

## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is entered into effective as of \_\_\_\_\_, 2016 (the “**Effective Date**”), by and between St. Charles Road Development, LLC (“**SCRD**”), a Missouri limited liability company, and the City of Columbia, Missouri (“**City**”).

1. Part Sale/Part Gift. Pursuant to the terms and subject to the conditions set forth herein, SCR D agrees to convey to City and City agrees to purchase and accept from SCR D, the land containing approximately 15.88 acres, more or less, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “**Property**”). It is the intention of the parties that the conveyance of the Property contemplated by this Agreement shall be a part sale/part gift transaction.

2. Sale Portion: Price. City agrees to pay to SCR D the sum of Three Hundred Seventeen Thousand Six Hundred and 00/100 Dollars (\$317,600.00) (the “**Purchase Price**”) at Closing (defined below).

3. Gift Portion. SCR D shall be solely responsible for establishing the fair market value of the Property and calculating the value of the gift portion of the conveyance of the Property. City agrees to cooperate reasonably, in good faith, and to execute all such documents as SCR D may require so that SCR D may realize any tax benefits associated with the gift portion of the Property, including, but not limited to, Internal Revenue Service Form 8283. The parties agree and acknowledge that the City makes no representations regarding the fair market value of the Property.

4. Conveyance. SCR D shall convey to the City at the Closing good, valid, marketable, indefeasible, merchantable and insurable fee simple title to the Property by general warranty deed in customary recordable form reasonably acceptable to City, free and clear of any and all liens, claims, encumbrances, options, restrictions and adverse rights and interests whatsoever, save and except the exceptions specifically and expressly stated and listed as title exceptions on the Title Commitment referenced in Section 5 below which are not objected to or otherwise deemed approved or waived by City pursuant to Section 5 of this Agreement (the “**Permitted Exceptions**”); provided, City shall be deemed to have objected to any and all liens on the Property securing the payment of any indebtedness, to the end that in no event shall any such liens on the Property be treated as a Permitted Exception, and any and all such liens, if any, shall be fully paid and discharged by SCR D at or prior to the Closing.

5. Title Insurance.

(a) SCR D shall cooperate with the City in obtaining within fifteen (15) days following the Effective Date hereof a customary American Land Title Association (“**ALTA**”) Title Commitment for an ALTA title insurance policy describing the Land, naming City as the proposed named insured and showing as the policy amount the Purchase Price for the Property (collectively, the “**Title Commitment**”). The Title Commitment shall assure to the City that at the Closing a sound and reputable title insurance company reasonably acceptable to the City will issue to the City a customary ALTA owner’s policy of title insurance in a form and substance

reasonably acceptable to the City reflecting fee simple title to the Property in the name of the City and subject only to the Permitted Exceptions (the “**Title Insurance Policy**”). Any and all mortgage indebtedness liens encumbering all or any part of the Property shall be fully paid and discharged by SCR D at or prior to the Closing.

(b) Within fifteen (15) days after receipt by City of the Title Commitment (the “**Title Review Period**”), City shall notify SCR D in writing of any objections by City to the state of title to the Property (“**City's Title Objections**”). SCR D shall have a period of thirty (30) days after receipt by SCR D of City’s Title Objections to cure or satisfy such City's Title Objections. In the event the City's Title Objections are not cured to City's satisfaction within said period, City may, at its option, either (i) accept the status of the title to the Property and proceed with the Closing, subject to the other terms and conditions set forth herein, or (ii) terminate this Agreement by delivering written notice of such termination to SCR D prior to the Closing. To the extent City does not provide written notice to SCR D within the Title Review Period of City's objection to any exception specifically and expressly stated and listed as a title exception on the Title Commitment, such exception(s) not so objected to by City shall be deemed accepted by City as Permitted Exception(s) hereunder; provided, City shall be deemed to have objected to any and all mortgage indebtedness liens on the Property, to the end that in no event shall any such mortgage liens on the Property be treated a Permitted Exception, and any and all such mortgage liens, if any, shall be fully paid and discharged by SCR D at or prior to the Closing.

(c) The cost of the Title Commitment and owner's Title Insurance Policy, including all title abstracting and search costs and title policy premiums, shall be paid by City. The cost of any special endorsements requested by City, and the premium for any Title Insurance Policy for City's lender, if any, shall be paid by the City.

6. Warranties as to Environmental Condition of Property. SCR D warrants and represents that it is not aware of any environmental hazards associated with the Property. SCR D further warrants and represents that it is not aware of any investigation, proceeding, claim or enforcement action with respect to any environmental condition associated with the Property. Except for the foregoing representations and warranties set forth in this paragraph, SCR D makes to City absolutely no warranties, representations, promises or guarantees concerning any physical condition, quality or characteristic of the Property or any part or portion thereof, other than any warranties or representations of SCR D which are expressly and explicitly set forth in this paragraph. All other warranties and representations, expressed or implied, of any kind or nature whatsoever, with respect to any physical condition, quality or characteristic of, or the value or usability of the Property or any part thereof, are hereby expressly waived by City and are expressly disclaimed by SCR D.

7. Relationship to Development Agreement. The parties have previously agreed to and executed that certain Development Agreement for Somerset Village, which was recorded in the Real Property Records of Boone County, Missouri on or about April 7, 2015 at Book 4423, Page 41 (the “Development Agreement”). Pursuant to the Development Agreement, the parties agreed that:

1) SCRCD would have an obligation to satisfy what is defined as “Owner’s Funding Obligation” in the Development Agreement;

2) The term “Owner’s Funding Obligation” would be calculated based on a Traffic Impact Study Fee schedule, attached as Exhibit B to the Development Agreement;

3) The City agreed to issue credits in the amount of \$2,179,825 (“Total Credits”) against Owner’s Funding Obligation for traffic infrastructure improvements which Owner had already completed or was obligated to otherwise complete; and

4) The Total Credits would be applied first to residential property in Tract 1 (as shown on Exhibit C to the Development Agreement) at a rate of \$5,231.25 per single family residential lot. Any remaining credits would be applied at SCRCD’s sole discretion.

As a result of the conveyance of the Property to the City, SCRCD has removed and will lose 52 single-family residential lots from Tract 1. Accordingly, “Owner’s Funding Obligation” shall be reduced by \$272,025, which represents the fees associated with the 52 single-family residential lots. The sum of the Total Credits shall remain \$2,179,825 and the credits which would have been applied to the 52 single-family residential lots shall be available to SCRCD to allocate and apply to other property in Somerset Village. Except as set forth in this paragraph, this Agreement is not intended and shall not be deemed to amend or alter the parties’ obligations as set forth in the Development Agreement.

8. Cart Path. The City shall construct a cart path, at the City’s expense, as shown on **Exhibit B**. The City shall install a gate where the cart path connects with Corey Drive and Armstrong Drive in Somerset Village, as shown on Exhibit C. Such gate shall be designed, constructed, maintained and operated solely at City’s expense and SCRCD shall have no obligation to design, construct, maintain or operate the gate. Notwithstanding the foregoing, the City shall construct the gate in a good and workman-like manner and shall keep the gate in a reasonable state of repair.

9. Stormwater Facility. This Agreement is not intended to alter or amend the parties’ rights and obligations with respect to the lake located within the Lake of the Woods Golf Course, as set forth in paragraph 13 of the Development Agreement.

10. Replat Expenses. The City agrees to pay the reasonable costs associated with replatting the Property in the amount of \$8,800. Such replatting expenses shall be paid by City at Closing (as defined below).

11. Driving Range Hours of Operation. In order to minimize the impact on adjacent residential areas, the City agrees that there shall be no golf activities or driving range operations occurring on the Property after 10:00 pm. This provision shall apply to weekdays and weekends and shall be in full force and effect for a period of ten (10) years from the Effective Date of this Agreement.

12. Closing. The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall occur on or before April 15, 2016, or at such other date and time as is mutually

acceptable to the parties. The date of the Closing is referred to herein as the “Closing Date.” Closing shall occur at Boone Central Title Company.

13. Taxes; Closing Costs and Prorations.

(a) Taxes. All taxes and special assessments relating to the Property shall be prorated between SCRD and City as of the Closing Date to the end that such taxes and special assessments accruing with respect to, or otherwise relating to, the period before the Closing Date shall be the obligation of SCRD and such taxes and special assessments accruing with respect to, or otherwise relating to, the period on or after the Closing Date shall be the obligation of City.

(b) Other Closing Costs. Other closing costs shall be allocated as follows:

(i) SCRD shall pay:

(A) the cost to remove any lien or encumbrance upon the Property (other than any Permitted Exception);

(B) any fee or commission to any broker, agent or finder engaged by SCRD in connection with the transactions contemplated by this Agreement; and

(C) one-half (50%) of the closing agent's closing fee.

(ii) City shall pay:

(A) all title search and abstracting fees, and the cost of the Title Commitment and Owner's Title Insurance Policy and the Survey;

(B) any fee or commission to any broker, agent or finder engaged by City in connection with the transactions contemplated by this Agreement;

(C) the recording fee for the recording of the deed to City hereunder;

(D) one-half (50%) of the closing agent's closing fee; and

(E) the expenses incurred in replatting the Property, as set forth in paragraph 10 above, in the amount of \$8,800.

Each party shall pay its own attorney's fees incurred in connection with the negotiation and preparation of this Agreement and the consummation of the Closing as contemplated hereby. Other closing costs shall be allocated between the parties in accordance with normal custom in connection with commercial real estate closing transactions in the community where the Property is located.

(c) The closing statement shall be prepared by the closing agent and shall be subject to review and approval, acting reasonably and in good faith, by both SCR D and City.

14. Contingencies.

(a) Council Approval. It is expressly agreed and understood that the performance of this Contract and the sale of the Property as contemplated herein is contingent upon the City Council approving a resolution authorizing the execution of this Contract.

(b) Platting. It is expressly agreed and understood that the performance of this Contract and the sale of the Property as contemplated herein is contingent upon City Council approval of the final plat of Somerset Village, Plat 3, which is attached hereto as Exhibit C.

If any of the foregoing contingencies are not satisfied, this Contract shall be null, void and of no further force or effect.

15. Miscellaneous.

(a) Assignment. This Agreement and the rights, obligations and duties of the parties hereto shall not be assignable or otherwise transferable without the prior written consent of the nonassigning party.

(b) Survival. The representations, warranties, covenants and obligations of the parties hereunder shall survive the Closing.

(c) Fees of Legal Counsel. In the event either party to this Agreement shall employ legal counsel to protect its rights hereunder or to enforce any term or provision hereof, the party prevailing in any such action shall have the right to recover from the other party all of its reasonable attorneys' fees and expenses incurred in relation to such claims, as awarded by the court as fair and appropriate in the circumstances.

(d) Further Assurances. The parties agree that from time to time hereafter, upon request, each of them will execute, acknowledge, and deliver such further commercially reasonable documents and instruments, and take such further commercially reasonable action, as may be reasonably necessary to carry out the intent of this Agreement.

(e) Modification. No term or provision contained herein may be modified, amended or waived except by written agreement or consent signed by the party to be bound thereby.

(f) Binding Effect and Benefit. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs, executors, personal representatives, successors and permitted assigns.

(g) Headings and Captions. Subject headings and captions are included for convenience purposes only and shall not affect the interpretation of this Agreement.

(h) Notice. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and either (i) delivered in person (ii) sent by express mail or other overnight delivery service providing receipt of delivery or (iii) mailed by certified or registered mail, postage prepaid return receipt requested, as follows:

If to SCRD, addressed or delivered in person to:

St. Charles Road Development, LLC  
c/o Rob Wolverton  
2504 St. Regis Ct.  
Columbia, MO 65203

with a copy to:

R. Caleb Colbert  
Brown Willbrand, P.C.  
PO Box 1304  
Columbia, MO 65205-1304

If to City, addressed or delivered in person to:

Mike Griggs  
PO Box 6015  
Columbia, MO 65205

with a copy to:

Steve Van Matre  
Law Department  
701 E. Broadway  
Columbia, MO 65201

or to such other address or number as either party may designate by written notice for notices to be directed to such party.

Any such notice or communication, if properly given or made in accordance with the terms hereof, shall be deemed to have been made when actually received, or upon refusal by the addressee to accept receipt.

(i) Severability. If any portion of this Agreement is held invalid, illegal, or unenforceable, such determination shall not impair the enforceability of the remaining terms or provisions hereof, and to this end the terms and provisions of this Agreement are declared to be severable.

(j) Rights and Remedies Cumulative. Rights and remedies expressed herein are cumulative and not exclusive of any rights and remedies otherwise available.

(k) Gender and Number. Throughout this Agreement, the masculine shall include the feminine and neuter and the singular shall include the plural and vice versa as the context requires.

(l) Entire Agreement. This document, together with the exhibits attached hereto, constitutes the entire agreement of the parties and supersedes any and all other prior agreements, oral or written, with respect to the subject matter hereof.

(m) Governing Law/Venue. This Agreement shall be subject to and governed by the laws of the State of Missouri. Any dispute, claim or proceeding which in any way relates to or arises out of this Agreement shall be filed in the Circuit Court for Boone County, Missouri or the United States District Court for the Western District of Missouri, Central Division.

(n) Counterparts; Facsimile. This Agreement may be executed and delivered by facsimile or electronic signature and/or in multiple counterparts, all of which when considered together shall reflect the signature of all parties hereto and shall constitute one and the same instrument.

(o) Joint Preparation; Interpretation. This Agreement shall be deemed to have been prepared jointly by the parties hereto, and any uncertainty or ambiguity existing herein shall not be interpreted against any party by reason of its drafting of this Agreement, but shall be interpreted according to the application of the general rules of interpretation for arm's length agreements. As used in this Agreement, the term "including" shall mean including, without limitation; and the term "person" shall include any individual, trust, estate, firm, association, corporation, partnership, limited liability company, governmental authority or other entity.

(p) Authority. Each individual signing this Agreement in a representative capacity acknowledges and represents that he/she is duly authorized to execute this Agreement in such capacity in the name of, and on behalf of, the designated corporation, partnership, limited liability company, trust or other entity. City specifically warrants and represents that it is authorized by the City Charter and City Ordinance to execute this Agreement and that City's execution of this Agreement does not violate any term or provision of the City Charter or City Ordinance.

(r) Disclosure. Robert and Christi Wolverton are licensed realtors in the State of Missouri.

*[signature page follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year aforesaid.

**CITY:**  
**City of Columbia, Missouri**

**By:** \_\_\_\_\_  
**Mike Matthes, City Manager**

**Approved as to form:**

\_\_\_\_\_  
**Nancy Thompson, City Counselor**

**I hereby certify that the expenditures in this contract are within the purpose of the appropriation to which they are charged, Account No. \_\_\_\_\_, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.**

\_\_\_\_\_  
**City Finance Director**

**OWNER:**

**St. Charles Road Development, LLC**

**By: Robert M. Lemone Revocable Trust u/t/a dated 1-27-2004, Member**

**By: Central Trust & Investment Company, trustee**

**By:**   
**Name Printed:** \_\_\_\_\_  
**Trust Officer**



**By: Robert A. Wolverton Revocable Living Trust u/t/a dated 7-29-2002, Member**

By: 

Robert A. Wolverton, Trustee

**By: Robert K. Pugh and Connie G. Pugh Living Trust u/t/a dated 5-10-1995, Member**

By: 

Robert K. Pugh

**By: TSA Investments, L.L.C., Member**

By: 

Thomas Scott Atkins, Member

**EXHIBIT A**  
**(Legal Description)**

Description of Somerset Village Plat 3  
January 29, 2016

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 48 NORTH, RANGE 12 WEST, CITY OF COLUMBIA, BOONE COUNTY, MISSOURI, BEING PART OF THE TRACT DESCRIBED BY THE WARRANTY DEED RECORDED IN BOOK 3837, PAGE 91, ALL BEING OF THE BOONE COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER OF SAID SECTION 2, THENCE ALONG THE QUARTER SECTION LINE N00°28'30"E, 1122.05 FEET; THENCE LEAVING SAID QUARTER SECTION LINE, S89°59'50"E, 613.68 FEET; THENCE S00°28'30"W, 1132.57 FEET TO A POINT ALONG THE QUARTER SECTION LINE; THENCE ALONG SAID QUARTER SECTION LINE, N89°00'50"W, 613.69 FEET TO THE POINT OF BEGINNING AND CONTAINING 15.88 ACRES.

  
Jay Alan Gebhardt LS-2001001909

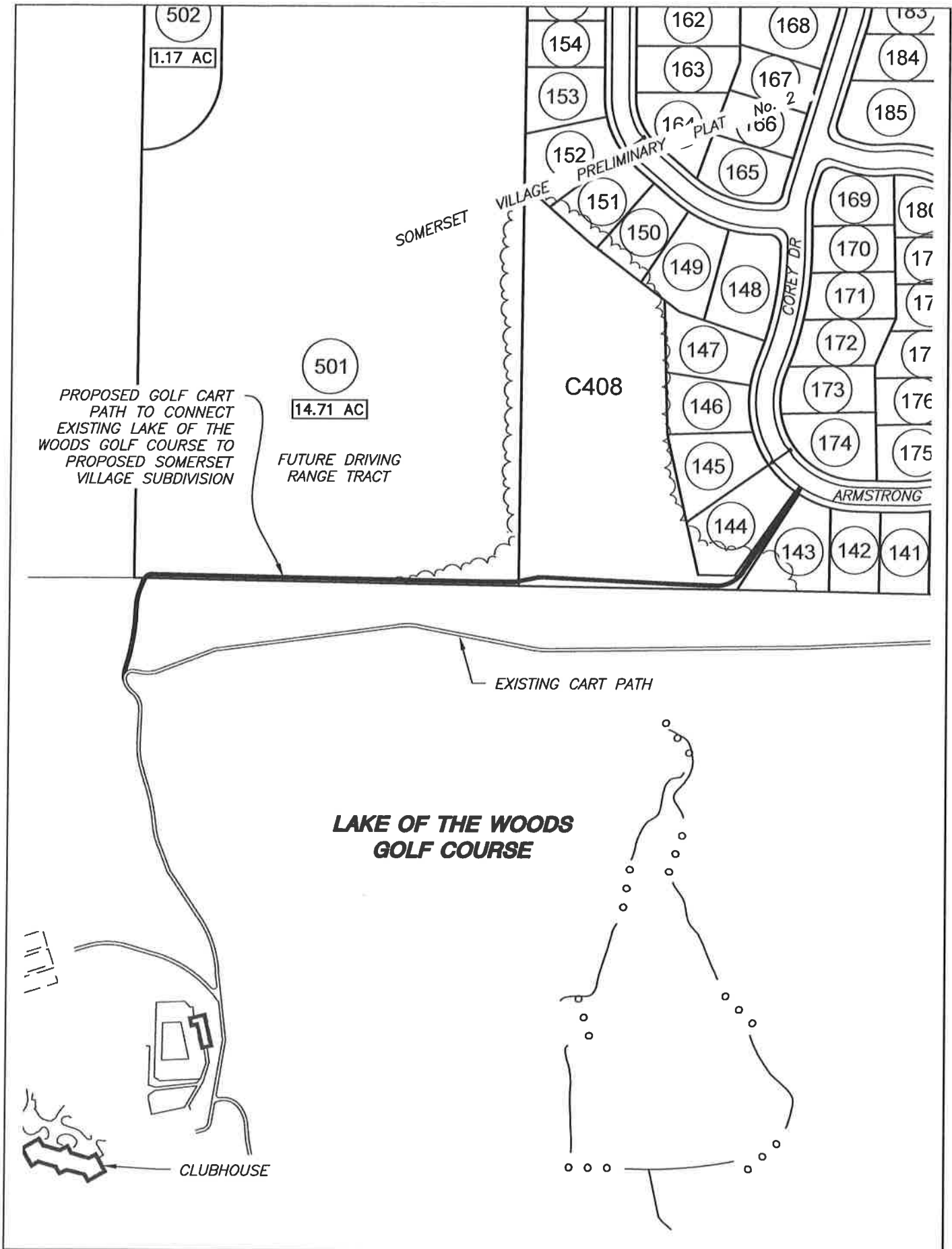


2/17/16  
Date

"EXHIBIT     A    "

**EXHIBIT B**

**(cart path)**



"EXHIBIT **B**"

**EXHIBIT C**

**(final plat)**

# SOMERSET VILLAGE PLAT 3

FINAL PLAT  
NOVEMBER 16, 2015



**KNOW ALL MEN BY THESE PRESENTS**

THAT I, **DAVID R. HARRIS**, of the County of Boone, State of Missouri, do hereby certify that the above described plat was duly recorded in the office of the Recorder of Deeds for the County of Boone, Missouri, on this 16th day of November, 2015, and that the same is a true and correct copy of the original as the same was presented to me for recording.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Recorder of Deeds for the County of Boone, Missouri, at Boone, Missouri, this 16th day of November, 2015.

DAVID R. HARRIS  
RECORDER OF DEEDS  
COUNTY OF BOONE, MISSOURI

**NOTES**  
1. THE CITY OF SOMERSET HAS REVIEWED THIS PLAT AND HAS APPROVED THE SAME FOR THE CITY OF SOMERSET.  
2. THE PLAT CONFORMS TO THE DEVELOPMENT AGREEMENT ENTERED INTO BETWEEN THE CITY OF SOMERSET AND THE DEVELOPER.  
3. THE PLAT CONFORMS TO THE ZONING ORDINANCES OF THE CITY OF SOMERSET AS AMENDED BY RESOLUTION NUMBER 2015-010-RECORDED IN PLAT 29 OF CITY RECORDS (10/16/15).

**FLOOD PLAIN STATEMENT**  
THIS PLAT IS NOT IN A FLOOD PLAIN AS SHOWN ON THE FIRM MAP OF THE COUNTY OF BOONE, MISSOURI, DATED MARCH 17, 2011.

**STREAM BUFFER STATEMENT**  
THIS PLAT IS NOT IN A STREAM BUFFER AS SHOWN ON THE FIRM MAP OF THE COUNTY OF BOONE, MISSOURI, DATED MARCH 17, 2011.

**CERTIFICATION**  
I, **DAVID R. HARRIS**, RECORDER OF DEEDS FOR THE COUNTY OF BOONE, MISSOURI, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED PLAT WAS DULY RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS FOR THE COUNTY OF BOONE, MISSOURI, ON THIS 16TH DAY OF NOVEMBER, 2015, AND THAT THE SAME IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS THE SAME WAS PRESENTED TO ME FOR RECORDING.

DAVID R. HARRIS  
RECORDER OF DEEDS  
COUNTY OF BOONE, MISSOURI

**A CIVIL GROUP**  
CIVIL ENGINEERING - PLANNING - SURVEYING  
3402 BRIDGEMAN BLVD. STE. 100  
PHI-15731 MISSOURI, FAX: 636-331-1577  
MISSOURI CERTIFICATE OF AUTHORITY: 8001066115

STATE OF MISSOURI }  
COUNTY OF BOONE }  
RECORDED AND AFFIRMED BEFORE ME THIS 16th DAY OF NOVEMBER, 2015.

DAVID R. HARRIS  
RECORDER OF DEEDS  
COUNTY OF BOONE, MISSOURI

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RECORDER OF DEEDS  
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DAVID R. HARRIS  
RECORDER OF DEEDS  
COUNTY OF BOONE, MISSOURI

OWNER: CHANGES E. HARRIS  
PLAT 37814, PG. 37

OWNER: 2014/44 REC. 301771

OWNER: 2014/44 REC. 301771

OWNER: 2014/44 REC. 301771

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"EXHIBIT C"