construction, Inc.  
10435 Dutchtown Road  
Knoxville, TN 37932

Tax identification number (TIN): 62-1143997  
Contractor Licensing No., if applicable: 20853  
Design Professional Licensing No. in the State of the Project: 231156  
for services in connection with the following:

PROJECT: Knox County Sheriff Impound Lot  
2339 Wheeler Street  
Knoxville, TN 37917

**ARTICLE 2 GENERAL PROVISIONS**

2.1 TEAM RELATIONSHIP Each Party agrees to act on the basis of trust, good faith, and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.1 Neither Design-Builder nor any of its agents or employees shall act on behalf of or in the name of Owner unless authorized in writing by Owner's Representative.

2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest; (b) promptly disclose to the other Party any conflicts of interest which may arise. Each Party warrants it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Design Professional, Subcontractors, Subsubcontractors, Suppliers or Others, to secure preferential treatment.

2.3 DESIGN PROFESSIONAL Architectural and engineering services shall be procured from licensed, independent design professionals retained by Design-Builder or furnished by licensed employees of Design-Builder, as permitted by the Law. The person or entity providing architectural and engineering services shall be referred to as Design Professional. If Design Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between Design-Builder and Design Professional.

2.3.1 STANDARD OF CARE Design Professional shall furnish and provide the architectural and engineering services necessary to design the Project in accordance with Owner's requirements, as outlined in Owner's Program and other relevant data defining the Project. The architectural and engineering services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity, during the time in which the Services are provided.

## 2.4 DEFINITIONS

2.4.1 "Agreement" means this ConsensusDocs 415 Standard Design-Build Agreement and General Conditions Between Owner and Design-Builder (Lump Sum Price), as modified, amendments, exhibits, addenda, and attachments made part of this Agreement upon its execution. Refer to Section 14.1.

2.4.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.4.3 A "Change Order" is a written order signed by Owner and Design-Builder after execution of this Agreement, indicating changes in the scope of the Work or Contract Time, including substitutions proposed by Design-Builder and accepted by Owner.

2.4.4 "Construction Schedule" is the document prepared by Design-Builder that specifies the dates on which Design-Builder plans to begin and complete various parts of the construction phase services Work, and the Project, including dates on which information and approvals are required from Owner.

2.4.5 The "Contract Documents" consist of those documents identified in §14.1.

2.4.6 The "Contract Time" is the period between the Date of Commencement and total time authorized to achieve Final Completion.

2.4.7 "Day" means calendar day.

2.4.8 "Date of Commencement" is as provided for in §6.1.

2.4.9 "Defective Work" is any portion of the Work not in conformance to the requirements of the Contract Documents.

2.4.10 "Final Completion" occurs on the date when Design-Builder's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable.

2.4.11 A Hazardous Material is any substance or material identified now or in the future as hazardous under any Laws or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up.

2.4.12 "Interim Directive" is any written order containing Work instructions that is signed by Owner after execution this Agreement and before Substantial Completion to the Work directed by Owner.

2.4.13 "Law" means a federal, state or local law, ordinance, code, rule, or regulation applicable to the Work with which Design-Builder must comply that are enacted as of the Agreement date.

2.4.14 "Others" means Owner's other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, subsubcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

2.4.15 "Overhead" shall mean (a) payroll costs and other compensation of Design-Builder's employees in Design-Builder's principal and branch offices; (b) general and administrative expenses of Design-Builder's principal and branch offices including charges against Design-Builder for delinquent payments; and (c) Design-Builder's capital expenses, including interest on capital used for the Work.

2.4.16 The "Owner" is the person or entity identified in ARTICLE 1, and includes Owner's representative. The parties acknowledge and agree that upon completion of the Project, The Industrial Development Board of the County of Knox will transfer the property to Knox County, Tennessee, and that the term "Owner" shall include Knox County, Tennessee.

2.4.17 The "Owner's Program" is a description of Owner's objectives, budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements, together with Schematic Design Documents which shall include drawings, outline specifications, and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the Worksite.

2.4.18 The "Parties" are collectively Owner and Design-Builder.

2.4.19 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by Owner or Others.

2.4.20 "Project schedule" A schedule that shows the timing and sequencing of the design and construction required to meet the time criteria set forth in Owner's Program. The Project includes the Construction Schedule and is coordinated with design phase service activities.

2.4.21 A "Subcontractor" is a person or entity retained by Design-Builder as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or any separate contractor employed by Owner or any separate contractor's subcontractors.

2.4.22 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond

Design-Builder's control. This date shall be confirmed by a certificate of Substantial Completion signed by The Parties.

2.4.23 A "Subsubcontractor" is a party or entity who has an agreement with a Subcontractor or other Subsubcontractor, or Supplier to perform any portion of the Work or to supply material or equipment.

2.4.24 A "Supplier" is a person or entity retained by Design-Builder to provide material and equipment for the Work.

2.4.25 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.26 The "Work" is the design services procured in accordance with §3.1, the construction services provided in accordance with §3.2, additional services in accordance with §3.11, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.4.27 "Worksite" means the geographical area of the Project location mentioned in ARTICLE 1 where the Work is to be performed

### **ARTICLE 3 DESIGN-BUILDER'S RESPONSIBILITIES**

3.1 DESIGN SERVICES Pursuant to a mutually agreeable schedule, Design-Builder shall submit for Owner's written approval, as applicable, Design Development Documents or Construction Documents, based on the Contract Documents in existence at the time of the execution of this Agreement or any further development of Contract Documents that have been approved in writing by Owner.

3.1.1 If required, the Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical, and electrical systems. When Design-Builder submits the Design Development Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the Design Development Documents approved by Owner shall result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Date of Substantial Completion or the Date of Final Completion.

3.1.2 The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws, or regulations enacted at the time of their preparation. When Design-Builder submits the Construction Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents or the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the Construction Documents approved by Owner shall result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Date of Substantial Completion or the Date of Final Completion. Construction shall be in accordance with the approved Construction Documents. One set of these documents shall be furnished to Owner before commencing construction.

3.1.3 OWNERSHIP OF DOCUMENTS

3.1.3.1 OWNERSHIP OF TANGIBLE DOCUMENTS Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided or procured by Design-Builder, its Design Professional, Subcontractors, or consultants and distributed to Owner for this Project, upon the making of final payment to Design-Builder or in the event of termination under ARTICLE 11, upon payment for all sums due to Design-Builder pursuant to ARTICLE 11. Owner's acquisition of the copyright shall be subject to Owner's making of all payments required by this Agreement.

3.1.3.2 COPYRIGHT The Parties agree that Owner  shall/  shall not obtain ownership of the copyright of all Documents. Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by §3.1.3.1 and the payment of the fee reflecting the agreed value of the copyright set forth below:

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with Design-Builder.

3.1.3.3 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 11, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under §3.1.3.1, provided payment has been made pursuant to §3.1.3.1

3.1.3.4 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. Owner's use of the Documents without Design-Builder's involvement or on other projects is at Owner's sole risk, except for Design-Builder's indemnification obligations, and Owner shall indemnify and hold harmless Design-Builder, its Design Professional, Subcontractors, and consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use.

3.1.3.5 DESIGN-BUILDER'S USE OF DOCUMENTS Where Design-Builder has transferred its copyright interest in the Documents under §3.1.3.1, Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

3.1.3.6 Design-Builder shall obtain from its Design Professional, Subcontractors, and consultants rights and rights of use that correspond to the rights given by Design-Builder to Owner in this Agreement, and Design-Builder shall provide evidence that such rights have been secured.

## 3.2 CONSTRUCTION SERVICES

3.2.1 Construction will commence upon the issuance by Owner of a written notice to proceed.

3.2.2 In order to complete the Work, Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, construction labor, materials, tools, and subcontracted items.

3.2.3 COMPLIANCE WITH LAW Design-Builder shall give all notices and comply with all Laws at its own costs. Design-Builder shall be liable to Owner for all loss, cost, and expense attributable to any acts or omissions by Design-Builder, its employees, subcontractors, and agents resulting from the

failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to Owner was given, and advance approval by appropriate authorities, including Owner, is received.

3.2.3.1 CHANGES IN LAW The Contract Price or Contract Time, or both shall be equitably adjusted by Change Order for additional costs or time needed resulting from any change in Law, including increased taxes, enacted after the date of this Agreement

3.2.4 Design-Builder shall maintain the Schedule of Work. This schedule shall indicate the dates for the start and completion of the various stages of the construction, including the dates when information and approvals are required from Owner. It shall be revised as required by the conditions of the Work.

3.2.5 Design-Builder shall obtain and Owner shall pay, in addition to the Contract Price, for the building permits necessary for the construction of the Project.

3.2.6 Design-Builder shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. Owner shall be afforded access to all Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to Change Order work performed on the basis of actual cost. Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by law.

3.2.7 Design-Builder shall provide periodic written reports to Owner on the progress of the Work in such detail as is required by Owner and as agreed to by The Parties, , provided, that prior to completion of the foundation Work, Design Builder will provide such written reports to Owner at an interval of at least every two (2) weeks.

3.2.8 Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.2.9 Design-Builder shall prepare and submit to Owner either:

- X final marked up as-built drawings
- updated electronic data

that generally document how the various elements of the Work including changes were actually constructed or installed, or as defined by the Parties by attachment to this Agreement.

3.3 CONSTRUCTION SCHEDULE Design-Builder shall prepare and submit a Schedule of Work for Owner's acceptance and written approval. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from Owner. The Schedule shall be revised on a monthly basis or as mutually agreed by the Parties.

#### 3.4 SAFETY OF PERSONS AND PROPERTY

3.4.1 SAFETY PRECAUTIONS AND PROGRAMS Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of Laws.

3.4.2 Design-Builder shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.4.2.1 its employees and other persons at the Worksite;

3.4.2.2 materials, supplies, and equipment stored at the Worksite for use in performance of the Work; and

3.4.2.3 the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.4.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE Design-Builder shall designate an individual at the Worksite in the employ of Design-Builder who shall act as Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by Design-Builder in writing to Owner, the designated safety representative shall be Design-Builder's project superintendent. Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to Owner. When Design-Builder is required to file an accident report with a public authority, Design-Builder shall furnish a copy of the report to Owner.

3.4.4 Design-Builder shall provide Owner with copies of all notices required of Design-Builder by Law. Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

3.4.5 Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of Design-Builder, or anyone for whose acts Design-Builder may be liable, shall be promptly remedied by Design-Builder. Damage or loss attributable to the acts or omissions of Owner or Others and not to Design-Builder shall be promptly remedied by Owner.

3.4.6 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Design-Builder's safety program, may require Design-Builder to stop performance of the Work or take corrective measures satisfactory to Owner, or both. If Design-Builder does not adopt corrective measures, Owner may perform them and reduce the amount of the Contract Price by the costs of the corrective measures. Design-Builder agrees to make no claim for damages, for an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion based on Design-Builder's compliance with Owner's reasonable request.

3.5 EMERGENCIES In any emergency affecting the safety of persons or property, Design-Builder shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price, the Date of Substantial Completion, or the Date of Final Completion, on account of emergency work shall be determined as a Change Order.

### 3.6 HAZARDOUS MATERIAL

3.6.1 Design-Builder shall not be obligated to commence or continue Work until all Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.6.2 If after commencing the Work, Hazardous Material is discovered at the Project, Design-Builder shall be entitled to immediately stop Work in the affected area. Design-Builder shall report the condition to Owner and, if required, the government agency with jurisdiction.

3.6.3 Design-Builder shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous

Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction. Design-Builder shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of Design-Builder, and shall be performed in a manner minimizing any adverse effect upon the Work.

3.6.4 If Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Design-Builder shall not be entitled to an equitable adjustment in the Contract Price, but shall be entitled to an equitable adjustment to the date of Substantial Completion.

3.6.5 [Intentionally Omitted].

3.7 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Design-Builder, Subcontractors, Owner or Others, shall be maintained at the Project by Design-Builder and made available to Owner and Subcontractors.

3.7.1 During Design-Builder's performance of the Work, Design-Builder shall be responsible for the proper handling, application, storage, removal, and disposal of all materials brought to the Worksite by Design-Builder. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Design-Builder if such materials or substances are required by the Contract Documents.

3.7.2 §3.6 shall survive the completion of the Work under this Agreement or any termination of this Agreement.

### 3.8 WARRANTY

3.8.1 For a period of one year, from the Date of Substantial Completion, Design-Builder warrants that all materials and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials, and that the Work is completed in material compliance with all applicable laws, building codes, rules and regulations. Design Builder further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion.

3.8.2 [Intentionally Omitted].

3.8.3 Design-Builder shall secure required certificates of inspection, testing, or approval and deliver them to Owner.

3.8.4 Design-Builder shall collect all written warranties and equipment manuals and deliver them to Owner in a format directed by Owner.

3.8.5 With the assistance of Owner's maintenance personnel, Design-Builder shall direct the checkout of utilities and start-up operations, and adjusting and balancing of systems and equipment for readiness.

### 3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 Before Substantial Completion and within one year after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, if any Defective Work is found, Owner shall promptly notify



Design-Builder in writing. Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

3.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of Work is complete. Correction periods shall be extended by one year with respect to any corrective work performed by Design-Builder.

3.9.3 If Design-Builder fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due Design-Builder. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, Design-Builder shall pay the difference to Owner.

3.9.4 Design-Builder's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Design-Builder and allow Design-Builder an opportunity to correct the Work if Design-Builder elects to do so. If Design-Builder elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Design-Builder does not elect to correct the Work, Owner may have the Work corrected by itself or Others, and, if Owner intends to seek recovery of those costs from Design-Builder, Owner shall promptly provide Design-Builder with an accounting of the correction costs it incurs.

3.9.5 If Design-Builder's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Design-Builder shall be responsible for the cost of correcting the destroyed or damaged property.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Design-Builder's other obligations under the Contract Documents.

3.9.7 Before final payment, at Owner's option and with Design-Builder's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.10 CONFIDENTIALITY Design-Builder shall treat as confidential and not disclose to third-persons, except Subcontractors, Subsubcontractors, and Design Professional as is necessary for the performance of the Work, or use for its own benefit any of Owner's developments, confidential information, know-how, discoveries, production methods, and the like that may be disclosed to Design-Builder or which Design-Builder may acquire in connection with the Work. Owner shall treat as confidential information all of Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to Owner in connection with the performance of this Agreement. The Parties shall each specify those items to be treated as confidential and shall mark them as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

3.11 ADDITIONAL SERVICES Design-Builder shall provide or procure the following Additional services upon the request of Owner. A written agreement between The Parties shall define the extent of such

Additional services. Such Additional services shall be considered a Change in the Work, unless they are specifically included in §3.1 or §3.2.

3.11.1 [Intentionally Omitted];

3.11.2 [Intentionally Omitted];

3.11.3 [Intentionally Omitted];

3.11.4 [Intentionally Omitted];

3.11.5 [Intentionally Omitted];

3.11.6 [Intentionally Omitted];

3.11.7 [Intentionally Omitted];

3.11.8 Artistic renderings, models, and mockups of the Project or any part of the Project or the Work;

3.11.9 Inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Project;

3.11.10 Interior design and related services including procurement and placement of furniture, furnishings, artwork, and decorations;

3.11.11 [Intentionally Omitted];

3.11.12 Design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained, or work to be performed, by Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems, and other specialty systems which are not a part of this Agreement;

3.11.13 Estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of Design-Builder;

3.11.14 The premium portion of overtime work ordered by Owner including productivity impact costs, other than that required by Design-Builder to maintain the Schedule of Work;

3.11.15 [Intentionally Omitted];

3.11.16 Obtaining service contractors and training maintenance personnel; assisting and consulting in the use of systems and equipment after the initial startup;

3.11.17 Services for tenant or rental spaces not required by this Agreement;

3.11.18 services requested by Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice;

3.11.19 Except when Design Professional is a party to the proceeding, serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project;

3.11.20 document reproduction exceeding the limits provided for in this Agreement;

3.11.21 [Intentionally Omitted];

3.11.22 acting as a Green Building Facilitator as identified in the ConsensusDocs 310 Green Building Addendum or separate addenda, which, at a minimum, shall include: (a) coordinating and facilitating the achievement of elected green measures and green status, such as achieving Leadership in Energy and Environmental Design "LEED" certification; (b) identifying, preparing, and submitting necessary documentation for elected green status; and (c) identifying project participants responsible to complete physical and procedural green measures;

3.11.23 performing formal commissioning services; and

3.11.24 other services as agreed to by the Parties and identified in an attached exhibit.

3.12 DESIGN-BUILDER'S REPRESENTATIVE Design-Builder shall designate a person who shall be Design-Builder's authorized representative. Design-Builder's Representative is Andy Naler.

#### **ARTICLE 4 OWNER'S RESPONSIBILITIES**

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER Owner's responsibilities under this article shall be provided with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencing the Work and thereafter at the written request of Design-Builder, Owner shall provide Design-Builder evidence of Project financing. Evidence of such financing shall be a condition precedent to Design-Builder's commencing or continuing the Work. Design-Builder shall be notified before any material change in Project financing.

4.3 [Intentionally Omitted]

4.4 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving Design-Builder's written request, Owner shall provide Design-Builder with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's interest in the real property on which the Project is located and the record legal title.

4.5 RESPONSIBILITIES DURING DESIGN

4.5.1 Owner shall review and approve further development of the drawings and specifications as set forth in ARTICLE 3.

4.6 RESPONSIBILITIES DURING CONSTRUCTION

4.6.1 Owner shall review the Construction Schedule, timely approve milestone dates set forth, and timely respond to its obligations.

4.6.2 If Owner becomes aware of any error, omission, or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, Owner shall give prompt written notice to Design-Builder. The failure of Owner to give such notice shall not relieve Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

4.6.3 Owner shall have no contractual obligations to Subcontractors, suppliers, or Design Professional.

4.6.4 [Intentionally Omitted].

4.7 TAX EXEMPTION If in accordance with Owner's direction Design-Builder claims an exemption for taxes, Owner shall indemnify and hold Design-Builder harmless from all liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's direction.

4.8 ELECTRONIC DOCUMENTS If Owner requires that The Parties exchange documents and data in electronic or digital form, before any such exchange, The Parties shall agree on a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate agreement, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.9 Owner's Representative is Hugh Holt. Owner's representative shall: (a) be fully acquainted with the Project; (b) agree to furnish the information and services required of Owner in a timely manner; and (c) have the authority to bind Owner in all matters requiring Owner's approval, authorization or written notice. If Owner changes its representative or the representative's authority as listed above, Owner shall notify Design-Builder in writing in advance.

## ARTICLE 5 SUBCONTRACTS

5.1. RETAINING SUBCONTRACTORS Design-Builder shall not retain any Subcontractor or Supplier to whom Owner has a reasonable and timely objection, provided that Owner agrees to increase the Contract Price for any additional costs incurred by Design-Builder as a result of such objection. Owner may propose subcontractors to be considered by Design-Builder. Design-Builder shall not be required to retain any subcontractor to whom Design-Builder has a reasonable objection.

5.2. MANAGEMENT OF SUBCONTRACTORS Design-Builder shall be responsible for the management of Subcontractors in the performance of their work.

### 5.3. CONTINGENT ASSIGNMENT OF SUBCONTRACT AGREEMENTS

5.3.1. If this Agreement is terminated, each subcontract agreement shall be assigned by Design-Builder to Owner, subject to the prior rights of any surety, provided that:

5.3.1.1. this Agreement is terminated by Owner pursuant to §11.2 or §11.3; and

5.3.1.2. Owner accepts such assignment, after termination by notifying the Subcontractor and Design-Builder in writing, and assumes all rights and obligations of Design-Builder pursuant to each subcontract or supply agreement.

5.3.2. If Owner accepts an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

5.4. BINDING OF SUBCONTRACTORS AND SUPPLIERS Design-Builder agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its Subsubcontractors and significant Suppliers) to all the provisions of this Agreement and the Contract Documents' applicable provisions to that portion of the Work.

## ARTICLE 6 CONTRACT TIME

6.1. DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below X. The Work shall proceed in general accordance with the Project Schedule which may be amended in accordance with this Agreement.

1. The date in which a Notice to Proceed is received by Merit Construction, Inc.
2. The date in which a Building Permit is received by Merit Construction, Inc.
3. The date in which a signed contract is received by Merit Construction, Inc.
4. The date in which a letter of appropriated funds is received by Merit Construction, Inc.

## 6.2. SUBSTANTIAL COMPLETION/FINAL COMPLETION

6.2.1. Substantial Completion of the Work shall be achieved in Three Hundred Sixty-Five (365) Days from the Date of Commencement. Unless otherwise specified, the Work shall be finally complete within Sixty (60) Days after the date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

6.2.2. Time is of the essence with regards to the obligations of the Contract Documents.

6.2.3. The Date of Final Completion of the Work is N/A or within Sixty (60) Days after the Date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

6.2.4. Unless otherwise instructed by an Interim Directive, Design-Builder shall not knowingly commence the Work before the effective date of insurance required to be provided by Design-Builder.

## 6.3. DELAYS AND EXTENSIONS OF TIME

6.3.1. If Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Design-Builder, Design-Builder shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of Design-Builder include, but are not limited to, the following: (a) acts or omissions of Owner or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 8.

6.3.2. [Intentionally Omitted].

6.3.3. In the event delays to the project are encountered for any reason, the Parties agree to undertake reasonable steps to mitigate the effect of such delays.

## 6.4. LIQUIDATED DAMAGES

6.4.1. SUBSTANTIAL COMPLETION The Parties agree that this Agreement [ ] shall/ X shall not provide for the imposition of liquidated damages based on the Date of Substantial Completion.

6.4.1.1. Design-Builder understands that if the Date of Substantial Completion as may be amended by subsequent Change Order, is not attained, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if the Date of Substantial Completion is not attained, Design-Builder shall pay Owner One Thousand dollars (\$1,000.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages

provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Date of Substantial Completion.

6.4.1.2. 6.4.1.16.4.1.2 Design Builder shall notify Owner and, if directed, Design Professional when it considers Substantial Completion of the Work or a designated portion to have been achieved. Owner shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by Owner without excessive interference in completing any remaining unfinished Work. If Owner determines that the Work or designated portion has not reached Substantial Completion, Owner shall promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use. Design Builder shall promptly complete all items on the list. When Substantial Completion of the Work has been achieved ("Substantial Completion"), Design Builder shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion (the "Date of Substantial Completion"), and the respective responsibilities of the Parties for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Design Builder to Owner for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or a designated portion.

6.4.2. FINAL COMPLETION Owner and Design-Builder agree that this Agreement X shall/ shall not provide for the imposition of liquidated damages based on the Date of Final Completion.

6.4.2.1. Design-Builder understands that if the Date of Final Completion is not attained, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if the Date of Final Completion is not attained, Design-Builder shall pay Owner One Thousand dollars (\$1,000.00) as liquidated damages for each Day that Final Completion extends beyond the Date of Final Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Date of Final Completion.

6.4.3. OTHER LIQUIDATED DAMAGES Owner and Design-Builder may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

6.5. LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in §6.4 and excluding losses covered by insurance required by the Contract Documents, Owner and Design-Builder agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. Design-Builder agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency.

6.5.1. The following items of damages are excluded from this mutual waiver: N/A

6.5.2. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. Owner and Design-Builder shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

## **ARTICLE 7 CONTRACT PRICE**

The Contract Price is Three Million, Nine Hundred Sixty-Four Thousand dollars (\$3,964,000.00) subject to adjustment as provided in ARTICLE 8.

## **ARTICLE 8 CHANGES IN THE WORK**

Changes in the Work which are within the general scope of this Agreement may be accomplished without invalidating this Agreement by Change Order, Interim Directive, or a minor change in the Work, subject to the limitations stated in the Contract Documents.

### **8.1. CHANGE ORDERS**

8.1.1. Design-Builder may request or Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of adjustment to the Contract Price or the Date of Substantial Completion or the Date of Final Completion. All such changes in the Work shall be authorized by applicable Change Order, and processed in accordance with this article. Each adjustment in the Contract Price resulting from a Change Order shall clearly separate the amount attributable to Design services.

8.1.2. The Parties shall negotiate an appropriate adjustment to Contract Price or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld. Notwithstanding the foregoing, in no event shall Design-Builder be entitled to an increase in the Contract Price for any Change Order requested by Design-Builder.

8.1.3. NO OBLIGATION TO PERFORM Design-Builder shall not be obligated to perform changes in the Work until a Change Order has been executed or a written Interim Directive has been issued.

### **8.2. INTERIM DIRECTIVE**

8.2.1. Owner may issue an Interim Directive directing a change in the Work before agreeing on an adjustment, if any, in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services or directing Design-Builder to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Design-Builder shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

8.2.2. The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, arising out of Interim Directive. As the changed work is completed, the Design Builder shall submit its costs for such work with its Application for Payment beginning with the next Application for Payment within thirty (30) Days of the issuance of the Interim Directive. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work.

8.2.3. If the Parties agree upon the adjustments in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services, for a change in the Work directed by an Interim Directive, such agreement shall be the

subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives issued since the last Change Order.

### 8.3. MINOR CHANGES IN THE WORK

8.3.1. Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion; and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment, or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

8.3.2. Design-Builder shall promptly inform Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by Design-Builder.

8.4. CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Design-Builder shall not stop affected Work after the concealed or unknown condition is first observed and give prompt written notice of the condition to Owner. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Design-Builder is to proceed. Design-Builder shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the condition, including any dispute about its existence or nature, shall be determined as provided in this ARTICLE 8. Notwithstanding the foregoing, in no event will Design Builder be entitled to an increase in the Contract Price respecting any concealed or unknown site conditions.

### 8.5. DETERMINATION OF COST

8.5.1. An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

8.5.1.1. unit prices set forth in this Agreement or as subsequently agreed;

8.5.1.2. a mutually accepted, itemized lump sum; or

8.5.1.3. COST OF THE WORK Cost of the Work as defined by this §8.5.1.3 plus 10% for Overhead and 5% for profit. "Cost of the Work" shall include the following costs reasonably incurred to perform a change in the Work:

8.5.1.3.1. Labor wages directly employed by Design-Builder performing the Work;

8.5.1.3.2. Salaries of Design-Builder's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;

8.5.1.3.3. Cost of applicable employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under Design-Builder's standard personnel policy, insofar as such costs are paid to



employees of Design-Builder who are included in the Cost of the Work in §8.5.1.3.1 and §8.5.1.3.2;

8.5.1.3.4. Reasonable transportation, travel, and hotel expenses of Design-Builder's personnel incurred in connection with the Work;

8.5.1.3.5. Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling;

8.5.1.3.6. Payments made by Design-Builder to Subcontractors for performed Work;

8.5.1.3.7. Fees and expenses for design services procured or furnished by Design-Builder

8.5.1.3.8. Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value of such items used, but not consumed that remain the property of Design-Builder;

8.5.1.3.9. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Design-Builder or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Design-Builder or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment;

8.5.1.3.10. Cost of the premiums for all insurance and surety bonds which Design-Builder is required to procure or deems necessary, and approved by Owner including any additional premium incurred as a result of any increase in the cost of the Work;

8.5.1.3.11. Sales, use, gross receipts or other taxes, tariffs, or duties related to the Work for which Design-Builder is liable;

8.5.1.3.12. Permits, fees, licenses, tests, and royalties;

8.5.1.3.13. Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work, provided that such did not arise from Design-Builder's negligence;

8.5.1.3.14. Water, power, and fuel costs necessary for the changed Work;

8.5.1.3.15. Cost of removal of all nonhazardous substances, debris, and waste materials;

8.5.1.3.16. Costs directly incurred to perform a change in the Work which are reasonably inferable from the Contract Documents for the changed Work

8.5.1.3.17. DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Design-Builder, all cash discounts shall accrue to Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work;

8.5.1.3.18. COST REPORTING Design-Builder shall maintain complete and current records that comply with generally accepted accounting principles and calculate the Cost of Work. Owner shall be afforded access to Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to requested payment for Cost of the Work. Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by Law;

8.5.1.3.19. COST AND SCHEDULE ESTIMATES Design-Builder shall use reasonable skill and judgment in the preparation of a cost estimate or schedule for a change to the Work, but does not warrant or guarantee their accuracy.

8.5.1.3.20. Cost of the Work pursuant to §8.5.1.3 is determined net of savings from the change. Design-Builder's Overhead and profit shall be added to any net increase in Cost of the Work. No Overhead and profit shall be applied to any net decrease in the Cost of the Work that is less than ten (10) percent of the Contract Price. Overhead and profit shall be applied to any net decrease ten (10) percent or more. Design-Builder shall maintain a documented, itemized accounting evidencing expenses and savings.

8.5.2. If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Owner or Design-Builder, such unit prices shall be equitably adjusted.

8.5.3. If Owner and Design-Builder disagree as to whether work required by Owner is within the scope of the Work, Design-Builder shall furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations. If Owner issues a written order for Design-Builder to proceed, Design-Builder shall perform the disputed work and Owner shall pay Design-Builder fifty percent (50%) of its estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. Design-Builder's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.6. CHANGES NOTICE For any claim for an increase in the Contract Price or an extension in the Date of Substantial Completion or the Date of Final Completion, Design-Builder shall give Owner written notice of the claim within twenty-one (21) Days after the occurrence giving rise to the claim or within twenty-one (21) Days after Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by Owner, but which do not proceed, shall be made within twenty-one (21) Days after the decision is made not to proceed. Thereafter, Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. Owner shall respond in writing denying or approving Design-Builder's claim no later than fourteen (14) Days after receipt of Design-Builder's documentation of claim. Owner's failure to so respond shall be deemed a denial of Design-Builder's claim. Any change in Contract Price or the Date of Substantial Completion or the Date of Final Completion resulting from such claim shall be authorized by Change Order.

8.7. INCIDENTAL CHANGES Owner may direct Design-Builder to perform incidental changes in the Work upon concurrence with Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract

Documents. Owner shall initiate an incidental change in the Work by issuing a written order to Design-Builder. Such written notice shall be carried out promptly and is binding on the Parties.

## ARTICLE 9 PAYMENT

### 9.1. PROGRESS PAYMENT

9.1.1. Before submitting the first application for payment, Design-Builder shall provide a Schedule of Values satisfactory to Owner, consisting of a breakdown of the Contract Price, with a separate line item for Design services.

9.1.2. On or before the First Day of each month after the Work has commenced, Design-Builder shall submit to Owner an application for payment in accordance with the Schedule of Values based upon the Work completed and materials suitably stored on the Worksite or at other locations approved by Owner. Approval of payment applications for such stored materials shall be conditioned upon submission by Design-Builder of bills of sale and applicable insurance or such other procedures satisfactory to Owner to establish Owner's title to such materials, or otherwise to protect Owner's interest including transportation to the site.

9.1.3. Within seven (7) Days after receipt of each monthly application for payment, Owner shall give written notice to Design-Builder of Owner's acceptance or rejection, in whole or in part, of such application for payment. Within fifteen (15) Days after accepting such Application, Owner shall pay directly to Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by Owner. If such application is rejected in whole or in part, Owner shall indicate the reasons for its rejection. If Owner and Design-Builder cannot agree on a revised amount, then, within fifteen (15) Days after its initial rejection in part of such application, Owner shall pay directly to Design-Builder the appropriate amount for those items not rejected by Owner for which application for payment is made, less amounts previously paid by Owner. Those items rejected by Owner shall be due and payable when the reasons for the rejection have been removed. Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents. Owner reserves the right to make any portion of a payment due hereunder pursuant to a check made payable to both Design Builder and any applicable Subcontractor.

9.1.4. If Owner fails to pay Design-Builder at the time payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) Days after receipt of the notice by Owner, and after such seven (7) Day period, stop the Work until payment of the amount owing has been received.

9.1.5. Payments due but unpaid pursuant to §9.1.3, less any amount retained pursuant to §9.2 or §9.3, may bear interest from the date payment is due at the prime rate prevailing at the place of the Project.

9.1.6. Design-Builder warrants and guarantees that title to all Work, materials, and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to Owner upon receipt of such payment by Design-Builder free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to as "liens."

9.1.7. Owner's progress payment, occupancy, or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

9.1.8. Upon Substantial Completion of the Work, Owner shall pay Design-Builder the unpaid balance of the Contract Price, less a sum equal to one hundred fifty percent (150%) of Design-Builder's estimated cost of completing any unfinished items as agreed to between The Parties as to extent and

time for completion. Owner thereafter shall pay Design-Builder monthly the amount retained for unfinished items as each item is completed.

9.1.9. STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite, including applicable insurance, storage and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by Design-Builder of bills of sale and proof of required insurance, or such other procedures satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the site.

9.1.10. LIEN WAIVERS. As a prerequisite for any progress payment, Design-Builder shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its subcontractors and Suppliers for the completed Work. Such waivers should be effective for all Work completed through the date of the pay application and shall be conditional upon payment. In no event shall Design-Builder be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid. If Owner has made payments in the time required by this article, Design-Builder shall, within thirty (30) Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If Construction Manager fails to take such action on a lien, Owner may cause the lien to be removed at Design-Builder's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute relating to the subject matter of the lien

9.2. RETAINAGE From each progress payment made before the time of Substantial Completion, Owner may retain Five percent (5%) of the amount otherwise due after deduction of any amounts as provided in §9.3, provided such percentage doesn't exceed the Law. If Owner chooses to use this retainage provision:

9.2.1. after the Work is fifty percent (50%) complete, Owner shall withhold no additional retainage and pay Design-Builder the full amount due on account of subsequent progress payments;

9.2.2. Owner may, in its sole discretion, reduce the amount to be retained at any time;

9.2.3. Owner may release retainage on that portion of the Work a Subcontractor has completed, in whole or in part, and which work Owner has accepted;

9.2.4. in lieu of retainage, Design-Builder may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

9.3. ADJUSTMENT OF AN APPLICATION FOR PAYMENT Owner may adjust or reject an application for payment or nullify a previously approved application for payment, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Design-Builder is responsible under this Agreement:

9.3.1. Design-Builder's repeated failure to perform the Work as required by the Contract Documents;

9.3.2. except as accepted by the insurer providing Builders Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by Design-Builder to Owner, or others to whom Owner may be liable;

9.3.3. Design-Builder's failure to pay either Design Professional, Subcontractor or Supplier following receipt of payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to Design-Builder in accordance with the terms of this Agreement;

9.3.4. Defective Work not corrected in a timely fashion;

9.3.5. reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion or the Date of Final Completion, and that the unpaid balance of the Contract Price is not sufficient to offset any direct damages that may be sustained by Owner as a result of the anticipated delay caused by Design-Builder;

9.3.6. reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work;

9.3.7. uninsured third-party claims involving the Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Contractor furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established; and

9.3.8. uninsured third-party claims involving Design-Builder or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Design-Builder furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Design-Builder, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Design-Builder in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

#### 9.4. OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK

Portions of the Work that are completed or partially completed may be used or occupied by Owner when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) or sureties consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. Design-Builder shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to Owner.

#### 9.5. FINAL PAYMENT

9.5.1. Final payment, consisting of the unpaid balance of the Contract Price, shall be due and payable when the Work is fully completed. Before issuance of final payment, Owner may request satisfactory evidence that all payrolls, materials bills, and other indebtedness connected with the Work have been paid or otherwise satisfied.

9.5.2. Final payment shall be made to Design-Builder within fifteen (15) Days after Design-Builder has submitted a complete and accurate application for final payment and the following submissions:

9.5.2.1. an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;

9.5.2.2. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

9.5.2.3. release of any liens, conditioned on final payment being received;

9.5.2.4. consent of any surety, if applicable; and

9.5.2.5. any outstanding known and unreported accidents or injuries experienced by Design-Builder or its subcontractors at the Worksite.

9.5.2.6. delivery of all warranties and guarantees required under or pursuant to the Contract Documents;

9.5.2.7. a complete list of all subcontractors and principal vendors on the Project; and

9.5.2.8. an indexed binder or pdf file of complete installation, operation and maintenance manuals, including any and all manufacturers' literature of equipment and materials used in the Work.

9.5.3. In making final payment Owner waives all claims except for:

9.5.3.1. outstanding liens;

9.5.3.2. improper workmanship or defective materials appearing within one year after the date of Substantial Completion;

9.5.3.3. Work not in conformance with the Contract Documents; and

9.5.3.4. terms of any special warranties required by the Contract Documents.

9.5.4. In accepting final payment, Design-Builder waives all claims except those previously made in writing and which remain unsettled.

## **ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS**

### **10.1. INDEMNITY**

10.1.1. To the fullest extent permitted by law, Design-Builder shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property required to be insured under §10.3, including reasonable attorneys' fees, costs, and expenses that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Design-Builder, Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Design-Builder shall not be required to indemnify or hold harmless the Indemnitees for any negligent or intentionally wrongful acts or omissions of the Indemnitees. Design-Builder shall be entitled to reimbursement of any defense costs paid above Design-Builder's percentage of liability for the underlying claim to the extent provided for by the subsection below.

10.1.2. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Design-Builder, its officers, directors, or members, Subcontractors, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under §10.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Others, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Others. Owner shall be

entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by the subsection above.

10.1.3. NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Design-Builder, anyone directly or indirectly employed by Design-Builder or anyone for whose acts Design-Builder may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

## 10.2. DESIGN-BUILDER'S LIABILITY INSURANCE

10.2.1. Before commencing the Work and as a condition for payment, Design-Builder shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Design-Builder shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Design-Builder's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

### 10.2.1.1. Employers' Liability Insurance

- (a) \$1,000,000 bodily injury by accident per accident
- (b) \$1,000,000 bodily injury by disease policy limit
- (c) \$1,000,000 bodily injury by disease per employee

### 10.2.1.2. Business Automobile Liability Insurance per accident \$1,000,000.

### 10.2.1.3. Commercial General Liability Insurance

- (a) Per occurrence \$1,000,000
- (b) General aggregate \$1,000,000
- (c) Products/completed operations aggregate \$2,000,000
- (d) Personal and advertising injury limit \$1,000,000

10.2.2. Employers' Liability, Business Automobile Liability, and Commercial General Liability coverage required under §10.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

10.2.3. Design-Builder shall maintain in effect all insurance coverage required under §10.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Design-Builder fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Design-Builder, or terminate this Agreement.

10.2.4. To the extent commercially available to Design-Builder and its current insurance company, insurance policies required under §10.2.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancelation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Design-Builder shall furnish Owner with certificates of

insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §10.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Design-Builder shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

### 10.3. PROPERTY INSURANCE

10.3.1. Unless otherwise directed in writing by Owner, before starting the Work, Design-Builder shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Design-Builder, Subcontractors, Subsubcontractors, Suppliers, and Design Professional as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy; and (c) insure at least against and not exclude:

10.3.1.1. the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;

10.3.1.2. damage resulting from defective design, workmanship, or material;

10.3.1.3. coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant, or structures. Coverage shall be to the extent loss or damage arises out of Design-Builder's activities or operations at the Project;

10.3.1.4. equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

10.3.1.5. testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

10.3.1.6. physical loss resulting from Terrorism.

10.3.2. The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §10.3.1 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Design-Builder has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Design-Builder shall provide a copy of the property policy or policies obtained in compliance with §10.3.1.

10.3.3. If Owner elects to purchase the property insurance required by this Agreement, including all of the same coverages and deductibles for the same duration specified in §10.3.1, then Owner shall give written notice to Design-Builder and the Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §10.3.1. Owner may then provide insurance to protect its interests and the interests of the Design-Builder, Subcontractors, Suppliers, and Subsubcontractors. The cost of this insurance shall be paid by Owner in a Change Order. If Owner gives written notice of its intent to purchase property insurance required by this



Agreement and fails to purchase or maintain such insurance, Owner shall be responsible for costs reasonably attributed to such failure.

10.3.4. The Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and subsubcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.

10.3.5. To the extent of the limits of Design-Builder's CGL specified in §10.2.1, Design-Builder shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent of the negligent acts or omissions of Design-Builder, Subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.3.6. RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to §10.3.1 until the Date of Final Completion.

#### 10.4. ADDITIONAL GENERAL LIABILITY COVERAGE

10.4.1. Owner  shall/  shall not require Design-Builder to purchase and maintain additional liability coverage.

10.4.2. If required by the above subsection, the additional liability coverage required of Design-Builder shall be: N/A

Additional Insured. Owner shall be named as an additional insured on Design-Builder's Commercial General Liability Insurance specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent or intentionally wrongful acts or omissions of Design-Builder, or those acting on Design-Builder's behalf, in the performance of Design-Builder's Work for Owner at the Worksite. The insurance of the Subcontractor shall be primary and non-contributory to any insurance available to the Additional Insureds.

OCP. Design-Builder shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on Commercial General Liability Insurance specified, or limits as otherwise required by Owner.

Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by Owner directly or the costs may be reimbursed by Owner to Design-Builder by increasing the contract price to correspond to the actual cost required to purchase and maintain the additional liability coverage.

Before commencing the Work, Design-Builder shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable.

10.5. ROYALTIES, PATENTS, AND COPYRIGHTS Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Design-Builder and incorporated in the Work. Design-Builder shall indemnify and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such

selection. Owner agrees to indemnify and hold Design-Builder harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner.

10.6. PROFESSIONAL LIABILITY INSURANCE Design-Builder shall obtain, either itself or through Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

Practice Policy or  Project Specific Coverage

written for not less than \$1,000,000 per claim and in the aggregate with a deductible not to exceed \$25,000. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by Design Professional. This coverage shall be continued in effect for one year(s) after the Date of Substantial Completion.

#### 10.7. BONDING

10.7.1. Performance and Payment Bonds  are/  are not required of Design-Builder. Such bonds shall be issued by a surety licensed in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without reasonable cause.

10.7.2. Such Performance Bond shall be issued in the penal sum equal to one hundred percent (100%) of the:

- Contract price, including design and construction.
- Agreed estimated construction cost of the Project as reflected in the Schedule of Values.

Such Performance Bond shall cover the cost to complete the Work, but shall not cover any damages of the type specified to be covered by the insurance pursuant to §10.2 and §10.3, whether or not such insurance is provided or in an amount sufficient to cover such damages.

10.7.3. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond. Design-Builder's payment bond for the Project, if any, shall be made available by Owner or Design-Builder upon Subcontractor's written request.

10.7.4. Design-Builder shall endeavor to keep its surety advised of changes within the scope of the initial Agreement potentially impacting the Contract Price or the Dates of Substantial Completion or Final Completion, though Design-Builder shall require that its surety waives any requirement to be notified of any alteration or extension of time.

### **ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION**

#### 11.1. SUSPENSION BY OWNER FOR CONVENIENCE

11.1.1. Owner may order Design-Builder in writing to suspend, delay, or interrupt all or any part of the Work without cause for such period of time as Owner may determine to be appropriate for its convenience.

11.1.2. Adjustments caused by suspension, delay, or interruption shall be made for increases in the Contract Price or the Date of Substantial Completion or the Date of Final Completion. No adjustment shall be made if Design-Builder is or otherwise would have been responsible for the suspension, delay, or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

## 11.2. NOTICE TO CURE A DEFAULT

11.2.1. If Design-Builder persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Construction Schedule, or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Design-Builder may be deemed in default.

If Design-Builder fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default, then Owner shall give Design-Builder a second notice to correct the default within a three (3) Day period.

11.2.2. After receiving Owner's written notice, if Design-Builder fails to promptly commence and continue satisfactory correction of the default, then Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing any reasonable means; (c) withhold payment due to Design-Builder; and (d) as Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Design-Builder the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

11.2.3. In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of a default without first giving written notice to Design-Builder, but shall give Design-Builder prompt notice.

## 11.3. OWNER'S RIGHT TO TERMINATE FOR DEFAULT

11.3.1. TERMINATION BY OWNER FOR DEFAULT Upon expiration of the second notice for default period pursuant to §12.2 and absent appropriate corrective action, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner under §12.2. If Owner's costs arising out of Design-Builder's failure to cure, including the costs to complete the Work and reasonable attorneys' fees, exceed the Contract Price, Design-Builder shall be liable to Owner for such excess costs. If Owner exercises its rights under this section, upon the request of Design-Builder, Owner shall furnish to Design-Builder a detailed accounting of the costs incurred by Owner.

11.3.2. If Design-Builder files a petition under the bankruptcy code, this Agreement shall terminate if Design-Builder or Design-Builder's trustee rejects the Agreement or, if a default occurs and Design-Builder is unable to give adequate assurance of required performance; or (c) Design-Builder is otherwise unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.3.3. Owner shall make reasonable efforts to mitigate damages arising from Design-Builder's default, and shall promptly invoice Design-Builder for all amounts due.

11.4. TERMINATION BY OWNER FOR CONVENIENCE If Owner terminates this Agreement other than as set forth in §11.1.2, Owner shall pay Design-Builder for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs.

11.4.1. If Owner terminates this Agreement before commencing construction, Design-Builder shall be paid the unpaid balance of Design-Builder's design costs as set forth in the Schedule of Values.

11.4.2. If Owner terminates this Agreement after commencing construction, Design-Builder shall be paid the unpaid balance of Design-Builder's design costs as set forth in the Schedule of Values, the Construction services provided to date, reasonable attorneys' fees and costs related to termination.

11.4.3. Owner shall also pay to Design-Builder fair compensation, either by purchase or rental at the election of Owner, for all equipment retained. Owner shall assume and become liable for obligations, commitments, and unsettled claims that Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this article, Design-Builder shall cooperate with Owner by taking all steps necessary to accomplish the legal assignment of Design-Builder's rights and benefits to Owner, including the execution and delivery of required papers.

#### 11.5. TERMINATION BY DESIGN-BUILDER

11.5.1. Seven (7) Days' after Owner's receipt of written notice from Design-Builder, Design-Builder may terminate this Agreement for any of the following reasons: if the Work has been stopped for a ninety (90) Day period through no fault of the Design-Builder: (a) under court order or order of other governmental authorities having jurisdiction, or (b) as a result of the declaration of a national emergency or other governmental act emergency during which, through no act or fault of Design-Builder, materials are not available; (c) Work is suspended by Owner for Convenience;

11.5.2. In addition, upon thirty (30) Days written notice to Owner and an opportunity to cure within three (3) Days, Design-Builder may terminate this Agreement if Owner: (a) fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project ;(b) assigns this Agreement over Design-Builder's reasonable objection; (c) fails to pay Design-Builder in accordance with this Agreement and Design-Builder stopped Work accordingly; or (d) otherwise materially breaches this Agreement.

11.5.3. Upon termination by Design-Builder in accordance with §11.5.1, Design-Builder shall be entitled to recover from Owner payment for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, Design-Builder shall be paid an amount calculated as set forth either in §11.4.1 or §11.4.2, depending on when the termination occurs, and §11.4.3.

### **ARTICLE 12 DISPUTE MITIGATION OR RESOLUTION**

12.1. WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If Design-Builder continues to perform, Owner shall continue to make payments in accordance with the Agreement.

12.2. DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

12.3. [Intentionally Omitted].

12.4.

12.5. BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below.

12.6. ARBITRATION.

The Parties choose binding arbitration for any claim or dispute arising out of or relating to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. Arbitration does not involve a judge or jury. Instead, an arbitrator with the power to award damages and other appropriate relief will decide claims and disputes. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

12.6.1. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

12.6.2. The arbitration shall use the following rules:

- the current AAA Construction Industry Arbitration Rules and AAA administration. AAA Construction Fast Track Rules shall apply to all two-party cases when neither Party's disclosed claim or counterclaim exceeds \$250,000. If arbitration is selected but no rules are selected, then this subsection shall apply by default;
- the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or
- the current arbitration rules of [ ] and administered by [ ].

12.7. LITIGATION

Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project

If not indicated, then litigation is default as opposed to arbitration.

12.7.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

12.7.2. VENUE The Project location shall serve as the venue.

12.8. MULTIPARTY PROCEEDING The Parties agree that all Parties necessary to resolve a matter shall be Parties to the same dispute resolution procedure, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

12.9. LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Design-Builder that Design-Builder may have under lien laws.

**ARTICLE 13 MISCELLANEOUS PROVISIONS**

13.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of The Parties and not for the benefit of any third party.

13.2. ASSIGNMENT Neither Owner nor Design-Builder shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party to this Agreement shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Design-Builder than this Agreement. In the event of such assignment, Design-Builder shall execute all consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party. Notwithstanding the foregoing, Owner shall be permitted to assign all right, title and interest in and to this Agreement to Knox County, Tennessee without the need for any consent of Design-Builder, and upon such assignment, Owner shall be fully released from any and all liability hereunder.

13.3. GOVERNING LAW The Law in effect at the location of the Project shall govern this Agreement.

13.4. SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.5. NOTICE Unless changed in writing, a Party's address indicated in ARTICLE 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service

13.6. NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

13.7. TITLES AND GROUPINGS The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.8. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

13.9 The Owner and Contractor declare and represent that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Agreement contains the entire agreement between the parties hereto, and that the terms of this Agreement are contractual and not a mere recital. There is no other agreement of any kind, verbal or otherwise, which varies, alters or adds to it.

13.10 The signatories to this Agreement on behalf of the Owner and Contractor warrant and represent that they have the authority to bind their respective party to the terms of this Agreement.

13.11 This Agreement may be signed in counterparts and shall be binding upon the Owner and Contractor when signed in counterparts. The Owner and Contractor agree that copies of original signatures (e.g., pdf, photocopy and facsimile) are as valid as original signatures.

13.12 Notwithstanding any other provision in this Agreement, the parties agree:

- a. The Architect is neither a third party beneficiary of this Agreement nor does the Contractor have any direct duties or obligations to the Architect arising under this Agreement, including, but not limited to, the Contractor has no duty to indemnify the Architect and/or Architect's consultants; however, the foregoing is not intended in any way to affect, limit, or restrict the Contractor's duties and obligations under the Agreement or its interacting with and cooperating with the Architect and/or Architect's consultants in furtherance of the Contractor's duties and obligations under the Agreement.
- b. The Contractor has no duty or obligation to perform any design for this Project. However, should the Contractor discover what it believes to be any errors, omissions, or inconsistencies in the Contract Documents, the Contractor shall promptly report them to Owner in writing. In such instance, however, it is recognized that the Contractor is not acting in the capacity of a licensed design professional, and that Contractor's examination and reporting are to facilitate construction. Following receipt of written notice from the Contractor of any errors, omissions, or inconsistencies, the Owner shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the errors, omissions, or inconsistencies, including, but not limited to issuance of a change order.
- c. Owner and Contractor agree that in the event that it shall be necessary for either the Owner or Contractor to retain legal counsel to enforce any of the respective parties' rights hereunder, then the substantially prevailing party in any dispute arising out of or related to this Agreement, its breach, or work pursuant to the Agreement, shall be entitled to recover from the other party reasonable attorney's, paralegal, and expert fees and costs, arbitration and/or litigation costs, appeal costs, and any and all other costs incurred by the substantially prevailing party in connection with such dispute. As used herein, the substantially prevailing party means the party that is afforded the greater relief (whether affirmatively or by means of a successful defense) with respect to claims having the greatest value or importance as determined by the court or arbitrator(s) allowing for all of the claims, counterclaims, and defenses asserted under the contract.
- d. Owner and Contractor agree that value engineering has been requested of Contractor, and the Contractor is not responsible or liable for any design responsibilities or any other liability arising from the Owner's decision to select the value engineered items as part of the Work.
- e. Owner and Contractor agree that if the Contractor presents information as part of the Submittals, Shop Drawings, and/or Request for Information process, including proposed schematics, diagrams, drawings, or specifications, the purpose is to assist the Owner and/or Architect in furtherance of the Project; however, the Contractor is not accepting any design responsibility or other similar liability arising therefrom.

13.13 [Intentionally Omitted].

13.14 **COVID-19** Notwithstanding any provision(s) in this Agreement, if Contractor's Work is delayed, disrupted, suspended, or otherwise impacted as a direct or indirect result of COVID-19 (Coronavirus), including, but not limited to, by (1) disruptions to material, supplies, and/or equipment; (2) illness of Contractor's or its Subcontractors' workforce and/or unavailability of labor; (3) government quarantines, closures, or other mandates, restrictions, and/or directives; (4) Owner or Contractor restrictions and/or directives; and/or (5) fulfillment of Contractor's contractual or legal health and safety obligations associated with COVID-19, then Contractor shall be entitled to an equitable adjustment to the Contract Schedule and duration to account for such delays, disruptions, suspensions, and impacts. Additionally, to

the extent the causes identified herein result in an increase in the cost and/or price of labor, materials, or equipment used in the performance of this Agreement, Contractor shall be entitled to an equitable adjustment to the Contract Price for such increases and impacts, including extended general conditions, provided Contractor presents documentation of such increases to Owner, provided, however, in no event shall Owner be obligated to pay any amounts to Contractor in excess of the Contract Price.

**13.15 Force Majeure.** Notwithstanding any provision in this Agreement, if the Contractor is delayed at any time in the commencement or progress of the Work by a Force Majeure event where the event is beyond the reasonable control of the Contractor and the Contractor takes all reasonable steps to seek to avoid or mitigate the event or its consequences, then the Contractor shall be entitled to an equitable adjustment to the Contract Schedule. Examples of a Force Majeure are as follows: (1) an act of God that could not be foreseen or anticipated; (2) war; (3) contamination by nuclear fuel, radioactive toxic and explosive; (4) riots or strikes unless restricted to employees of the Contractor or its Subcontractors; and (5) government actions, including but not limited to, delays caused by the imposition of government regulations, orders, tariffs, or similar actions which impact delivery of labor, goods and services.

**13.16 Warranty.** Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, including Plans and Specifications, and free from defective workmanship and materials and that the Work is completed in material compliance with all applicable laws, building codes, rules and regulations. This express warranty shall extend for a period of one (1) year from the Date of Substantial Completion and Final Completion, and any warranty claims or claim for breach of any warranty provision of this Contract, whether known or unknown, accrued or unaccrued, shall be submitted by Owner to Contractor in writing within this one (1) year period otherwise it is waived. The warranty will be extended for an additional one (1) year respecting any corrective work of Design Builder. This warranty excludes any damage or defect caused by abuse, modifications not executed by Contractor or a subcontractor or supplier not hired by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. NOTWITHSTANDING ANY OTHER PROVISION IN THE CONTRACT DOCUMENTS, WITH THE EXCEPTION OF MANUFACTURERS' WARRANTIES AND/OR EXTENDED EXPRESS WARRANTIES FROM SUBCONTRACTORS AND VENDORS, THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF, AND CONTRACTOR EXPRESSLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## ARTICLE 14 CONTRACT DOCUMENTS

14.1. CONTRACT DOCUMENTS The Contract Documents are as follows:

- (a) This Agreement;
- (b) Basis of Design/Owner's Program;
- (c) Owner-provided information pursuant to §3.6.3 and other Owner information identified as intended to be a contract document;
- (d) The Schematic Design Documents upon Owner approval pursuant to §2.4.17;
- (e) The Design Development Documents upon Owner approval pursuant to §3.1;
- (f) The Construction Documents upon Owner approval under §3.1;
- (g) Change Order, Interim Directives, and amendments issues in accordance with this Agreement.
- (h) Other: .



14.2. ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) design documents approved by Owner pursuant to §2.4.17 and §3.1.3 in order of the most recently approved; (d) information furnished by Owner pursuant to §4.1 or designated as a Contract Document in §ARTICLE 14; (e) other documents listed in this Agreement. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Where figures are given, they shall be preferred to scaled dimensions. Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

OWNER: The Industrial Development Board of the County of Knox

BY: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

DESIGN-BUILDER: Merit Construction, Inc.

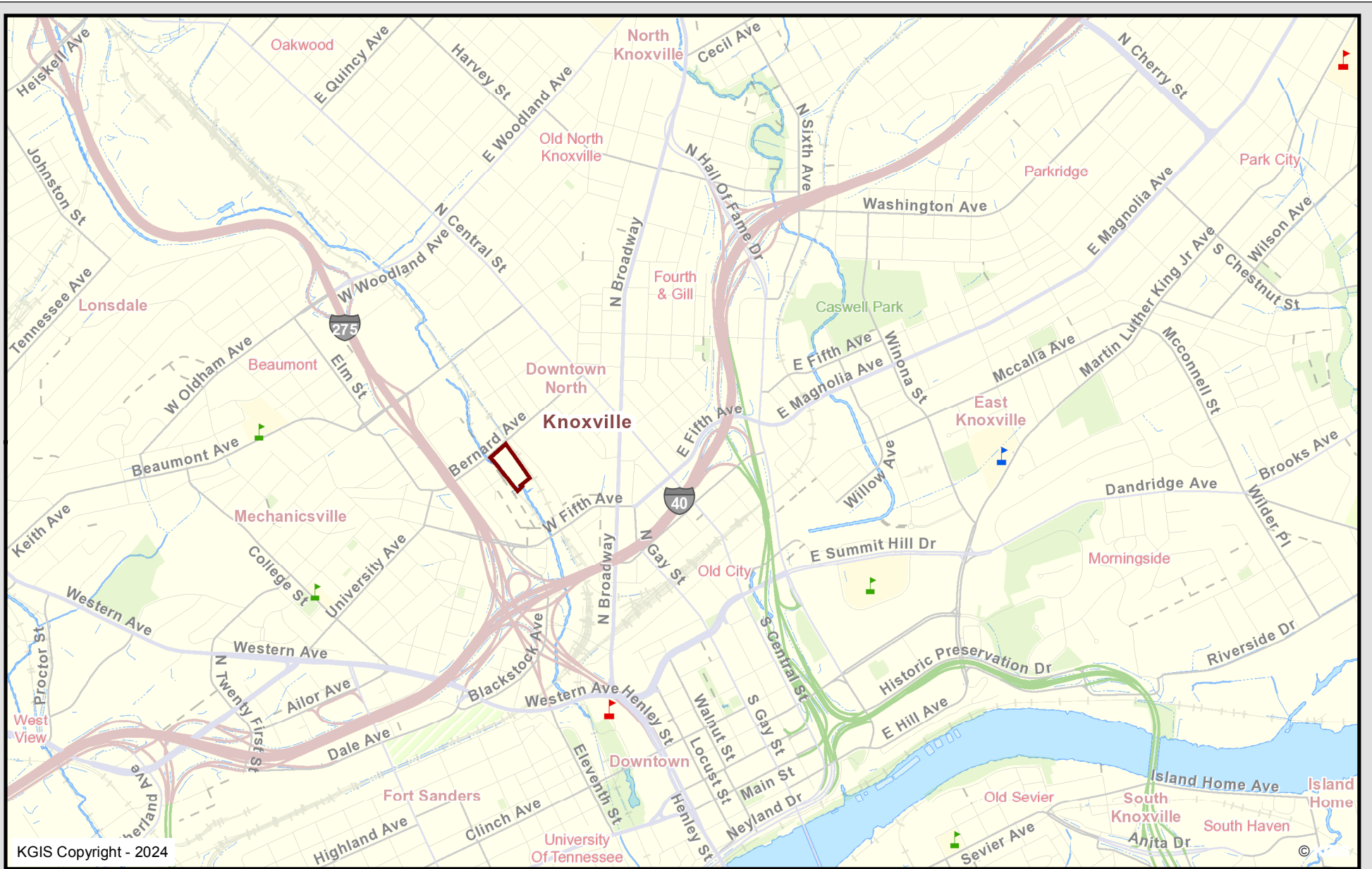
BY: \_\_\_\_\_ NAME: Shannon Sapp TITLE: President & CEO

WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

END OF DOCUMENT.

DRAFT



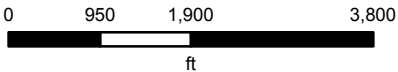


**Bernard Property**

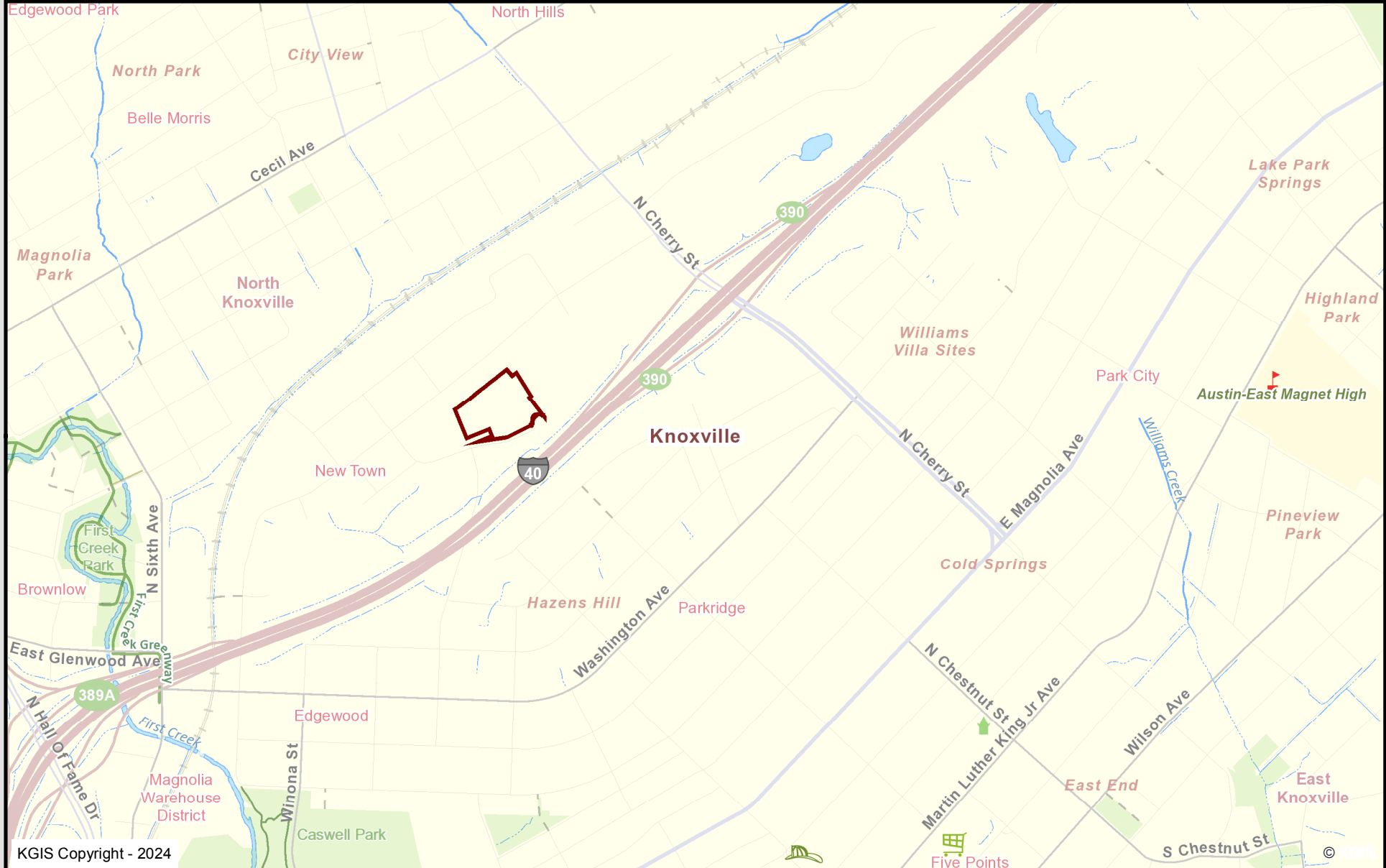
**Knoxville - Knox County - KUB Geographic Information System**



Printed: 3/8/2024 at 1:54:48 PM



KGIS makes no representation or warranty as to the accuracy of his map and its information nor to its fitness for use. Any user of this map product accepts the same AS IS ,WITH ALL FAULTS, and assumes all responsibility for the use thereof, and futher covenants and agrees to hold KGIS harmless from any and all damage, loss, or liability arising from any use of this map product.



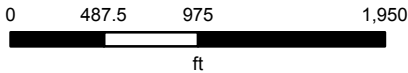
KGIS Copyright - 2024

Wheeler Properties, LLC

Knoxville - Knox County - KUB Geographic Information System



Printed: 3/8/2024 at 1:51:45 PM



KGIS makes no representation or warranty as to the accuracy of his map and its information nor to its fitness for use. Any user of this map product accepts the same AS IS ,WITH ALL FAULTS, and assumes all responsibility for the use thereof, and futher covenants and agrees to hold KGIS harmless from any and all damage, loss, or liability arising from any use of this map product.