

## **MUNICIPAL ORDER 32-2021**

**A MUNICIPAL ORDER REPEALING MUNICIPAL ORDER 7-2019 AND AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF OWENSBORO AND RIVERFRONT BRIO, LLC PROVIDING A \$4,6000,00.00 FINANCIAL INCENTIVE FOR THE CONSTRUCTION AND OPENING OF A NEW DOWNTOWN HOTEL AND PARKING STRUCTURE, AND RESIDENTIAL DEVELOPMENTS CONTAINING AT LEAST 180 UNITS; AND FURTHER PROVIDING THAT THE CITY SHALL BE ENTITLED TO REIMBURSEMENT OF THE FINANCIAL INCENTIVE VIA ALL TAX INCREMENT FINANCING (TIF) REVENUE THAT RIVERFRONT BRIO, LLC WOULD OTHERWISE BE ENTITLED TO RECOUP FOR ITS COSTS.**

**WHEREAS**, on November 17, 2015, the Board of Commissioners of the City of Owensboro approved an ordinance creating a new Downtown Tax Increment Financing (TIF) Development District; and

**WHEREAS**, by Municipal Order 7-2019, the Board of Commissioners authorized the execution of a Memorandum of Agreement with Riverfront Brio, LLC, which was entered into on April 18, 2019; and

**WHEREAS**, Riverfront Brio, LLC has engaged in further negotiations with the City of Owensboro and the City of Owensboro desires to enter into a new Memorandum of Agreement adjusting the benefits and specific obligations of each, a copy of which is attached hereto as Exhibit "A" and incorporated by reference; and

**WHEREAS**, as a consequence Municipal Order 7-2019 should now be repealed.

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

**Section 1.** That Municipal Order 7-2019 is repealed.

**Section 2.** The Owensboro Board of Commissioners hereby authorizes the Mayor to sign a Memorandum of Agreement between the City and Riverfront Brio, LLC, providing:

- (a) A \$4,600,000.00 financial incentive for the construction and opening of a nationally recognized brand hotel containing at least 110 rooms in the downtown area of Owensboro and an associated parking structure, and residential developments in the downtown area containing at least 180 units; and
- (b) That the City shall be entitled to reimbursement of the incentives via all TIF revenue that Riverfront Brio, LLC would otherwise be entitled to recoup for its public infrastructure costs associated with the hotel, parking structure and residential developments.

**Section 3.** That the Mayor, City Manager and other appropriate staff members are hereby authorized and directed to execute any and all of the agreements, instruments, or documents deemed necessary to the furtherance of the authority outlined herein.

**INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING,** this the 10th day of August, 2021.

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Thomas H. Watson, Mayor

ATTEST:

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Kim Tignor, Acting City Clerk

## **EXHIBIT "A"**

### **MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement (hereinafter "Agreement"), dated as of August \_\_\_\_, 2021, is made by and between the **CITY OF OWENSBORO**, a municipal corporation of the Home Rule Class created and existing under the laws of the Commonwealth of Kentucky, 101 East Fourth Street, P. O. Box 10003, Owensboro, Kentucky 42302-9003 (hereinafter the "City"), and **RIVERFRONT BRIO, LLC**, a Kentucky limited liability company, 2960 Fairview Drive, Owensboro, Kentucky 42303-2171 (hereinafter the "Developer"). City and Developer are each a "Party" and collectively the "Parties."

### **RECITALS**

**WHEREAS**, Developer and/or its affiliates are the owners of property in the downtown area of the City of Owensboro (hereinafter referred to as the "Property"), which is the entirety of the northeast block of W. 3<sup>rd</sup> Street and Cedar Street consisting of approximately 2.1 acres; and

**WHEREAS**, the City desires continued downtown redevelopment, including the creation of residential units and an additional hotel, through implementation of the Downtown Master Plan; and

**WHEREAS**, Developer and its affiliates desire to construct a hotel and residential projects with adequate parking to serve such projects, which will create jobs and further stimulate local commerce; and

**WHEREAS**, the City and an affiliated entity of Developer, Riverfront JAM LLC (hereinafter "JAM"), have previously agreed by that certain Parking Lot Lease Agreement dated June 1, 2012, to provide parking for the benefit of Texas Gas Transmission, LLC,

(hereinafter referred to as “TXG”), the existing tenant of JAM; and

**WHEREAS**, the City recognizes the positive economic impact of the hotel and residential projects and additional parking in downtown and hereby agrees to provide a financial incentive to the Developer for its investment and job creation/retention for our community.

**NOW THEREFORE**, in consideration of these premises and the mutual covenants and conditions hereinafter set forth, the Parties agree as follows:

1. Developer agrees to begin Construction of a new hotel which shall be opened as a nationally recognized brand containing at least 110 rooms on the Property within ninety (90) days of the date of this Agreement and to complete said hotel on the Property within twenty-four (24) months of the start of Construction, or twenty-seven (27) months of the date of the Agreement, whichever is earlier. “Construction” for purposes of this Agreement is defined to mean actual building of the relevant portion of the projects (i.e., hotel, residential units, and parking) including submissions for approval by government instrumentalities and/or the hotel brand (delays in approvals shall toll the applicable deadlines). In no event shall actual building commence later than thirty (30) days from the date that all such approvals have been received. Design alone shall not satisfy the requirement of Construction.

2. Developer agrees to build a Parking Structure on the Property containing adequate parking to support the projects as contemplated herein, including one hundred seven (107) spaces upon the Property for employees of TXG. “Parking Structure” for the purposes of this Agreement is defined to mean multi-level vehicular parking including, but not limited to a parking deck parking garage, or podium-style parking, encompassing at

least seventy-five percent (75%) of the total number of parking spaces on the Property. Developer shall begin Construction of the Parking Structure upon the Property within ninety (90) days of the date of this Agreement and shall complete the Parking Structure on the Property within twenty-four (24) months of the start of Construction, or twenty-seven (27) months of the date of the Agreement, whichever is earlier. One hundred seven (107) spaces available in the parking structure for TXG employees shall be made available to the City and the public from the hours of 5:30 p.m. until 6:00 a.m., Monday through Thursday, and from 5:30 p.m. on Fridays until 6:00 a.m. on Mondays. As clarification, in the event that TXG is no longer a tenant of JAM, TXG no longer needs all or part of the parking identified hereunder as parking for TXG employees, or TXG is provided alternate parking by JAM or its affiliates, the parking identified hereunder as parking for TXG employees or relevant portion thereof shall thereafter continue to be for the use and benefit of JAM without change to the City and the public use terms stated above. Provided, however, the provision by JAM of alternative parking for TXG employees is subject to City approval, which approval will not be unreasonably withheld.

The Parking Structure on the Property shall be used for a public purpose (the public purpose being economic development: to enable the operation of a hotel, creating residential density and for parking in the downtown) by the residents of the development, hotel guests and employees/customers of JAM, TXG, and Developer's projects as well as patrons of, and visitors to, the surrounding business, governmental, and professional offices, when available, and this parking shall be subject to such charges as determined by the market, rules, restrictions and regulations as implemented by the Developer (with notice to the City).

City agrees that during the entirety of the Construction of the Parking Structure on the Property, City shall provide TXG employees with temporary parking as shown on the attached Exhibit A, which shall be at no cost to TXG or the Developer.

3. Developer agrees to build a total of one hundred eighty (180) residential units in the downtown area within the area marked on Exhibit B (hereinafter the "Project Zone"). Developer shall begin Construction of the residential units being located upon the Property within one hundred eighty (180) days of the date of this Agreement, and to complete said residential development upon the Property within twenty-four (24) months of the start of Construction, or thirty (30) months of the date of the Agreement, whichever is earlier.

Further, Developer shall begin Construction of the remainder of the 180 residential units (remainder being 180 minus the number of units built upon the Property) within the Project Zone at any or all of the three locations noted on Exhibit B within twelve (12) months of the date of this Agreement, and to complete said residential developments within thirty (30) months of the start of Construction, or forty-two (42) months of the date of the Agreement, whichever is earlier. In the event that approval to rezone, a variance is denied, or other governmental approval is denied, City agrees that Developer may move a residential development to another site within the Project Zone. One residential development to be located outside the Property and within the Project Zone must be constructed in a substantially similar quality and appearance to the development shown in the renderings attached as Exhibit C. The Developer further agrees to provide sufficient parking for residents of the developments.

4. In consideration of Developer constructing the hotel and residential developments and accommodating additional parking for TXG employees, the City agrees to provide a financial incentive to Developer in the amount of Four Million Six Hundred Thousand Dollars (\$4,600,000.00) (the "Incentive"), Nine Hundred Twenty Thousand Dollars (\$920,000.00) of which has been previously paid to Developer. The Incentive will be paid to the Developer based upon completion of various phases of the hotel and residential developments as stated in the following table which deadlines are subject to the tolling provisions of Section 1 and Section 19 when applicable:

PHASE	DEADLINE	REQUIREMENTS	INSTALLMENT
1	Within ninety (90) days of the date of this Agreement	Begin Construction of hotel and Parking Structure upon the Property	\$920,000.00 (Already paid to Developer)
2	N/A	Completion of 50% of hotel and Parking Structure upon the Property	\$1,290,000.00
3	Earlier of 24 months of the start of Construction or 27 months of date of Agreement	Completion of hotel and Parking Structure upon the Property (Completion shall be upon issuance of Certificate of Occupancy)	\$1,290,000.00
4	Earlier of 24 months of the start of Construction or 30 months of date of Agreement	Completion of residential units upon the Property (Completion shall be upon issuance of Certificate of Occupancy)	Pro rata portion of \$1,100,000.00*
5	Within thirty 30 months of the start of Construction or 42 months of date of Agreement	Completion of other residential developments	Pro rata portion of \$1,100,000.00*

\*For example, if 72 residential units are timely completed upon the Property, the payment would be  $72/180 \times \$1,100,000.00$ , or \$440,000.00, and, if an additional 108 units are timely completed within the Project Zone, payment would be  $108/180 \times \$1,200,000.00$ , or \$660,000.00 (all

payments shall be made by the City within seven (7) days of meeting the requirements. In no event would payment for residential units exceed \$1,100,000.00.

5. Developer shall notify the City in writing of its completion of each phase set forth in Section 4 above and request an installment payment or final payment, whichever is applicable, from the City. Failure to meet any of the construction deadlines for the hotel and parking structure set forth in Section 4 shall result in a forfeiture of ten percent (10%) of the installment payment for each thirty (30) days the deadline is missed.

6. The City shall have the right to inspect the work that has been performed prior to making any installment payment to ensure that the applicable requirement has been met; notwithstanding the preceding right of inspection, the issuance of a Certificate of Occupancy shall be binding upon the City as a trigger point for payment as stated herein.

7. This Agreement shall commence upon its execution by both Parties and shall remain in full force and effect for three and one-half (3½) years plus any extensions on a day for day basis for any tolling as provided for hereunder, or until such time as all terms and conditions have been satisfied. All dates stated hereunder and the term in this Section 7 are subject to the tolling provisions of Section 1 and Section 19 of this Agreement when applicable.

8. Upon completion of construction of the hotel and Parking Structure, the City further agrees to lease to the Developer an additional 153 parking spaces (subject to reduction in accordance with Section 2 above) in the City-owned Locust Street parking garage. The Parties agree that the additional 153 spaces in the Locust Street parking garage will be needed for a term of at least fifty (50) years, thus the City agrees to lease such spaces to the Developer for an initial term of ten (10) years for a fee of Ten Dollars



(\$10.00) per space per month for the base term. City further grants to the Developer four (4) additional ten (10) year renewal periods, which shall automatically renew unless the City receives written notice from the Developer. Each renewal is subject to a Five Dollar (\$5.00) per space per month increase which shall be capped at the then existing market-rate for comparable parking within the City Limits as determined by an independent appraiser agreed upon by the Parties. Further, the City agrees to negotiate in good faith with the Developer to provide parking in the City-owned Locust Street parking garage if the Developer or an affiliated entity secures a new tenant for the building located at 234 Frederica Street.

9. The City agrees to favorably consider reasonable designs from Developer to effectuate angled street parking on Cedar Street between Second and Third Streets submitted by Developer during the regulatory approval process, provided Cedar Street remains a two-way street. Developer may use part of the Incentive to fund the approved changes.

10. This Agreement may be terminated by either the City or the Developer giving written notice to the other Party in the event either Party breaches any one or more of the material terms and conditions set forth herein and fails to cure said breach or commence to cure said breach within sixty (60) days after first receiving written notice thereof from the non-breaching Party. In the event of a material default and failure to cure by Developer after receipt of notice as provided herein, including but not limited to a failure to construct and open the hotel, the City shall have the right to 1) immediately suspend or terminate this Agreement and 2) immediately recover from the Developer that portion of the Incentive paid up to the time of breach (including the \$920,000.00 already paid and

any other monies paid before the execution of this Agreement, plus interest at the rate of four percent (4%), per annum from date of payment, in addition to pursuing any other remedies to which the City may be entitled in law or equity, including injunctive relief and the payment of reasonable attorneys' fees. In the event of a material default and failure to cure by the City after receipt of notice as provided herein, Developer shall be entitled to demand injunctive relief and specific performance by the City, in addition to pursuing any other remedies to which Developer may be entitled in law or equity, including the payment of reasonable attorneys' fees.

11. The Parties further acknowledge that the City applied for and was approved by the Kentucky Economic Development Finance Administration (KEDFA) to create a Downtown Tax Increment Financing (TIF) District for the purpose of financing new development in the downtown. By virtue of entering into this Agreement, Developer waives any claim it may have to any TIF revenue above and beyond the Incentive provided for in this Agreement as it relates to the projects contained herein.

12. Developer agrees, to the extent permitted by applicable law, to indemnify and hold harmless the City, its directors, officers, employees, agents, shareholders, representatives, successors, heirs and assigns, from and against any and all claims, demands, environmental claims, injuries to persons, damage to property, suits, proceedings, judgments, losses, liabilities, damages, costs, fines, penalties and expenses of every kind and nature (including but not limited to reasonable attorneys' fees), resulting from, arising out of or related to the construction of the hotel, residential developments and associated parking. The obligation of Developer to indemnify City herein shall survive the termination or expiration of this Agreement for any reason.

13. City agrees, to the extent permitted by applicable law, to indemnify and hold harmless the Developer, its directors, officers, employees, agents, shareholders, representatives, successors, heirs and assigns, from and against any and all claims, demands, environmental claims, injuries to persons, damage to property, suits, proceedings, judgments, losses, liabilities, damages, costs, fines, penalties and expenses of every kind and nature (including but not limited to reasonable attorneys' fees), resulting from, arising out of or related its obligations herein, including, but not limited to the public use of the parking on the Property. The obligation of City to indemnify Developer herein shall survive the termination or expiration of this Agreement for any reason.

14. Any written notices or requests required under the terms of this Agreement shall be given to the following:

CITY: Nate Pagan, City Manager  
City of Owensboro  
P.O. Box 10003  
101 East Fourth Street  
Owensboro, KY 42303

DEVELOPER: Riverfront Brio, LLC  
Matthew Hayden, Manager  
2960 Fairview Drive  
Owensboro, KY 42303

15. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason, other provisions 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.

16. The failure on the part of either Party hereto to insist in any instance upon a strict observance by the other Party of any provision of this Agreement shall not be construed as a waiver of that or any other provision of this Agreement and it shall not diminish the right of either Party to demand compliance therewith on any subsequent occasion.

17. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. The Parties hereby agree that the state courts of Daviess County and the Commonwealth of Kentucky shall have exclusive jurisdiction to hear and determine any claims or disputes.

18. Developer shall have the right to assign its rights and obligations hereunder. All of the covenants, provisions and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors, and assigns.

19. Force Majeure- Developer will not be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, government restriction due to epidemic or pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, and lack of availability of raw materials or

energy. If Developer contends that there is a lack of availability of raw materials or energy preventing it from performing under this Agreement, it must provide documentation to City showing the lack of availability.

20. If Developer alleges that any deadline provided for in Section 4 should be tolled based upon a delay in approval in Section 1 or an event of force majeure in Section 19, then it must immediately, within fourteen (14) days of determining that a delay is occurring, advise the City of same, and Developer and City agree to meet within seven (7) days of the date of notification to the City to discuss the applicable facts and use their best efforts to reach agreement concerning to what extent tolling will occur. If Developer fails to notify City of the alleged delay in approval or the alleged event of force majeure, then no tolling of the applicable deadline will occur.

21. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes the Memorandum of Agreement entered into by the Parties on April 18, 2019, and all promises, communications, representations, whether oral or written, by any employee, officer, or representative of either Party. There are no promises, representations, covenants, undertakings, restrictions, or conditions, other than those expressly set forth herein. Any subsequent amendment shall be in writing and executed by authorized representatives of both Parties.

22. City agrees to execute such SNDAs, estoppels or other like certificates or agreements as may be reasonably required by TXG or by Developer's lender(s), subject to its review and approval of such instruments.

**IN TESTIMONY WHEREOF**, witness the signatures of the Parties hereto on this the day and date first hereinabove written.

CITY: **CITY OF OWENSBORO**

\_\_\_\_\_  
Thomas H. Watson, Mayor

ATTEST:

\_\_\_\_\_  
Kim Tignor, Acting City Clerk

DEVELOPER: **RIVERFRONT BRIO, LLC**

\_\_\_\_\_  
Matthew R. Hayden, Manager

COMMONWEALTH OF KENTUCKY     )  
  )  
COUNTY OF DAVIESS                     )     Sct.

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Thomas H. Watson, as Mayor, and attested by Kim Tignor, as Acting City Clerk, for and on behalf of the City of Owensboro, Kentucky, on this the \_\_\_\_ day of August, 2021.

\_\_\_\_\_  
Notary Public, State of Kentucky at Large

Notary ID# \_\_\_\_\_

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

COMMONWEALTH OF KENTUCKY           )  
   )       Sct.  
COUNTY OF DAVIESS                  )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Matthew R. Hayden, as Manager, for and on behalf of Riverfront Brio, LLC, a Kentucky limited liability corporation, on this the \_\_\_\_ day of August, 2021.

Notary Public, State of Kentucky at Large  
Notary ID# \_\_\_\_\_  
My commission expires: \_\_\_\_\_

PREPARED BY:

Mark Pfeifer  
City Attorney  
101 E. 4<sup>th</sup> Street  
Owensboro, KY 42303  
(270)687-8556

## Exhibits

- A- Temporary Parking Locations for TXG  
B- Project Zone Map  
C- Residential Rendering



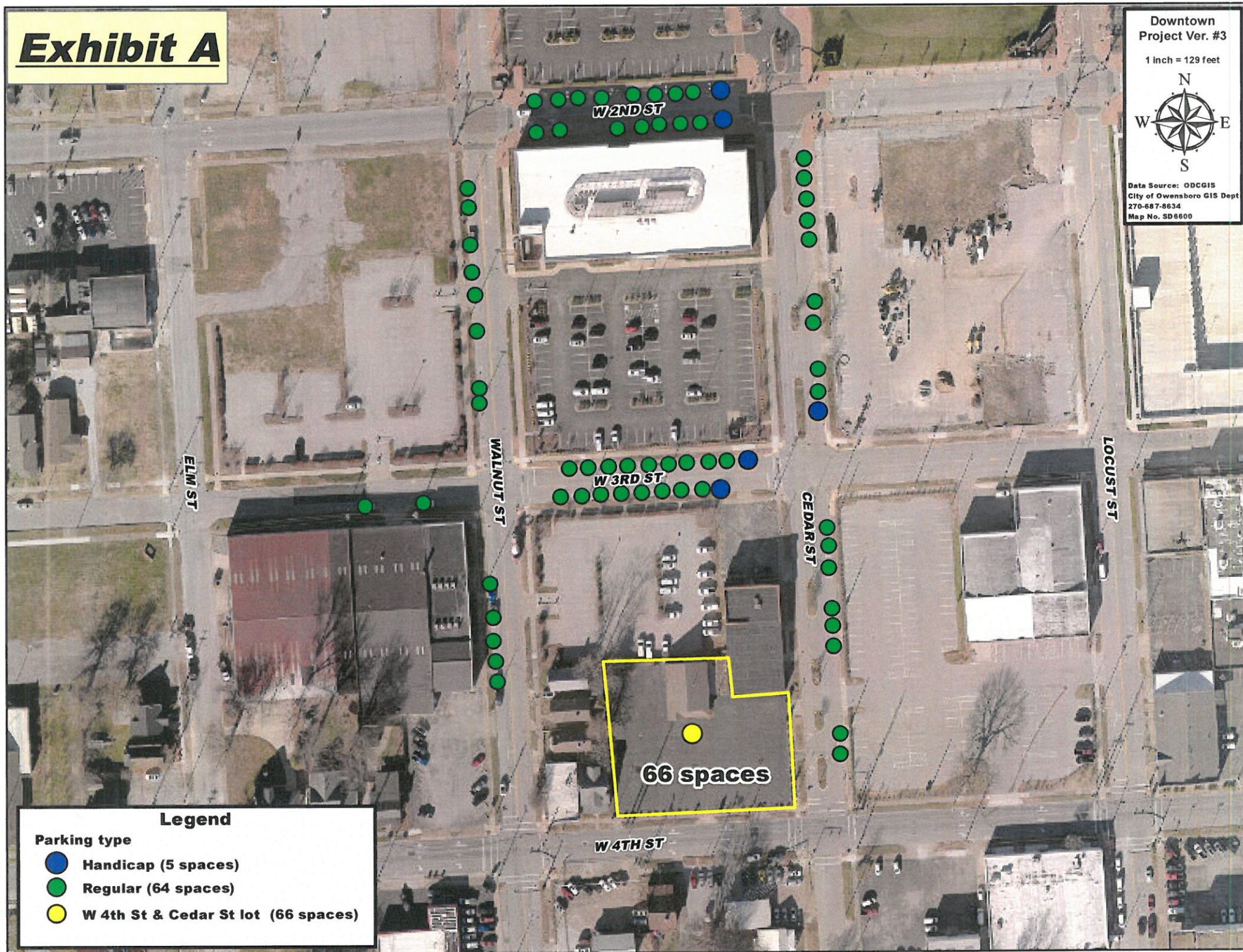
# Exhibit A

Downtown  
Project Ver. #3

1 inch = 129 feet



Data Source: ODCGIS  
City of Owensboro GIS Dept  
270-687-8634  
Map No. SD6600



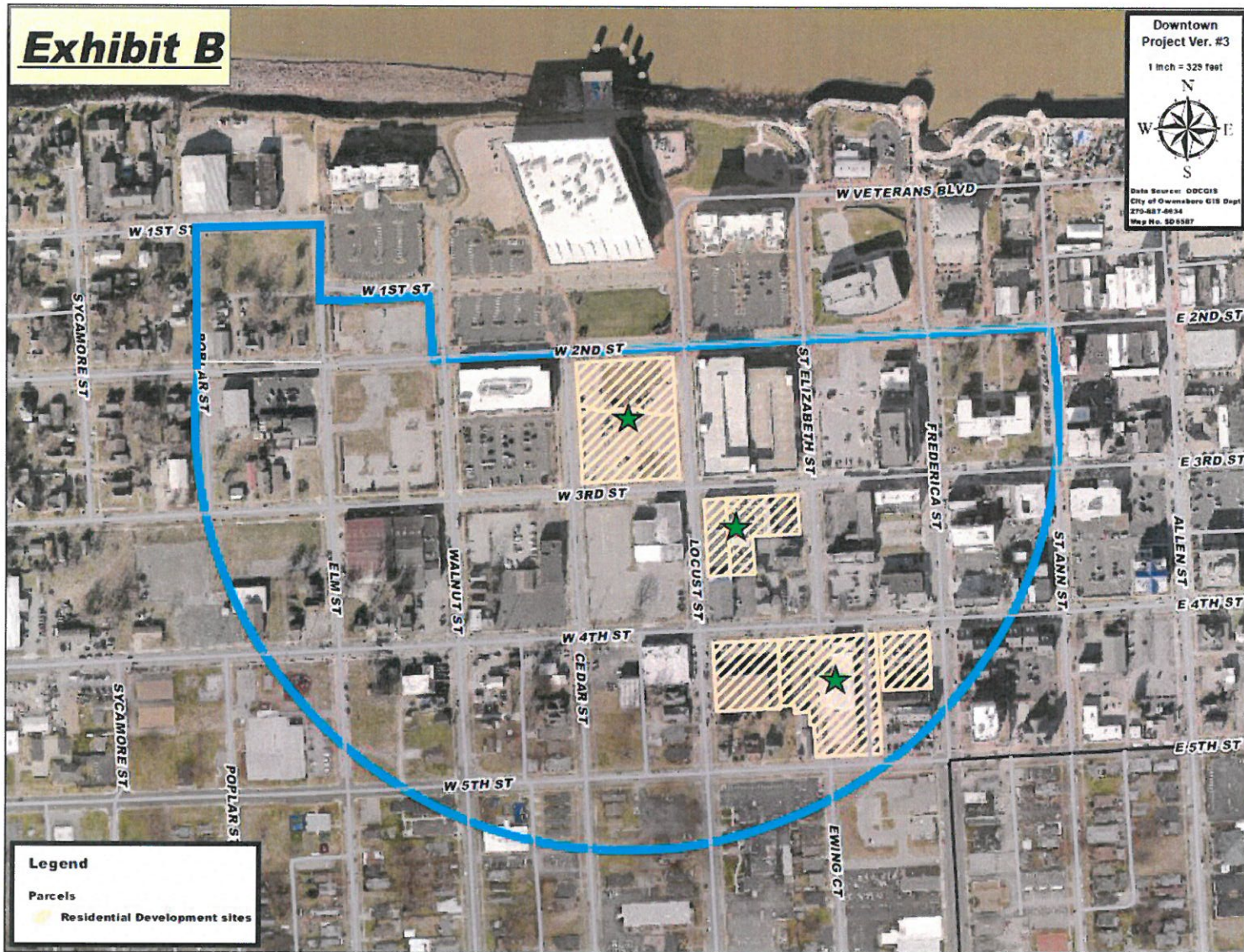
## Legend

### Parking type

- Handicap (5 spaces)
- Regular (64 spaces)
- W 4th St & Cedar St lot (66 spaces)



## Exhibit B





# RIDGEWEST

a mixed-use development

**in** integrity/Architecture  
[www.integrityarch.com](http://www.integrityarch.com)





# RIDGE WEST

**ii** integrity/Architecture  
www.integrityarch.com



NORTHWEST CORNER





# RIDGE WEST

ii integrity/Architecture  
www.integrityarch.com



NORTH ELEVATION



SOUTH ELEVATION