

PRELIMINARY FUNDING AGREEMENT

This **PRELIMINARY FUNDING AGREEMENT** (this “*Agreement*”) is made and entered into as of the ____ day of _____, 2020, by and between the **CITY OF CHESTERFIELD, MISSOURI** (the “*City*”) and **Wildhorse Village, LP** (the “*Company*”).

RECITALS

- A.** The Company has submitted a proposal for the redevelopment of fourteen (14) parcels as described and outlined on Exhibit A attached hereto and incorporated herein (the “*Redevelopment Area*”).
- B.** The Company has advised the City that the costs of redeveloping the Redevelopment Area will be extraordinarily high and, to make the redevelopment of the Redevelopment Area financially feasible, has requested that the City consider a community improvement district (“*CID*”) to include the Redevelopment Area.
- C.** The Company has advised the City that even with a CID to include the Redevelopment Area, to make the redevelopment of the Redevelopment Area financially feasible the Company may request at a later date that the City consider certain additional economic development incentives for the Redevelopment Area.
- D.** In order for the City to fully consider and evaluate the CID, the City has requested the Company deposit funds with the City to be used by the City to pay for the City’s actual out-of-pocket expenses necessary to perform a full evaluation of the CID and engage consultants as needed for such evaluation.

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

1. Advance of Funds.

On or before _____, 2020, the Company shall deposit Seventeen Thousand Five Hundred and 00/100 Dollars (\$17,500.00) (the “*Preliminary Funds*”) with the City to be used in connection with the City’s consideration of the CID in the Redevelopment Area. The City shall use the Preliminary Funds to pay or reimburse the City for payment of actual out-of-pocket costs and expenses incurred by the City for services provided by such consultants and advisors (including, but not limited to, attorneys, planners, and financial consultants) associated with the City’s consideration of the CID and the City’s consideration and implementation of the CID, including, preparation, drafting and review of any ordinances, statutory notices, five-year plan and other related documents, the review of petitions and other work relating to the CID, and for expenses incurred by the City (such as mailing, publication and similar costs) in connection with the foregoing. The parties acknowledge that such amount is a substantial sum and agree to use their best efforts to work together to reduce the total costs to be paid out of the Preliminary Funds.

2. Disbursement.

Subject to this Agreement, the City shall disburse the Funds (as defined herein) for fees and expenses incurred or to reimburse the City for fees and expenses previously paid by the City upon receipt of (a) invoices for work reasonably and actually performed by consultants and advisors, (b) detailed invoices and/or line-item receipts for out-of-pocket expenses incurred by such parties or the City for the planning, legal and financial work described in this Agreement, and (c) such other supporting

documentation as may be requested by the City. The City Administrator of the City will use reasonable care in ascertaining that the fees and expenses paid from the Funds are fair and reasonable.

3. Copies of Disbursement Requests.

The Company may request copies of all disbursement records (as maintained pursuant to Section 2 above) detailing costs paid from the Funds. If the Company has questions regarding any disbursement records, the Company shall direct such questions in writing to the City Administrator within thirty (30) days of the Company's receipt of the requested disbursement records; thereafter, the City and Company shall in good faith attempt to resolve any questions so raised as soon as reasonably possible, and to the extent necessary, communicate or negotiate with the appropriate third party submitting the payment request in order to do so.

4. Consideration of CID.

The City agrees to work with the Company and attempt to agree upon a mutually acceptable CID, and take all other reasonable actions precedent to the favorable consideration by the City Council of the approval of the CID; provided, that nothing herein shall obligate the City to approve a CID. Notwithstanding the foregoing, the parties acknowledge and agree that the ultimate determination of the formation and approval of the CID is in the sole discretion of the Mayor and City Council.

5. Company's Right of Termination.

The Company may terminate this Agreement at any time prior to the establishment of the CID in its sole discretion upon giving the City ten (10) days' prior written notice; whereupon ten (10) days following the Company's delivery of said notice this Agreement shall be deemed terminated. Upon receipt of such notice, the City will cease incurring expenditures under this Agreement as soon as reasonably possible. The City shall pay to the Company, within sixty (60) days after the Company delivers notice of its termination under this Section, all Funds remaining after the City's payment of any fees and expenses submitted pursuant to this Agreement for work performed through the date of termination.

6. City's Right of Termination.

The City may terminate this Agreement upon giving the Company thirty (30) days' prior written notice if the initial Preliminary Funds advanced hereunder have been spent and the Company does not provide additional Preliminary Funds to the City prior to the expiration of such thirty (30) day notice period. Upon giving such notice under this Section, the City shall cease incurring expenditures under this Agreement. The City shall pay to the Company, within sixty (60) days after the City delivers notice of its termination of this Agreement under this Section, all Preliminary Funds remaining after the City's payment of any fees and expenses submitted pursuant to this Agreement for work performed by the City or its consultants, as specified in Section 1 hereof, through the date of termination.

7. Excess Funds; Expenses Incurred by the City in Excess of the Funds.

If the City does not expend all the Funds as provided herein, the City shall immediately return the remainder to the Company. Further, if the parties enter into a redevelopment agreement for the Redevelopment Area, the redevelopment agreement shall provide for the disbursement of any remaining Preliminary Funds in the manner specified in the redevelopment agreement.

In the event that the City incurs costs in reviewing the CID in the Redevelopment Area in excess of the amount of the Preliminary Funds, the Company will pay such excess amount to the City within ten (10) days of the City's written request (the "***Additional Funds***" and together with the Preliminary Funds, the "***Funds***"). Additionally, at the City's reasonable discretion, such excess costs may be submitted by the City to the CID for reimbursement on a priority basis before any reimbursement of the Company for advancing the Funds. All costs advanced by the Company to the City, whether the Preliminary Funds or the Additional Funds, to the extent permissible under applicable law, shall be reimbursable to Company by the CID in connection with Company's construction of its proposed development project for the Redevelopment Area.

8. No Third-Party Beneficiaries.

This Agreement constitutes a contract solely between the City and the Company. No third party has any beneficial interest in or derived from this Agreement.

9. Notices.

All notices or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given and received when (i) hand delivered, (ii) mailed by registered or certified mail, postage prepaid, or (iii) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

If to the City:

City of Chesterfield, Missouri
Chesterfield City Hall
690 Chesterfield Parkway West
Chesterfield, Missouri 63017
Attention: Mike Geisel, City Administrator

With a copy to:

Armstrong Teasdale LLP
7700 Forsyth Boulevard, Suite 1800
St. Louis, Missouri 63105
Attention: Robert Klahr

If to the Company:

Wildhorse Village, LP
7800 Forsyth Blvd.
Clayton, MO 63105
Attention: Jeffrey J. Tegethoff

With copy to:

Husch Blackwell
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
Attention: Patrick J. Eckelkamp

or to such other address with respect to any party as that party may, from time to time, designate in writing and forward to the other. All such notices or other communications shall be deemed given upon receipt or refusal of service. Attorneys for each party shall be authorized to give and receive notices for each such party.

10. City Requirements and Prior Approval.

The Company agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's zoning ordinances, subdivision regulations and all planning or infrastructure requirements related to the development of Redevelopment Area. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which the Company must comply and does not in any way constitute prior approval of any future proposal for development, including the CID. The parties understand that the City may not lawfully contract away its police powers and that approval of the CID and any zoning, subdivision and similar development application cannot be contractually guaranteed. This Agreement does not alter or diminish the City's ability to exercise its legislative discretion to consider the CID in accordance with the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended, and all applicable laws and any other applications with respect to development of Redevelopment Area.

11. Limitation of Liability.

Notwithstanding any provision hereof to the contrary, the City and its officials, officers, agents, employees and representatives shall not be liable to the Company for damages or otherwise if this Agreement or any prospective adoption of the CID is declared invalid or unconstitutional in whole or in part by the final judgment of any court of competent jurisdiction (as to which all rights of appeal have expired or have been exhausted), and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Company is prevented from enjoying the rights and privileges contemplated hereunder.

12. Miscellaneous.

a. Severability. If any provision of this Agreement is unenforceable, the remainder of this Agreement shall be enforced as if such provision were not contained herein.

b. No Waiver. Failure of any party hereto to enforce its rights hereunder at any time shall not be deemed a waiver of any such rights.

c. Representations and Warranties. The Company and the City each represent and warrant that (i) this Agreement has been duly executed by them or on their behalf, as the case may be, pursuant to due authorization, and is not in violation of any such party's governing documents, charter or ordinances, as the case may be, (ii) no consents are necessary for the execution, delivery, and performance of this Agreement by such party, and (iii) this Agreement is valid, binding and enforceable against such party in accordance with its terms.

d. Assignment. This Agreement may not be assigned by either party without the written consent of the other.

e. Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement among the parties. Any modification

to this Agreement as approved shall be attached hereto and incorporated herein by reference.

f. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior oral agreements or written agreements, arrangements, and understandings related thereto.

g. Execution in Counterparts; Electronic Transmission. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The City and the Company agree that the transactions described herein may be conducted and related documents may be received or stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

h. Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the City of Chesterfield, Missouri has caused this Preliminary Funding Agreement to be duly executed as of the date first above written.

CITY OF CHESTERFIELD, MISSOURI

By: _____
Name: Bob Nations
Title: Mayor

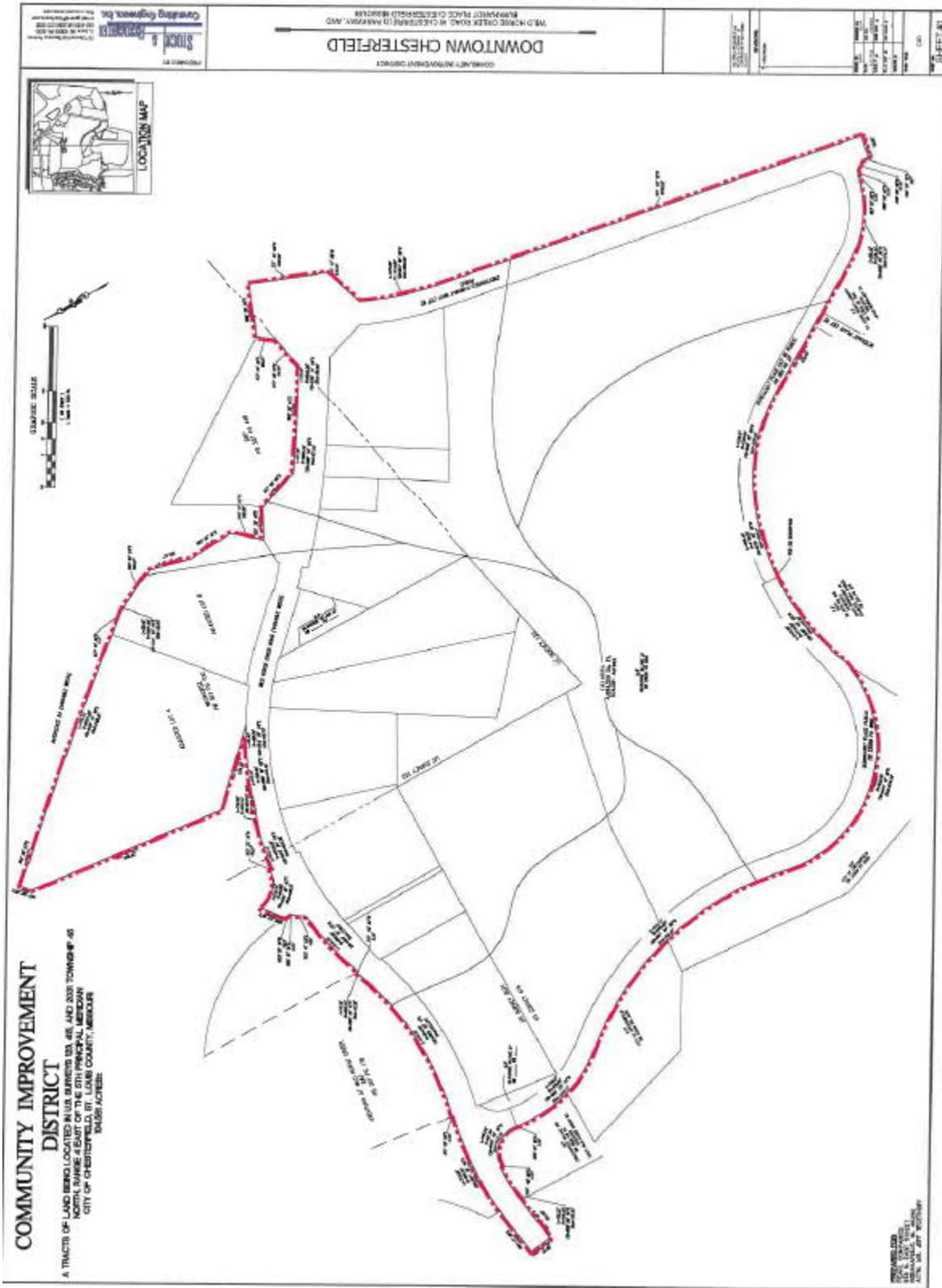
IN WITNESS WHEREOF, the Company has caused this Preliminary Funding Agreement to be duly executed as of the date first above written.

WILHORSE VILLAGE, LP

By: Wildhorse Village GP, LLC, its General Partner

By: _____
Name: Jeffrey J. Tegethoff, Manager

EXHIBIT A REDEVELOPMENT AREA





CID Description

A tract of land being part of U.S. Surveys 123, 415, and 2031, in Township 45 North, Range 4 East, of the Fifth Principal Meridian, City of Chesterfield, St. Louis County, Missouri, and being more particularly described as follows:

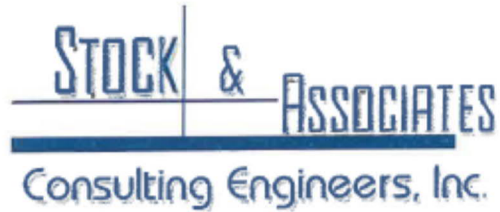
Beginning at the western corner of Burkhardt Place as dedicated by Plat Book 283 Page 37 of the above said county records, also being the southern corner of Burkhardt Place as dedicated by Deed Book 23588 Page 3666 of said county records, being on a curve to the left having a radius of 775.00 feet; thence the following courses and distances along the south and west lines of that part of Burkhardt Place, dedicated by Deed Book 23588 Page 3666: along said curve an arc distance of 342.59 feet, and a chord which bears South 80 degrees 42 minutes 32 seconds West, 339.80 feet, to a point of reverse curve having a radius of 405.00 feet; along said curve an arc distance of 805.88 feet and a chord which bears North 44 degrees 41 minutes 16 seconds West, 679.35 feet to a point of reverse curve having a radius of 925.00 feet; along said curve an arc distance of 845.72 feet and a chord which bears North 13 degrees 54 minutes 00 seconds West, 816.57 feet to a point of reverse curve having a radius of 405.00 feet; and along said curve an arc distance of 346.17 feet and a chord which bears North 15 degrees 35 minutes 22 seconds West, 335.72 feet, to the south right of way line of Wild Horse Creek Road, variable width; thence the following courses and distances along the said south right of way line: North 06 degrees 01 minute 10 seconds East, 2.05 feet to a curve to the left having a radius of 87.40 feet; along said curve an arc distance of 149.76 feet and a chord which bears North 40 degrees 14 minutes 16 seconds West, 132.10 feet; North 00 degrees 40 minutes 26 seconds East, 6.00 feet to a curve to the left having a radius of 919.00 feet; along said curve to the left an arc distance of 150.37 feet and a chord which bears South 85 degrees 59 minutes 10 seconds West, 150.20 feet; and South 81 degrees 17 minutes 55 seconds West, 122.55 feet; thence crossing said Wild Horse Creek Road, North 08 degrees 42 minutes 05 seconds West, 72.38 feet, to the north right of way line of Wild Horse Creek Road; thence the following courses and distances along said north right of way line: North 81 degrees 17 minutes 55 seconds East, 122.61 feet to a curve to the right having a radius of 991.00 feet; along said curve to the right an arc

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distance of 372.90 feet and a chord which bears South 87 degrees 51 minutes 46 seconds East, 370.70 feet; North 11 degrees 05 minutes 08 seconds East, 5.05 feet to a non-tangential curve to the left having a radius of 914.00 feet; thence along said curve an arc distance of 540.56 feet and a chord which bears North 85 degrees 59 minutes 11 seconds East, 532.72 feet to a point of reverse curve having a radius of 996.00 feet; along said curve an arc distance of 10.29 feet and a chord which bears North 69 degrees 34 minutes 43 seconds East, 10.29 feet; South 00 degrees 03 minutes 27 seconds West, 5.31 feet to a non-tangential curve to the right having a radius of 991.00 feet; along said curve an arc distance of 239.69 feet and a chord which bears North 76 degrees 27 minutes 35 seconds East, 239.11 feet; North 33 degrees 41 minutes 53 seconds East, 44.54 feet; and North 86 degrees 57 minutes 16 seconds East, 5.00 feet to the west right of way line of Chesterfield Airport Road, 60.00 feet wide; thence North 03 degrees 02 minutes 44 seconds West, along said right of way line, 22.40 feet; thence crossing said Chesterfield Airport Road, North 50 degrees 23 minutes 25 seconds East, 78.61 feet, to the east right of way line of said Chesterfield Airport road, said point being on a curve to the left having a radius of 94.50 feet; thence with said east right of way line, along said curve an arc distance of 130.28 feet and a chord which bears South 46 degrees 57 minutes 03 seconds East, 120.21 feet, to the north right of way line of said Wild Horse Creek Road; thence the following courses and distances along said north right of way line: South 03 degrees 33 minutes 12 seconds West, 10.67 feet to a non-tangential curve to the right having a radius of 1,003.00 feet; along said curve an arc distance of 102.42 feet and a chord which bears South 83 degrees 30 minutes 02 seconds East, 102.38 feet to a point of compound curve having a radius of 992.54 feet; along said curve an arc distance of 125.98 feet and a chord which bears South 71 degrees 30 minutes 38 seconds East, 125.90 feet to a point of compound curve having a radius of 991.00 feet; along said curve to the right an arc distance of 141.48 feet and a chord which bears South 69 degrees 16 minutes 55 seconds East, 141.36 feet to a point of compound curve having a radius of 991.00 feet; and along said curve an arc distance of 95.80 feet and a chord which bears South 62 degrees 26 minutes 35 seconds East, 95.76 feet, to the south corner of Adjusted Lot A of Wildhorse a subdivision according to the Plat thereof, as recorded in Plat Book 367 Page 100, of above said records; thence the following courses and distances along the south and west lines of said Adjusted Lot A: North 44 degrees 11 minutes 10 seconds West, 279.36 feet; North 06 degrees 41 minutes 28 seconds East, 640.42 feet; and North 47 degrees 58 minutes 33 seconds East, 36.14 feet, to the western right of way line of Interstate 64/ Route 40. Variable width; thence the following courses and distances along said right of way: South 42 degrees 02 minutes 27 seconds East, 197.77 feet to a curve to the right having a radius of 11,157.00 feet; along said

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curve an arc distance of 709.33 feet and a chord which bears South 40 degrees 13 minutes 10 seconds East, 709.21 feet; North 77 degrees 10 minutes 33 seconds East, 0.27 feet to a curve to the right having a radius of 5,664.58 feet; along said curve an arc distance of 38.40 feet and a chord which bears South 34 degrees 40 minutes 44 seconds East, 38.40 feet; South 24 degrees 24 minutes 24 seconds East, 125.81 feet; South 14 degrees 29 minutes 30 seconds West, 134.14 feet; South 03 degrees 21 minutes 32 seconds East, 145.49 feet; and South 40 degrees 19 minutes 34 seconds West, 105.00 feet; thence leaving said right of way line and crossing Ramp "A" of Interstate 64, South 62 degrees 38 minutes 49 seconds East, 102.65 feet, to the northwest corner of a Boundary Adjustment Plat as recorded in Plat Book 357 Page 448 of above said records, said point also being the East right of way line of above said Wild Horse Creek Road; thence the following courses and distances along the east right of way line: South 17 degrees 59 minutes 06 seconds East, 139.51 feet to a curve to the left having a radius of 1,859.86 feet; along said curve an arc distance of 117.66 feet and a chord which bears South 56 degrees 34 minutes 00 seconds East, 117.64 feet; South 58 degrees 22 minutes 44 seconds East, 163.68 feet to a curve to the left having a radius of 1,859.86 feet; along said curve an arc distance of 55.96 feet and a chord which bears South 59 degrees 14 minutes 28 seconds East, 55.96 feet; and North 77 degrees 45 minutes 51 seconds East, 110.86 feet to the North line of Chesterfield Parkway West, variable width; thence along said right of way line, North 37 degrees 01 minute 50 seconds East, 59.27 feet; thence leaving said right of way line, South 68 degrees 38 minutes 05 seconds East, 167.57 feet, and South 21 degrees 21 minutes 55 seconds West, 246.08 feet, to the intersection of the south right of way line of above said, Wild Horse Creek Road, and the east right of way line of Chesterfield Parkway West, 73.00 feet wide; thence the following courses and distances along the east right of way line of Chesterfield Parkway West: South 71 degrees 17 minutes 55 seconds West, 135.85 feet to a curve to the left having a radius of 1,113.50 feet; along said curve an arc distance of 270.65 feet and a chord which bears South 17 degrees 02 minutes 58 seconds West, 269.98 feet; and South 10 degrees 03 minutes 12 seconds West, 1,376.00 feet; thence crossing said Chesterfield Parkway West, North 79 degrees 56 minutes 48 seconds West, 73.00 feet, to the west right of way line of said Chesterfield Parkway West; thence the following courses and distances along said west right of way line: North 10 degrees 03 minutes 12 seconds East, 22.45 feet; North 35 degrees 08 minutes 35 seconds West, 35.20 feet; North 80 degrees 08 minutes 45 seconds West, 15.00 feet; and North 10 degrees 01 minute 02 seconds East, 3.50 feet to the south right of way line of above said Burkhardt Place being on a curve to the right having a radius of 330.23 feet; thence the following courses and distances along said right of way line and its extension across intersecting streets:

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along said curve to the right an arc distance of 281.12 feet and a chord which bears North 55 degrees 46 minutes 38 seconds West, 272.71 feet; North 31 degrees 26 minutes 20 seconds West, 472.64 feet to a curve to the left having a radius of 525.00 feet; along said curve an arc distance of 325.17 feet and a chord which bears North 49 degrees 10 minutes 59 seconds West, 320.00 feet to a point of compound curvature having a radius of 775.00 feet; and along said curve with an length of 266.48 feet and a chord which bears North 76 degrees 46 minutes 38 seconds West, 265.17 feet to the POINT OF BEGINNING.

Containing 4,554,229 square feet or 104.551 acres, more or less.