

## **REAL ESTATE AGREEMENT**

THIS AGREEMENT (the "Agreement") is hereby made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date"), by and between Day3 Development, LLC, a Missouri limited liability company authorized to conduct business in Kansas (the "Seller"), and the City of Olathe, Kansas, a municipal corporation duly organized under the laws of the State of Kansas, or its assignee or designee (the "Buyer" or "City") (each, a "Party", and collectively, the "Parties"). This Agreement is subject to approval by the Governing Body of the City (effective only after this Agreement is signed by the Mayor of said City).

WHEREAS, Seller desires to grant and Buyer desires to obtain, upon the terms and conditions hereinafter set forth, the following real property as legally described in **Exhibit A**, together with all rights, easements and appurtenances pertaining thereto, and all improvements, trees, bushes, landscaping and foliage thereon (collectively, the "Property"). The Parties acknowledge that the Property contains no structures or other buildings or vertical improvements.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, the Parties agree as follows:

1. Purchase Price. Seller shall sell the Property to Buyer and Buyer shall purchase the Property from Seller for the sum of One Hundred Ten Thousand Dollars (\$110,000.00), subject to any adjustments as set forth in Paragraph 3.
2. Taxes. All ad valorem real property taxes for 2018 shall be paid in full by

Seller. If the amount of the real property taxes for 2019 cannot be ascertained by the Closing Date, proration will be computed based upon the amount of taxes and assessments on the Property for the previous calendar year even though the Property may have had a lower assessed valuation or tax rate for such prior year.

3. Closing. Closing hereunder (the "Closing") shall be held on or before thirty (30) days from the satisfaction or waiver of all contingencies set forth herein. As a contingency to be satisfied before Closing, Seller agrees to construct a public recreation trail on the Property in accordance with the conditions and specifications set forth in Paragraph 4 (the "Trail"). Upon completion of the Trail and acceptance of the Trail by the City, Seller will deliver an executed "Certificate of Substantial Completion" for construction of the Trail on the Property to Buyer along with a special warranty deed conveying the Property from Seller to Buyer. Should Seller's actual cost to construct the Trail be less than the Purchase Price, Seller and Buyer agree that the Purchase Price will be reduced to equal such cost. In no event will the Purchase Price exceed the amount set forth in Paragraph 1.

At Closing, subject to any adjustments as set forth in this Paragraph 3, Buyer shall deliver the purchase consideration set forth in Paragraph 1 herein to Seller, and at such time, Buyer may file the special warranty deed executed by Seller with the Johnson County Register of Deeds. Buyer agrees to pay the costs of recording all conveyance and other instruments tendered to it.

4. Post-Closing Obligations of Seller. Seller agrees to construct the Trail to City trail construction technical specifications and standards, which are set forth on **Exhibit B** attached hereto. The Trail will be no less than ten (10) feet wide and

constructed of no less than five inches (5") of asphalt including a three inch (3") base and two inches (2") of surface over four inches (4") of rock. The Trail will be constructed on an alignment mutually agreed-upon between the City and Seller, including connections to existing and planned sidewalks.

The Parties mutually acknowledge and agree that this Agreement does not affect in any way the Parties' obligations regarding construction of Lindenwood or any other public infrastructure.

5. Post-Closing Obligations of Buyer. The Parties acknowledge that the purpose of Buyer's acquisition of the Property is for the permanent maintenance of the Trail and future public recreational facilities adjacent to the Trail (such facilities, including, but not limited to, playgrounds and open mowed space, to be constructed at the sole discretion of the City). Upon acceptance of the Trail and transfer of the Property from Seller to Buyer, Buyer will maintain the Property and operate the trail as part of the future Coffee Creek trail system at standard City trail maintenance standards as determined solely by the City.

6. Representations and Warranties. Seller represents, warrants and covenants to Buyer that:

- a. Seller has the legal capacity and authority to execute and deliver this Agreement and all instruments to consummate the sale of the Property.
- b. Seller has no knowledge that any person other than Seller has any right, title or interest in and to the Property.
- c. To Seller's knowledge, there are no causes of action, suits or judgments against Seller or the Property which would delay or prohibit the sale.

- d. There are no contracts, agreements or obligations of Seller for and with respect to the Property which have not been disclosed to Buyer in writing, and which are or may become a lien against the Property or an obligation of Buyer upon Closing.
- e. To Seller's knowledge, there has occurred no release, generation, discharge, manufacture, treatment, transportation or disposal on or in connection with the Property of any hazardous, dangerous or toxic materials, substances or wastes (all, collectively, "Hazardous Materials"), as any of such terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (known as "CERCLA") or the Resource Conservation and Recovery Act (known as "RCRA") or any other applicable federal, state or local law, regulation, ordinance or requirement relating to or imposing standards of conduct concerning any hazardous, toxic or dangerous materials, substances or wastes (all, collectively "Environmental Laws") in violation of any Environmental Laws.

7. Maintenance of the Property. Prior to Closing and during possession of the Property, the Property shall be maintained by Seller in a reasonable, professional and prudent manner and in its current condition at all times. After Closing, the Property is to be maintained by Buyer.

8. Notices. All notices, requests, demands or other communications hereunder shall be in writing and deemed given when delivered personally or on the day said communication is deposited in the U.S. mail, by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller: Day3 Development, LLC  
6300 W. 143<sup>rd</sup> Street, Suite 200  
Overland Park, KS 66223

If to Buyer: City of Olathe  
PO Box 768  
Olathe, KS 66051-0768  
ATTN: City Clerk

With a Copy to: City of Olathe  
PO Box 768  
Olathe, KS 66051-0768  
ATTN: City Attorney

or to such other address as the Parties may from time to time designate by notice in writing to the other Party.

9. Amendments. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by both Parties.

10. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Kansas.

11. Legal Fees. In the event legal action is instituted by any of the Parties to enforce the terms of this Agreement or arising out of the execution of this Agreement, the prevailing Party will be entitled to receive from the other Party or Party's reasonable attorney's fees to be determined by the court in which the action is brought.

12. Waiver. Failure of either Buyer or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Buyer's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

13. Agents or Brokers. Each Party represents to the other that no broker, finder or intermediary is involved in the purchase and sale of the Property. Each Party hereby indemnifies and agrees to hold the other Party harmless from and against any and all costs arising or resulting, directly or indirectly, out of any claim by any broker or finder in connection with this transaction due to their respective acts.

14. Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

15. Captions. All captions, headings, section and subsection numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

16. Severability. The invalidity or enforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

17. Entire Agreement. **TIME IS OF THE ESSENCE OF THIS AGREEMENT.** This Agreement constitutes the sole and entire agreement of the Parties and is binding upon Seller and Buyer, their heirs, successors, legal representatives and assigns.

18. Voluntary Negotiation. Each Party hereby acknowledges that it has the power and authority to enter into this Agreement. By signing this Agreement, each Party affirms that this Agreement was negotiated voluntarily and in good faith.

19. Survival of Closing. The obligations of the Parties, including but not limited to, the representations, promises and warranties which by their nature will or could apply in the future after Closing, shall survive Closing.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto  
as of the date first above written.

**SELLER:**

Day3 Development, LLC,  
A Missouri Limited Liability Company

By: Travis Schram, Manager

## ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me, the undersigned, a Notary Public within and for the County and State aforesaid, came Travis Schram as Manager of Day3 Development, LLC, to me personally known to be the identical person who executed the above and foregoing instrument and who acknowledged the execution of the same on behalf of said Trust.

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

**Notary Public**

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

My Appointment Expires:

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**BUYER:**

CITY OF OLATHE, KANSAS  
A Municipal Corporation

By: \_\_\_\_\_  
Michael E. Copeland, Mayor

ATTEST:

\_\_\_\_\_  
Emily K. Vincent, City Clerk

(SEAL)

**ACKNOWLEDGMENT**

STATE OF KANSAS        )  
                                  ) ss:  
COUNTY OF JOHNSON    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **MICHAEL E. COPELAND**, Mayor of the City of Olathe, Kansas, and **EMILY K. VINCENT**, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

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

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

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

My Appointment Expires:

\_\_\_\_\_



**EXHIBIT A**  
**Property Legal Description**

A tract of land lying in the Northeast One-Quarter of Section 19, Township 14 South, Range 24 East, in the City of Olathe, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Southeast corner of the Northeast One-Quarter of said Section 19; thence South 87 degrees 36 minutes 39 seconds West, along the South line of the said Northeast One-Quarter, a distance of 2114.03 feet; thence North 02 degrees 23 minutes 21 seconds West a distance of 50.00 feet to the Point of Beginning of the following described tract; thence North 46 degrees 13 minutes 20 seconds West a distance of 457.29 feet; thence South 87 degrees 36 minutes 39 seconds West a distance of 225.55 feet to a point on the West line of the said Northeast One-Quarter and said point being 380.00 feet North of the Southwest corner of the said Northeast One-Quarter; thence North 02 degrees 24 minutes 44 seconds West, along the West line of the said Northeast One-Quarter of said Section 19, a distance of 683.76 feet to a point of curvature; thence Northeasterly on a curve to the left having an initial tangent bearing North 31 degrees 08 minutes 24 seconds East, a radius of 360.00 feet, a central angle of 08 degrees 25 minutes 37 seconds and an arc length of 52.95 feet; thence South 67 degrees 16 minutes 55 seconds East a distance of 56.48 feet; thence South 21 degrees 12 minutes 38 seconds East a distance of 88.27 feet; thence South 39 degrees 26 minutes 44 seconds East a distance of 173.32 feet; thence South 47 degrees 18 minutes 44 seconds East a distance of 84.88 feet; thence South 58 degrees 26 minutes 43 seconds East a distance of 160.51 feet; thence South 65 degrees 06 minutes 58 seconds East a distance of 156.91 feet; thence South 02 degrees 23 minutes 21 seconds East a distance of 592.30 feet to the Point of Beginning and containing 6.959 acres, more or less.

and

A tract of land lying in the Northeast One-Quarter of Section 19, Township 14 South, Range 24 East, in the City of Olathe, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Southeast corner of the Northeast One-Quarter of said Section 19; thence South 87 degrees 36 minutes 39 seconds West, along the South line of the said Northeast One-Quarter, a distance of 1109.51 feet to the Point of Beginning of the following described tract; thence continuing South 87 degrees 36 minutes 39 seconds West, along the South line of the said Northeast One-Quarter, a distance of 1004.52 feet thence North 02 degrees 23 minutes 21 seconds West a distance of 642.30; thence South 65 degrees 06 minutes 58 seconds East a distance of 240.00 feet; thence South 69 degrees 56 minutes 51 seconds East a distance of 90.87 feet; thence South 81 degrees 23 minutes 10 seconds East a distance of 150.87 feet; thence South 75 degrees 23

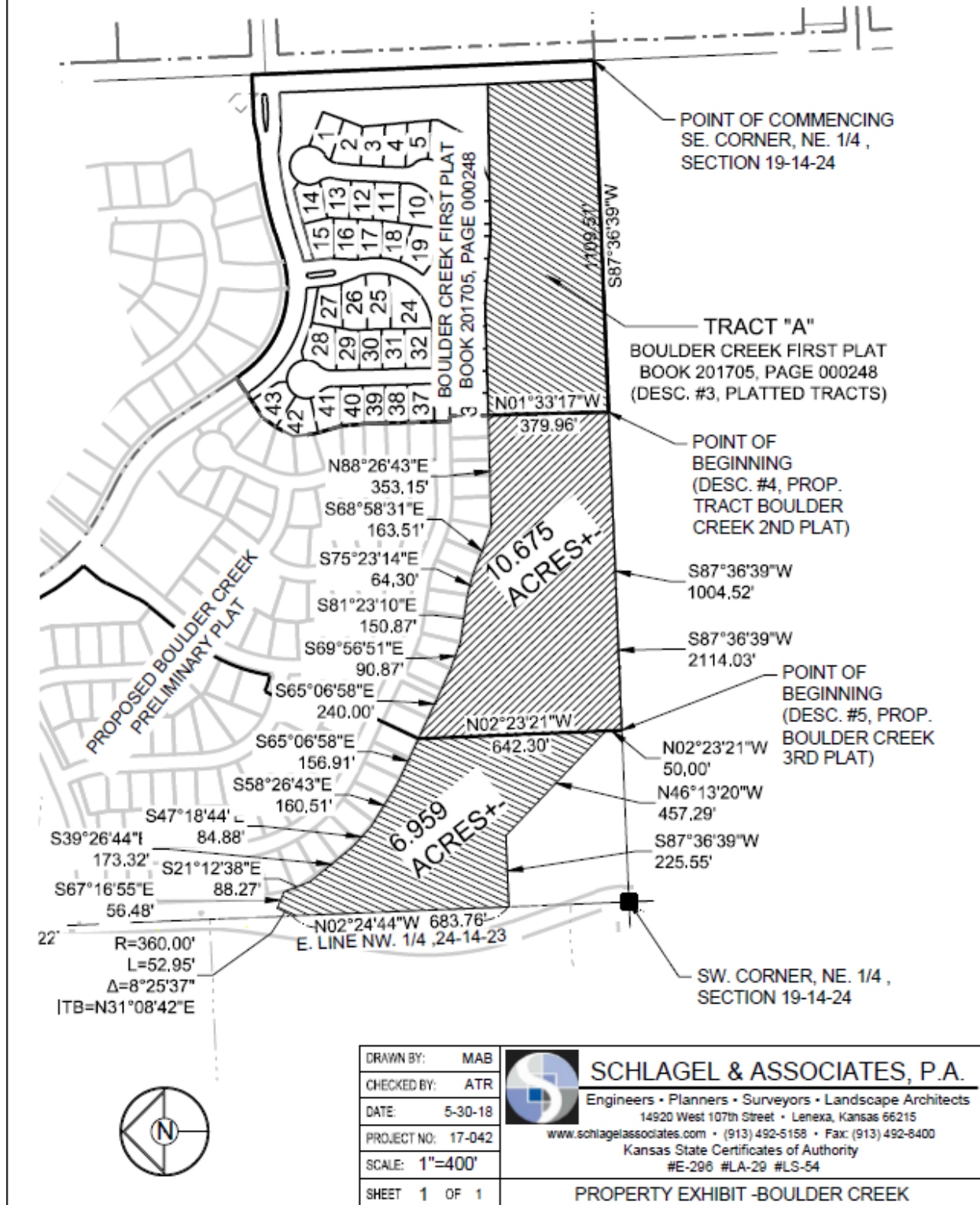
minutes 14 second East a distance of 64.30 feet; thence South 68 degrees 58 minutes 31 seconds East a distance of 163.51 feet; thence North 88 degrees 26 minutes 43 seconds East a distance of 353.15 feet; thence South 01 degrees 33 minutes 17 seconds East a distance of 379.96 feet to the Point of Beginning and containing 10.675 acres, more or less.

and

Tract A of Boulder Creek, First Plat, a subdivision in the City of Olathe, as recorded in the Register of Deeds office in Johnson County, Kansas in Book 201705, Page 248 and containing 8.6262 acres, more or less.

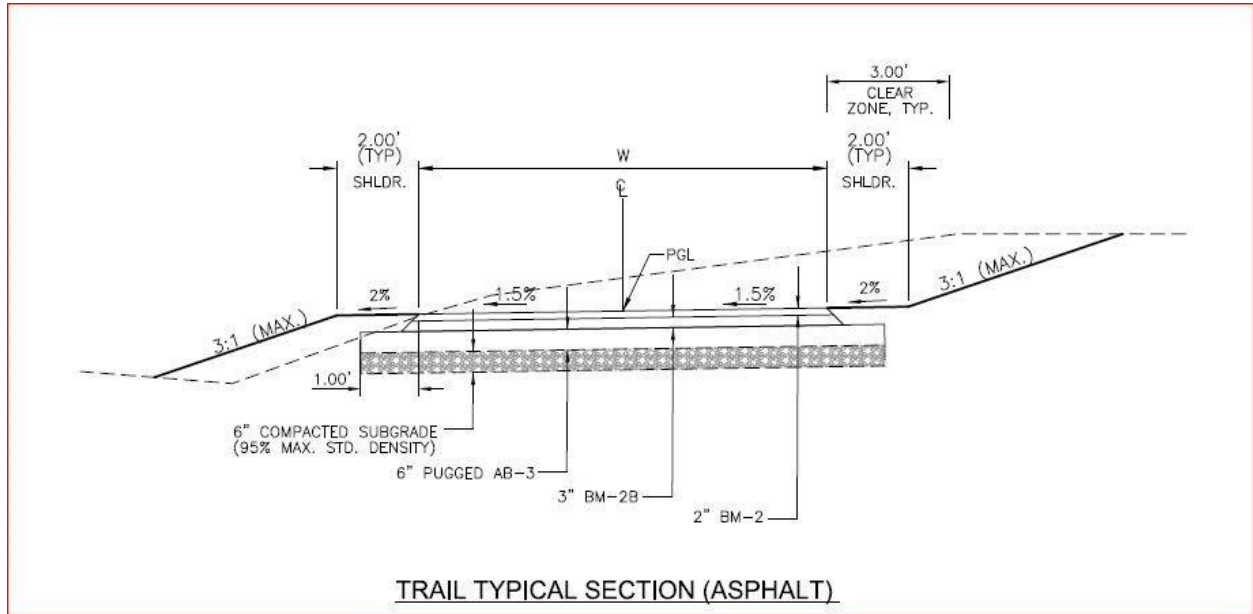
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# PROPERTY EXHIBIT - BOULDER CREEK



## EXHIBIT B

### Trail Construction Technical Specifications and Standards



Mix designs for all asphalt material to be used on this project, with a testing date current within six months of the date of the notice to proceed, shall be submitted and approved by the engineer prior to placement of any asphalt. This submittal shall include, but not be limited to, information in Section 600, of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction, 1990 Edition and Section 1300 of the Olathe Technical Specifications.