

MUNICIPAL ORDER 2-2020

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH JED RENTALS, LLC, PROVIDING FOR THE CONSENSUAL ANNEXATION OF UNINCORPORATED PROPERTY LOCATED IN DAVIESS COUNTY AT 3509 FAIRVIEW DRIVE, CONTAINING 3.461 ACRES, MORE OR LESS, AND REFERRED TO AS "MALLARD LANDING"; AND FURTHER PROVIDING THAT THE CITY SHALL REIMBURSE JED RENTALS, LLC ONE-HUNDRED PERCENT (100%) OF THE TOTAL AD VALOREM (EXCLUDING SCHOOL TAX), NET PROFITS, AND OCCUPATIONAL TAX REVENUES DERIVED FROM THE PROPERTY OVER A DESIGNATED FIVE (5) YEAR PERIOD; AND FURTHER PROVIDING THAT THE CITY WILL GRANT AN ADDITIONAL THREE (3) YEAR PERIOD UNDER WHICH THE CITY WILL REIMBURSE JED RENTALS, LLC ONE-HUNDRED PERCENT (100%) OF THE TOTAL AD VALOREM (EXCLUDING SCHOOL TAX), NET PROFITS, AND OCCUPATIONAL TAX REVENUES DERIVED FROM THE 2013 ANNEXATION OF "HOBO ESTATES," A 9.717 ACRE TRACT.

WHEREAS, Developer is the owner of a certain tract of real property consisting of approximately 3.461 acres, more or less, which is located at 3509 Fairview Drive, Owensboro, KY and referred to as Mallard Landing; and

WHEREAS, Developer's property is presently located in an unincorporated area of Daviess County that is contiguous to the corporate boundaries of the City and, when annexed, developed, and/or sold, will utilize and benefit from various municipal services, including public safety, sanitary sewer, water, and electric utilities; and

WHEREAS, the City of Owensboro has established an annexation incentive program for a development for the purposes of eligibility for incentives; and

WHEREAS, Developer wishes to grant his or her consent and voluntarily participate in the City annexation incentive program whereby Mallard Landing shall be annexed into the corporate limits of the City of Owensboro; and

WHEREAS, the social and economic wellbeing of the City is directly related to, and in many respects dependent upon the growth of the City and its tax revenue base through annexation of contiguous territories. In order to meet various capital needs, especially in the area of public safety, provide and maintain infrastructure and other public facilities, promote economic development, and continue to provide affordable, quality municipal services to taxpayers, the City deems it to be in its best interest to encourage and induce contiguous commercial developments to become citizens of Owensboro through consensual annexation, with all services, rights, privileges, and other amenities appertaining thereto; and

WHEREAS, as an incentive to Developer to incorporate Mallard Landing into the City through consensual annexation in order to make all municipal services available to said property and to facilitate overall municipal growth, the Parties enter into an agreement by which the City will reimburse the Developer in an amount of one hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and occupational tax revenues derived from any property located therein, over a designated five (5) year period; and

WHEREAS, in 2013, Developer also annexed to the City its property known as the Hobo Estates and was to receive incentives under a Memorandum of Agreement entered into by the Parties, in accordance with Municipal Order 16-2013. A copy of Municipal Order 16-2013 is attached hereto as Exhibit A.

However, due to unexpected circumstances, Developer was unable to timely earn the annexation incentives for Hobo Estates and the City has agreed to grant an additional three (3) year time period for incentives for that property.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That the Mayor be, and he hereby is authorized and directed to execute a Memorandum of Agreement with JED Rentals, LLC setting forth the terms and conditions by which the 3.461 acre tract of land located at 3509 Fairview Drive, will be consensually annexed into the City of Owensboro in consideration for the City agreeing to:

(a) Reimburse JED Rentals, LLC in an amount of one-hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and occupational tax revenues derived from any property located therein, over a designated five (5) year period; and

(b) Grant an additional three (3) year period under which the City will reimburse JED Rentals, LLC the total ad valorem (excluding school tax), net profits, and occupational tax revenues derived from the 2013 annexation of Hobo Estates, a 9.717 acre tract. A copy of said Memorandum of Agreement is attached hereto and incorporated by reference herein.

INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING, this the 14th day of January, 2020.

Thomas H. Watson, Mayor

ATTEST:

Beth Cecil, City Clerk

EXHIBIT A

MUNICIPAL ORDER 16-2013

MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH JED RENTALS, LLC, PROVIDING FOR THE CONSENSUAL ANNEXATION OF 9.717 ACRES KNOWN AS "HOBO ESTATES", CONTAINING APPROXIMATELY FORTY (40) RESIDENTIAL BUILDINGS CONTAINING EIGHTY (80) RESIDENTIAL RENTAL UNITS, LOCATED ON LAFAYETTE DRIVE BETWEEN J.R. MILLER BOULEVARD AND JEFFERSON STREET IN OWENSBORO, DAVIESS COUNTY, KENTUCKY; AND FURTHER PROVIDING THAT THE CITY SHALL REIMBURSE DEVELOPER FOR THE ACTUAL COST OF CONSTRUCTION OF VARIOUS PUBLIC FACILITIES DEDICATED TO PUBLIC USE FOR SAID PROPERTY, IN AN AMOUNT NOT TO EXCEED THE COST OF ALL PUBLIC FACILITIES OR THE TOTAL AD VALOREM TAX REVENUES DERIVED FROM SAID 9.717 ACRE TRACT, WHICHEVER IS LESS, OVER A FIVE (5) YEAR PERIOD.

WHEREAS, JED Rentals, LLC is the owner of approximately 9.717 acres of real property in "Hobo Estates" located on Lafayette Drive between J.R. Miller Boulevard and Jefferson Street, in Owensboro, Daviess County, Kentucky; and

WHEREAS, on February 14, 2013, the Owensboro Metropolitan Planning Commission approved a preliminary development plan for 9.717 acres in "Hobo Estates"; and

WHEREAS, the property that comprises Hobo Estates is zoned R-1C Residential, which zoning classification allows for single-family residential development; and

WHEREAS, the social and economic well being of the City is directly related to, and in many respects dependent upon, the sustained growth of the

City and its tax revenue base through annexation of contiguous properties. In order to meet various capital needs, especially in the area of public safety, provide and maintain infrastructure and other public facilities, promote economic development, and continue to provide affordable, quality municipal services to taxpayers, the City deems it to be in its best interest to encourage and induce contiguous property owners of industrial, commercial, and/or residential development to become citizens of Owensboro through consensual annexations, with all services, rights, privileges, and other amenities appertaining thereto; and

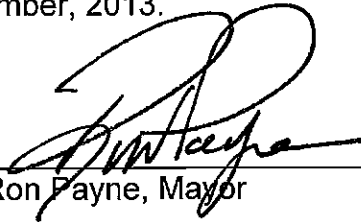
WHEREAS, as an incentive to JED Rentals, LLC to incorporate said 9.717 acre tract of land ("Hobo Estates") into the City through consensual annexation in order to make all municipal services available to the property and thereby facilitate overall growth of the City, the City desires to reimburse Developer for the cost of construction of various public facilities and improvements dedicated to public use within "Hobo Estates", in an amount not to exceed the total cost of all public facilities or the total ad valorem (excluding school tax) tax revenues derived from any property therein, whichever is less, over a five (5) year period, which period shall commence on May 1, 2013, or upon receipt of a written request for same by JED Rentals, LLC to the City of Owensboro, whichever first occurs.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That the Mayor be, and he hereby is authorized and directed to execute a Memorandum of Agreement with JED Rentals, LLC, setting forth the

terms and conditions by which the 9.717 acre tract of land comprising "Hobo Estates" will be consensually annexed into the City of Owensboro in consideration for the City agreeing to reimburse JED Rentals, LLC for the actual cost of construction of various public facilities and improvements dedicated for public use within said 9.717 acre tract of land. A copy of said Memorandum of Agreement is attached hereto and incorporated by reference herein.

INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING, this the 5th day of November, 2013.



Ron Payne, Mayor

ATTEST:



Beth Cecil, City Clerk

Consent

**CITY OF OWENSBORO
AGENDA REQUEST AND SUMMARY
COVER SHEET**

Item No.
M.O. 16-2013

TITLE
Municipal Order authorizing the Mayor to execute a Memorandum of Agreement with JED Rentals, LLC providing for consensual annexation of 9.717 acres in Hobo Estates, in exchange for reimbursement of the cost of certain public facilities dedicated to public use over a five-year period.

MEETING OF CITY COMMISSION ON <i>(State the meeting date):</i> November 5, 2013
BUDGET <i>(State any budget consequences):</i> N/A

SUMMARY AND BACKGROUND <i>(Continue on additional sheet, if necessary):</i>
JED Rentals, LLC is the owner of a 9.717 acre tract of property known as Hobo Estates, located on Lafayette Drive between J.R. Miller Boulevard and Jefferson Street. OMPC approved a preliminary plan for development of the 9.717 acres, containing 40 residential buildings, or 80 residential rental units on February 14, 2013. The property is currently zoned R-1C for single family residential development. As an inducement to JED Rentals, LLC to consensually annex the subject 9.717 acres, this agreement requires the City to reimburse it for the actual cost of construction of various defined public facilities dedicated to public use within the annexed development, in an amount not to exceed the total ad valorem (excluding school tax) tax revenues derived from the annexed property over a 5-year period commencing on May 1, 2013, or upon receipt of a written request by JED Rentals, LLC, whichever occurs first. The attached Memorandum of Agreement details the terms and conditions of the agreement between JED Rentals, LLC and the City.
<input type="checkbox"/> Check if continued on next page

ATTACHMENTS <i>(12 copies for agenda packets)</i>	Check if no attachments
M.O. 16-2013; Memorandum of Agreement	<input type="checkbox"/>

Note: All City Commission Agenda items submitted by staff, including appropriate backup materials, must be approved and submitted to the City Clerk not later than noon Thursdays preceding Tuesday, 6:30 p.m. meetings.

Submitted By	Department Head Approval	City Attorney Approval	City Manager Approval

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into this 5th day of November, 2013, by and between CITY OF OWENSBORO, KENTUCKY, a municipality of the second class, 101 East Fourth Street, P. O. Box 10003, Owensboro, Kentucky 42302-9003, (hereafter referred to as "City"), and JED RENTALS, LLC, 1518 East 11th Street, Owensboro, Kentucky 42303 (hereafter referred to as "Developer").

RECITALS

WHEREAS, Developer is the owner of a certain tract of real property consisting of approximately 9.717 acres, more or less, commonly referred to and known as Hobo Estates, containing approximately 40 residential buildings containing 80 residential rental units, located on Lafayette Drive between J.R. Miller Boulevard and Jefferson Street in Daviess County, Kentucky; and

WHEREAS, a preliminary plan for development of the 9.717 acres in Hobo Estates was approved by the Owensboro Metropolitan Planning Commission on February 14, 2013; and

WHEREAS, the property that comprises Hobo Estates was rezoned on March 7, 2013, from R-1B Residential to R-1C Residential, which zoning classification allows for single-family residential development; and

WHEREAS, Developer's property, which is presently located in an unincorporated area of Daviess County that is contiguous to the corporate

boundaries of the City, when annexed, developed, and/or sold, will utilize and benefit from, various municipal services, including public safety, sanitary sewer, water, and electric utilities; and

WHEREAS, the social and economic well being of the City is directly related to, and in many respects dependent upon, the substantial growth of the City and its tax revenue base through annexation of contiguous territories. In order to meet various capital needs, especially in the area of public safety, provide and maintain infrastructure and other public facilities, promote economic development, and continue to provide affordable, quality municipal services to taxpayers, the City deems it to be in its best interest to encourage and induce contiguous industrial, commercial, and/or residential developments to become citizens of Owensboro through consensual annexation, with all services, rights, privileges, and other amenities appertaining thereto; and

WHEREAS, as an incentive to Developer to incorporate the entire 9.717 acre tract of real property into the City through consensual annexation in order to make all municipal services available to said property and to facilitate overall municipal growth, the City desires to reimburse Developer for the cost of the construction of various public facilities and improvements dedicated to public use and maintenance within said 9.717 acre tract, in an amount not to exceed the total cost of the public facilities or the total ad valorem (excluding school tax), net profits, and occupational tax revenues derived from any property located therein, whichever is less, over a designated five (5) year period.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions contained herein, the parties agree as follows:

1. **ANNEXATION:** Upon the approval and execution of this agreement by the parties, Developer shall proceed without unreasonable delay with formal application for consensual annexation by the City of said 9.717 acre tract known as Hobo Estates, and shall give its consent to, and in all other respects, support an annexation ordinance proposed to the Owensboro Board of Commissioners for adoption, pursuant to KRS 81A.412. A copy of the plan for development of Hobo Estates is attached hereto and incorporated by reference as if fully set forth herein.

In consideration of the foregoing, the City or its designated agency, shall accept and assume maintenance of, all public facilities approved by the City Engineer, including streets, alleys, curbs, gutters, parks, bicycle/pedestrian trails, and infrastructure (including sanitary sewers, stormwater drains, inlets, and retention basins, but excluding common areas), or other public improvements or right-of-way dedicated to public use and maintenance on the final development plan and the final subdivision plat approved by the Owensboro Metropolitan Planning Commission and filed of record in the Office of the Daviess County Clerk, hereafter referred to as "Public Facilities." All maintenance required hereunder shall be performed by the City according to its approved maintenance schedule, as may be changed from time to time.

2. INCENTIVES; REIMBURSEMENT FOR COST OF PUBLIC FACILITIES; CALCULATION OF TAX REVENUES; LIMITATIONS:

(A) Incentives: In consideration of the consensual annexation of the aforementioned 9.717 acres in Hobo Estates, the City hereby agrees to reimburse Developer for the verified cost of the "public facilities" required to be constructed by Developer, its employees, agents or contractors, within Hobo Estates, subject to the terms, conditions, and limitations set forth herein.

(B) Reimbursement for Public Facilities; Source of Funding:

1. The City shall reimburse Developer for the actual costs incurred in connection with the construction of "public facilities" within the 9.717 acre tract of property upon the release of any public improvement bond and submission of an itemized invoice properly documenting same. Developer shall submit invoices to the City's Director of Finance on a quarterly basis, and payments will be made on or before the 15th day of the following month, subject to the provisions in Section 2(E) below.

2. Expenses to be reimbursed by City to Developer under this agreement shall be paid solely from all real and personal property, occupational, and net profits tax revenues, excluding school taxes and any taxes levied and restricted to a specific purpose, derived by the City from said 9.717 acre tract of property, hereafter referred to as "tax revenues," over a maximum

period of five (5) years. The five (5) year term shall commence on May 1, 2013. The City's obligation to reimburse Developer for the cost of public facilities shall commence on the first day of the next fiscal quarter after the five (5) year term begins.

(C) Calculation of Personal Property (Motor Vehicle) Tax Revenues): Personal property tax revenues calculated annually on all motor vehicles within Hobo Estates annexed pursuant to this agreement shall be calculated and expressed as a percentage of the real property taxes collected from the same annexed property. The percentage used shall be determined by a formula using the total personal property taxes collected on all motor vehicles within the City as the numerator and the total ad valorem taxes on all real property within the City (exclusive of taxes collected for and on behalf of the Owensboro Public School System), as the denominator.

(D) Accounting: The Director of Finance is authorized and directed to collect and deposit all "tax revenues" in a separate, dedicated account established for the 9.717 acre tract incorporated by the City through consensual annexation, for the five (5) year period designated herein. To assist the Finance Department in tracking tax revenues derived from the development, sale, and/or lease of real and personal property within said 9.717 acre tract, Developer shall,

at its expense, promptly provide the City with a copy of the final subdivision plat approved by the Owensboro Metropolitan Planning Commission and filed in the Office of the Daviess County Clerk, any deeds of conveyance, and the names and mailing addresses of any person, firm or corporation with a leasehold interest in any portion of subject property. During the term of this agreement, Developer shall also notify the City's Director of Finance of the sale, transfer, and/or lease of any portion of subject property to any other person or entity for commercial development or other use by providing a copy of the deed of conveyance or the name and mailing address of any person, firm or corporation with a leasehold interest.

(E) Limitation on Reimbursement of Expenses:

1. The City's maximum liability to Developer for reimbursement of the cost of qualified "public facilities" shall not exceed the total verified cost of the public facilities or the total sum of all "tax revenues" collected by the City from the 9.717 acre tract of property known as Hobo Estates, whichever is less, over the designated five (5) year period. The City shall reimburse Developer for qualified expenses upon receipt of sufficient dedicated "tax revenues" under Sections 2(B)(2) and (C) of this agreement.

3. TERM: This agreement shall commence effective May 1, 2013, and shall remain in full force and effect for the duration of the designated five (5) year period, or until such time as all terms and conditions set forth herein have been satisfied.

4. DEFAULT; REMEDIES: This agreement may be terminated by the City, by written notice, in the event Developer breaches any one or more of the terms and conditions set forth herein, and fail to cure said breach within a reasonable time after written notice thereof. This agreement may be terminated by Developer in the event the City fails to reimburse Developer for qualified public facility expenses on the terms and conditions set forth herein, and fails to cure said breach within a reasonable time after written notice thereof by Developer.

Upon a material breach of this agreement by either party, the non-breaching party shall be entitled to all remedies at law or equity, including but not limited to, specific performance or mandatory injunctive relief, rescission, or compensatory and consequential damages arising therefrom; provided, however, a material breach by the City notwithstanding, under no circumstances shall the City be required to de-annex property annexed pursuant to this agreement, which process is a discretionary and non-negotiable legislative function.

5. NOTICES: Any written notices or requests required under the terms of this agreement shall be given to the following:

CITY: City of Owensboro, Kentucky
Attention: City Manager
P. O. Box 10003
101 East 4th Street
Owensboro, Kentucky 42302-9003

DEVELOPER: JED Rentals, LLC
Attention: Paul W. Davis
1518 East 11th Street
Owensboro, Kentucky 42303

6. AGREEMENT NULL AND VOID: This agreement shall terminate, and otherwise become null and void, and neither party shall have any further liability to the other, if the real property described herein is not incorporated into the City by the Owensboro Board of Commissioners through consensual annexation or Daviess County and the City of Owensboro merge governments.

7. ENTIRE AGREEMENT: This agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements, promises, communications, representations, whether oral or written, by any employee, officer, or representative of either party hereto. There are no promises, representations, covenants, undertakings, restrictions, or conditions, other than those expressly set forth herein. Any subsequent amendment hereto shall be in writing and executed by authorized representatives of both parties. This agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, provided, however, that this agreement shall not be transferred or assigned at any time by Developer without the express written consent of the City.

8. SEVERABILITY: The provisions of this agreement are independent of and severable from each other, and no provision shall be effected or rendered invalid or unenforceable by virtue of the fact that for any reason, other provisions herein may be invalid or unenforceable, in whole or in part. If a court of competent jurisdiction determines that any provision of this agreement is invalid or unenforceable as written, a court may interpret, construe, rewrite or revise such provision, to the fullest extent allowed by law, so as to make it valid

and enforceable consistent with the intent of the parties. In the event a court of competent jurisdiction finally determines that any portion of this agreement is invalid or unenforceable as written, neither party shall have any liability to the other as a result thereof.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first hereinabove written.

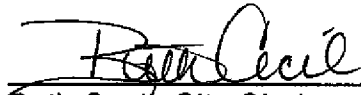
FIRST PARTY:

CITY OF OWENSBORO, KENTUCKY

By


Ron Payne, Mayor

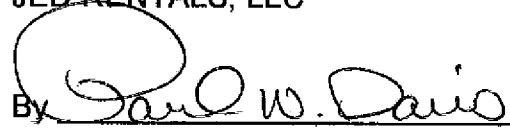
ATTEST:

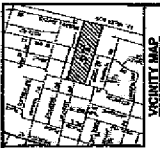

Beth Cecil, City Clerk

SECOND PARTY:

JED RENTALS, LLC

By


Paul W. Davis, Manager



APPROVED BY:
661
 State of Michigan
 Department of Transportation
 Date: 11/11/10

SANITARY SEWER SYSTEM APPROVAL
 ACCEPTANCE OF SEWAGE
 Date: 12/15/10
 Approved: [Signature]
 Michigan Department of Transportation

WATER DISTRIBUTION SYSTEM APPROVAL
 Date: 12/15/10
 Approved: [Signature]
 Michigan Department of Transportation

TELEPHONE EASEMENTS APPROVAL
 Date: 12-17-10
 Approved: [Signature]
 AT&T Intellectual Property

NATURAL GAS EASEMENTS APPROVAL
 Date: 12-17-10
 Approved: [Signature]
 AT&T Intellectual Property

ELECTRICAL EASEMENTS APPROVAL
 Date: 12/18/10
 Approved: [Signature]
 AT&T Intellectual Property

OWNER'S CERTIFICATION
 I, the undersigned, certify that I am the owner of the property shown on this plan and that I have the right to convey the same.

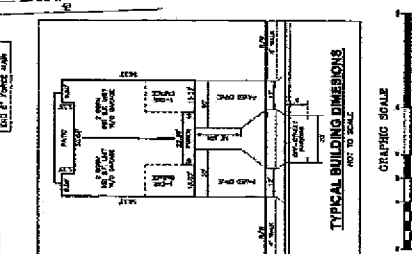
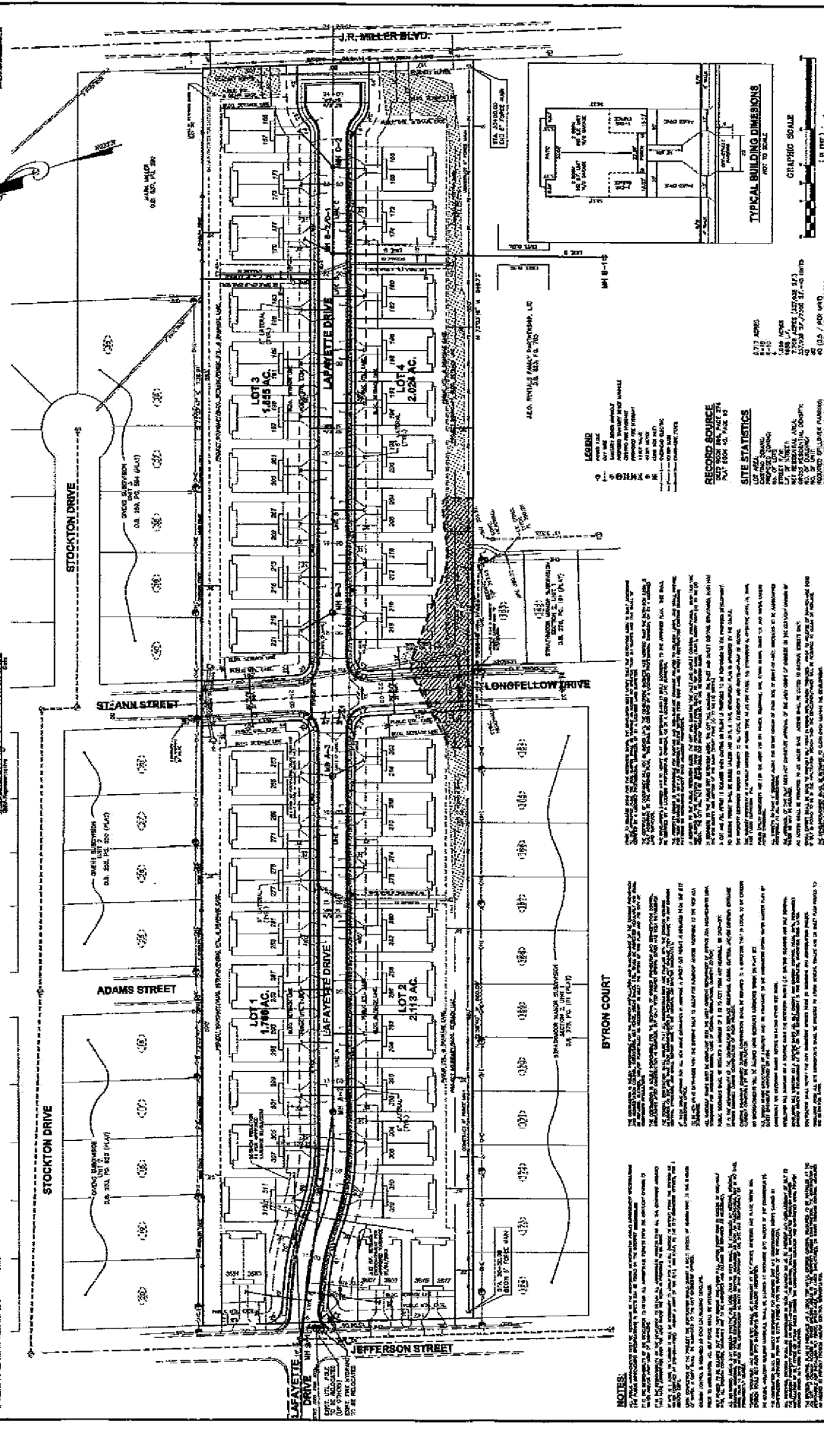
G.M.P. APPROVAL
 Date: 11-18-10
 Approved: [Signature]
 City of Detroit

SURVEYOR'S CERTIFICATION
 I, the undersigned, certify that I am a duly licensed surveyor in the State of Michigan and that I have surveyed the property shown on this plan and that I have the right to convey the same.

OWNER'S CERTIFICATION
 I, the undersigned, certify that I am the owner of the property shown on this plan and that I have the right to convey the same.

OWNER'S CERTIFICATION
 I, the undersigned, certify that I am the owner of the property shown on this plan and that I have the right to convey the same.

OWNER'S CERTIFICATION
 I, the undersigned, certify that I am the owner of the property shown on this plan and that I have the right to convey the same.



LEGEND
 [Symbol] Public Right-of-Way
 [Symbol] Easement
 [Symbol] Utility Line
 [Symbol] Proposed Building Footprint
 [Symbol] Proposed Driveway
 [Symbol] Proposed Parking Space
 [Symbol] Proposed Walkway

RECORD SOURCE
 2010 2010
 2010 2010
 2010 2010
 2010 2010

SITE STATISTICS
 2.77 ACRES
 4,115 SQ. FT.
 4,115 SQ. FT.
 4,115 SQ. FT.

NOTES:
 1. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL GOVERNMENT AND STATE AGENCIES.
 2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL GOVERNMENT AND STATE AGENCIES.
 3. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL GOVERNMENT AND STATE AGENCIES.

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OCI

HOBO ESTATES

COMBINATION FINAL DEVELOPMENT PLAN & PRELIMINARY SUBDIVISION PLAT

J.E.D. RENTALS FAMILY PARTNERSHIP, LTD
 10000 W. LAFAYETTE DRIVE
 DETROIT, MI 48213

OWNER'S CERTIFICATION

DATE: 11/11/10

SCALE: 1" = 40'

SHEET: 2 OF 9

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into this _____ day of _____, 2020, by and between CITY OF OWENSBORO, KENTUCKY, a municipality of the home rule class, 101 East Fourth Street, P. O. Box 10003, Owensboro, Kentucky 42302-9003, (hereafter referred to as “City”), and JED Rentals, LLC, 1518 East 11th Street, Owensboro, KY 42303-0841, (hereafter referred to as “Developer”). City and Developer are each a “Party” and collectively the “Parties”.

RECITALS

WHEREAS, Developer is the owner of a certain tract of real property consisting of approximately 3.461 acres, more or less, which is located at 3509 Fairview Drive, Owensboro, KY and referred to as Mallard Landing; and

WHEREAS, Developer's property is presently located in an unincorporated area of Daviess County that is contiguous to the corporate boundaries of the City and, when annexed, developed, and/or sold, will utilize and benefit from various municipal services, including public safety, sanitary sewer, water, and electric utilities; and

WHEREAS, the City of Owensboro has established an annexation incentive program for a development for the purposes of eligibility for incentives; and

WHEREAS, Developer wishes to grant his or her consent and voluntarily participate in the City annexation incentive program whereby Mallard Landing shall be annexed into the corporate limits of the City of Owensboro; and

WHEREAS, the social and economic well being of the City is directly related to, and in many respects dependent upon, the growth of the City and its tax revenue base through annexation of contiguous territories. In order to meet various capital needs, especially in the area of public safety, provide and maintain infrastructure and other public facilities, promote economic development, and continue to provide affordable, quality municipal services to taxpayers, the City deems it to be in its best interest to encourage and induce contiguous commercial developments to become citizens of Owensboro through consensual annexation, with all services, rights, privileges, and other amenities appertaining thereto; and

WHEREAS, as an incentive to Developer to incorporate Mallard Landing into the City through consensual annexation in order to make all municipal services available to said property and to facilitate overall municipal growth, the Parties enter into an agreement by which the City will reimburse the Developer in an amount of one hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and occupational tax revenues derived from any property located therein, over a designated five (5) year period for Mallard Landing; and

WHEREAS, in 2013, Developer also annexed to the City its property known as the Hobo Estates and was to receive incentives under a Memorandum of Agreement entered into by the Parties, in accordance with Municipal Order 16-2013. A copy of Municipal Order 16-2013 is attached hereto as Exhibit A. However, due to unexpected circumstances, Developer was unable to timely

earn the annexation incentives for Hobo Estates and the City has agreed to grant an additional three (3) year time period for incentives for that property.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions contained herein, the Parties agree as follows:

SECTION 1. ANNEXATION: Mallard Landing shall be annexed into the City pursuant to KRS 81A.412. In consideration of the foregoing, Mallard Landing shall remain a private development within the property to be annexed, including streets, alleys, curbs, gutters, parks, bicycle/pedestrian trails, and public infrastructure (including sanitary sewers, stormwater drains, inlets, and retention basins, and common areas), on the final development plan and the final subdivision plat approved by the Owensboro Metropolitan Planning Commission and filed of record in the Office of the Daviess County Clerk.

SECTION 2. INCENTIVES; CALCULATION OF TAX REVENUES; LIMITATIONS.

(A) Under the terms of this Agreement, the City will reimburse the Developer in an amount of one hundred percent (100%) of the total ad valorem (excluding school tax), net profits, and occupational tax revenues derived from any property located therein, over a newly designated three (3) year period for Hobo Estates, and over a designated five (5) year period for Mallard Landing.

(B) Expenses to be reimbursed by City to Developer under this Agreement shall be paid solely from all real and personal property, occupational, and net profits tax/fee revenues (excluding school

taxes/fees, franchise bank deposit taxes, any and all in lieu of present or future taxes/fees, and any taxes levied and restricted to a specific purpose) derived by the City , hereafter referred to as "Tax Revenues," over a maximum period of three (3) years for Hobo Estates, and over a five (5) year period for Mallard Landing (the "Reimbursement Term"). The City's obligation to reimburse Developer shall commence on the first day of the next fiscal quarter after the three (3) year term begins for Hobo Estates and after the five (5) year term begins for Mallard Landing.

(C) It is understood that all reimbursements provided in this Agreement shall be made solely to the present Developer and not to any subsequent developer, purchasers, tenants, or other interests present or future.

(D) Accounting:

(1) The Director of Finance and Support Services is authorized and directed to collect and deposit all Tax Revenues derived by the City from Mallard Landing annexed hereby, in a separate, dedicated account established for the property incorporated by the City through consensual annexation over a designated five (5) year period. To assist the Finance Department in tracking Tax Revenues derived from the development, sale, and/or lease of real and personal property within Mallard Landing, Developer shall, at its own expense, promptly provide the City with a copy of the final subdivision plat approved by the Owensboro Metropolitan Planning Commission and filed in the Office of the Daviess County Clerk, any deeds of conveyance, and the names and mailing addresses of any

person, firm or corporation with a leasehold interest in any portion of Mallard Landing.

(2) The Director of Finance and Support Services is also authorized and directed to collect and deposit all Tax Revenues in a separate, dedicated account derived by the City over a designated three (3) year period for the previously annexed Hobo Estates.

(E) It is agreed that in the event the Developer sells, transfers and/or leases any part of Mallard Landing or Hobo Estates, Developer shall continue to receive the incentive payments as defined in this Agreement. It is understood that the incentive payments are to be paid directly to the Developer regardless as to who owns and/or leases the properties provided the Developer is in compliance with all terms of this Agreement.

(F) Payment under this Agreement is contingent upon those entities or persons from whom such Tax Revenues were derived, properly reporting such to the City of Owensboro. In the event that an entity or person does not properly report such Tax Revenues in a sufficient format to enable the City to attribute those Tax Revenues to Mallard Landing or Hobo Estates, the payment will be withheld until a proper reporting has been received and processed. City and Developer agree that both shall immediately utilize any and all available means or authority to require those entities or persons to immediately and properly report such Tax Revenues so as not to delay further payment to Developer.

(G) Limitation on Reimbursement of Expenses:

1. The City's maximum liability to Developer for reimbursement shall not exceed one hundred percent (100%) of the total verified sum of all Tax Revenues collected by the City over a designated three (3) year period for Hobo Estates, and over a designated five (5) year period for Mallard Landing.

SECTION 3. TERM: This Agreement shall commence upon its execution by both the Parties and the reimbursement term shall begin in two (2) phases, the first on January 1, 2020 for Phase 1 (Hobo Estates) for a period no longer than three (3) years terminating on January 1, 2023, and Phase 2 (Mallard Landing) shall begin on January 1, 2020 for a period of five (5) years terminating on January 1, 2025. This Agreement shall remain in full force and effect for the duration of the designated period for each phase, or until such time as all terms and conditions set forth herein have been satisfied, whichever first occurs. At the end of the reimbursement term, this Agreement shall be null and void.

Phase	Reimbursement Term Start Date
Phase 1	January 1, 2020 (Hobo Estates) (3 Years)
Phase 2	January 1, 2020 (Mallard Landing) (5 Years)

SECTION 4. DEFAULT; REMEDIES: This Agreement may be terminated by the City, by written notice, in the event Developer breaches any one or more of the terms and conditions set forth herein, including failure to timely complete all public improvements as per applicable ordinances, Planning and Zoning requirements, and the City's Private Development Policy which is incorporated herein by reference as Exhibit B, and fails to cure said breach within a

reasonable time after written notice thereof. This Agreement may be terminated by Developer in the event the City fails to reimburse Developer on the terms and conditions set forth herein, and fails to cure said breach within a reasonable time after written notice thereof by Developer.

Upon a material breach of this Agreement by either party, the non-breaching party shall be entitled to all remedies at law or equity, including but not limited to, specific performance or mandatory injunctive relief, rescission, or compensatory and consequential damages arising therefrom; provided, nor shall the City's total liability ever exceed one hundred percent (100%) of the total verified sum of all Tax Revenues collected by the City from Mallard Landing or Hobo Estates, whichever is less.

SECTION 5. NOTICES: Any written notices or requests required under the terms of this agreement shall be given to the following:

CITY:

City of Owensboro
Attention: City Manager
P. O. Box 10003
101 East 4th Street
Owensboro, Kentucky 42302-9003

DEVELOPER:

JED RENTALS, LLC
1518 EAST 11th STREET
Owensboro, Kentucky, 42303

SECTION 6. AGREEMENT NULL AND VOID: This Agreement shall terminate, and otherwise become null and void, and neither party shall have any further liability to the other, if Mallard Landing described herein is not

incorporated into the City by the Owensboro Board of Commissioners or the Commonwealth of Kentucky through consensual annexation or, if for any reason, Mallard Landing or Hobo Estates is de-annexed at any time.

SECTION. 7. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements, promises, communications, representations, whether oral or written, by any employee, officer, or representative of either Party hereto. There are no promises, representations, covenants, undertakings, restrictions, or conditions, other than those expressly set forth herein. Any subsequent amendment hereto shall be in writing and executed by authorized representatives of both Parties. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns, provided, however, that this Agreement shall not be transferred or assigned at any time by Developer without the express written consent of the City.

SECTION 8. SEVERABILITY: The provisions of this Agreement are independent of and severable from each other, and no provision shall be effected or rendered invalid or unenforceable by virtue of the fact that for any reason, other provisions herein may be invalid or unenforceable, in whole or in part. If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable as written, a court may interpret, construe, rewrite or revise such provision, to the fullest extent allowed by law, so as to make it valid and enforceable consistent with the intent of the Parties. In the event a court of competent jurisdiction finally determines that any portion of this Agreement is

invalid or unenforceable as written, neither Party shall have any liability to the other as a result thereof.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of the day and year first hereinabove written.

CITY OF OWENSBORO:

By _____
Thomas H. Watson, Mayor

ATTEST:

Beth Cecil, City Clerk

J.E.D. RENTALS, LLC:

By _____
Paul Davis, Manager