

First Reading: March 16, 2021
Second Reading: dispensed

RESOLUTION NO. 2020- 015

A RESOLUTION APPROVING CONSENT DECREE BETWEEN FIVE STAR EQUITY INVESTORS, LLC, SYCAMORE TOWNSHIP BOARD OF ZONING APPEALS, STURBRIDGE HOMEOWNERS' ASSOCIATION, AND HEITMEYER FARMS HOMEOWNERS' ASSOCIATION IN CASE NO. A1904001 PENDING IN THE HAMILTON COUNTY, OHIO COURT OF COMMON PLEAS

WHEREAS, Five Star Equity Investors, LLC ("Five Star"), is the owner of approximately 3.187 acres of land located at 6100, 6331, 6341, 6491, and 6551 Kugler Mill Road, Sycamore Township, Hamilton County, Ohio, and identified by the Hamilton County Auditor's office as Parcel Nos. 600-0094-0001-00, 600-0094-0002-00, 600-0092-0046-00, 600-0092-0298-00, 600-0092-0045-00, and 600-0092-0048-00 (the "Property"); and

WHEREAS, the Property is zoned "B" Single-Family Residential pursuant to the terms of the Sycamore Township Zoning Resolution; and

WHEREAS, on June 14, 2019, Five Star applied to the Sycamore Township Board of Zoning Appeals (the "BZA") and Sycamore Township, Ohio ("Sycamore Township"), Case No. SYCB190013, for a Conditional Use Permit to construct a church with support parking and infrastructure on the property (the "Application"); and

WHEREAS, pursuant to Chapters 3 and 17 of the Sycamore Township Zoning Resolution, a church is an allowable conditional use in the "B" Single-Family Residential District; and

WHEREAS, notice of Five Star's public hearing before the BZA was given pursuant to the requirements contained in the Sycamore Township Zoning Resolution which included notice by regular first class mail to owners within 200 feet of the Property and also by publication in a newspaper of general circulation in Sycamore Township, which said notice was given at least 10 days prior to the date of the proposed public hearing; and

WHEREAS, a public hearing before the BZA was held on July 15, 2019; and

WHEREAS, at the July 15, 2019, public hearing, sworn testimony and evidence was received by the BZA concerning Five Star's Application; and

WHEREAS, at the conclusion of the public hearing, the BZA voted to deny Five Star's Application, finding that the granting of the Conditional Use Permit as requested would seriously affect the public convenience, prosperity, and general welfare of Sycamore Township and the adjoining property owners; and

WHEREAS, the BZA memorialized its decision to deny Five Star's Application in Resolution No. SYZB190013, which was adopted by the BZA on August 5, 2019; and

WHEREAS, in response to the BZA's decision to deny Five Star's Application, Five Star filed an administrative appeal (the "Litigation") pursuant to R.C. Chapter 2506 of BZA's decision contained in Resolution No. SYZB190013 believing it was arbitrary, capricious, unreasonable, unlawful, unconstitutional, and unsupported by a preponderance of the substantial, reliable and probative evidence submitted on the record, and was contrary to the public interest, a gross abuse of discretion, and resulted in an uncompensated taking; and

WHEREAS, Counsel for Five Star and Sycamore Township, and counsel for both the Sturbridge Homeowners' Association and the Heitmeyer Farms Homeowners' Association (both, the "HOA's") engaged in significant discussions relating to the potential settlement of this appeal, which discussions have included an assessment of the facts surrounding the alleged arbitrariness of the BZA's decision to deny Five Star's Application; and

WHEREAS, the parties and the HOA's desire to conclude this litigation in a manner which will permit Five Star to develop the Property in a manner so as to avoid the possibility of the Court issuing a decision which would allow Five Star to develop the Property as a church with supporting parking and infrastructure but would allow Five Star to reasonably develop the Property with input from the other parties; and

WHEREAS, the parties are desirous and interested in having the Subject Property developed in a manner that promotes the public health, safety, morals, and general welfare; and

WHEREAS, the parties are agreeable to resolving their disputes, having the Subject Property developed as proposed herein, dismissing all pending claims, and thus, fully settling the above-captioned case; and

WHEREAS, on or before January 14, 2021, Sycamore Township published notice of its intent to meet, consider, and take action on the Consent Decree and the date and time of the public meeting (the "Public Hearing") in the Cincinnati Enquirer, a newspaper of general circulation in Sycamore Township, Ohio; and

WHEREAS, this public notice was published at least 15 days prior to the advertised February 2, 2021, Public Hearing; and

WHEREAS, at the start of the February 2, 2021, Public Hearing, Five Star requested a continuance of the Public Hearing to March 2, 2021, which continuance was granted; and

WHEREAS, at the start of the March 2, 2021, Public Hearing, Five Star requested a continuance of the Public Hearing to March 9, 2021, which continuance was granted; and

WHEREAS, on March 9, 2021, Sycamore Township held the Public Hearing and received public comment on the Consent Decree; and

WHEREAS, Sycamore Township made available to the public at the Sycamore Township Fiscal Officer's office copies of the Consent Decree during normal business hours; and

WHEREAS, Five Star, at least 10 days prior to the submission of the Consent Decree to the Court, will publish notice in the Cincinnati Enquirer which will include a caption of this case, the case number, and Court where this Consent Decree will be filed, the intention of the parties to file the Consent Decree, a description of the Property, and the proposed use of the Property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of Sycamore Township that:

SECTION 1. The Board approves the Consent Decree, a copy of which is attached as **Exhibit A.**

SECTION 2. The Board upon at least a majority vote does hereby dispense with the requirement that this resolution be read on two separate days, and hereby authorizes the adoption of this Resolution upon its first reading.

SECTION 3. Upon the unanimous vote of the Board of Township Trustees, this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of Sycamore Township and shall take effect immediately. The reason for the emergency is the need to present a fully executed copy of the Consent Decree to the Court so as to end the Litigation as soon as possible.

VOTE RECORD:

Mr. James AYE Mr. LaBarbara AYE Mr. Weidman AYE

PASSED at the meeting of the Board of Township Trustees this 16th day of March 2021.

/s/ Thomas C. James, Jr.
Thomas C. James, Jr., Chairman

/s/ Jim LaBarbara
Jim LaBarbara, Vice Chairman

/s/ Thomas J. Weidman
Thomas J. Weidman, Trustee

AUTHENTICATION

This is to certify that this Resolution was duly passed, and filed with the Sycamore Township Fiscal Officer, this 16th day of March 2021.

/s/ Robert C. Porter III

Robert C. Porter, III
Sycamore Township Fiscal Officer

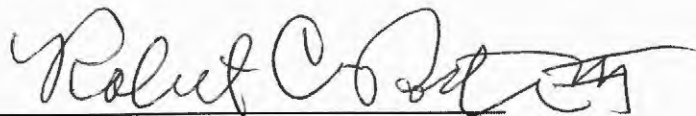
APPROVED AS TO FORM:

/s/ Deepak K. Desai

Deepak K. Desai, Law Director

PROOF OF PUBLICATION

I hereby certify that a summary of this Resolution was published in the Cincinnati Enquirer
on March 22, 2021 and March 29, 2021.

A handwritten signature in black ink, appearing to read "Robert C. Porter, III", with a stylized flourish at the end.

Robert C. Porter, III, Fiscal Officer
Sycamore Township, Ohio

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

FIVE STAR EQUITY INVESTORS, LLC,)	Case No. A 1904001
)	
Plaintiff-Appellant,)	Judge Alan C. Triggs
)	(Magistrate Anita Berding)
v.)	
)	
SYCAMORE TOWNSHIP BOARD OF ZONING APPEALS, et al.,)	<u>CONSENT DECREE</u>
)	
)	
Defendants-Appellees.)	

WHEREAS, Plaintiff-Appellant, Five Star Equity Investors, LLC (“Five Star”), is the owner of approximately 3.8841 acres of land located at 6100, 6331, 6341, 6491, and 6551 Kugler Mill Road, Sycamore Township, Hamilton County, Ohio, and identified by the Hamilton County Auditor’s office as Parcel Nos. 600-0094-0001-00, 600-0094-0002-00, 600-0092-0046-00, 600-0092-0298-00, 600-0092-0045-00, and 600-0092-0048-00 (the “Property”) which is more particularly described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Property is zoned “B” Single-Family Residential pursuant to the terms of the Sycamore Township Zoning Resolution; and

WHEREAS, on June 14, 2019, Five Star applied to Defendants-Appellees, Sycamore Township Board of Zoning Appeals (the “BZA”) and Sycamore Township, Ohio (“Sycamore Township”), Case No. SYCB190013, for a Conditional Use Permit to construct a church with support parking and infrastructure on the property (the “Application”); and

WHEREAS, pursuant to Chapters 3 and 17 of the Sycamore Township Zoning Resolution, a church is an allowable conditional use in the “B” Single-Family Residential District; and

WHEREAS, notice of Five Star’s public hearing before the BZA was given pursuant to the requirements contained in the Sycamore Township Zoning Resolution which included notice

by regular first class mail to owners within 200 feet of the Property and also by publication in a newspaper of general circulation in Sycamore Township, which said notice was given at least 10 days prior to the date of the proposed public hearing;

WHEREAS, a public hearing before the BZA was held on July 15, 2019; and

WHEREAS, at the July 15, 2019, public hearing, sworn testimony and evidence was received by the BZA concerning Five Star's Application; and

WHEREAS, at the conclusion of the public hearing, the BZA voted to deny Five Star's Application, finding that the granting of the Conditional Use Permit as requested would seriously affect the public convenience, prosperity, and general welfare of Sycamore Township and the adjoining property owners; and

WHEREAS, the BZA memorialized its decision to deny Five Star's Application in Resolution No. SYZB190013, which was adopted by the BZA on August 5, 2019; and

WHEREAS, in response to the BZA's decision to deny Five Star's Application, Five Star filed an administrative appeal (the "Litigation") pursuant to R.C. Chapter 2506 of BZA's decision contained in Resolution No. SYZB190013 believing it was arbitrary, capricious, unreasonable, unlawful, unconstitutional, and unsupported by a preponderance of the substantial, reliable and probative evidence submitted on the record, and was contrary to the public interest, a gross abuse of discretion, and resulted in an uncompensated taking; and

WHEREAS, Counsel for Five Star and Sycamore Township, and counsel for both the Sturbridge Homeowners Association and the Heitmeyer Farms Civic Association (both, the "HOA's") engaged in significant discussions relating to the potential settlement of this appeal, which discussions have included an assessment of the fact surrounding the alleged arbitrariness of the BZA's decision to deny Five Star's Application; and

WHEREAS, the parties and the HOA's desire to conclude this litigation in a manner which will permit Five Star to develop the Property in a manner so as to avoid the possibility of this Court issuing a decision which would allow Five Star to develop the Property as a church with supporting parking and infrastructure but would allow Five Star to reasonably develop the Property with input by the Defendants-Appellees and the HOA's; and

WHEREAS, the Defendants-Appellants, including Sycamore Township, are desirous and interested in having the Subject Property developed in a manner that promotes the public health, safety, morals, and general welfare; and

WHEREAS, the Parties are agreeable to resolving their disputes, having the Subject Property developed as proposed herein, dismissing all pending claims, and thus, fully settling the above-captioned case; and

WHEREAS, on or before January 14, 2021, Sycamore Township published notice of its intent to meet, consider, and take action on this Consent Decree and the date and time of the public meeting (the "Public Hearing") in the Cincinnati Enquirer, a newspaper of general circulation in Sycamore Township, Ohio; and

WHEREAS, this public notice was published at least 15 days prior to the advertised February 2, 2021, Public Hearing at 6:00pm; and

WHEREAS, on February 2, 2021, Sycamore Township convened the Public Hearing and continued it in progress to March 2, 2021, and then until March 9, 2021, at which time Sycamore Township received public comment on this Consent Decree; and

WHEREAS, Sycamore Township made available to the public at the Sycamore Township Fiscal Officer's office copies of this Consent Decree during normal business hours; and

WHEREAS, on March 16, 2021, the Trustees of Sycamore Township voted unanimously to approve this Consent Decree; and

WHEREAS, Five Star, at least 10 days prior to the submission of this Consent Decree to this Court, published notice in the Cincinnati Enquirer which included a caption of this case, the case number, and Court where this Consent Decree will be filed, the intention of the parties to file this Consent Decree, a description of the Property, and the proposed use of the Property; and

WHEREAS, on April 15, 2021, a hearing was held before this Court on the Consent Decree where the parties presented evidence satisfactory to the Court that this Consent Decree is a fair and reasonable settlement; and

WHEREAS, Five Star, Sycamore Township, and the HOA's, without trial or adjudication of any issue of fact or law, and without admission by Defendants-Appellees of the facts or allegations contained in the appeal, and by consent of the parties, and upon consideration of the mutual promises set forth herein, the sufficiency of which is hereby acknowledged by the parties,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. This Court has jurisdiction over the parties and subject matter of this action;
2. The parties have fully complied with all of the notice requirements contained in R.C. 505.07 and this Consent Decree is fair and reasonable;
3. The undersigned representatives of each party certify that they are fully authorized by the party or parties whom they represent to enter into the terms and conditions of this Consent Decree and to legally bind the parties to it;
4. This Consent Decree shall apply to and be binding upon the parties to this action, their offices, directors, successors, assigns, and heirs;

5. This Consent Decree constitutes the full and complete settlement of all claims which have, or could have been asserted by Five Star in the Litigation arising out of the BZA's denial of its Application until the date of entry of this Consent Decree, including claims for attorneys' fees and costs;

6. This Consent Decree shall not constitute admission or adjudication with respect to the Litigation, and any alleged facts or conclusion of law with respect to any matter alleged or arising out of the Litigation, or an admission or evidence of any wrongdoing or misconduct or liability on the part of Five Star, the BZA, or Sycamore Township;

7. Currently, the Property is zoned by Sycamore Township as "B" Single-Family Residential District. Pursuant to this Consent Decree, as detailed in Exhibit A-1 attached hereto and incorporated by reference, the future zoning of the Property and all parcels involved in the Consent Decree will be: (i) Lots 1-11 (the "Lots" or "Residential PUD") shall be rezoned to B-2 District and designated a PUD -1 as specified by the Sycamore Township Zoning Resolution § 4-2.3 and 4-2.5(c) Clustered Dwellings and (ii) Lot "12" shall be rezoned "OO" Planned Office District as prescribed in Chapter 7 of the Sycamore Township Zoning Resolution. The Residential PUD as detailed in Exhibits B and B-1 set forth and attached to this Consent Decree constitute the Lots' Township zoning and do not require any further process as set forth in the Sycamore Township Zoning Resolution unless changes or amendments to Exhibits B and B-1 are requested in the future. The Defendants-Appellees shall permit the Property to be developed in accordance with the Site Plan and "The Villas of Kenwood PUD Plan" attached hereto and incorporated herein as Exhibits B and B-1, and the Landscape Plan as attached hereto as Exhibit C. Exhibits B, B-1, and C are all incorporated herein by reference. Specifically, the Property shall be developed consistent with Exhibits B, B-1, and C and shall include the following:

- A. The residential portion of the Property adjacent to Kugler Mill Road shall consist of 11 single-family lots (the “Lots”) with individual driveways that include vehicular turnarounds as set forth on Exhibits B & B-1 and the residences shall be constructed in accordance with the general building plans provided by a luxury builder who is mutually acceptable to the undersigned parties. Should the parties disagree on choosing a builder to develop the Lots or such building plans, this Court shall make that determination as set forth in paragraph 10. Five Star agrees that the deeds of each of the above-referenced eleven (11) Lots will be amended to include a restriction that each such Lot can only be utilized for residential purposes. Five Star is under no obligation whatsoever to begin developing the Lots until such time as the conditions set forth in Paragraph 9 below relating to the Township’s approval of both the Proposed Office Building and a TIF as set forth in the executed TIF Memorandum of Understanding attached hereto and incorporated herein as Exhibit
- D. The southern portion of the subject Property shall contain all or a portion of 104 surface parking spaces as noted on Exhibit B for the benefit of the Proposed Office Building (the “Parking Area”).
- B. Five Star agrees no construction or site preparation including, but not limited to, demolition, clearing, blasting, test drilling, landfill, levelling, earth-moving, excavating, land drainage and other land preparation shall be conducted with respect to the construction of the Proposed Office Building until at least 3 of the above-referenced single-family homes have been completed on the residential portion of the Property adjacent to Kugler Mill Road. The HOA's at their discretion

and signified by their attorney shall have the right to reduce the preconstruction requirement from 3 single-family homes to 2 single-family homes on the Lots.

- C. A perpetual landscape buffer (“East Landscape Buffer”) as detailed in Exhibit E and noted on Exhibits B, B-1, and C shall exist along the easterly property line of the commercial development adjacent to an existing residence situated on Kugler Mill Road. Five Star or the ultimate developer of the Proposed Office Building (as noted on Exhibit B) shall construct the landscape improvements in accordance with Exhibit C attached hereto. Exhibit E is incorporated herein by reference. Five Star or its successors and assigns shall be responsible for the continued maintenance of such landscaping and six-foot (6’) privacy fence on the East Landscape Buffer. The terms and conditions of the aforementioned easement shall be generally consistent with the requirements of the additional landscape buffer easement referenced below.
- D. A pedestrian walkway as noted on Exhibit B, not to exceed 5 feet in width, shall be located adjacent to westerly boundary of Lot No. 11 (the “Walkway”). The Walkway shall be situated on a mutually acceptable perpetual pedestrian access easement in favor of the commercial properties south of the subject Property. At the request of the owner of Lot No. 11, Five Star shall install a privacy fence adjacent to the walkway, to be maintained by the owner of Lot No. 11. No other access shall be permitted from Kugler Mill Road to the commercial properties to the south, except for the temporary construction access roadway set forth below and noted on Exhibit B.

- E. A temporary construction access roadway shall be installed by the developer of the Proposed Office Building in the location noted on Exhibit B attached hereto. Upon completion of construction of the Proposed Office Building, the landscaping plan set forth on Exhibit C shall be installed. This temporary construction access shall be located on Lot 10 or Lot 11 of Exhibit B as close to Interstate 71 (northwest on Kugler Mill Road) as is reasonably feasible and shall not be located in Lots 1-8 of Exhibit B.
- F. The existing landscape buffer easement (“North Landscape Buffer”) situated between the commercial property to the south and the subject Property shall be modified by the Township as detailed in Exhibit F so as to be consistent with Exhibits B, B-1, and C attached hereto. Exhibit F is incorporated herein by reference.
- G. The owners of the 11 Lots or a homeowners’ association shall be responsible for the maintenance of the landscape area and fence (Exhibits B and C), except for the East Landscape Buffer (Exhibit E) called for in Paragraph 7(C) above.
- H. Signage on the Proposed Office Building shall be limited to the Galbraith Road and Interstate 71 sides of the building.
- I. The parties shall make a good faith effort to agree upon a mutually acceptable lighting plan for the Parking Area on the southern portion of the subject Property (104 spaces) and Proposed Office Building. If the parties are unable to agree on a mutually acceptable lighting plan, this Court shall make the final determination as set forth in paragraph 10.

J. Five Star and the HOAs shall make a good faith effort to obtain the following from Defendant-Appellee Sycamore Township, but acknowledge that approval for some of the below-referenced requests may rest with outside entities not involved in this Consent Decree:

- i. a sidewalk along the north side of Kugler Mill Road;
- ii. a crosswalk across Kugler Mill Road near the Walkway referenced in Paragraph 7(D) above;
- iii. a crosswalk across Kugler Mill Road adjacent to the Indian Creek Apartments; and
- iv. two traffic display speed signs along Kugler Mill Road.
- v. a sidewalk on the south side of Kugler Mill Road.

8. If approval for the sidewalk on the south side of Kugler Mill Road set forth in paragraph 7 (J)(v) is obtained, Five Star or its successors or assigns shall build and pay for and/or require the luxury builder to build and pay for the cost of creating such sidewalk in compliance with all Township and County rules, codes, and requirements. Cost of the four other items set forth in paragraph 7(J)(i-iv) will not be the financial responsibility of Five Star or its successors or assigns.

9. The terms and conditions of this Consent Decree are expressly conditioned upon Sycamore Township's approval of the Proposed Office Building with the supporting Parking Area south of the subject Property (as noted on Exhibit B), along with Sycamore Township's approval of tax increment financing ("TIF") the principal terms of which were negotiated between Five Star and Sycamore Township as set forth in the executed TIF Memorandum of Understanding attached hereto and incorporated herein as Exhibit D. If Sycamore Township does not approve the Proposed Office Building or the TIF on terms as set forth in the executed TIF Memorandum of Understanding attached hereto and incorporated herein as Exhibit D, then upon receipt of notice, this Consent Decree shall be void *ab initio*. The Proposed Office Building and New Parking Garage

as detailed in Exhibit B and referenced in Exhibit D- TIF Memorandum of Understanding, attached to this Consent Decree are both required to complete the normal process as set forth in the Sycamore Township Zoning Resolution with respect to each of their construction.

10. The Court shall retain jurisdiction over this matter and allow this case to be reopened without filing fees for the purpose of enabling the parties to the Consent Decree to apply to this Court for any further Order that may be necessary to construe, carry out, or enforce compliance with the terms of this Consent Decree or to modify the terms of this Consent Decree. If the undersigned parties are unable to come to mutually acceptable understanding with respect to any issues or disagreements which may arise, this Court shall make any final interpretations and determination.

11. This Consent Decree shall be governed by and construed in accordance with the laws of the State of Ohio.

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Attorney for Defendants-Appellees,

Sycamore Township Board of Zoning Appeals & Sycamore Township



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(513) 241-2877 (fax)

*Counsel for Sturbridge Homeowners Association
& Heitmeyer Farms Civic Association*



Thomas Brockman

President of Sturbridge Homeowners

Association, an Unincorporated Association



Rusty Sicking

President of Heitmeyer Farms Civic

Association, a Civic Association

Judge Alan C. Triggs

EXHIBIT "A"

(Legal Description of Subject Property)

**DESCRIPTION FOR:
LOCATION:**

**3.8841 Acre CONSOLIDATION OF PARCELS
Kugler Mill Road, Sycamore Township**

Situate in Section 8, Town 4, Entire Range 1, Sycamore Township, Hamilton County, Ohio, and being more particularly described as follows:

Beginning at the intersection of the easterly right-of-way line of Interstate Route 71 (as recorded in Deed Book 3674, Page 498, Hamilton County Recorder's Office) and the centerline of Kugler Mill Road (an undedicated right-of-way of variable width);

Thence along said centerline of Kugler Mill Road, South 48°08'12" East, 776.84 feet to a point;

Thence South 42°17'48" West, passing an iron pin set at 40.00 feet, a total distance of 243.00 feet to an existing 5/8" iron pin;

Thence North 48°08'12" West, 451.65 feet to a set iron pin;

Thence North 42°17'48" East, 10.00 feet to a set iron pin;

Thence North 48°08'12" West, 93.67 feet to a point witnessed by an existing 5/8" iron pin (cap: "H+M") lying 1.9' east;

Thence South 05°52'24" West, 12.36 feet to a set iron pin;

Thence North 48°08'12" West, 90.55 feet to an iron pin set in the aforesaid easterly right-of-way line of Interstate Route 71;

Thence along said easterly line of Interstate Route 71, North 17°10'53" East, 41.43 feet to a set iron pin;

Thence continuing along said easterly line of Interstate Route 71, North 09°41'31" East, passing an iron pin set at 195.34 feet, a total distance of 242.60 feet to the point of beginning.

Containing 3.8841 acres of land, of which 0.4413 acres lies within the 25' undedicated right-of-way, leaving a net acreage of 3.4428 acres.

Subject to all legal highways, easements and restrictions of record.

The above description was prepared from a Consolidation Plat by McGill Smith Punshon, Inc. dated November 23, 2020. The bearings are based on the Ohio State Plane Coordinate System South Zone (NAD 83) adjusted to ground, Hamilton County Benchmark No. 8357.

Prepared by: McGill Smith Punshon, Inc.

Date: November 23, 2020

MSP No.: 08499.25

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McGill Smith Punshon, Inc.

3700 Park 42 Drive ■ Suite 190B ■ Cincinnati, Ohio ■ 45241-2097
513.759.0004 ■ Fax 513.563.7099 ■ www.mcgillsmithpunshon.com



Renana Gross
11/23/2020



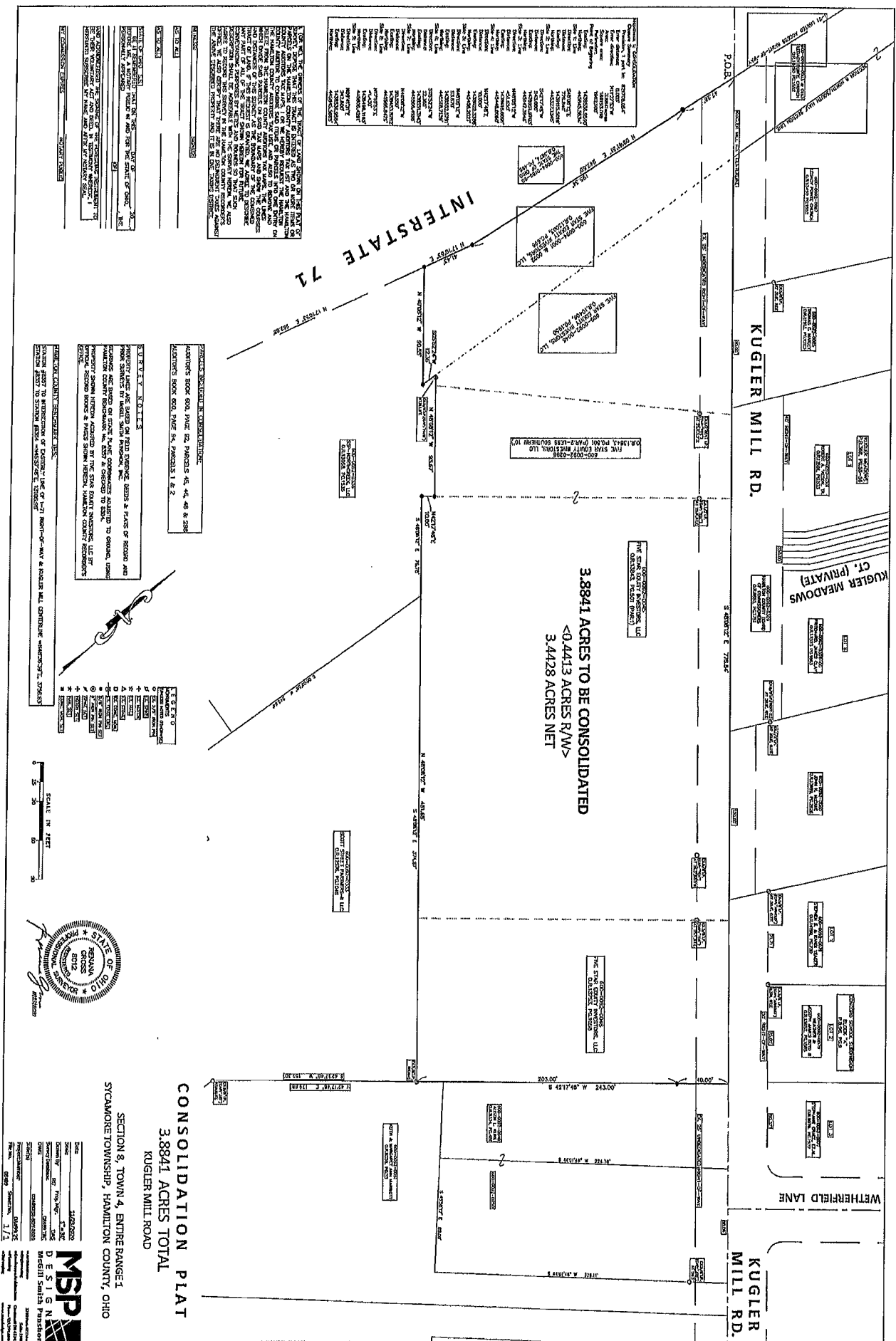
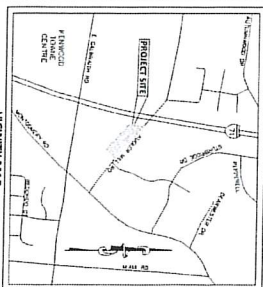


EXHIBIT "A-1"

("New Township Zoning")



OWNER
FIVE STAR EQUITY INVESTORS, LLC
7755 MONTGOMERY ROAD, SUITE 1900
CINCINNATI, OH 45236

APPLICANT
SCOTT STEET PARTNERS, LLC
7755 MONTGOMERY ROAD, SUITE 1900
CINCINNATI, OH 45236
ATTN: MARIE E. FOX

SUBJECT PROPERTY IS ZONED B-RESIDENTIAL.

LOT DATA

MINIMUM LOT AREA: 9,000 SQ. FT.

MINIMUM LOT WIDTH: 60 FEET

MINIMUM FRONT YARD: 20 FEET

MINIMUM REAR YARD: 20 FEET

NOTES:

1. ALL EX. STRUCTURES ARE TO BE REMOVED PRIOR TO THE START OF SITE CONSTRUCTION

2. EXISTING PARCELS ARE TO BE CONSIDERED

SITE ACREAGE: 3.891 AC.

PARCELS 600-0093-0045

PARCELS 600-0093-0046

PARCELS 600-0093-0047

PARCELS 600-0093-0048

PARCELS 600-0093-0049

PARCELS 600-0093-0050

PARCELS 600-0093-0051

PARCELS 600-0093-0052

PARCELS 600-0093-0053

PARCELS 600-0093-0054

PARCELS 600-0093-0055

PARCELS 600-0093-0056

PARCELS 600-0093-0057

PARCELS 600-0093-0058

PARCELS 600-0093-0059

PARCELS 600-0093-0060

PARCELS 600-0093-0061

PARCELS 600-0093-0062

PARCELS 600-0093-0063

PARCELS 600-0093-0064

PARCELS 600-0093-0065

PARCELS 600-0093-0066

PARCELS 600-0093-0067

PARCELS 600-0093-0068

PARCELS 600-0093-0069

PARCELS 600-0093-0070

PARCELS 600-0093-0071

PARCELS 600-0093-0072

PARCELS 600-0093-0073

PARCELS 600-0093-0074

PARCELS 600-0093-0075

PARCELS 600-0093-0076

PARCELS 600-0093-0077

PARCELS 600-0093-0078

PARCELS 600-0093-0079

PARCELS 600-0093-0080

PARCELS 600-0093-0081

PARCELS 600-0093-0082

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PARCELS 600-0093-0109

PARCELS 600-0093-0110

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PARCELS 600-0093-0112

PARCELS 600-0093-0113

PARCELS 600-0093-0114

PARCELS 600-0093-0115

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PARCELS 600-0093-0218

PARCELS 600-0093-0219

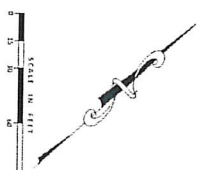
PARCELS 600-0093-0220

PARCELS 600-0093-0221

PARCELS 600-0093-0222

PARCELS 600-0093-022

SOIL SURVEY DATA	
MAP UNIT SYMBOL	MAP UNIT NAME
UAGC6C	URBAN/LAND ALONG URBAN/RTE 15 CROSS MOTHE COMPLEX, 0 TO 12 PERCENT SLOPES
UJANC	URBAN/LAND ALONG URBAN/RTE 15 COMPLEX, FRAGRANT SUBSTRATUM OVER TILL, 0 TO 12 PERCENT SLOPES
UAUF	URBAN/LAND ADJUTANTS COMPLEX, SMOOTHED, 0 TO 50 PERCENT SLOPES



VILLAS OF KENWOOD

SYCAMORE TOWNSHIP
HAMILTON COUNTY, OHIO

Sheet Title

**ZONING PLAT
PRELIMINARY PLAT**

Project Number	08499.21
----------------	----------

File Number
DA49

EXHIBIT "B"

(Site Plan)

Northcreek Expansion Concept Design "H" 02.10.2020

MSP
DESIGN
McGill Smith Pughen
MSP Design No. 08499_20

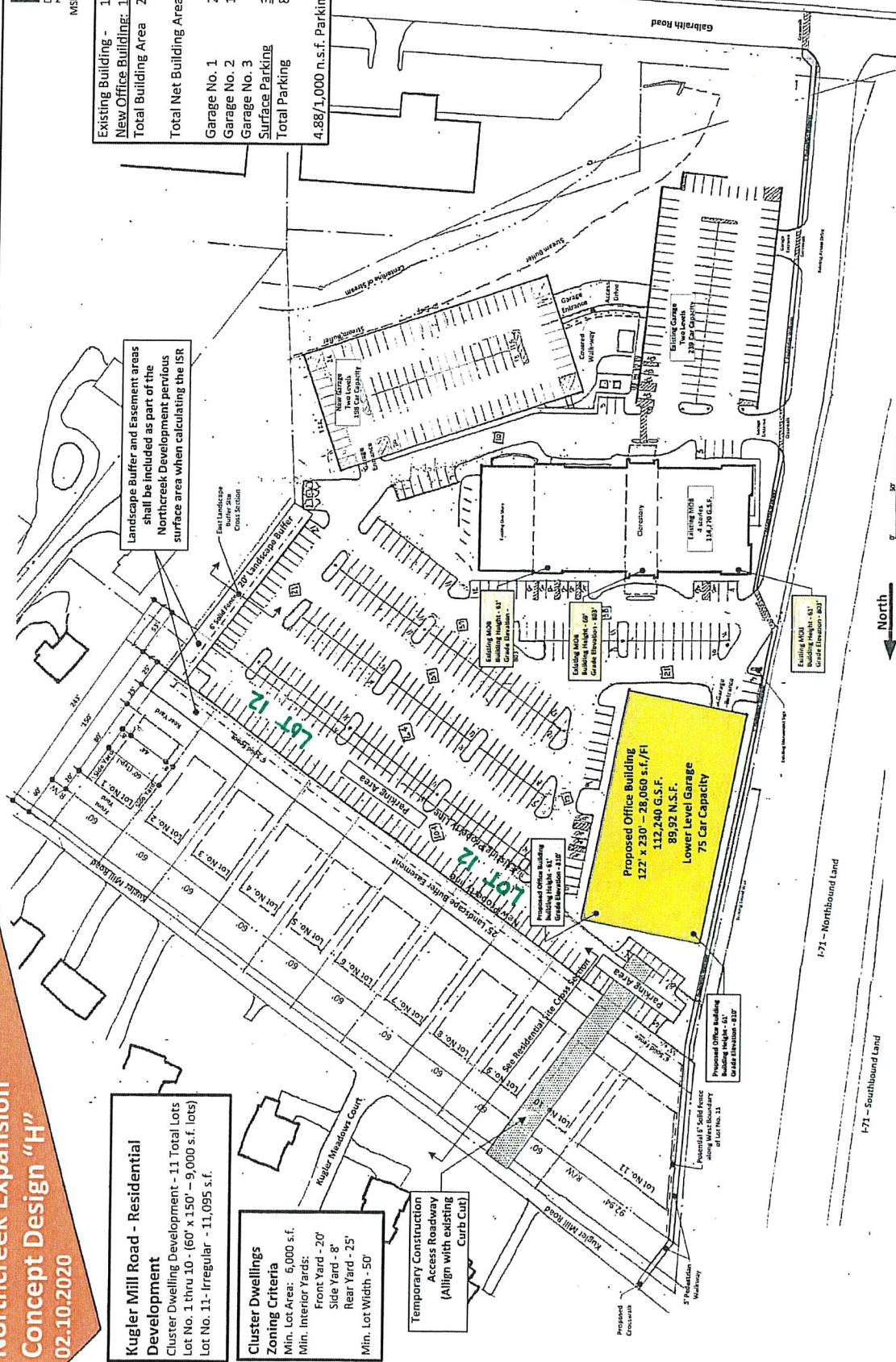
Existing Building - 114,270 gsf
New Office Building: 112,240 gsf
Total Building Area: 226,510 gsf
Total Net Building Area: 181,208 nsf
Garage No. 1: 239 cars
Garage No. 2: 198 cars
Garage No. 3: 75 cars
Surface Parking: 373 cars
Total Parking: 885 cars
4.88/1,000 n.s.f. Parking Ratio

Landscape Buffer and Easement areas shall be included as part of the Northcreek Development previous surface area when calculating the ISR

Kugler Mill Road - Residential Development
Cluster Dwelling Development - 11 Total Lots
Lot No. 1 thru 10 - (60' x 150' - 9,000 s.f. lots)
Lot No. 11 - Irregular - 11,095 s.f.

Cluster Dwellings Zoning Criteria
Min. Lot Area: 6,000 s.f.
Min. Interior Yards:
Front Yard - 20'
Side Yard - 8'
Rear Yard - 25'
Min. Lot Width - 50'

Temporary Construction Access Roadway (Align with existing Curb Cut)



North
Graphic Scale 1" = 30'

I-71 - Northbound Land

I-71 - Southbound Land

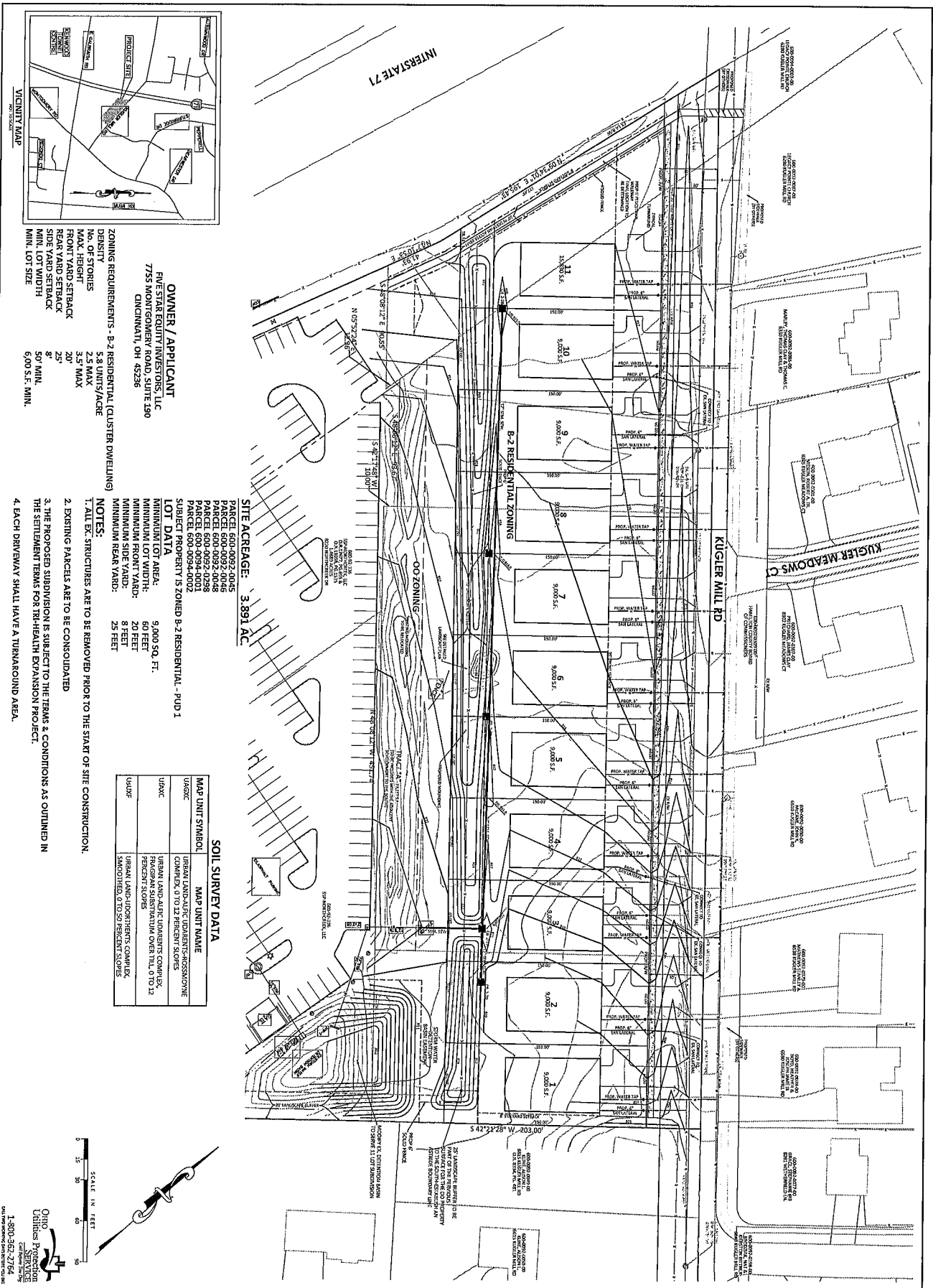
EXHIBIT "B-1"

("The Villas of Kenwood PUD Plan")



SYCAMORE TOWNSHIP
HAMILTON COUNTY, OHIO

[illegible]

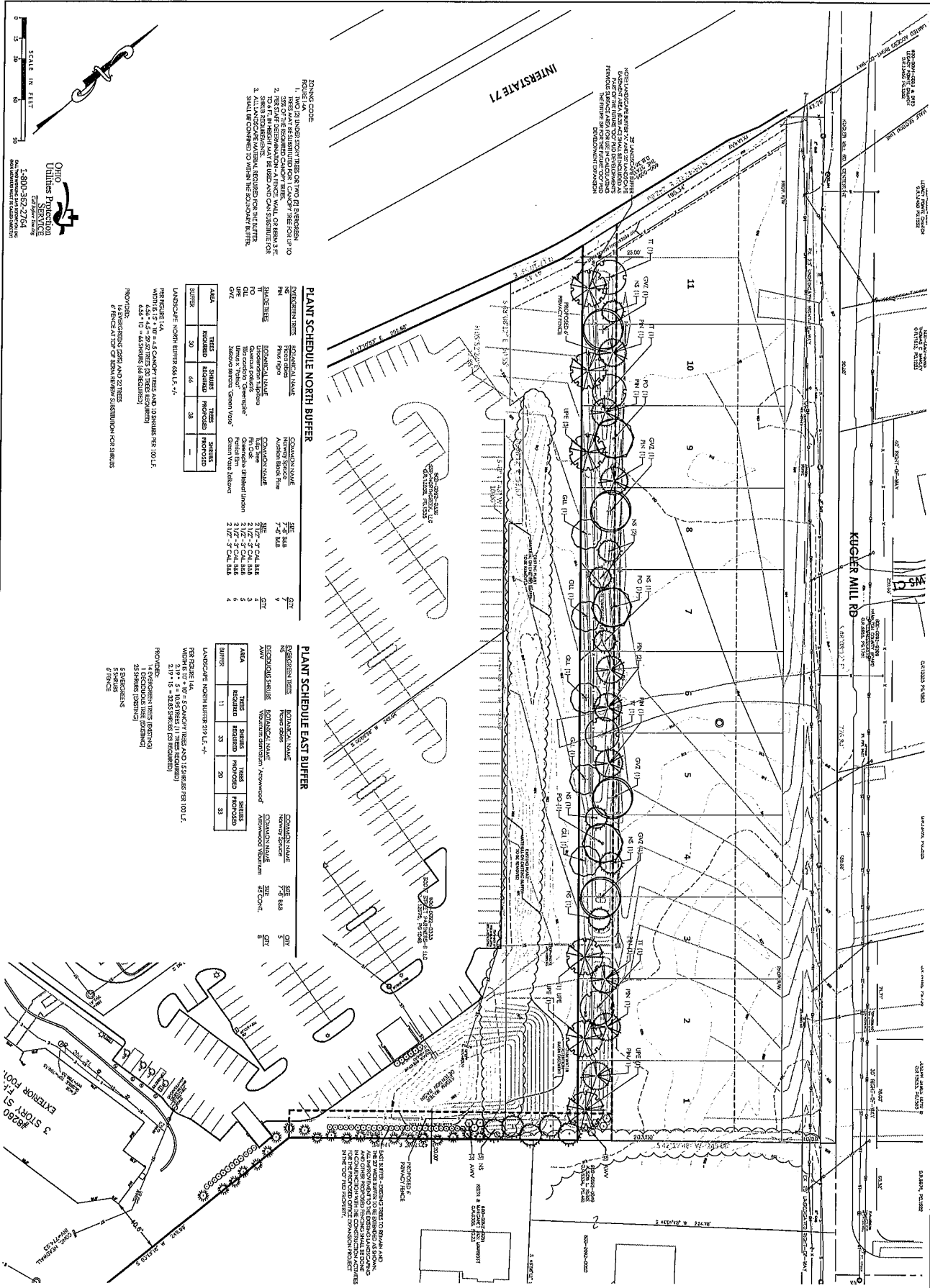


VILLAS OF KENWOOD
SECTION 8, TOWN 4, ENTIRE RANGE 1
SYCAMORE TOWNSHIP
HAMILTON COUNTY, OHIO

MSP DESIGN Meggin Smith Furnishco		3709 Park Ave. Suite 100 Glenview, IL 60025 Tel: 847.439.9292 Fax: 847.439.9293 www.mspdesign.com
Architect Engineering Planning Construction Management Construction	Project Manager Design Construction Owner	Date 04/09/2014 File # 04/09/2014-0001
Location Address City/State/Zip Country	Project/Location No.	Date 04/09/2014 File # 04/09/2014-0001
Title/Name/Unit 1234567890		

PRELIMINARY PLAN

Project Number	08439.29
Drawing Scale	AS NOTED
Sheet Number	2/2
File Number	08439



PLANT SCHEDULE NORTH BUFFER

AREA	TREES REQUIRED	SHRUBS REQUIRED	TREES PRODUCED	SHRUBS PRODUCED
BUTTER	30	66	28	—

PER FIGURE 1-4:
WIDTH IS $15' \times 10' = 4.5$ CANOPY TREES AND 10 SHRUBS PER 100 L.F.
 $6.56 \times 4.5 = 29.52$ TREES (30 TREES REQUIRED)
 $6.56 \times 10 = 65.6$ SHRUBS (66 REQUIRED)

PLANT SCHEDULE EAST BUFFER

DISCRIPTION	ITEMS	ROMANIC NAME	COMMON NAME	SIZE	QTY
NO		Form Order	Heavy Spacer	7-8 lbs	5
DISCRIPTION	SHELLS	ROMANIC NAME	COMMON NAME	SIZE	QTY
AWY		Vegetarian diet	Arrowwood	4-5 Cont.	8
AREA	TEES	SHRUBS	TEES	SHRUBS	
Barber	REQUIRED	REQUIRED	PROPOSED	PROPOSED	
	11	35	20	35	

LANDSCAPE NORTH BUFFER 219 L.F. +/-
PER FIGURE 14A
WIDTH 10' + 10' = 5 CANOPY TREES AND 15 SHELTERS PER 100 L.F.
219' * 5 = 10.95 TREES (11 TREES REQUIRED)
219' * 15 = 32.85 SHELTERS (33 REQUIRED)

EXHIBIT C

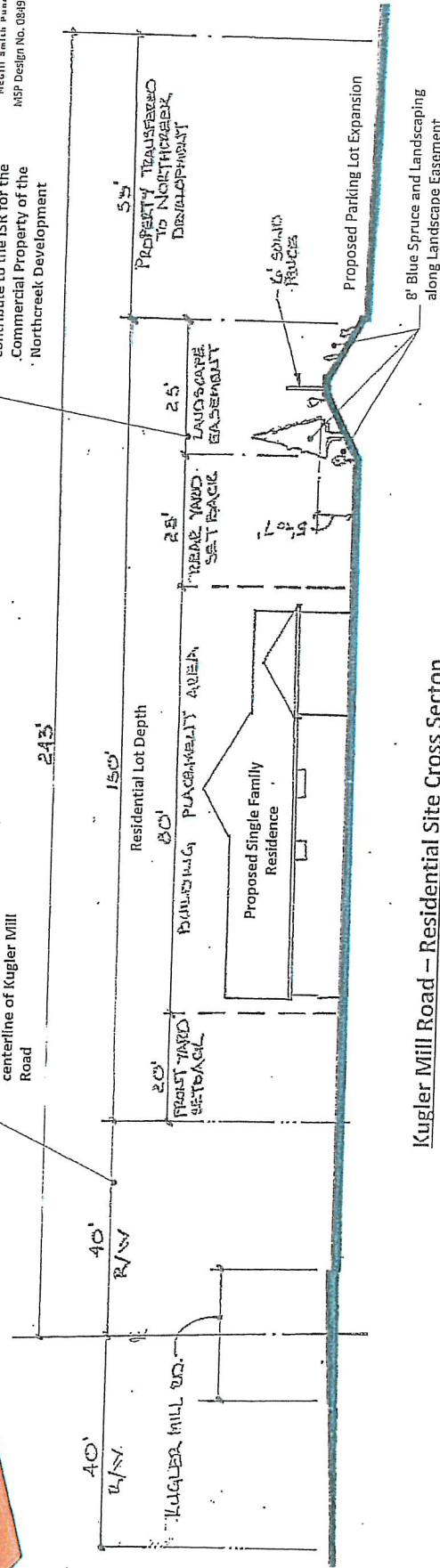
THE LANDSCAPE PLAN

**Northcreek Expansion
Concept Design "H"
2.10.2020**

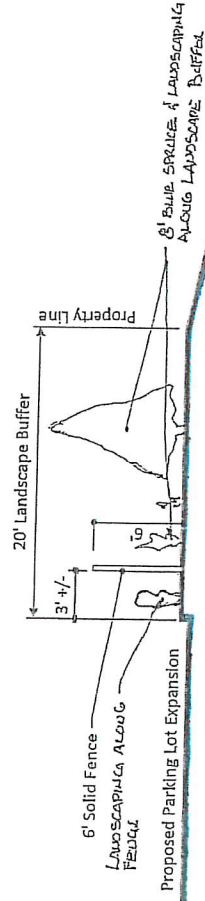


25' Landscape Easement area will contribute to the ISR for the Commercial Property of the Northcreek Development

Right of Way to be extended from 30' to 40' from centerline of Kugler Mill Road



Kugler Mill Road - Residential Site Cross Section



East Side Landscape Buffer - Site Cross Section

EXHIBIT "D"

(TIF Memorandum of Understanding)

**Memorandum of Understanding
Between
Sycamore Township
and
Five Star Equity Investors, LLC**

Whereas, the purpose of this Memorandum of Understanding ("MOU") is to memorialize the parties' agreement as to the principal terms and conditions concerning Sycamore Township's approval of tax increment financing ("TIF") on approximately 3.187 acres of land located at 6100, 6331, 6341, 6491, and 6551 Kugler Mill Road, Sycamore Township, Hamilton County, Ohio, and identified by the Hamilton County Auditor's office as Parcel Nos. 600-0094-0001-00, 600-0094-0002-00, 600-0092-0046-00, 600-0092-0298-00, 600-0092-0045-00, and 600-0092-0048-00 (the "Property") owned by Five Star Equity Investors, LLC; and

Whereas, this MOU exists between Five Star Equity Investors, LLC ("Five Star") and Sycamore Township ("Township")(both collectively referred to as "the Parties."); and

Whereas, this MOU is not binding by itself, but rather the terms and conditions contained herein shall be contingent upon the Parties agreeing to terms and conditions in the below-referenced Consent Decree which shall be approved by a majority of the Board of Trustees for Sycamore Township; and

Whereas, this MOU shall be executed in conjunction with the agreed upon terms and conditions as set forth in the Consent Decree, incorporated by reference herein, executed pursuant to and in compliance with R.C. 505.07, to resolve litigation pending in the Hamilton County Court of Common Pleas, Case No. 1904001, between the Township and Five Star.

Terms and Conditions

Contingent to the Parties properly approving the above-referenced Consent Decree, the Township and Five Star agree that the Township will approve a TIF on the above-referenced Property and agree that the following principal terms and conditions are included in the Developer Agreement created between the two parties with respect to any TIF on the above-referenced Property:

1. The Township, in conjunction with Five Star, will issue Municipal Debt (the Debt") yielding net proceeds of at least \$4,000,000 for a Parking Garage to be constructed as set forth in the Consent Decree.
2. The Garage will become a Public Facility with a Lease, Maintenance, and/or Indemnification Agreement with Five Star or the Owner/Operator of the Medical Office Building (MOB) to be constructed as set forth in the Consent Decree.
3. The Debt will be for a term not greater than 30 years, and will amortize according to a schedule reasonably acceptable to the Township and Five Star.

4. The fixed interest rate of the Debt will be determined by the Township, but will not exceed 4% annually.
5. The Township will require the owner of the MOB to agree to enter an agreement to pay, as a tax priority lien, minimum service payments ("MSP") on the property sufficient to cover debt service charges on the Debt, consistent with R.C. 5709.74 and 5709.91 (such agreement being the "Service Agreement"). The Service Agreement will be attached and incorporated into the Developer Agreement and the MSP will be equal to the amount required to retire the Debt schedule as provided in the example below in paragraph 9.
6. Five Star will personally guarantee the completion of the Parking Garage and the MOB. This guarantee will be released after the later to occur of (i) completion of the Building and Garage, and (ii) the MOB obtains a 60% occupancy rate as demonstrated by executed leases. Five Star will obtain the personal guarantee of Mr. Allen David Davis with respect to the completion of the Parking Garage and the MOB.
7. The Parties agree the Service Agreement shall be recorded by the Township and run with the Property. The Parties agree the recorded MSP will have the full force and effect of R.C. 5709.91 and shall be treated in the same manner as taxes for all purposes of a lien as described in section R.C. 323.11 of the Revised Code, including, but not limited to, the priority and enforcement of the lien and the collection of the service payments, minimum service payment obligations, or service charges secured by the lien.
8. The Township shall *not* contribute any more than 85% of the Township's annual share of the payments in lieu of taxes ("PILOT") to retire the aforementioned Debt.
9. Example:

The Township shall contribute not more than 85% of the Township annual share of the PILOT to retire the Debt.

a. Example (Not final)

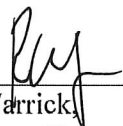
- | | | |
|-------|---|---------------|
| i. | \$ 4,504,500.00 | |
| ii. | \$ 186,716.82 PILOT | |
| iii. | 4% Interest | |
| iv. | 30 months of capitalized interest (\$ 450,450.00) | |
| v. | 30 Term | |
| vi. | Semi-annual Payment | \$ 142,543.83 |
| vii. | Semi-annual Township contribution (85%) | \$ 79,354.00 |
| viii. | Semi-annual MOB owner contribution | \$ 63,189.83 |
| | (MSP per Service Agreement) | |

10. The minimum service payment in the Service Agreement can increase or decrease based upon the PILOT contribution and the debt service due on the Debt.
11. Five Star and/or the Owner/Operator of the MOB agree that construction on the Parking Garage will not begin until committed construction financing is in place for the construction of the MOB.
12. The inclusion of the recorded Service Agreement will provide the Township specific security ensuring that the Debt will be retired.

IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT THIS AGREEMENT IS ONLY BINDING UPON THE PROPER EXECUTION AND APPROVAL OF THE ABOVE-REFERENCED CONSENT DECREE.

The Parties represent that the individuals below are authorized to sign this Memorandum of Understanding on behalf of and bind the respective parties.

SIGNED IN AGREEMENT WITH THE ABOVE STATEMENTS:



Ray Warrick
Sycamore Township Administrator
8540 Kenwood Road
Sycamore Township, OH 45236

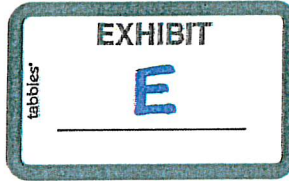
3/17/2021
Date



Marie E. Fox, Asset Manager
Five Star Equity Investors, LLC
P.O. Box 36381
Cincinnati, OH 45236

3/15/2021
Date

DRAFT



COVENANT AND GRANT OF EASEMENTS

In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, **SCOTT STREET PARTNERS – II LLC**, an Ohio limited liability company ("SSP"), with a mailing address of P.O. Box 36381, Cincinnati, Ohio 45236, for itself and on behalf of its successors and assigns as the owner of that certain real property described on Exhibit A attached hereto and made a part hereof (the "SSP Property"), hereby agrees as follows:

A. SSP, for itself and on behalf of its successors and assigns as the owner of the SSP Property, covenants with **THE BOARD OF TOWNSHIP TRUSTEES OF SYCAMORE TOWNSHIP, OHIO**, an Ohio township ("Grantee"), with a mailing address of 8540 Kenwood Road, Cincinnati, Ohio 45236, and unto their successors in office, that the portion of the SSP Property described on Exhibit B attached hereto and made a part hereof (the "Easement Property") shall be used solely for the purpose of a landscape buffer between the SSP Property and the property located immediately east of the Easement Property.

B. SSP, for itself and on behalf of its successors and assigns as the owner of the SSP Property, covenants that the owner of the SSP Property shall at no expense to Grantee, with reasonable promptness after recording of this instrument, cause the Easement Property to be landscaped (and a fence installed) in accordance with the landscape plan attached hereto as Exhibit C (the "Plan") and thereafter maintained, repaired and replaced in accordance with such Plan.

C. SSP, for itself and on behalf of its successors and assigns as the owner of the SSP Property, grants and conveys to Grantee, and unto their successors in office:

- (a) A perpetual easement in, on, upon, over, along, under, through and across the Easement Property, to install, maintain, repair, and replace landscaping and fencing within the Easement Property in accordance with the Plan (at the cost and expense of the owner of the SSP Property), if SSP, its successors and assigns fail to install, maintain, repair and replace such landscaping and fencing in accordance with the Plan after written notice from Grantee; and
- (b) A perpetual easement on, over, and across the portion of the SSP Property adjoining the Easement Property, for the purpose of allowing employees, contractors, subcontractors,

landscapers, excavators, construction vehicles, material and equipment to access the Easement Property as may be necessary or desirable to exercise the easement granted in Section C(a) above.

This grant shall include, but not be limited to, the following respective rights and duties of SSP and Grantee and their respective successors:

1. SSP shall have the right to use the adjoining land of the SSP Property in any manner which is consistent with the rights granted herein to Grantee, provided such use is in compliance with all applicable laws, codes and ordinances. Provided, however, SSP and its successors, as the owner of the SSP Property, shall not place, or permit the placement of, any building or other obstruction on the SSP Property which may unreasonably interfere with the exercise of the rights granted herein to Grantee.
2. Grantee and its successors and assigns shall have the right to pile dirt and other material and to operate equipment upon the surface of the Easement Property and the adjoining land of the SSP Property, but only during those times when Grantee or its successors or assigns are installing, maintaining, repairing, or replacing the landscaping within the Easement Property pursuant to Section C(a) above.
3. Any physical damage to the surface area of the SSP Property resulting from the exercise of the rights granted herein to Grantee shall be paid by Grantee, or repaired or restored by Grantee to a condition which is reasonably close to the condition it was in prior to the damage, all to the extent such damage is caused by Grantee, its successors or assigns. Exercise of its rights under this Covenant and Grant of Easements shall not be construed as physical damage to the SSP Property by Grantee.
4. The rights, agreements, representations, warranties, covenants and easements set forth herein are intended to be and shall be construed as covenants running with the land, and shall be binding upon, inuring to the benefit of, and enforceable by, SSP and its successors and assigns as the owner of the SSP Property, and Grantee and its successors in office.
5. If any of the provisions of this instrument or the application of that provision to any person or circumstances shall to any extent be invalid or unenforceable under applicable law, the remainder of this instrument or the application of the provisions to other persons or circumstances shall not be affected and each provision of this instrument shall be valid and enforceable to the fullest extent permitted by law.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has signed this Covenant and Grant of Easements on the date set forth below.

SCOTT STREET PARTNERS - II LLC

By: _____
Name: _____
Title: _____

STATE OF OHIO)
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ of Scott Street Partners – II LLC, an Ohio limited liability company, on behalf of the company.

Notary Public
My commission expires: _____

This instrument was prepared in its unexecuted form, without benefit of title exam, by Daniel E. Reitz, Esq., Graydon Head & Ritchey LLP, 312 Walnut Street, Suite 1800, Cincinnati, Ohio 45202.

DRAFT

EXHIBIT A

THE SSP PROPERTY

DRAFT

EXHIBIT B

THE EASEMENT PROPERTY

EXHIBIT C

THE PLAN

DRAFT



COVENANT AND GRANT OF EASEMENTS

In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, **FIVE STAR EQUITY INVESTORS, LLC**, an Ohio limited liability company ("Five Star"), with a mailing address of P.O. Box 36381, Cincinnati, Ohio 45236, for itself and on behalf of its successors and assigns as the owner of that certain real property described on Exhibit A attached hereto and made a part hereof (the "Five Star Property"), hereby agrees as follows:

A. This instrument is executed pursuant to that certain Consent Decree issued in Hamilton County, Ohio Court of Common Pleas Case No. A 1904001, styled Five Star Equity Investors, LLC v. Sycamore Township Board of Zoning Appeals, et. al. (the "Consent Decree").

B. Five Star, for itself and on behalf of its successors and assigns as the owner of the portion of the Five Star Property described on Exhibit B attached hereto and made a part hereof (the "Easement Property"), covenants with **THE BOARD OF TOWNSHIP TRUSTEES OF SYCAMORE TOWNSHIP, OHIO**, an Ohio township ("Grantee"), with a mailing address of 8540 Kenwood Road, Cincinnati, Ohio 45236, and unto their successors in office, that the Easement Property shall be used solely for the purpose of a landscape buffer between the property located immediately north of the Easement Property and the property located immediately south of the Easement Property.

C. Five Star, for itself and on behalf of its successors and assigns as the owner of the Easement Property, covenants that the owner of the Easement Property shall at no expense to Grantee, with reasonable promptness after recording of this instrument, cause the Easement Property to be landscaped (and a fence installed) in accordance with the landscape plan attached hereto as Exhibit C (the "Plan") and thereafter maintained, repaired and replaced in accordance with such Plan.

D. Five Star, for itself and on behalf of its successors and assigns as the owner of the Easement Property, grants and conveys to Grantee, and unto their successors in office:

- (a) A perpetual easement in, on, upon, over, along, under, through and across the Easement Property, to install, maintain, repair, and replace landscaping and fencing within the Easement Property in accordance with the Plan (at the cost and expense of the owner of

the Easement Property), if the owner of the Easement Property fails to install, maintain, repair and replace such landscaping and fencing in accordance with the Plan after written notice from Grantee; and

- (b) A perpetual easement on, over, and across the portion of the Five Star Property immediately adjoining the Easement Property, for the purpose of allowing employees, contractors, subcontractors, landscapers, excavators, construction vehicles, material and equipment to access the Easement Property as may be necessary or desirable to exercise the easement granted in Section D(a) above.

This grant shall include, but not be limited to, the following respective rights and duties of Five Star and Grantee and their respective successors:

1. Five Star and its successors shall have the right to use the adjoining land of the Five Star Property in any manner which is consistent with the rights granted herein to Grantee, provided such use is in compliance with all applicable laws, codes and ordinances. Provided, however, Five Star and its successors shall not place, or permit the placement of, any building or other obstruction on the Easement Property which may unreasonably interfere with the exercise of the rights granted herein to Grantee.

2. Grantee and its successors and assigns shall have the right to pile dirt and other material and to operate equipment upon the surface of the Easement Property and the immediately adjoining land of the Five Star Property, but only during those times when Grantee or its successors or assigns are installing, maintaining, repairing, or replacing the landscaping within the Easement Property pursuant to Section D(a) above.

3. Any physical damage to the surface area of the Five Star Property resulting from the exercise of the rights granted herein to Grantee shall be paid by Grantee, or repaired or restored by Grantee to a condition which is reasonably close to the condition it was in prior to the damage, all to the extent such damage is caused by Grantee, its successors or assigns. Exercise of its rights under this Covenant and Grant of Easements shall not be construed as physical damage to the Five Star Property by Grantee.

4. The rights, agreements, representations, warranties, covenants and easements set forth herein are intended to be and shall be construed as covenants running with the land, and shall be binding upon, inuring to the benefit of, and enforceable by, Five Star and its successors and assigns as the owner of the Five Star Property, and Grantee and its successors in office.

5. Notwithstanding the foregoing or anything herein to the contrary, in the event the Five Star Property is subdivided as envisioned by the Consent Decree, then:

(i) the owner(s) of the eleven (11) Lots (as defined in the Consent Decree) or a homeowners' association formed for the benefit of such Lots, shall thereupon become solely responsible at their expense for performance of the obligations set forth in Section C above; and in such case the owner of the balance of the Five Star Property (i.e., less and except the portion comprised of such Lots)

shall automatically and forever be released, relieved and absolved from any liability or responsibility therefor; and

(ii) the owner(s) of the Lots shall thereupon become third party beneficiaries of this instrument and the covenants made herein, and shall have the right to enforce the same (subject to Section 5(iii) below); and

(iii) commencing on the date that none of the Lots is owned by Five Star or its affiliate(s), any amendment or modification to, or termination of, this instrument, shall require the written consent of (in addition to the written consent of Grantee and the owner of the Easement Property), the written consent of the owner(s) of at least seven (7) of the eleven (11) Lots. For the avoidance of doubt, and notwithstanding the foregoing or anything herein to the contrary, so long as Five Star or its affiliate(s) own at least one Lot, any amendment or modification to, or termination of, this instrument, shall only require the written consent of the Grantee and the owner of the Easement Property.

6. If any of the provisions of this instrument or the application of that provision to any person or circumstances shall to any extent be invalid or unenforceable under applicable law, the remainder of this instrument or the application of the provisions to other persons or circumstances shall not be affected and each provision of this instrument shall be valid and enforceable to the fullest extent permitted by law.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has signed this Covenant and Grant of Easements on the date set forth below.

FIVE STAR EQUITY INVESTORS, LLC

By: _____
Name: _____
Title: _____

STATE OF OHIO)
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, the _____ of Five Star Equity Investors, LLC, an Ohio limited liability company, on behalf of the company.

Notary Public
My commission expires: _____

This instrument was prepared in its unexecuted form, without benefit of title exam, by Daniel E. Reitz, Esq., Graydon Head & Ritchey LLP, 312 Walnut Street, Suite 1800 Cincinnati, Ohio 45202.

DRAFT

EXHIBIT A

THE FIVE STAR PROPERTY

DRAFT

EXHIBIT B

THE EASEMENT PROPERTY

EXHIBIT C

THE LANDSCAPE PLAN