



**CITY OF ASHLAND
815 EAST BROADWAY
(SOUTHERN BOONE FIRE PROTECTION DISTRICT TRAINING FACILITY)
ASHLAND, MO. 65010
BOARD OF ALDERMEN AGENDA
TUESDAY, NOVEMBER 06, 2018
7:00 P.M.**

Call regular meeting to order

Pledge of Allegiance

Roll Call

CONSENT

1. Consideration of the 11-06-2018 agenda: **Action:** _____
2. Consideration of the 10-11-2018 special meeting minutes: **Action:** _____
3. Consideration of the 10-16-2018 meeting minutes: **Action:** _____

PUBLIC HEARINGS

4. Public Hearing-Annexation of Hardwick Lane for the City of Ashland, Missouri
5. Public Hearing-Annexation of 25.99 acres for Ashland Commons, LLC.

PUBLIC COMMENTS

6. Anyone wishing to appear before the Board

APPOINTMENTS

7. None

COUNCIL BILLS

8. Council Bill No. 2018-058, an ordinance extending the corporate limits of the City of Ashland, Missouri by annexing unincorporated area; Directing the City Clerk to give notice of the annexation. First reading by title only. **Action:** _____
9. Council Bill No. 2018-059, an ordinance to change the zoning of a parcel of land from (A-1) Agricultural District to (APC) Airport Planned Commercial District. First reading by title only **Action:** _____
10. Council Bill No. 2018-060, an ordinance extending the corporate limits of the City of Ashland, Missouri by annexing unincorporated area on the north side of Liberty Lane; Directing the City Clerk to give notice of the annexation. First reading by title only. **Action:** _____

11. Council Bill No. 2018-061, an ordinance authorizing the Mayor to execute a Right of Way Transfer Agreement with Hummingbird Properties, LLC. First reading by title only. **Action:** _____
12. Council Bill No. 2018-062, an ordinance approving the final major plat for Cartwright Business and Technology Park, Plat 2. First reading by title only. **Action:** _____
13. Council Bill No. 2018-063, an ordinance authorizing the sale of real estate owned by the City of Ashland, Missouri, a municipal corporation, to Daniel and Cynthia Downing. First reading by title only. **Action:** _____
14. Council Bill No. 2018-064, an ordinance to amend Chapter 14 of the Code of the City of Ashland. First reading by title only. **Action:** _____
15. Council Bill No. 2018-065, an ordinance vacating part of a drainage easement for the Renee Drive Drainage Improvement Project; and authorizing the City Clerk to record this ordinance. First Reading by title only. **Action:** _____
16. Council Bill No. 2018-066, an ordinance authorizing the Mayor to enter into a Missouri Transportation Finance Corporation Direct Loan Agreement and Promissory Note for the construction of a roundabout at Route M and Henry Clay Blvd. First reading by title only. **Action:** _____
17. Council Bill No. 2018-067, an ordinance authorizing the Mayor to enter into the third amendment to lease agreement with Elements Home Energy Solutions, LLC. First reading by title only. **Action:** _____
18. Council Bill No. 2018-068, an ordinance to amend Chapter 10; 2012 International Residential Building Code Addendums of the Boone County Resource Management; Section 302.2 Townhouses. First reading by title only. **Action:** _____
19. Council Bill No. 2018-069, an ordinance authorizing the City of Ashland, Missouri to enter into a lease purchase transaction with Connections Bank, as Lessor, with respect to the construction of a new City Hall Facility; and approving related agreements. First reading by title only. **Action:** _____
20. Council Bill No. 2018-070, an ordinance authorizing the Mayor to enter into a cost share agreement with the Missouri Highways and Transportation Commission. First reading by title only. **Action:** _____

ORDINANCES

- 21. Ordinance No. 1214, an ordinance extending the corporate limits of the City of Ashland, Missouri by annexing unincorporated area; Directing the City Clerk to give notice of the annexation. **Action:** _____
- 22. Ordinance No. 1215, an ordinance to change the zoning of a parcel of land from (A-1) Agricultural District to (APC) Airport Planned Commercial District. **Action:** _____
- 23. Ordinance No. 1216, an ordinance authorizing the Mayor to enter into a Right of Way Transfer Agreement to Hummingbird Properties, LLC. **Action:** _____
- 24. Ordinance No. 1217, an ordinance approving the final major plat of Cartwright Business & Technology Park, Plat 2. **Action:** _____
- 25. Ordinance No. 1218, an ordinance authorizing the Mayor to enter into the third amendment to lease agreement with Elements Home Energy Solutions, LLC. **Action:** _____
- 26. Ordinance No. 1219, an ordinance authorizing the City of Ashland, Missouri to enter into a lease purchase transaction with Connections Bank, as Lessor, with respect to the construction of a new City Hall Facility; and approving related agreements. **Action:** _____
- 27. Ordinance No. 1220, an ordinance authorizing the Mayor to enter into a cost share agreement with the Missouri Highways and Transportation Commission. **Action:** _____

RESOLUTIONS

- 28. A resolution authorizing the Mayor to enter into an agreement for professional planning services for updating the City's Comprehensive Plan with Streiler Planning, LLC. **Action:** _____
- 29. A resolution authorizing the disposal of excess property owned by the City of Ashland. **Action:** _____

OTHER

- 30. None

DISCUSSION


- 31. None

REPORTS

- 32. Mayor's Report
- 33. City Administrator's Report/Police Chief

- 34. City Attorney's Report
- 35. Board of Aldermen's Report
- 36. Vote to adjourn the meeting

The City of Ashland wants to make certain our meeting is accessible to all citizens. If you require any accommodations (signing, interpreter, translator, etc.) that we do not normally have at our meetings, please let Darla Sapp, City Clerk know of your needs. (if possible 48 hours in advance of the meeting)

Posted: 11-02-2018@ 2:10 pm 

City Hall and website: www.ashlandmo.us

THURSDAY, OCTOBER 11, 2018
BOARD OF ALDERMEN SPECIAL MEETING MINUTES
4:30 P.M.

DRAFT COPY NOT APPROVED BY BOARD

Mayor Rhorer called the special meeting to order at 4:40 p.m. on Thursday, October 11, 2018 at 109 East Broadway, Ashland, Missouri.

Mayor Rhorer called the roll:

Ward One: Leslie Martin-absent, Danny Clay-here
Ward Two: Jesse Bronson-absent, Richard Sullivan-here
Ward Three: Rick Lewis-here, Jeff Sapp-here

Staff Present: Darla Sapp, City Clerk and Lyn Woolford, Police Chief/City Administrator.

Mayor Rhorer presented Council Bill No. 2018-057 for consideration. Alderman Sapp made motion and seconded by Alderman Clay to take up Council Bill No. 2018-057, an ordinance to modify Ordinance No. 1207, pertaining to providing for the purchase/sale of real property with Westhoff Rental's LLC. First reading by title only. Mayor Rhorer called for questions or comments. Lyn Woolford, City Administrator reported we needed to make a correction in the ordinance on the dollar amount from \$235,000.00 to \$375,000.00 on the purchase price. He stated he thought we were just having to come up with the difference of \$235,000.00 at closing since Dave Westhoff would owe us \$140,000.00 for City Hall. He stated for legal purposes and to be clear we have to purchase the property then Mr. Westhoff will pay us our purchase price for City Hall. Mayor Rhorer called for the vote. Alderman Sullivan-aye, Alderman Sapp-aye, Alderman Lewis-aye, Alderman Clay-aye, Alderman Bronson-absent, Alderwoman Martin-absent. Motion carried.

Mayor Rhorer presented Ordinance No. 1212 for consideration. Alderman Sapp made motion and seconded by Alderman Clay to take up Council Bill No. 2018-057, an ordinance to modify Ordinance No. 1207, pertaining to providing for the purchase/sale of real property with Westhoff Rental's LLC. Mayor Rhorer called for questions or comments. Mayor Rhorer called for the vote. Alderman Lewis-aye, Alderman Clay-aye, Alderman Sullivan-aye, Alderman Sapp-aye, Alderman Bronson-absent, Alderwoman Martin-absent. Motion carried.

Alderman Sapp made motion and seconded by Alderman Clay to adjourn the meeting at 4:48 p.m.. Mayor Rhorer called for the vote. Alderman Lewis-aye, Alderman Clay-aye, Alderman Sullivan-aye, Alderman Sapp-aye, Alderman Bronson-absent, Alderwoman Martin-absent. Motion carried.

Darla Sapp, City Clerk

Gene Rhorer, Mayor

TUESDAY, OCTOBER 16, 2018
BOARD OF ALDERMEN MINUTES
7:00 P.M.

DRAFT COPY NOT APPROVED BY BOARD

Mayor Rhorer called the regular meeting to order at 7:00 p.m. on October 16, 2018 at 815 East Broadway, Ashland, Missouri.

Mayor Rhorer led in the pledge of allegiance.

Mayor Rhorer called the roll:

Ward One: Leslie Martin-here, Danny Clay-absent
Ward Two: Jesse Bronson-here, Richard Sullivan-here
Ward Three: Rick Lewis-here, Jeff Sapp-here

Staff Present: Darla Sapp, City Clerk, Lyn Woolford, Police Chief/City Administrator and Jeffrey Kays, City Attorney.

Mayor Rhorer presented the agenda of October 16, 2018 for consideration. Alderman Bronson made motion and seconded by Alderman Sapp to approve the agenda as presented. Mayor Rhorer called for the vote. Motion carried.

Mayor Rhorer presented the minutes of October 02, 2018 Board meeting for consideration. Alderman Bronson made motion and seconded by Alderman Sapp to approve the minutes as presented. Mayor Rhorer called for the vote. Motion carried.

Mayor Rhorer asked if anyone wished to appear before the Board to come to the podium and state their name and place of residence on any subject.

Shawn Middendorf, Division Manager with Alliance Water Resources introduced the new local manager, Russell Gerling. Mr. Gerling gave a brief history of his work experience to the Board. The Board welcomed Mr. Gerling to his new position.

Mayor Rhorer presented Ordinance No. 1213 for consideration. Alderman Bronson made motion and seconded by Alderman Sapp to take up Ordinance No. 1213, an ordinance authorizing the appropriation of funds to certain accounts within the fiscal year 2019 budget. Mayor Rhorer called for questions or comments. Lyn Woolford, City Administrator reported that Shelley Martin, Treasurer went over these amendments at the last meeting and this was the second reading of the Ordinance. Mayor Rhorer called for the vote. Alderman Lewis-aye, Alderman Bronson-aye, Alderwoman Martin-aye, Alderman Sullivan-aye, Alderman Sapp-aye, Alderman Clay-absent. Motion carried.

Mayor Rhorer presented Paul Beuselinck's resignation from the Planning and Zoning Commission. Alderman Bronson made motion and seconded by Alderman Sapp to accept the resignation from Paul Beuselinck from the Planning and Zoning Commission. Mayor Rhorer called for the vote. Alderman Sapp-aye, Alderman Sullivan-aye, Alderwoman Martin-aye, Alderman Lewis-aye, Alderman Bronson-aye, Alderman Clay-absent. Motion carried.

Mayor Rhorer stated a public hearing for annexation of Hardwick Lane for the City of Ashland on November 06, 2018 needed to be set. Alderman Bronson made motion and seconded by Alderman Sapp to set the public hearing for Hardwick Lane annexation for November 06, 2018 at 7:00 p.m. Mayor

Rhorer called for the vote. Alderman Sapp-aye, Alderman Sullivan-aye, Alderwoman Martin-aye, Alderman Lewis-aye, Alderman Bronson-aye, Alderman Clay-absent. Motion carried.

Mayor Rhorer stated we need to set a public hearing for annexation for Ashland Commons, LLC on November 06, 2018. Alderman Bronson made motion and seconded by Alderman Sapp to set the public hearing for Ashland Commons, LLC annexation for November 06, 2018 at 7:00 p.m. Mayor Rhorer called for the vote. Alderman Lewis-aye, Alderman Bronson-aye, Alderwoman Martin-aye, Alderman Sullivan-aye, Alderman Sapp-aye, Alderman Clay-absent. Motion carried.

Mayor Rhorer reported the next item on the agenda is discussion of the recycling containers. Lyn Woolford, City Administrator recommend we continue the recycling program, move the bins to a fenced area at the Maintenance Building, establish hours of availability and to add surveillance cameras. The Board discussed the relocation site, cost of improvements to the proposed site and the ability for expansion in the future. Alderman Sullivan questioned the pro's and con's of the water building site as they first discussed and the Maintenance Building. The Board discussed the fact this is not in a residential area, is visible to the public and is a larger lot. Lyn Woolford reported the surveillance system is already installed in this building and we could easily add another camera. The two lots were discussed at length with the determination that additional information was needed. Lyn Woolford reported he attached a survey on recycling from Mid-Mo Solid Waste Management to his report. The Board discussed the location and felt the water building was the best location for the recycling containers.

Mayor's Report:

Mayor Rhorer reported the Fall Fest is this Saturday at the city park. He stated the Balloon Festival and carnival is this weekend at Cartwright Properties.

City Administrator/Police Chief Report:

Lyn Woolford gave a summary of the income report on sales tax and property tax for the City of Ashland. He reported the park/storm water tax collection began this month and we should see some revenue next month.

He informed the Board he received complaints of the trash carts on Kimberly Drive being a safety issue. He stated they did door hangers advising the tenants of the issue and to put their trash carts back up by their apartments. He stated most residents complied. He stated a letter would be sent out and if this does not work, the police department will issue summons.

Lyn Woolford reported the Main Street Sidewalk Project advertisement for bids will run in this week's paper and opened on November 15, 2018.

He informed the Board there has been no updates on the 50/50 cost share with MoDot for Broadway/Henry Clay roundabout.

Lyn Woolford stated the water building is almost complete with the exception of Centurylink, natural gas getting hooked up and the concrete approach.

He reported the road salt has been delivered and Watson Concrete is working in Palomino Ridge Subdivision on the curb and gutter.

He stated the enhanced pedestrian signals for crosswalks have been ordered by the school.

Lyn Woolford and employees from Alliance Water Resource discussed a sewer blockage on Russian Setter Drive. Lyn Woolford reported it was a dead sewer tap that had fallen into the main sewer line. He reported it was on property owned by Bill Martin and he assisted in digging this up.

Lyn Woolford reported the school is hosting a twenty-two band competition in Ashland this Saturday. He stated the marching band part will be from 8:30 a.m. to 10:30 a.m. and the rest of the competition will be at the school. He stated with the Fall Festival, Balloon Event and band competition it would be a very busy weekend in Ashland.

City Attorney report:
Jeffrey Kays did not have a report.

Board of Aldermen's Reports:
Alderman Lewis informed the Board the Lion's Club will have a food booth at the Fall Festival and asked for volunteers.

Alderman Bronson gave an update on the Park Board meeting on Monday night. He reported most of the meeting was about the Fall Festival.

Alderman Sullivan stated door hangers on grass clippings on the roadway needed to put out on Renee Street.

Alderman Sapp also reported grass clippings on roadway in Palomino Ridge Subdivision on Redwood Drive/Pinto Pony area.

Alderman Bronson made motion and seconded by Alderman Sapp to go into closed session pursuant to Chapter 610.021 (3) hiring, firing and disciplining of a certain employee; personnel matters with a ten minute break. Mayor Rhorer called for the vote. Alderman Lewis-aye, Alderman Bronson-aye, Alderman Lewis-aye, Alderwoman Martin-aye, Alderman Sullivan-aye, Alderman Sapp-aye, Alderman Clay-absent. Motion carried.

The City Clerk was not present at the closed meeting.

Mayor Rhorer stated they were back in open session with no reportable action taken.

Alderman Bronson made motion and seconded by Alderman Sapp to adjourn the meeting. Mayor Rhorer called for the vote. Motion carried.

Darla Sapp, City Clerk

Gene Rhorer, Mayor

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held before the Board of Aldermen of the City of Ashland, Mo. at 7:00 p.m. on November 06, 2018 at 815 East Broadway, Ashland, Mo. concerning the matter of the proposed voluntary annexation for the City of Ashland, Missouri of a tract of land into the City limits of the following described real estate in Boone County to wit:

A tract of land located in the West Half of Section 26, Township 47 North, Range 12 West, Columbia, Boone County, Missouri and being part of the land described by the warranty deed recorded in Book 4828, Page 94 and being more particularly described in the Quit-Claim Deed on file in the City Clerk's office.



At this public hearing any interested person, corporation or political subdivision may present evidence regarding the proposed annexation. Furthermore, any objections to the proposed annexation should be filed in writing with the Board of Aldermen of the City of Ashland no later than fourteen days after the date of said public hearing.

For additional information contact City Hall at 657-2091 or e-mail cityclerk@ashlandmo.us

Done by order of the Board of Aldermen

Darla Sapp, City Clerk

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHLAND, MISSOURI BY ANNEXING UNINCORPORATED AREA; DIRECTING THE CITY CLERK TO GIVE NOTICE OF THE ANNEXATION

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ASHLAND, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen hereby finds that a verified petition was filed with the City on October 01, 2017 requesting annexation of land that is contiguous and compact to the existing corporate limits of the City and that is described in "Exhibit A", which is attached to and made a part of this ordinance. This petition was signed by the owners of the fee interest of record in the land proposed to be annexed. A public hearing was held concerning this matter on November 06, 2018. Notice of this hearing was published more than fourteen days prior to the hearing in a newspaper of general circulation qualified to publish legal matters. At the public hearing all interested persons, corporations and political subdivisions were permitted to present evidence regarding the proposed annexation.

Section 2. The Board of Aldermen determines that the annexation is reasonable and necessary to the proper development of the City and that the City has the ability to furnish normal municipal services to the area to be annexed within a reasonable time.

Section 3. The Board of Aldermen determines that no written objection to the proposed annexation has been filed within fourteen days after the public hearing.

Section 4. The Board of Aldermen hereby extends the city limits by annexing the land described in Exhibit "A". Appendix "A" of Chapter 1 of the City Code is hereby amended to include the land described in Exhibit "A."

Section 5. The City Clerk is hereby authorized and directed to cause three certified copies of this ordinance to be filed with the Clerk of Boone County, Missouri and three certified copies with the Assessor of Boone County, Missouri. The City Clerk is further authorized and directed to forward to the Missouri Department of Revenue, by registered or certified mail, a certified copy of this ordinance and a map of the City clearly showing the area annexed into the City.

Section 6. The property described in Exhibit "A" is located in Ward One.

Section 7. This ordinance shall be in full force and effect from and after its passage and approval.

Dated this _____ day of _____, 2018.

Gene Rhorer, Mayor

Attest:

Darla Sapp, City Clerk

Certified as to correct form:

Jeffrey Kays, City Attorney

EXHIBIT A

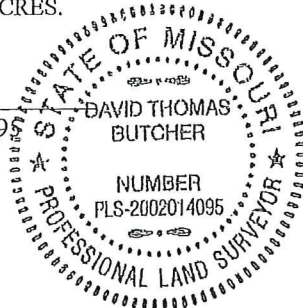
A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 26, TOWNSHIP 47 NORTH, RANGE 12 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF THE LAND DESCRIBED BY THE WARRANTY DEED RECORDED IN BOOK 4537, PAGE 36 AND BEING THE SURVEY RECORDED IN BOOK 4828, PAGE 94 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 26, AND WITH THE SOUTH LINE THEREOF, S 89°19'00"E, 479.81 FEET TO THE POINT OF BEGINNING:

THENCE FROM THE POINT OF BEGINNING, 312.44 FEET ALONG A 5298.80-FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD N 7°57'50"E, 312.39 FEET; THENCE N 9°39'35"E, 83.85 FEET; THENCE 448.55 FEET ALONG A 1363.47-FOOT RADIUS CURVE TO THE LEFT, SAID CURVE HAVING A CHORD N 0°14'15"E, 446.53 FEET; THENCE N 9°11'15"W, 309.01 FEET; THENCE S 80°48'45"W, 5.00 FEET; THENCE N 9°11'15"W, 100.00 FEET; THENCE N 80°48'45"E, 5.00 FEET; THENCE N 9°11'15"W, 176.75 FEET; THENCE S 80°48'45"W, 161.14 FEET TO A POINT 143.92 FEET LEFT OF CENTERLINE STATION 558+90.61, OF HWY 63; THENCE N 13°51'35"E, 340.81 FEET TO A POINT 175.62 FEET LEFT OF CENTERLINE STATION 555+51.38 OF HWY 63; THENCE N 16°53'45"E, 279.02 FEET TO A POINT 216.25 FEET LEFT OF CENTERLINE STATION 552+74.80 OF HWY 63; THENCE N 25°05'50"E, 539.54 FEET TO A POINT 370.27 FEET LEFT OF CENTERLINE STATION 547+57.86 OF HWY 63 AND TO A POINT 125 FEET RIGHT OF CENTERLINE STATION 5+61.53 OF RTE H; THENCE S 89°39'25"E, 413.43 FEET TO A POINT 125 RIGHT OF CENTERLINE STATION 9+74.97; THENCE S 32°29'00"W, 262.19 FEET, TO STATION 23+00; THENCE LEAVING SAID STATION, S 56°04'40"W, 474.99 FEET, TO STATION 28+00; THENCE LEAVING SAID STATION 28+00, 291.15 FEET ALONG A 425.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A CHORD S 10°26'20"W, 285.49 FEET, TO P.C. STATION 31+42.53; THENCE LEAVING SAID STATION 31+42.53, S 4°02'55"E, 279.17 FEET TO STATION 34+20.57; THENCE S 80°48'45"W, 20.00 FEET AT STATION 34+20.57 SAID STATION ALSO BEING STATION 496+23.75 OF OLD HIGHWAY 63; THENCE LEAVING SAID STATION 34+20.57, S 9°11'15"E, 176.75 FEET TO STATION 489+00.50; THENCE AT STATION 489+00.50, N 80°48'45"E, 5.00 FEET; THENCE LEAVING SAID STATION 489+00.50, S 9°11'15"E, 100.00 FEET TO STATION 499+00.50; THENCE WITH STATION 499+00.50, S 80°48'45"W, 5.00 FEET; THENCE LEAVING STATION 499+00.50, S 9°11'15"E, 309.01 FEET TO STATION 502+09.10; THENCE LEAVING STATION 502+09.10, 468.29 FEET ALONG A 1423.47-FOOT RADIUS CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD S 0°14'15"W, 466.18 FEET TO STATION 506+67.93; THENCE LEAVING STATION 506+67.93, S 9°39'35"W, 83.85 FEET TO STATION 507+51.78; THENCE LEAVING SAID STATION 507+51.78, 515.60 FEET ALONG A 5238.80-FOOT RADIUS CURVE TO THE LEFT, SAID CURVE HAVING A CHORD S 6°50'00"W, 515.39 FEET TO STATION 512+70.34; THENCE LEAVING STATION 512+70.34, 505.90 FEET ALONG A 684.67-FOOT RADIUS CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD S 24°53'20"W, 494.47 FEET TO STATION 517+54.22; THENCE, N 43°56'35"W, 60.00 FEET; THENCE 461.88 FEET ALONG A 624.67-FOOT RADIUS CURVE TO THE LEFT, SAID CURVE HAVING A CHORD N 24°52'30"E, 451.43 FEET; THENCE 209.08 FEET ALONG A 5298.80-FOOT RADIUS CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD N 5°08'40"E, 209.06 FEET; TO THE POINT OF BEGINNING AND CONTAINING 8.43 ACRES.

David T. Butcher
DAVID T. BUTCHER, PLS-2002014095

12/7/2017
DATE



MEMORANDUM

DATE: August 15, 2018

TO: Honorable Mayor and Board of Aldermen

FROM: Planning and Zoning Commission

RE: Recommendation from the Planning and Zoning Commission

- a) The Planning and Zoning Commission recommends the approval of the requested rezoning from A-1, Agricultural District, to A.P.C., Airport Planned Commercial District, of property on Hardwick Lane to the City of Ashland Board of Aldermen.

Megan Young
Administrative Assistant

AN ORDINANCE TO CHANGE THE ZONING OF A PARCEL OF LAND FROM (A-1)
AGRICULTURAL DISTRICT TO (APC) AIRPORT PLANNED COMMERCIAL DISTRICT

WHEREAS, Public Notice of such was given as prescribed by Missouri State Statute 89.040, and a public hearing was held on Tuesday, October 23, 2018; and

WHEREAS, the Planning and Zoning Commission has reviewed the pertinent information and received comment from adjacent residents and has unanimously agreed to recommend to the Board of Aldermen to approve the rezoning from (A-1) Agricultural District to (APC) Airport Planned Commercial District; and

WHEREAS, the Board of Aldermen of the City of Ashland, Missouri has reviewed the request as submitted and has elected to rezone the property described in Section 1 from (A-1) Agricultural District.

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

Section 1. The zoning is hereby amended from the present (A-1) Agricultural District to (APC) Airport Planned Commercial District for the following described property in attached Exhibit "A".

Section 2. The City hereby finds and declares that the property described in Section 1 hereof is at the present particularly suitable for the purposes and uses of (APC) Airport Planned Commercial District and in conformity with the existing uses and value of the immediately surrounding properties.

Section 3. This ordinance shall be in full force and effect from and after its passage.

Dated this _____ day of _____, 2018.

Gene Rhorer, Mayor

Attest:

Darla Sapp, City Clerk

Certified as to correct form:

Jeffrey Kays, City Attorney

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHLAND, MISSOURI BY ANNEXING UNINCORPORATED AREA ON THE NORTH SIDE OF LIBERTY LANE; DIRECTING THE CITY CLERK TO GIVE NOTICE OF THE ANNEXATION

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ASHLAND, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen hereby finds that a verified petition was filed with the City on October 8, 2018 requesting annexation of land that is contiguous and compact to the existing corporate limits of the City and that is described in "Exhibit A", which is attached to and made a part of this ordinance. This petition was signed by the owners of the fee interest of record in the land proposed to be annexed. A public hearing was held concerning this matter on November 06, 2018. Notice of this hearing was published more than fourteen days prior to the hearing in a newspaper of general circulation qualified to publish legal matters. At the public hearing all interested persons, corporations and political subdivisions were permitted to present evidence regarding the proposed annexation.

Section 2. The Board of Aldermen determines that the annexation is reasonable and necessary to the proper development of the City and that the City has the ability to furnish normal municipal services to the area to be annexed within a reasonable time.

Section 3. The Board of Aldermen determines that no written objection to the proposed annexation has been filed within fourteen days after the public hearing.

Section 4. The Board of Aldermen hereby extends the city limits by annexing the land described in Exhibit "A". Appendix "A" of Chapter 1 of the City Code is hereby amended to include the land described in Exhibit "A."

Section 5. The City Clerk is hereby authorized and directed to cause three certified copies of this ordinance to be filed with the Clerk of Boone County, Missouri and three certified copies with the Assessor of Boone County, Missouri. The City Clerk is further authorized and directed to forward to the Missouri Department of Revenue, by registered or certified mail, a certified copy of this ordinance and a map of the City clearly showing the area annexed into the City.

Section 6. The property described in Exhibit "A" is located in Ward Three.

Section 7. This ordinance shall be in full force and effect from and after its passage and approval.

Dated this _____ day of _____, 2018.

Gene Rhorer, Mayor

Attest:

Darla Sapp, City Clerk

Certified as to correct form:

Jeffrey Kays, City Attorney

EXHIBIT "A"

A tract of land located in the Northwest Quarter of Section 15, Township 46 North, Range 12 West, Boone County, Missouri, being part of the tracts described by the Trustee's Deeds recorded in Book 4704, Page 4 and Book 4816, Page 149 and the Survey's recorded in Book 4699, Page 141 and Book 4792, Page 170 of the Boone County Records and being more particularly described as follows:

Commencing at the Northwest Corner of said Survey recorded in Book 4699, Page 141; Thence from the point of beginning, with the West Line of said Survey, $S0^{\circ}40'05''W$, 473.24 feet to the point of beginning;

Thence from the point of beginning, leaving said West line $S87^{\circ}41'55''E$, 1317.46 feet to the East line of said Survey recorded in Book 4792, Page 170 on the Quarter Section line; Thence with the lines of said Survey, $S0^{\circ}59'10''W$, 624.86 feet; Thence leaving said Quarter Section Line, continuing with the lines of said Survey, 247.38 feet along a 1472.26-Foot radius non-tangent curve to the left, said curve having a Chord $S9^{\circ}07'10''W$, 247.09 feet to the Southeast corner of said Survey in Book 4792, Page 170 on the Quarter Section line; Thence along the South line of said Survey recorded in Book 4699, Page 141, $N87^{\circ}13'25''W$, 1278.00 feet to the Southwest corner of said survey recorded in Book 4699, Page 141. Thence leaving said Quarter Section line and with the West line of said survey, $N0^{\circ}40'05''W$, 859.74 feet to the point of beginning and containing 25.99 acres.

COUNCIL BILL NO. 2018-061

ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A RIGHT OF WAY
TRANSFER AGREEMENT WITH HUMMINGBIRD PROPERTIES, LLC

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ASHLAND,
MISSOURI AS FOLLOWS:

Section 1. The Board of Aldermen authorizes the Mayor, on behalf of the City of Ashland, to enter into a Right of Way Transfer Agreement with Hummingbird Properties, LLC.

Section 2. The terms of said agreement shall be as set forth in the attached agreement, which by reference is incorporated herein as if more fully and completely set out as Exhibit "A".

Section 3. This ordinance shall be in full force and effect from and after its passage and approval.

Dated this _____ day of _____, 2018.

Gene Rhorer, Mayor

Attest:

Darla Sapp, City Clerk

Certified as to correct form:

Jeffrey Kays, City Attorney

RIGHT OF WAY TRANSFER AGREEMENT

This Right of Way Transfer Agreement (this “Agreement”) is made and entered into and shall be effective as of the 6th day of November, 2018, (the “Effective Date”) by and between the Hummingbird Properties, LLC, a Missouri limited liability company and its successors and assigns (“Hummingbird”) and the City of Ashland, a Missouri fourth class city (“Ashland”).

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in view of the recitals of facts contained herein, which are incorporated in this Agreement by this reference, Hummingbird and Ashland agree as follows:

1. **Definitions:** In this Agreement, the following terms will have the following meanings:

a. “Ashland Tract” means that certain real estate owned by Ashland, which is described on Exhibit A attached hereto and incorporated herein by this reference.

b. “Engineer” means Crockett Engineering Consultants, LLC, a Missouri limited liability company.

c. “Environmental Law” means all existing and future statutes, ordinances, codes, regulations, rules, rulings, orders, decrees, directives, and other law and policies pertaining to environmental protection including any requirements by the City, the State of Missouri's Department of Natural Resources, and the Environmental Protection Agency of the United States Government and including the Resource Conservation and Recovery Act of 1987, the Comprehensive Environmental Response, Compensation and Liability Act, any so-called “Superfund” or “Superlien” law, the Toxic Substances Control Act and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials or any other hazardous, toxic or dangerous waste, substance or constituent or other substance, whether solid, liquid or gas, as now or at any time hereafter in effect.

d. “Event of Default” means the failure of a Party to perform its obligations hereunder or it means that a representation or warranty made by a Party in this Agreement shall be untrue.

e. “Governmental Authorities” or “Governmental Authority” means, any governmental or regulatory agency, whether state, local, or federal, that has or may have authority with respect to issuing, approving, amending, revoking, or making decisions impacting licenses, permits, consents, concessions, orders and other authorizations and agreements, with respect to the Hardwick Lane Plans or the Hardwick Lane Realignment or any other matter related to this Agreement.

f. “Hazardous Materials” or “Hazardous Material” means any hazardous substance, hazardous waste or pollutant or contaminant defined as such in (or for the

purposes of) any Environmental Law and shall include, without limitation, any radioactive material (including, without limitation, any source, special nuclear or by-product material as defined in 42 U.S.C. Section 2011 et seq., as amended or hereafter amended) explosives, hydrocarbons, asbestos in any form or condition, polychlorinated biphenyls (PCBs), petroleum or petroleum based products, radon gas and all other wastes and substances, now or hereafter defined as hazardous, toxic, dangerous, or otherwise regulated under any Environmental Law, and any other materials or substances, the exposure to which is prohibited, limited or regulated by any governmental authority or which does or could pose a hazard to health or safety.

g. “Hardwick Lane Realignment” means the realignment of a portion of Hardwick Lane in the City of Ashland, Boone County Missouri, near its north terminus as it exists on the Effective Date, to connect with Baldrige Avenue and to no longer connect directly to Route H, all as substantially shown on the Hardwick Lane Plans.

h. “Hardwick Lane Plans” means the Cartwright Business & Technology Park Phase 3 plans of the Engineer dated September 12, 2018. A copy of the most recent version of the Hardwick Lane Plans is attached hereto as Exhibit B and incorporated herein by this reference.

i. “In Default” means the status of a Party that has committed an Event of Default following any required Notice given by the other Party and failure by the defaulting Party to cure, eliminate, or correct such Event of Default within the time allowed in this Agreement and, if no such time is stated, within the time stated in such Notice.

j. “Lien” means any interest in any real or personal property, whether tangible or intangible, securing an obligation owed to, or a claim by, a Person other than the owner of the property in question, whether such interest is based on common law, statute or contract, including, without limitation, any security interest, mortgage, deed of trust, pledge, hypothecation, mechanic's lien, materialmen's lien, judgment lien, lis pendens, tax lien or other lien or encumbrance of any kind or nature whatsoever, any conditional sale or trust receipt and any lease, consignment or bailment for security purposes. The term “Lien” shall include, without limitation, reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting real property.

k. “MoDOT” means the Missouri Highways and Transportation Commission and its agents and/or employees including the Missouri Department of Transportation created pursuant to the provisions of Sections 226.005 to 226.190 of the Revised Statutes of Missouri, as amended.

l. “Parties” means Hummingbird and Ashland. Each of the Parties may be referred to herein as a “Party”.

m. "Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity or a governmental authority.

n. "Right of Way" means rights of way related interests in the real property located on the Ashland Tract including without limitation easements, temporary easements, construction easements, easements for ingress and egress for design and construction, all rights of way, and other such rights to and interests in such real property.

2. **Recitals of Pertinent Facts:** This Agreement has been entered into in view of the following facts, which the Parties believe are true and accurate, to-wit:

a. Ashland is the owner of the Ashland Tract.

b. Hummingbird owns the property east of the Ashland Tract, which is contiguous with the Ashland Tract.

c. The Parties desire that the Ashland Tract, including the Right of Way, be conveyed by Ashland to Hummingbird.

d. In exchange for Ashland conveying the Ashland Tract to Hummingbird and Ashland performing its other obligations hereunder, the Parties desire that Hummingbird complete the Hardwick Lane Realignment in accordance with the Hardwick Lane Plans.

3. **Contingencies:** Hummingbird's obligations under this Agreement shall be subject to the contingencies hereafter specified in this paragraph 3 ("Hummingbird's Contingencies"). If any of the following Hummingbird's Contingencies are not met within the time allowed for the satisfaction of the Hummingbird's Contingencies and Hummingbird shall have sent notice to Ashland stating that the Hummingbird Contingencies have not been met and that this Agreement has been terminated, this Agreement shall be void. Each of Hummingbird's Contingencies is for the benefit of Hummingbird, and may be waived by Hummingbird in writing in Hummingbird's discretion. All of the following Hummingbird's Contingencies will be deemed waived by Hummingbird on the Closing Date, unless on or before that date, Hummingbird gives notice to the Ashland as to the nonsatisfaction of any one or more of the following Hummingbird's Contingencies. Hummingbird's Contingencies shall be as follows:

a. Hummingbird must be satisfied that Hummingbird will acquire title to the Ashland Tract in the manner required by this Agreement, including as required in paragraph 4 below. If at any time on or before the Closing Date Hummingbird becomes aware of any circumstance which reasonably indicates that Hummingbird will not acquire title to the Ashland Tract in the manner required by this Agreement, then Hummingbird shall have the right to terminate this Agreement. If Hummingbird gives written notice of termination of this Agreement because one or more of the foregoing Hummingbird's Contingencies

have not been satisfied, neither Hummingbird nor Ashland shall have any further obligations under this Agreement, and this Agreement shall be null and void.

b. Hummingbird must be satisfied that the Ashland Tract shall have been annexed into the City of Ashland and placed in the zoning district "Airport Planned Commercial District" under Section 9.292.2 of Chapter 9 of The code of the City of Ashland, Missouri with all permitted uses available under said district and with an approved final plat acceptable to Hummingbird. If at any time on or before the Closing Date Hummingbird becomes aware of any circumstance which reasonably indicates that the Ashland Tract is not annexed, zoned, and platted in the manner required by this Agreement, then Hummingbird shall have the right to terminate this Agreement. If Hummingbird gives written notice of termination of this Agreement because one or more of the foregoing Hummingbird's Contingencies have not been satisfied, neither Hummingbird nor Ashland shall have any further obligations under this Agreement, and this Agreement shall be null and void.

4. **Ashland Tract Conveyance:** Within fifteen (15) days after the Effective Date, Ashland shall convey the Ashland Tract to Hummingbird. Such conveyance shall be in a form and shall be conveyed in a manner acceptable to Hummingbird, including without limiting the foregoing, title to the Ashland Tract shall be conveyed by warranty deed and shall be without encumbrances that are unacceptable to Hummingbird and without the existence of any Hazardous Materials on the Ashland Tract and without the existence of any violation of any Environmental Law applicable to the Ashland Tract. For example, should there be a Lien affecting the Ashland Tract, Ashland shall cause such Lien to be removed. Hummingbird may obtain, at Hummingbird's expense, a title insurance commitment for the Ashland Tract. The title insurance commitment must be issued by an underwriter for which Boone Central Title Company is an agent or another title insurance company and underwriter acceptable to Purchaser. Said commitment must obligate the title insurance company to issue an ALTA owner's title insurance policy to Hummingbird immediately after Closing which insures Hummingbird's title to the Ashland Tract to be free from liens or encumbrances except for those that Hummingbird has stated in writing to the title company as being acceptable. The amount of title insurance which is committed to be issued by said title insurance company must be a reasonable amount acceptable to Hummingbird. The title insurance commitment to be procured by Hummingbird as prescribed above shall enable Hummingbird to obtain at Closing the owner's policy of title insurance at a standard rate insuring the Hummingbird's title to the Ashland Tract as described herein. Any premium due with respect to said policy shall be paid by Hummingbird.

5. **Closing:** The closing (the "Closing") of the conveyance of the Ashland Tract shall occur on the earliest of: (a) 10:00 a.m. on November 21, 2018; or (b) or such other time as the parties may mutually agree upon. The Closing shall occur in the offices of Boone-Central Title Insurance Company (the "Title Company") in Columbia Missouri or such other place upon which the parties may agree. The date on which the Closing is held is referred to herein as the "Closing Date" or "date of Closing." At Closing, Ashland shall, in addition to any other obligations of Ashland as set forth in this Agreement, perform the following:

- a. Deliver the required conveyance documents, duly executed and acknowledged by Ashland, conveying title to the Ashland Tract to Hummingbird as described herein.
- b. Release or cause to be released and/or terminated: (i) any consensual liens created by Ashland, and, (ii) any security interest, mortgage or deed of trust, mechanic's lien, or lease affecting the Ashland Tract, if any.
- c. Deliver an executed and acknowledged seller's affidavit of title in a customary form reasonably acceptable to the Title Company.
- d. Deliver to Title Company any other documents required by this Agreement to be delivered by Ashland or reasonably necessary to implement and effectuate this Agreement.

6. **Additional Covenants of Ashland:** Prior to the Closing, Ashland agrees as follows:

- a. Ashland shall not sell, agree to sell, assign, transfer, or otherwise dispose of any portion of the Ashland Tract or any rights with respect thereto.
- b. Ashland shall not perform any construction or development work related to the Ashland Tract not shown on the Hardwick Lane Plans.
- c. Ashland shall not seek or permit or consent to any change to the zoning classifications of the Ashland Tract, or any special or conditional use permits relating to same.
- d. Ashland shall cause all City of Ashland authorizations to occur which are necessary to enable Ashland to perform its Closing obligations hereunder (e.g., vacation of right of way interests in the Ashland Tract).

7. **Ongoing Obligations:**

- a. Ashland hereby covenants, warrants and agrees that the representations and warranties made herein by Ashland shall be and shall remain true and correct as of the date hereof and at all times thereafter until such time as the Ashland Tract conveyance to Hummingbird.
- b. Hummingbird shall engage the Engineers to seek approvals from Ashland necessary to allow Hardwick Lane Realignment.
- c. Following the Closing and upon approval by all Governmental Authorities, including Ashland, of all matters required in order to construct the Hardwick Lane Realignment (including MoDOT's approval of the retention of access from Route H at the former intersection of Hardwick Lane and Route H in a manner acceptable to Hummingbird), Hummingbird shall construct the Hardwick Lane Realignment in

accordance with the Hardwick Lane Plans. Hummingbird agrees to cause construction to commence as soon as practicable following receipt of the aforementioned approvals and to diligently prosecute the same to completion within two hundred forty (240) days, subject to delays caused by circumstances beyond Hummingbird's control, including, but not limited to inclement weather. The Parties agree that for each day that Hummingbird is unable to work on constructing the Hardwick Lane Realignment due to inclement weather, said two hundred forty (240) day period shall be extended by another day and that any such extension shall not constitute an Event of Default by Hummingbird.

d. After the Hardwick Lane Realignment has been completed in accordance with the Hardwick Lane Plans, Hummingbird shall cause the Hardwick Lane Realignment to be dedicated to Ashland in accordance with Ashland's governing ordinances and Ashland shall promptly take action in accordance with its governing ordinances accepting the improvements for future maintenance.

8. **Ashland Events of Default:** The occurrence of any one or more of the following events shall constitute an "Event of Default" of Ashland:

a. If default shall be made by Ashland in the due performance of any covenant, agreement or condition herein contained or required to be performed or observed by Ashland;

b. If any representation, warranty, statement, or certification of Ashland contained herein shall prove to be in any material respect incorrect; and,

c. If this Agreement or any of the documents conveying the Ashland Tract shall cease to be in full force and effect, be declared null and void by a court of competent jurisdiction, or Ashland shall assert that its obligations under any such document are not in full force and effect (except as the performance of such obligations may be explicitly excused under the terms of such document).

9. **Remedies if Ashland is In Default:** Ashland shall be In Default following an Event of Default of Ashland and any required Notice given by Hummingbird and Ashland's failure to cure, eliminate, or correct such Event of Default within the time allowed in this Agreement for curing such Event of Default, and, if no such time is stated herein, within the time stated in such Notice. If Ashland shall be In Default, in addition to all remedies conferred upon Hummingbird by law and equity, Hummingbird may (but shall not be required to) pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any others and that the pursuit of such remedies shall not be an Event of Default of Hummingbird:

a. Withhold from constructing the Hardwick Lane Realignment and terminate any other of its obligations to Ashland with or without terminating the Agreement or the obligations of Ashland.

b. Exercise or pursue any other remedy or cause of action permitted at law or equity or under this Agreement.

10. **Hummingbird Events of Default:** Hummingbird shall have committed an Event of Default if default shall be made by Hummingbird in the due performance of any obligation herein contained or required to be performed or observed by Hummingbird

11. **Remedies if Hummingbird is In Default:** Hummingbird shall be In Default following an Event of Default of Hummingbird and any required Notice given by Ashland and Hummingbird's failure to cure, eliminate, or correct such Event of Default within the time allowed in this Agreement for curing such Event of Default, and, if no such time is stated herein, within the time stated in such Notice. If Hummingbird shall be In Default, Ashland may (but shall not be required to) pursue any remedy or cause of action permitted at law or equity or under this Agreement concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any others.

12. **Due Authority:** Each of the Persons who has executed this Agreement on behalf of the their respective Party represents that he or she has been duly empowered and authorized by the board of directors, partners, members, managers, officers or other authorities of their respective Party to enter into this Agreement on behalf of their respective Party and to bind such Party in accordance with the terms hereof and that neither the execution, delivery, nor performance of this Agreement, violates or conflicts with any organizational documents, instruments, or agreements by which a Party is bound.

13. **Miscellaneous:**

a. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Parties' permitted assigns, successors, and legal representatives of the parties hereto.

b. **No Assignment:** No Party may assign its rights or obligations under this Agreement without the written consent of the other Party, and no such written consent shall be valid without reference to consent being given pursuant to this paragraph 13(b) of this Agreement.

c. **Missouri Contract:** This Agreement shall be deemed a Missouri contract and construed according to the laws of such state, regardless of whether this Agreement is being executed by any of the Parties hereto in other states or otherwise. The proper venue for any action concerning this Agreement shall be Boone County, Missouri.

d. **Counterparts:** This Agreement may be executed in several counterparts, each of which shall be deemed an original.

e. Time: Time is of the essence in this Agreement. If the final day of any period which is set forth in this Agreement falls on a Saturday, Sunday, or legal holiday under the laws of the United States or the state of Missouri, then in such event, the duration of such period shall be extended to the next day which is not a Saturday, Sunday, or other legal holiday. Any reference to a time of day (e.g., 12:00 noon) shall refer to the time of day applicable to the City of Ashland, Missouri.

f. Construction: The paragraph headings, captions, or abbreviations are used for convenience only and shall not be resorted to for interpretation of this Agreement. Whenever the context so requires, the masculine shall refer to the feminine, the singular shall refer to the plural, and vice versa.

g. Waiver: Except as otherwise specified herein, no waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party against whom it is asserted, and any such waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

h. No Adverse Inference: This Agreement shall not be construed more strongly against one Party or the other. The Parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

i. Survival: Except as otherwise expressly provided herein, the representations, warranties, and obligations under this Agreement shall survive termination of this Agreement.

j. Entire Agreement: This Agreement and the attachments and exhibits hereto set forth all the promises, covenants, agreements, conditions, and understandings among the Parties and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, expressed or implied, oral or written, except as herein contained. This Agreement may be modified only by an agreement in writing signed by all of the Parties.

k. No Joint Venture: Ashland acknowledges and agrees that Hummingbird is not a venturer, co-venturer, insurer, guarantor or partner of Ashland in any work contemplated herein and that Hummingbird shall bear no liability whatsoever resulting from an assertion that Hummingbird is a venturer, co-venturer, insurer, guarantor or partner of Ashland.

l. Further Actions: The Parties agree to execute such further documents and take such further actions as may reasonably be required to carry out the provisions and intents and purposes of this Agreement.

m. Force Majeure: In the event that a Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of (or if failure to perform the services is caused by) natural disaster, actions or decrees of any Governmental Authority having jurisdiction or communication line failure not the fault of the affected party ("Force Majeure Event"), the Party who has been so affected shall immediately give Notice to the other Party and shall do everything possible to resume performance. Upon such Notice, performance under this Agreement shall be immediately suspended, but only until such Force Majeure Event no longer permits performance.

n. Parties' Representatives: No officer, agent, director, employee, attorney, or representative of the Parties shall be personally liable to any Party for any Event of Default or breach or for any other obligation under this Agreement or for any amount which may become due to any Party and no Party shall have any recourse against any officer, agent, director, employee, attorney, or representative of the other Party.

o. Notices: Any notice given or required to be given hereunder ("Notice"), unless otherwise provided, shall be in writing and shall be deemed to have been delivered, whether actually received or not, three (3) days after being deposited in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Hummingbird or Ashland, as may be the case, as shown below:

If to Hummingbird: Hummingbird Properties, LLC
5875 West Van Horn Tavern Rd.
Columbia, MO 65203

With a copy to: Robert Hollis
Van Matre, Harrison, Hollis, Taylor, Elliott, and
Hicks, PC
1103 East Broadway
P. O. Box 1017
Columbia, MO 65205-1017
(Attorney for Hummingbird)

If to Ashland: Mayor
109 East Broadway
Ashland, MO 65010

p. Waiver of Jury Trial / Attorney's Fees: The Parties hereby waive and mutually relinquish their rights to a trial by jury in connection with any litigation arising out of this Agreement. If any Party shall seek to enforce against any other Party the provisions of this Agreement, by legal or equitable proceedings, then the prevailing Party in such proceeding shall recover from the other Party to such proceedings (whether such prevailing Party is a plaintiff or defendant and whether such Party prevails in full or substantially as to the relief sought or opposed by such Party), all of such prevailing Party's reasonable costs, expenses and attorney's fees incurred in such proceedings and in

connection with such proceedings, and shall have judgment therefor in addition to judgment for all other sums and remedies to which such prevailing Party would otherwise be entitled.

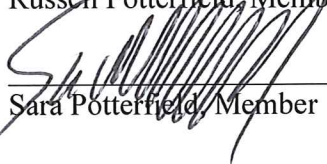
Remainder of this page left blank intentionally – Signature pages follow

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _____ day of _____, 20__.

Hummingbird Properties, LLC

By: 

Russell Potterfield, Member

By: 

Sara Potterfield, Member

City of Ashland

By: _____
Name: _____
Title: _____

ATTEST:

_____, City Clerk

EXHIBIT A

Ashland Tract

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 26, TOWNSHIP 47 NORTH, RANGE 12 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF THE LAND SHOWN IN THE SURVEY RECORDED IN BOOK 4828, PAGE 94 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SURVEY AND WITH THE NORTH LINE THEREOF, S 89°39'25"E, 413.43 FEET; THENCE LEAVING SAID NORTH LINE, S 32°29'00"W, 262.19 FEET; THENCE S 56°04'40"W, 474.99 FEET; THENCE 291.15 FEET ALONG A 425.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, S 10°26'20"W, 285.49 FEET; THENCE S 4°02'55"E, 87.36 FEET; THENCE 212.70 FEET ALONG A 380.00-FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, S 15°18'30"W, 209.93 FEET; THENCE S 80°48'45"W, 171.28 FEET TO THE WEST LINE OF SAID SURVEY; THENCE WITH SAID WEST LINE, N 13°51'35"E, 340.81; THENCE N 16°53'45"E, 279.02 FEET; THENCE N 25°05'50"E, 539.54 FEET TO THE POINT OF BEGINNING AND CONTAINING 5.27 ACRE.

EXHIBIT B

Hardwick Lane Plans

MEMORANDUM

DATE: October 24, 2018

TO: Honorable Mayor and Board of Aldermen

FROM: Planning and Zoning Commission

RE: Recommendation from the Planning and Zoning Commission

1. The Planning and Zoning Commission recommends the approval of the Final Major Plat for Cartwright Business & Technology Park Phase 3, Plat 2 on parcel ID #21-900-00-00-013.00 01 on E. Route H/S. Hardwick Ln. for Hummingbird Properties, LLC., to the City of Ashland Board of Aldermen.

Megan Young

Administrative Assistant

AN ORDINANCE APPROVING THE FINAL MAJOR PLAT FOR CARTWRIGHT
BUSINESS AND TECHNOLOGY PARK, PLAT 2

WHEREAS, the City has enacted a Subdivision Ordinance; and

WHEREAS, in accordance with the Subdivision Regulations, The Planning and Zoning Commission has recommended the approval of the Cartwright Business and Technology Park, Plat 2 dated August 27, 2018 at their meeting on October 23, 2018; and

WHEREAS, the Board of Aldermen accepts the recommendation of the Planning and Zoning Commission.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ASHLAND,
MISSOURI AS FOLLOWS:

Section 1. The final plat for Cartwright Business and Technology Park, Plat 2 sealed on October 04, 2018, meets the requirements of Chapter 11, Subdivision Regulations, of the City of Ashland Municipal Code and approved for recording.

Section 2. The legal description of the subdivision is as follows:

A tract of land located in the Northwest Quarter of Section 26, Township 47 North, Range 12 West, Ashland, Boone County, Missouri and all of lot C3, Cartwright Business & Technology Park Plat No. 1, recorded in Plat Book 51, Page 81, and a tract of land described in deed recorded in Book _____, Page _____ and being part of the land shown in survey recorded in Book 4624, Page 147 and described by the Warranty Deed recorded in Book 4537, Page 36 and being more particularly described as follows:

Beginning at the Northwest Corner of Lot 4 of said Cartwright Business & Technology Park Plat No. 1, said corner, also being on the South right-of-way line state Route H, and with the lines of said Cartwright Business & Technology Park Plat No. 1, S 0°20'35"W, 523.00 feet; Thence S 78°37'15"W, 255.32 feet; Thence S 56°04'40"W", 1291.16 feet; Thence S35°57'25"W, 173.63 feet; Thence S 1°29'45"E, 124.40 Feet to the north right-of-way line of Baldrige Avenue; Thence with said North right-of-way line, 185.46 feet along a 633.00-foot radius non-tangent curve to the left, said curve having a Chord S 89°12'50"W, 184.80 feet; Thence S 80°48'45"W, 29.76 feet; Thence 47.12 feet along a 30.00-foot radius curve to the right, said curve having a Chord N 54°11'15"W, 42.43 feet to the East right-of-way line of Hardwick Lane; Thence with the East right-of-way line of said Hardwick Lane, N 9°11'15"W, 178.65 feet; Thence N 80°48'45"E, 5.00 feet; Thence N 9°11'15" W; 100 feet; Thence S 80°48'45"W, 5.00 feet; Thence N 9°11'15"W, 176.75 feet; Thence N 80°48'45"E, 20.00 feet; Thence leaving said East

right-of-way line; N 4°02'55"W, 191.81 feet to the East line of the tract described in the Deed Recorded in Book _____, Page _____; Thence with the lines of said deed, 212.70 feet along a 380.00-foot radius non-tangent curve to the left, said curve having a Chord S 15°18'30"W, 209.93 feet; Thence S 80°48'45"W, 171.28 feet to a point 143.92 feet left of the centerline station 558+90.61 of U.S. Highway 63; Thence N 13°51'35"E, 340.81 feet to a point 175.82 feet left of centerline station 555+51.38 of U.S. Highway 63; Thence N 16°53'45"E, 279.02 feet to a point 216.25 feet left of centerline station 552+74.80 of U.S. Highway 63; Thence N 25°05'50"E, 539.54 feet to a point 370.27 feet left of centerline station 547+57.86 of U.S. Highway 63, The South right-of-way line of state Route H; Thence with said South right-of-way line S 89°39'25"E, 413.43; Thence N 85°56'40"E, 65.19 feet; Thence N 84°45'20"E, 462.20 feet; Thence S 89°39'25"E, 632.82 feet to the point of beginning and containing 40.50 acres.

Section 3. The City Clerk is hereby instructed to have the plat recorded.

Section 4. This ordinance shall be in full force and effect after its passage and approval.

Dated this _____ day of _____, 2018.

Gene Rhorer, Mayor

Attest:

Darla Sapp, City Clerk

Certified as to correct form:

Jeffrey Kays, City Attorney

AN ORDINANCE AUTHORIZING THE SALE OF REAL ESTATE OWNED BY THE CITY OF ASHLAND, MISSOURI, A MUNICIPAL CORPORATION, TO DANIEL AND CYNTHIA DOWNING

WHEREAS, the City of Ashland, Missouri does not see a need for this real estate now or in the future.

WHEREAS, the existing property required regular maintenance (mowing, etc.) which used City resources; and

WHEREAS, it has been determined to be in the City's best interest for the transfer of the property to the new owner and place it back on the tax roll; and

WHEREAS, the buyers expressed a desire to purchase real estate located off East Liberty Lane and further described in Exhibit A attached.

NOW THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Ashland, Missouri, as follows:

Section 1. Real Estate to be Conveyed. That in accordance with the terms of this ordinance, the Mayor of the City of Ashland, Missouri is, authorized to execute the attached real estate contract conveying to Daniel and Cynthia Downing the described real estate located in the City of Ashland, Missouri.

Section 2. This ordinance shall be in full force and effect upon its passage and approval.

Dated this _____ day of November 2018.

Gene Rhorer, Mayor

Attest:

Darla Sapp, City Clerk

Certified as to correct form:

Jeffrey Kays, City Attorney

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of the Effective Date by and between the parties hereto: The City of Ashland, a Missouri municipality ("Seller" or the "The City of Ashland"), whose address is: Ashland City Hall, 109 E. Broadway, P.O. Box 135 Ashland, MO 65010 and Daniel and Cynthia Downing, husband and wife ("Buyer or Buyers"), whose address is: 508 East Liberty Lane, Ashland, MO 65010.

WHEREAS, Buyer desires to purchase, and Seller desires to sell, the Property, upon the terms and conditions set forth in this Agreement.

WHEREAS, the following basic terms, conditions, and definitions are applicable to and an integral part of, and shall be deemed incorporated by reference in, this Agreement:

Effective Date: The first date on which both parties have fully executed and delivered this Agreement, which is: _____, 20__.

Property: The property located at or near 508 East Liberty Ln., Ashland, MO 65010 in Boone County, Missouri, which is legally described on Exhibit A hereto.

Purchase Price: \$10,000.00, subject to adjustments described in Section 3.

Earnest Money: No earnest money will be paid by Seller.

Due Diligence Period: The period commencing on the Effective Date and expiring at 5:00 p.m. (central) on the forty-fifth (45th) day after the Effective Date, subject to termination earlier upon termination of this Agreement.

Title Company: Boone Central Title Company, whose address is 601 East Broadway, Ste 102, Columbia, MO 65201

Broker(s): No brokers are used in this transaction.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge by their execution and delivery hereof, the parties agree as follows:

1. ADDITIONAL DEFINITIONS. Except as otherwise specified herein, terms shall have the meanings specified above and below:

"Agreement" means this Agreement, including all exhibits, attachments, supplements, and amendments hereto.

"Business Day" means any day that is not a Saturday, Sunday, or federal or state holiday.

"Closing" means the actual closing and consummation of the transactions contemplated hereby.

“Closing Date” means the date scheduled for the Closing, which shall be designated by the Buyer but which shall occur not later than ten (10) business days after the expiration of the Due Diligence Period, or such other date mutually agreed by the parties.

“Contracts” means any leases or occupancy agreements, management, service, operating, listing, brokerage, supply or maintenance, or construction agreements, equipment leases, or other contracts, agreements, or transactions with any third party with respect to or affecting the Property, which may remain in effect and to which Buyer or the Property may be subject after the Closing.

“Due Diligence Documents” means the documents and information listed on Exhibit B hereto.

“Permitted Exceptions” means (a) real estate taxes for the year of Closing and thereafter; (b) all applicable zoning and other ordinances, regulations, and laws; and (c) all covenants, easements, conditions, restrictions, and other exceptions disclosed on the Title Commitment and/or Survey, which are not objected to by Buyer, subject to Section 5.3; provided, however, that the obligation for Seller to pay off any indebtedness or other obligations secured by any Seller’s Liens and discharge, terminate, and release all such Liens by Closing shall in no event constitute Permitted Exceptions.

“Seller’s Liens” means any deeds of trust, mortgages, or mechanics’, judgment, tax, or other monetary liens encumbering the Property, any title exceptions arising after the Effective Date as a result of a violation by Seller of this Agreement, and any obligations of Seller under any Contracts (other than Assigned Contracts, if any).

“Title Policy” means an ALTA Owner's Policy of Title Insurance, in an amount equal to the Purchase Price, insuring title to the Land and Improvements in Buyer in fee simple absolute, free and clear of all liens and encumbrances other than Permitted Exceptions, together with such endorsements as may be requested by Buyer.

This Agreement shall be construed, in all cases, according to its fair meaning. The parties acknowledge that they and their respective counsel have had the opportunity to review and give input with respect to this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. The headings contained herein are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement, the term “including” and terms of similar import shall be deemed to mean “including without limitation,” and, as the context so requires, terms defined or used in the singular shall have a comparable meaning when used in the plural, and vice versa, and the use of the neuter shall also refer to the masculine or feminine, and vice versa.

2. PURCHASE AND SALE OF THE PROPERTY. Subject to the terms and conditions herein, Buyer agrees to purchase and acquire from Seller, and Seller agrees to sell and convey to Buyer, the Property at Closing, free and clear of all liens and encumbrances other than Permitted Exceptions. The Property shall be deemed to include: (a) the land described on Exhibit A hereto and all rights, title, interest, benefits, and income appurtenant or attributable thereto, including all Seller’s rights and interest, if any, to roads, rights of way, and easements adjacent or belonging thereto (“Land”), the exact size and legal description of which shall be determined by reference to the Survey, if any, pursuant to Section 5; (b) all buildings, fixtures, and other improvements of every kind and description on or at the Land (“Improvements”), in their present condition; and (c) Seller’s rights and interest in any site surveys, studies, or reports, plans and specifications, warranties and contract rights, and permits and licenses with respect to the Land or Improvements (“Plans”). If applicable, the Property also shall be deemed to include: (i) the personal property located and used at the Property to be conveyed to Buyer, which is listed on Exhibit C hereto (“Personal Property”); and (ii) the existing Contracts relating to the lease, occupancy, management, operation, maintenance, or repair of the Property to be assigned to and assumed by Buyer,

which are listed on Exhibit D hereto ("Assigned Contracts"), including any security deposits held pursuant to the Assigned Contracts.

3. PURCHASE PRICE AND PAYMENT. Subject to the terms and conditions herein, Buyer agrees to pay to Seller the Purchase Price at Closing, by certified or wire-transferred funds, as payment in full for the Property. The Purchase Price shall be adjusted at Closing for the credits, proration, and adjustments provided herein, including a credit for any Earnest Money as described in Section 4 and the adjustments described in Section 11.

4. EARNEST MONEY. If Earnest Money is required, then the following provisions shall apply:

4.1 Deposit. Within two (2) business days after the Effective Date, Buyer shall deposit the Earnest Money with the Title Company; if Buyer fails to do so, then Seller shall have the right to immediately terminate this Agreement. If the Closing occurs, the Earnest Money shall be paid to Seller and credited against the Purchase Price. If the Closing does not occur and the Earnest Money is to be paid to Seller in accordance with the express terms of this Agreement, then the Earnest Money shall be paid to Seller; in all other events, the Earnest Money shall be paid to Buyer.

4.2 Instructions. Within two (2) business days after the Effective Date, the parties shall deposit a fully-executed copy of this Agreement with the Title Company, which shall serve as escrow instructions. The parties agree to execute such additional escrow instructions that the Title Company may reasonably require and are consistent with this Agreement; if any such instructions and this Agreement conflict then this Agreement shall control. The Earnest Money shall be held in a separate, interest-bearing account and as otherwise directed by Buyer, in writing. The Earnest Money shall be held by the Title Company, in escrow, until the earliest of (a) the Closing, whereupon the Earnest Money shall be released to Seller and credited against the Purchase Price; (b) its receipt of a joint notice executed by Seller and Buyer, whereupon the Earnest Money shall be released in accordance with the instructions therein; or (c) its receipt of a notice of termination of this Agreement and request to release the Earnest Money executed by one party, provided, that it delivers a copy of such notice and request to the other party and receives no contrary instruction from such other party within ten (10) business days after delivery of such copy to such other party, whereupon the Earnest Money shall be released in accordance with the instructions in such notice and request. In the event of any conflicting notices or contrary instructions, the Title Company may refuse to release the Earnest Money except pursuant to court order, deposit the Earnest Money with a court pursuant to an action in interpleader, and/or take such other actions with respect to the Earnest Money consistent with applicable law and this Agreement, in which case the Title Company shall be released from all liability hereunder except for its willful misconduct, gross negligence, or violation of this Agreement.

5. TITLE AND SURVEY. Within five (5) business days after the Effective Date, Seller shall deliver to Buyer copies of all title policies, title commitments, and existing surveys relating to the Property in Seller's possession or control. Within fifteen (15) days after the Effective Date, Seller shall cause the Title Company to provide a commitment to issue the Title Policy at Closing ("Title Commitment"), together with copies of all exception documents referenced therein. By the later of forty-five (45) days after the Effective Date or thirty (30) days after its receipt of the Title Commitment, Buyer may procure a survey of the Land and Improvements ("Survey"); if Buyer fails to do so, then it shall be deemed to have waived its right to require a Survey for purposes of this Agreement. Each party shall provide copies of the Title Commitment or Survey to the other party promptly upon request.

5.1 Review. Buyer shall have fifteen (15) days after its receipt of the Title Commitment and the Survey, if any, whichever is received later ("Title Review Period"), to give Seller notice of such objections as Buyer may have to anything contained therein ("Objections"). If Buyer fails to deliver

Objections within the Title Review Period, then all title exceptions disclosed on the Title Commitment and Survey shall constitute Permitted Exceptions, subject to Section 5.3.

5.2 Objections and Cure. If Buyer delivers Objections within the Title Review Period, then Seller shall expeditiously and diligently proceed in good faith and a commercially reasonable manner to satisfy such Objections; provided, that this shall not require Seller to pay any money or incur any fees, costs, or liability whatsoever, other than to pay off any indebtedness or other obligations secured by any Seller's Liens and discharge, terminate, and release all such Liens by Closing. Seller may, but is not required to, cure other Objections requiring it to pay money or incur fees, costs, or liability, in which case it shall use commercially reasonable efforts to cure such other Objections no later than the Closing Date. If Seller fails to cure such other Objections, then Buyer shall have the option to either: (a) terminate this Agreement, in which event Buyer shall receive a full refund of any Earnest Money and the parties shall be relieved of any further obligations hereunder, or (b) elect to close notwithstanding such uncured other Objections, in which event there shall be no adjustment to the Purchase Price and such Objections shall constitute Permitted Exceptions.

5.3 Insured Closing. The Closing shall be an "insured closing" with "gap coverage" as such terms are commonly understood in the title insurance industry, i.e., at Closing, upon request Buyer will be entitled to receive an updated and marked-up Title Commitment or a pro forma Title Policy to insure that Buyer will receive the Title Policy and that no circumstances have arisen since the date of the Title Commitment that would adversely affect title to the Property other than Permitted Exceptions. The Title Policy will provide "extended form coverage," i.e., without standard or general preprinted exceptions (other than the survey exception unless Buyer procures an appropriate Survey), which shall not constitute Permitted Exceptions.

6. OTHER DUE DILIGENCE AND INSPECTIONS. In addition to its rights to review title to the Property as described in Section 5, Buyer shall have the right to conduct other reviews, inspections, and due diligence with respect to the Property as described herein.

6.1 Seller's Deliveries and Notices. Within five (5) business days after the Effective Date, Seller shall deliver to Buyer true, correct, and complete copies of all Due Diligence Documents in Seller's possession or control.

6.2 Inspections. During the Due Diligence Period, Buyer shall have the license and right to enter onto the Property from time to time during normal business hours for the purpose of conducting such surveys, studies, tests, audits, examinations, investigations, and other inspections of the Property as it deems necessary or desirable; provided, that Buyer shall give Seller reasonable advance notice of and opportunity to be present at such inspections, and Buyer shall not perform any scraping, drilling, boring, or other forms of invasive testing at the Property without Seller's consent. Buyer shall defend, indemnify and hold harmless Seller from and against (but if the City of Ashland is Buyer, then to the extent permitted by Missouri law and not inconsistent with the doctrine of sovereign immunity it shall be responsible for) any claims, causes of action, damages, liability, or costs or expenses arising or resulting from such inspections. Buyer also agrees to repair and restore any damage to the Property caused by such inspections.

7. REPRESENTATIONS AND WARRANTIES.

7.1 Seller's Representations and Warranties. In order to induce Buyer to enter into this Agreement and to consummate the purchase of the Property, Seller hereby represents and warrants to Buyer as of the Effective Date and as of the Closing as follows:

(a) (i) Seller is the entity specified in the introductory paragraph to this Agreement and is qualified to do business and in good standing under the laws of the State of Missouri; and

(ii) Seller has been duly authorized to enter into and perform its obligations under this Agreement, which is valid, binding, and enforceable against Seller in accordance with its terms (subject to general creditor's rights and equitable principles) and does not violate any agreement or judicial order to which Seller is a party or to which it or the Property is subject.

(b) There is not now pending nor, to the best of Seller's knowledge and belief has there been threatened, any investigation, demand, action, suit, or proceeding relating to the Property before or by any agency, court, or other governmental authority. Seller has not received any notice from any federal, state, county or municipal governmental authority alleging any fire, health, safety, building, pollution, environmental, zoning or other legal violation with respect to the Property, which has not been entirely corrected in accordance with applicable law. To the best of Seller's knowledge and belief, the Property is not in violation of any applicable law.

(c) Except as set forth in the hazardous waste and/or environmental studies and reports included in the Due Diligence Documents to be provided to Buyer, to the best of Seller's knowledge and belief, no hazardous materials have been released at the Property, and none are currently located on the Property which are not being stored and maintained in accordance with all applicable laws.

(d) There are no special assessments, takings, or other governmental actions filed, pending or, to the best of Seller's knowledge and belief, proposed, against the Property.

(e) There are no option or right-of-first-refusal agreements affecting the Property. There are no Contracts (other than the Assigned Contracts, if any). Seller is not in default of, and to the best of its knowledge and belief no other party is in default of, and no event or circumstance has occurred which, after notice or opportunity to cure would constitute such a default of, any Assigned Contract.

7.2 Buyer's Representations and Warranties. In order to induce Seller to enter into this Agreement and to consummate the sale of the Property, Buyer hereby represents and warrants to Seller as of the Effective Date and as of the Closing as follows: (i) Buyer is the entity specified in the introductory paragraph to this Agreement and is qualified to do business and in good standing under the laws of the State of Missouri; and (ii) Buyer has been duly authorized to enter into and perform its obligations under this Agreement, which is valid, binding, and enforceable against Buyer in accordance with its terms (subject to general creditor's rights and equitable principles) and does not violate any agreement or judicial order to which Buyer is a party or to which it is subject.

8. COVENANTS. From and after the Effective Date and until the Closing or earlier termination of this Agreement:

8.1 Title. Seller shall not convey any right, title, or interest in or to the Property, or create or permit any new title exceptions with respect to the Property without Buyer's consent, other than exceptions to be cured by Closing. If there are any Seller's Liens, Seller shall cause the same to be discharged, terminated, and released as required in order to convey title to the Property in accordance with this Agreement.

8.2 Physical Condition and Operation. Seller will manage, operate, insure, and maintain the Property in the same manner and condition as before the Effective Date, reasonable wear and tear excepted; without limiting the generality of the foregoing, Seller will not alter the Property or commit or permit waste to the Property without Buyer's consent. If the Property includes any Personal Property, Seller will not remove any material item of Personal Property without Buyer's consent, unless the same is obsolete and is replaced by tangible personal property of equal or greater utility and value.

8.3 Contracts. Seller will terminate all contracts, agreements, or transactions with any third party with respect to or affecting the Property before Closing (other than Assigned Contracts, if any). Seller will not enter into or amend any Contracts without Buyer's consent. If the Property includes any Assigned Contracts, Seller will not violate or terminate such Assigned Contracts and Seller will operate under such Assigned Contracts in the ordinary course of business; without limiting the generality of the foregoing, Seller will not collect any rents or others amounts due under any Assigned Contracts more than one month in advance, and it will report and prorate all amounts collected before Closing.

8.4 Updates. Seller shall notify Buyer if any of the Due Diligence Documents previously provided to Buyer are amended, supplemented, or updated; or if Seller becomes aware that any information in any Due Diligence Document previously provided to Buyer, or any representation or warranty of Seller herein, is or becomes untrue or incorrect in any material respect.

8.5 Exclusivity. Seller agrees not to market or show the Property to any other prospective purchasers or to solicit, entertain, or accept any offers for the Property (whether or not subordinate to this Agreement) from any other prospective purchasers.

9. CONTINGENCIES. The obligations of Buyer under this Agreement are conditioned upon the satisfaction or waiver of all requirements and contingencies set forth in this Section ("Contingencies"). The Contingencies are: (a) Buyer must receive title to the Property, in accordance with Section 5, at Closing; (b) none of the representations and warranties of Seller herein must cease to be true and correct, in all material respects, prior to Closing; and (c) Buyer must be satisfied with all its due diligence and inspections with respect to the Property pursuant to Section 6 as well as being satisfied that no other facts or circumstances exist that may make its acquisition, ownership, occupancy, or use of the Property imprudent, all in its sole and absolute discretion, in each case by the end of the Due Diligence Period. If any Contingency is not satisfied or waived by the applicable deadline noted above, then Buyer may terminate this Agreement by written notice to Seller at any time prior to such deadline and receive a full refund of any Earnest Money.

In addition, the obligations of the City of Ashland under this Agreement are conditioned upon the approval of the transactions contemplated hereby by the Board of Alderman of the City of Ashland, which approval may be given or withheld in its sole and absolute discretion, no later than the end of the Due Diligence Period ("Approval Contingency"). If the Approval Contingency is not satisfied by such date, then it shall result in an automatic termination of this Agreement as of such date without further action, and Buyer shall receive a full refund of any Earnest Money.

10. CLOSING AND POSSESSION. The Closing shall occur at the offices of the Title Company at 12:00 noon on the Closing Date or such other time as mutually agreed by the parties. A party need not be present at Closing if such party has delivered all of the items it is required to deliver at Closing to the Title Company by the Closing Date with escrow instructions consistent with this Agreement.

10.1 Seller's Deliveries. At Closing, Seller shall deliver possession of the Property. Seller shall deliver the Property "as is" and without any representations or warranties, Seller and Buyer hereby disclaiming any such representations or warranties, in each case except as expressly provided herein. Seller also shall execute and deliver to Buyer the following:

(a) A warranty deed conveying all right, title, and interest in and to the Land and Improvements, free and clear of all liens and encumbrances, other than Permitted Exceptions.

(b) All affidavits, certificates, closing statements, and other documents reasonably required by the Title Company to insure title to the Property in accordance with this Agreement, or reasonably required by Buyer to the extent not contrary to the terms of this Agreement and otherwise reasonably acceptable to Seller.

(c) If applicable: (i) if the Property includes any Assigned Contracts, one or more assignment(s) from Seller with respect thereto (including an accounting and transfer of any security deposits) and consents or estoppel certificates from the other parties thereto, and (ii) if the Property includes any Personal Property, a warranty bill of sale; in all cases in form reasonably satisfactory to Buyer.

10.2 Buyer's Deliveries. At Closing, Buyer shall deliver the Purchase Price, subject to prorations, credits, and adjustments as provided herein. Buyer also shall execute and deliver to Buyer the following:

(a) All affidavits, certificates, closing statements, and other documents reasonably required by the Title Company to insure title to the Property in accordance with this Agreement, or reasonably required by Seller to the extent not contrary to the terms of this Agreement and otherwise reasonably acceptable to Buyer.

(b) If applicable: if the Property includes any Assigned Contracts, one or more assignment and assumption agreement(s) with respect thereto.

11. PURCHASE PRICE ADJUSTMENTS AND EXPENSES.

11.1 Prorations. The following amounts shall be prorated between the parties:

(a) Taxes and Special Assessments. If the City of Ashland is Buyer, all ad valorem real estate taxes imposed on the Property for the year in which Closing occurs shall be prorated as of the Closing Date; if the City of Ashland is Seller, it is tax exempt and such taxes shall not be prorated. Special assessments imposed on the Property, if any, shall be the sole responsibility of the owner of the Property as of the date the applicable special assessment becomes due and payable.

(b) Utilities and Assigned Contracts. If applicable: fees and charges for utilities, income and prepaid expenses under Assigned Contracts, and other like items customarily prorated upon the sale of property similar to the Property, in each case for the period in which Closing occurs, shall be prorated as of the Closing Date.

(c) Re-proration. The exact amount of prorated items may not be known and may be based on the latest information available on the Closing Date; if so, the parties agree to re-prorate such items once such amounts are ultimately determined based upon final bills or statements.

11.2 Expenses. The following costs and expenses shall be paid by the parties as described below, including as an appropriate adjustment to the Purchase Price set forth on the closing statement.

(a) Seller shall pay for (i) all costs to discharge, terminate, and release the Seller's Liens; (ii) all costs of examinations, fees, and premiums for the Title Commitment and Title Policy, other than the cost of any requested endorsements to the Title Policy; (iii) one-half of the customary closing or escrow fees of the Title Company; and (iv) the costs to record any documents necessary to remove the Seller's Liens and all other liens or encumbrances other than the Permitted Exceptions.

(b) Buyer shall pay for (i) all costs to conduct its due diligence and inspections of the Property, including the Survey, if any; (ii) the cost of any requested endorsements to the Title Policy; (iii) one-half of the customary closing or escrow fees of the Title Company; and (iv) all costs to record the deed and all other recordable documents at Closing, other than such recording costs to be paid by Seller as specified herein.

11.3 Broker Commissions and Other Expenses. All other costs and expenses paid or incurred in connection with or incident to this Agreement and the performance and consummation of the transactions contemplated hereby shall be borne by the party paying or incurring same. Without limiting the generality of the foregoing, the parties represent and warrant to one another that they have not dealt with any broker with respect to the transactions contemplated hereby other than the broker(s) set forth in the recitals hereto, if any, whose commissions, fees, and expenses shall be paid as set forth in said recital. Each party shall defend, indemnify, hold harmless the other party from and against (but for the City of Ashland, then to the extent permitted by Missouri law and not inconsistent with the doctrine of sovereign immunity it shall be responsible for) any claims, causes of action, damages, liability, or costs or expenses that the other may sustain or incur by reason of its breach of this paragraph.

12. RISK OF LOSS AND CONDEMNATION. Seller has the risk of loss, destruction, or damage to the Property until Closing. If any such event occurs prior to Closing, Seller will promptly notify Buyer. If the cost to repair such damage and restore the Property to its previous condition is estimated by Buyer to be not more than \$10,000 in the aggregate, Seller may complete such repair and restoration by Closing; if Seller does not do so, then Buyer will be entitled to a reduction in the Purchase Price to the extent necessary to cover the remaining cost to complete such repair and restoration estimated by Buyer up to \$10,000 in the aggregate, and Buyer will be responsible for any such repair and restoration. If the cost of such repair and restoration is estimated by Buyer to be more than \$10,000 in the aggregate, Buyer may, at its option, either (a) terminate this Agreement and receive a refund of any Earnest Money, or (b) proceed to Closing without any adjustment to the Purchase Price except Seller will assign and pay to Buyer all associated insurance claims and proceeds plus the amount of any deductible. If all or any part of the Property is condemned or becomes subject to any condemnation action or proceeding prior to Closing, Seller will promptly notify Buyer, and Buyer may, at its option, either (a) terminate this Agreement and receive a refund of any Earnest Money, or (b) proceed to Closing without any adjustment to the Purchase Price except Seller will assign and pay to Buyer all associated claims, awards, and proceeds.

13. DEFAULTS AND REMEDIES.

13.1 Seller Default. If Seller defaults in the performance of any of its covenants under this Agreement and fails to cure such default within ten (10) days after notice thereof from Buyer to Seller, then Buyer may elect to: (a) terminate this Agreement, in which case any Earnest Money shall be paid to Buyer, or (b) obtain specific performance of Seller's obligations under this Agreement plus recovery of all Buyer's costs and expenses in connection with such default.

13.2 Buyer Default. If Buyer defaults in the performance of any of its covenants under this Agreement and fails to cure such default within ten (10) days after notice thereof from Seller to Buyer, then Seller may terminate this Agreement, in which case any Earnest Money shall be paid to Seller as liquidated damages for such default, it being agreed that this shall be the sole and exclusive remedy of Seller for any such default (any right of Seller to any other legal or equitable remedy being expressly waived with respect to any such default).

14. ASSIGNMENT. Buyer may assign its rights under this Agreement to an affiliate without Seller's consent, and no other assignment of this Agreement or any interest herein shall be permitted without Seller's prior written consent; provided, that in no event shall any assignment release the assignor from any obligations hereunder.

15. GENERAL.

15.1 Notices. Any notice or other communication required or permitted hereunder must be in writing and either: hand delivered; or sent overnight via reputable national courier or mailed by U.S. certified mail, fees and postage prepaid, in each case to the relevant party at its address as set forth herein (as the same may be changed by notice given in accordance herewith) and, in the case of the The City of

Ashland, with a copy to the City Attorney, PO Box 284, Ashland, MO 65010. Any such communication shall be deemed given, delivered, and effective: when hand delivered; one (1) business day after deposit with the courier; or three (3) business days after deposit with the U.S. Postal Service.

15.2 Time. Time is of the essence in the performance of and compliance with this Agreement; provided, that if any date or period specified herein falls or expires on a day which is not a business day, then such date or period shall be automatically deemed moved or extended to the next business day.

15.3 Survival. If this Agreement terminates in accordance with its terms, it shall cease to be of any further force or effect and the parties shall be relieved from all obligations hereunder, except for such obligations which are expressed or by their terms are intended to survive.

15.4 Miscellaneous. This Agreement shall be governed by the laws of the State of Missouri, without regard to conflicts of law principles. This Agreement constitutes the complete and integrated agreement of the parties and supersedes all prior and contemporaneous discussions, negotiations, understandings, and agreements relating to the subject matter hereof. This Agreement is binding upon and shall inure to the benefit of Seller and Buyer, their respective heirs, successors, and permitted assigns. This Agreement is intended to be enforceable in all respects, but if any provision hereof is invalid or unenforceable under applicable law, such provision shall be enforced to the fullest extent permitted by law and the validity and enforceability of the other provisions shall be unaffected. This Agreement may not be amended or modified except in a writing signed by all parties, and no term or condition hereof shall be deemed waived by a party except in a writing signed by such party. No failure or delay in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or of any other right or privilege. This Agreement may be executed and delivered via facsimile or other electronic transmission, which shall be deemed to be originals.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Agreement on the respective dates set forth below, to be effective as of the Effective Date.

THE CITY OF ASHLAND

By: _____
Name: Gene *Rhorer*
Title: Mayor

Attest: _____
Name: Darla Sapp
Title: City Clerk

BUYERS

Daniel Downing

Cynthia Downing

EXHIBIT A
Legal Description

Lot Nine (9) of SOUTHWOODS COMMERCIAL PARK PLAT NUMBER ONE (1) as shown by Plat of said subdivision recorded in Plat Book 37, Page 49, Boone County Records.

EXHIBIT B

Due Diligence Documents

1. Survey, Engineering, and Construction Documents:

- (a) all surveys, site plans, and floor plans,
- (b) all engineering or inspection studies or reports (including roof, mechanical systems and parking lot), and any existing construction, guaranty and/or warranty documents,
- (c) any "as-built" architectural or engineering plans (including a building systems summary indicating electrical, heating, hot water, utility company, fire protection and emergency power, if applicable),
- (d) building and occupancy permits, and
- (e) the most recent capital budget, if any.

2. Environmental and Structural: All past phase I, phase II, and other hazardous materials or other environmental studies and reports. All soil boring, ground water monitoring, and subsurface inspections, test results, and remediation plans.

3. Government Notices: All notices from any federal, state, county or municipal governmental authority alleging any fire, health, safety, building, pollution, environmental, zoning or other legal violation.

4. Appraisal and Tax Information: Any appraisals. Ad valorem and other real estate tax bills, statements, and assessments (including personal property tax, if applicable) for the past two years and current tax year, including any copies of any proposed reassessments for the forthcoming year.

5. Utilities: Water, sewer, electric and other utility bills and statements from the last full cycle.

6. Insurance: Current certificates of property and casualty insurance.

7. Leases, Contracts, and Rent Roll: All leases or occupancy agreements; management, service, operating, listing, brokerage, supply or maintenance, or construction agreements; equipment leases; or other material contracts and agreements with respect to or affecting the Property. A rent roll for the past 12 months.

8. Other: Any other documents or information reasonably requested by Buyer.

EXHIBIT C

Personal Property (if applicable)

NONE

EXHIBIT D

Assigned Contracts (if applicable)

NONE

Parcel Information Viewer

▼

X

Zoom to Neighborhood

▼

X

Zoom to Location

2450800160090001

Owner CITY OF ASHLAND
Address PO BOX 135
City, State, Zip ASHLAND, MO 65010
School ASHLAND (R1)
Legal Description SOUTHWOODS COMMERCIAL PARK PLAT 1 LOT 9
Lot Size 50.01 × 412.71
Irregular Shape Y
Parcel 24-508-00-16-009.00 01

Full Real Estate Summary

Location Information
Property Address 00000 E LIBERTY LN
Section/Township/Range Sec. 15 46 12

Taxing Entities
City ASHLAND (02)
Fire SOUTHERN BOONE COUNTY (F2)
Library COL BC LIBRARY (L4)
Road COMMON ROAD DISTRICT (CO)
School ASHLAND (R1)

Recorded Documents
Deed Book/Page [3051 0015](#)
[2697 0048](#)
[2658 0142](#)
[2162 0263](#)
Subdivision Plat Book/Page [37 49](#)

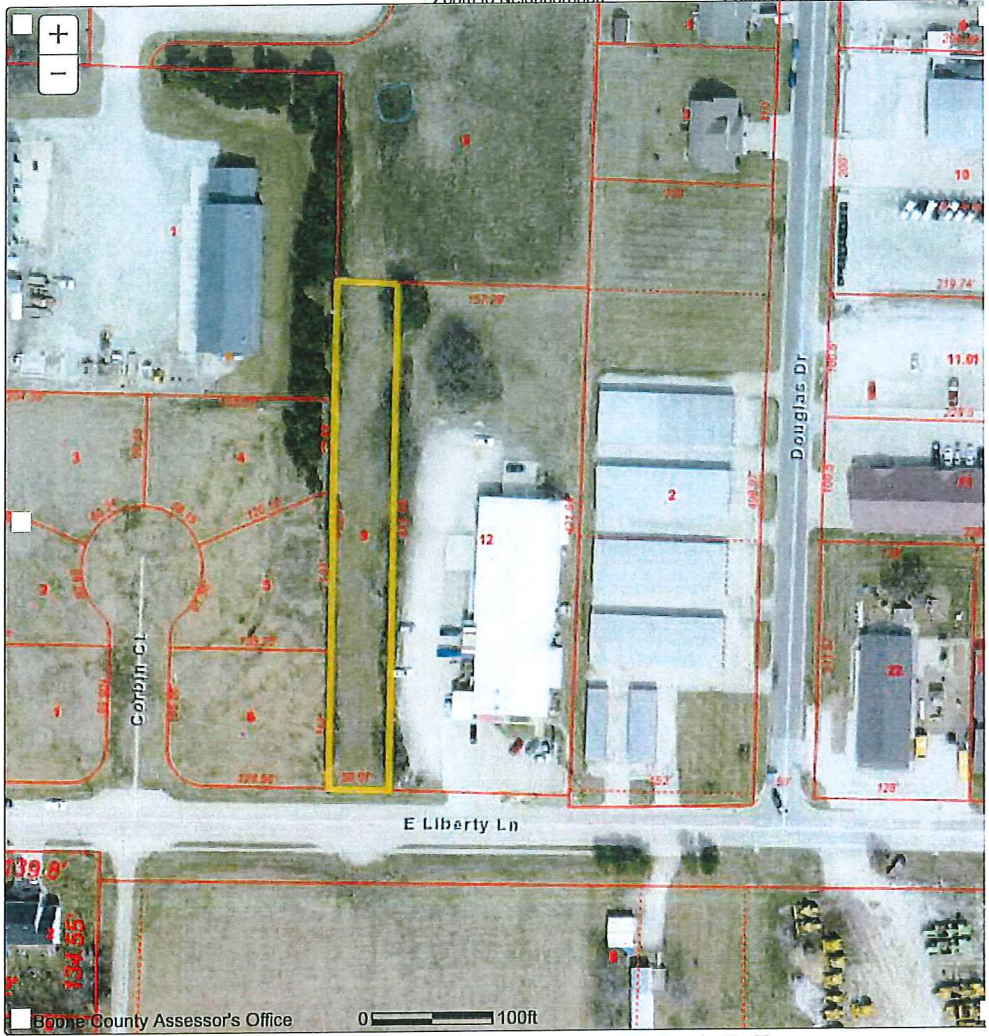
Current Appraised

Type	Land	Bldgs	Total
XV	\$10,320	\$0	\$10,320
Totals	\$10,320	\$0	\$10,320

Current Assessed

Type	Land	Bldgs	Total
XV	\$0	\$0	\$0
Totals	\$0	\$0	\$0

[List of Most Recent Tax Bill\(s\)](#)



[Click here for navigation tips](#)