

PERFORMANCE CONTRACT

THIS PERFORMANCE CONTRACT (“this Contract”) is made and entered into the date of the last signatory below (the “Effective Date”), by and between the City of Columbia, Missouri, a municipal corporation of the State of Missouri (“City”) and Columbia School District No. 93, a Missouri public school district (“Subdivider”). The City and Subdivider may hereinafter be collectively referred to as the Parties and individually as a Party.

RECITALS

The Subject Property. Subdivider holds title to approximately 63 acres of land currently located in the City of Columbia, generally located along Sinclair Road, legally described in the attached **Exhibit A** (the “Subject Property”).

NOW, THEREFORE, in view of the foregoing Recitals and in consideration of the mutual promises, declarations, covenants and agreements of the City and Subdivider as hereinafter set forth, the Parties hereto do hereby agree as follows:

AGREEMENT

1. Except as provided in Paragraph 2 hereof, Subdivider shall, at its cost, construct, erect, and install certain public infrastructure improvements or services and utilities required in connection with the Final Plat submitted to the City by the Subdivider and attached hereto as **Exhibit B**, including sidewalks and all improvements and utilities shown on the plat and related construction plans, unless otherwise specified herein. Such improvements and services shall be constructed, erected, and installed pursuant to the applicable Codes and Regulations of the City, and shall be completed within 36 months after approval of the plat by the City’s City Council.

2. City agrees, subject to appropriation of funds for such purposes and approval of such project(s) by the City Council following all public improvement project requirements set forth in the city code, to construct, erect, and install certain public infrastructure improvements or services as identified below.

- a. **Route K and Sinclair Road Intersection Improvements.** The City will construct the necessary roadway improvements at the intersection of Route K and Sinclair Road. Such roadway improvements shall follow the city’s public improvement process and may consist of a roundabout or a left turn lane at the intersection of Route K and Sinclair Road or such other improvements as may be approved by the City Council for construction at such location. Following construction, Subdivider shall pay to City the sum of One Hundred Sixty-Nine Thousand Seven Hundred Twenty-Three dollars (\$169,723.00) as Subdivider’s share of the construction cost of such improvements, which represents the estimated cost to Subdivider to construct a left turn lane at the same location. Subdivider shall pay this amount to City only upon City’s completion of construction of the roadway improvements, the satisfactory completion of which shall be determined in the City’s sole discretion. City

shall invoice Subdivider for such payment and Subdivider shall pay the same within thirty (30) days of receipt of such invoice. Payment of this amount shall in no way affect the issuance of a building permit or occupancy permit to Subdivider. If City fails to authorize the construction of such roadway improvements or appropriate funds for such construction, Subdivider shall be obligated to construct the left turn lane. If the cost to Subdivider to construct the left turn lane exceeds the sum of One Hundred Sixty-Nine Thousand Seven Hundred Twenty-Three dollars (\$169,723.00), then City shall reimburse Subdivider for the additional amount, with said reimbursement not to exceed Fifty Thousand dollars (\$50,000.00). Subdivider shall invoice City for such reimbursement and City shall pay the same within thirty (30) days of receipt of such invoice.

b. Sidewalk Improvements between Nifong and Southampton Drive.

The city will construct sidewalk improvements along the eastern side of Sinclair Road from Nifong Boulevard southward to the northern edge of Southampton Drive as shown in the attached **Exhibit C**.

- i. Payment for sidewalk. In lieu of constructing the sidewalk between Nifong and Southampton Drive, Subdivider will pay the City as provided herein the sum of Three Hundred Thousand dollars (\$300,000.00) or the actual cost of construction, whichever is less ("Payment Amount").
 - ii. Purchase of a portion of Subject Property by City. Payment of the Payment Amount by Subdivider is contingent upon City's purchase of a portion of the Subject Property. In the event the City purchases a portion of the Subject Property, Subdivider will pay the Payment Amount in installments as construction progresses, with City submitting invoices to Subdivider as portions of construction are completed and the contractor submits payment applications to the City. Subdivider shall pay such invoices within thirty (30) days of such invoice. In the event City does not purchase a portion of the Subject Property, Subdivider shall have no obligation to reimburse the City for construction of such sidewalk improvements, if any.
 - iii. No effect on certain permits. Payment of the Payment Amount and construction of the sidewalks shall in no way affect the issuance of a building permit or occupancy permit to Subdivider.
- c. Sidewalk Improvements between Chesterfield and Subject Property.**
The city will construct sidewalk improvements along the eastern side of Sinclair Road from the south side of Chesterfield Drive southward until it connects to the northern boundary of the Subject Property as shown in attached **Exhibit D**.

3. No utility service connections or occupancy permits shall be issued to the Subdivider or to any other person for any structure on land in the subdivision unless and until all utilities and improvements identified in Paragraph 1 of this Contract have been constructed, erected and installed in accordance with this Contract, and the structure is constructed in accordance with all applicable ordinances, rules and regulations of the City.

4. City may construct, erect or install any improvement or utility not constructed, erected or installed by Subdivider as required by this Contract. City may perform such work using City employees or City may contract for performance of the work. Subdivider shall reimburse City for all costs and expenses incurred by City in connection with the construction, erection or installation of improvements in utilities under this paragraph.

5. Subdivider agrees to pay City all expenses and costs, including reasonable attorneys' fees, incurred by City in collecting amounts owed by Subdivider under this Contract. City agrees to pay Subdivider all expenses and costs, including reasonable attorneys' fees, incurred by Subdivider in collecting amounts owed by City under this Contract.

6. City shall not require a bond or other surety to secure the construction of the improvements and utilities required by Subdivider in connection with the final plat.

7. The obligations of the Parties under this Contract shall not be assigned without the express consent of the other Party.

8. The remedies set forth in this contract are not exclusive. The Parties do not waive any other remedies available to enforce the obligations under this Contract or to recover damages resulting from the other Party's failure to perform its obligations under this contract.

9. This contract is not intended to confer any rights or remedies on any person other than the parties.

10. Any amendment to this Contract must be in writing and must be executed by the City and the Subdivider. Oral modifications or amendments of this Agreement shall be of no force or effect.

11. This Contract contains the entire and complete agreement between the City and the Subdivider. The Parties agree that this Contract constitutes a lawful contract between the Parties.

12. In no event shall the language of this Contract constitute or be construed as a waiver or limitation for any Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

IN WITNESS WHEREOF, the parties have executed this contract on the day and year first above written.

COLUMBIA SCHOOL DISTRICT NO. 93

CITY OF COLUMBIA, MISSOURI

BY: Jan Mees
Jan Mees, Board President

BY: _____
Mike Matthes, City Manager

Date: 06/06/18

Date: _____

ATTEST:
Jay L. Daverport
Board Secretary

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor

EXHIBIT A
Legal Description of Subject Property

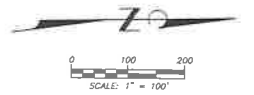
A tract of land containing 63.00 acres, more or less, located in the Northeast Quarter (NE 1/4) of Section Three (3), Township Forty-seven (47) North, Range Thirteen (13) West, of the Fifth (5th) Principal Meridian, in the City of Columbia, Boone County, Missouri, being shown and described as Tract Three (3) of the survey recorded September 13, 2017 as Instrument No. 2017019045 in Book 4803, Page 180, Records of Boone County, Missouri.

FILED FOR RECORD, BOONE COUNTY, MISSOURI
NORA DIETZEL, RECORDER OF DEEDS

CPS MIDDLE SCHOOL SUBDIVISION

MAJOR SUBDIVISION DECEMBER 22, 2017

EXHIBIT B



MONUMENT LEGEND
IRON
ALL MONUMENTS ARE FOUND UNLESS SHOWN (S) SET
BEARINGS ARE REFERENCED TO THE LINES OF A SURVEY RECORDED IN BOOK 4803 PAGE 180

- NOTES:
1. THE COMMON LOT AS LOCATED ON THIS PLAT SHALL FOREVER BE AVAILABLE AS POSSIBLE CREDIT TO LOT 1 TOWARDS THE FOLLOWING:
 - A. MINIMUM CLIMAX FOREST PRESERVATION REQUIREMENTS, OR AS MAY BE SIMILARLY DEFINED BY CITY OF COLUMBIA REQUIREMENTS.
 - B. MINIMUM SIGNIFICANT TREE PRESERVATION REQUIREMENTS, OR AS MAY BE SIMILARLY DEFINED BY CITY OF COLUMBIA REQUIREMENTS.
 - C. STORMWATER BEST MANAGEMENT PRACTICE VALUE RATING FOR NATIVE VEGETATION PRESERVED OR ESTABLISHED, OR AS MAY BE SIMILARLY DEFINED BY CITY OF COLUMBIA REQUIREMENTS.ACTUAL CREDIT SHALL BE DETERMINED BASED ON HOW THE EXISTING VEGETATION WITHIN THE COMMON LOT APPLIES TO EACH OF THE ABOVE LISTED ITEMS.
 2. THIS PROPERTY IS LOCATED IN ZONE X "AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN" AS SHOWN BY FIRM MAP NUMBER 20071000000, DATED APRIL 19, 2017.
 3. IN ACCORDANCE WITH CHAPTER 12A OF THE CITY OF COLUMBIA CODE OF ORDINANCES A TYPE III STREAM BUFFER HAS BEEN PROVIDED, AS DETERMINED FROM THE 7.5 MINUTE SERIES USGS COLUMBIA QUADRANGLE MAP DATED 2015, AND IS LOCATED AS SHOWN ON THE PLAT.

A SUBDIVISION LOCATED IN THE NORTHEAST QUARTER OF SECTION 3, T4N R13W IN COLUMBIA, BOONE COUNTY, MISSOURI, DESCRIBED BY WARRANTY DEED RECORDED IN BOOK 4810 PAGE 33, BEING TRACT 3 OF A SURVEY RECORDED IN BOOK 4803 PAGE 180, CONTAINING 63.00 ACRES.
THIS TRACT IS SUBJECT TO A 20 FOOT WATER DISTRICT RIGHT-OF-USE PERMIT RECORDED IN BOOK 482 PAGE 504, A 10 FOOT EASEMENT RECORDED IN BOOK 1626 PAGE 216, AN 8 FOOT GAS LINE EASEMENT DESCRIBED BY DECREE AND JUDGMENT RECORDED IN BOOK 123 PAGE 362, AND AN 8 FOOT EASEMENT FOR INSPECTION PURPOSES RECORDED IN BOOK 235 PAGE 599 AND ASSIGNMENT IN BOOK 497 PAGE 327, ALL LOCATED AS SHOWN ON THE PLAT.
A CATHODIC PROTECTION SYSTEM EASEMENT RECORDED IN BOOK 560 PAGE 417 WAS RELEASED BY THE DOCUMENT RECORDED IN BOOK 4786 PAGE 22.
THIS URBAN PROPERTY WAS SURVEYED AND SUBDIVIDED IN ACCORDANCE WITH THE CURRENT MISSOURI STANDARDS FOR PROPERTY BOUNDARY SURVEYS.

ENGINEERING SURVEYS & SERVICES
MISSOURI L.S. CORP #0004004872
1112 FAH STREET
COLUMBIA, MO 65201
PHONE: (313) 442-7548
EMAIL: FOSCARIN@ESS-S&S.COM

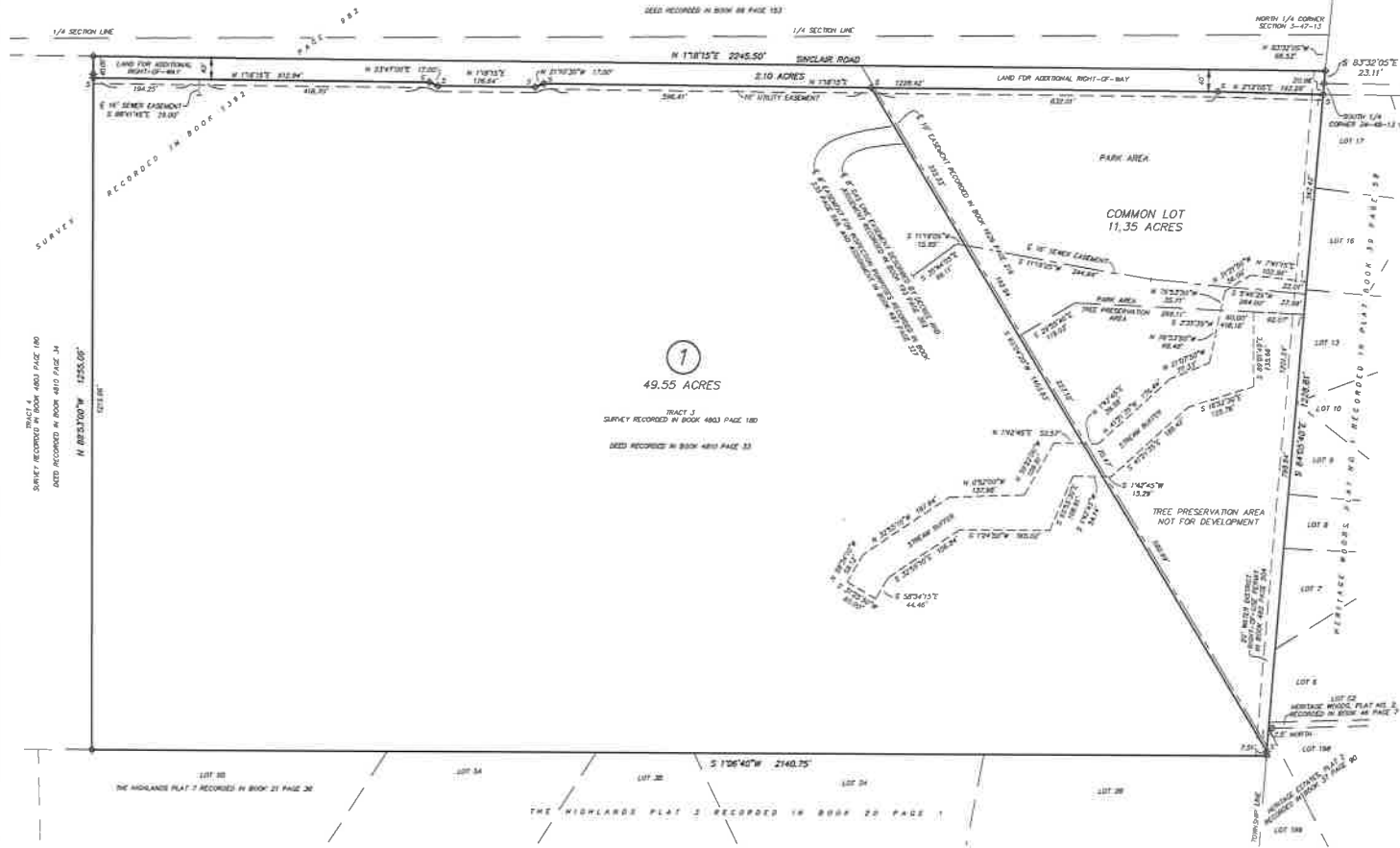
FREDERICK E. CARROZ II
PROFESSIONAL LAND SURVEYOR
PLS - 0008716820

F. CARROZ II
NOTARY PUBLIC
STATE OF MISSOURI
COMMISSION EXPIRES 12/31/17

STATE OF MISSOURI) SS
COUNTY OF BOONE) SS

ON THIS _____ DAY OF _____, 2017, BEFORE ME PERSONALLY APPEARED FREDERICK E. CARROZ II TO ME KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.
IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL AT MY OFFICE IN SAID COUNTY AND STATE, THE DAY AND YEAR FIRST ABOVE WRITTEN.
MY TERM EXPIRES DECEMBER 6, 2018.

JOSHUA D. LEHMAN, NOTARY PUBLIC



49.55 ACRES
TRACT 3
SURVEY RECORDED IN BOOK 4803 PAGE 180
DEEDS RECORDED IN BOOK 4810 PAGE 33

KNOW ALL MEN BY THESE PRESENTS:
THAT WE, THE COLUMBIA SCHOOL DISTRICT NO. 93, BEING THE SOLE OWNER OF THE ABOVE DESCRIBED TRACT, HAVE CAUSED THE SAME TO BE SUBDIVIDED INTO TWO LOTS AS SHOWN ON THE PLAT, LAND FOR ADDITIONAL STREET RIGHT-OF-WAY ALONG SINCLAIR ROAD, A 10' UTILITY EASEMENT ALONG SINCLAIR ROAD, TWO 16' SEWER EASEMENTS, AND TREE PRESERVATION AREA, LOCATED AS SHOWN ON THE PLAT, ARE HEREBY DEDICATED TO THE CITY OF COLUMBIA, FOR PUBLIC USE FOREVER.

COLUMBIA SCHOOL DISTRICT NO. 93

ACCEPTED BY ORDINANCE OF THE CITY COUNCIL OF COLUMBIA, MISSOURI, THIS _____ DAY OF _____

BRIAN TREECE, MAYOR

ATTEST: _____
SHEELA AMB, CITY CLERK

STATE OF MISSOURI) SS
COUNTY OF BOONE) SS

ON THIS _____ DAY OF _____, 2017, BEFORE ME APPEARED _____ PERSONALLY KNOWN TO ME, WHO BEING BY ME DULY SWORN, DID SAY THAT HE/SHE IS THE _____ OF THE COLUMBIA SCHOOL DISTRICT AND THAT THE FOREGOING INSTRUMENT WAS SIGNED AND SEALED ON BEHALF OF THE COLUMBIA SCHOOL DISTRICT BY AUTHORITY OF ITS SCHOOL BOARD AND THAT HE/SHE ACKNOWLEDGED SAID INSTRUMENT TO BE THE FREE ACT AND DEED OF THE COLUMBIA SCHOOL DISTRICT AND THAT IT WAS EXECUTED FOR THE CONSIDERATION STATED THEREIN AND NO OTHER.

IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL IN THE COUNTY AND STATE AFORESAID THE DAY AND YEAR WRITTEN ABOVE.
MY COMMISSION EXPIRES _____

NOTARY PUBLIC

EXHIBIT C

Sidewalk Improvements between Nifong and Southampton Drive

EXHIBIT C

NOTE: TPC = ESTIMATED TOTAL PROJECT COST
 TBD = TO BE DETERMINED
 CPS = COLUMBIA PUBLIC SCHOOLS



NIFONG/SINCLAIR
 ROUNDABOUT
 CONSTRUCTION: 2019
 TPC=1,085,000
 FUNDING BY CITY

SCHOOL PARKING LOT
 CONSTRUCTION: 2019
 TPC=250,000
 FUNDING BY
 CITY-CPS(PROPOSED)
 COST SHARE

ARCH CULVERT
 CONSTRUCTION: 2018
 TPC=\$343,000
 FUNDING BY CITY

SIDEWALK
 CONSTRUCTION: 2018
 TPC=\$45,000
 FUNDING BY CITY

CPS MIDDLE
 SCHOOL SITE
 AND SIDEWALK

SIDEWALK GAP
 TO BE CONSTRUCTED
 BY SITE DEVELOPMENT
 (1,800 LF)
 TPC=\$232,000

SIDEWALK GAP
 AT EXISTING HOMES
 UNDETERMINED CONSTRUCTION
 (1,700 LF)
 TPC=\$220,000

SIDEWALK
 GAP

EXISTING
 SIDEWALK

RT K/SINCLAIR RD ROUNDABOUT
 CONSTRUCTION: TBD
 TPC=\$1,232,000
 FUNDING BY MODOT-CITY-CPS
 (PROPOSED) COST SHARE

SIDEWALK
 CONSTRUCTION: TBD
 TPC=\$300,000
 FUNDING BY CPS

EXISTING
 SIDEWALK

City of Columbia, Missouri
 Department of Public Works

SINCLAIR ROAD PROJECTS

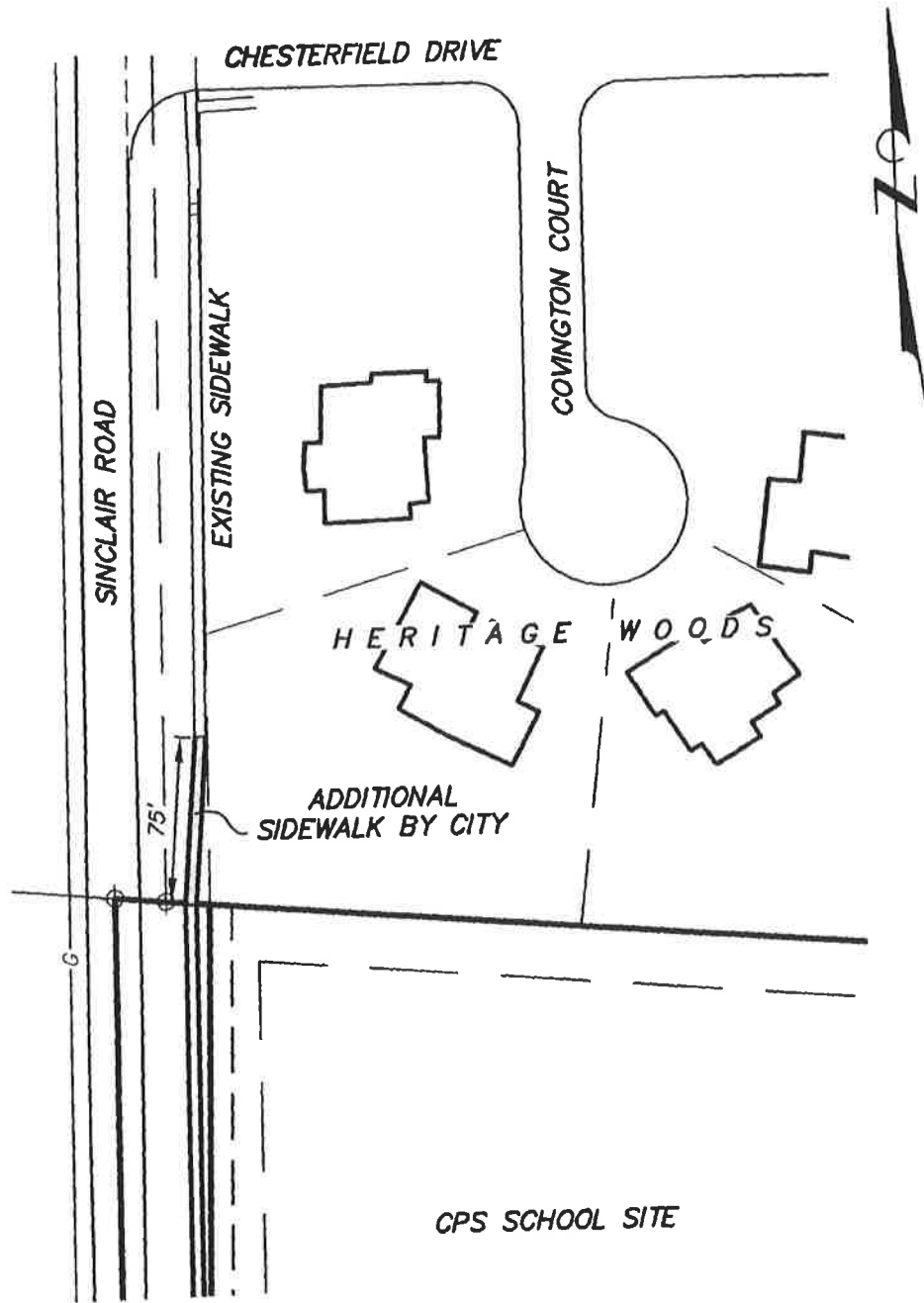
Scale: None | Dwn: C.N.S. | Date:1/8/18

EXHIBIT D

Sidewalk Improvements between Chesterfield and Subject Property

EXHIBIT D

SCALE: 1" = 80'



**HERITAGE WOODS
SIDEWALK**

13703