Chairperson Wiesehan stated that parking at short term rentals is a reoccurring issue, not just an issue for this short term rental.

Discussion was held between Commissioner Unes and Mr. Naven on the density cap for short term rentals. Mr. Naven stated that, if approved, this will be the first short term rental in the Homeowners Association (HOA).

Abbey Buehler, owner and applicant, was present. Ms. Buehler elaborated on the layout of the home (see Exhibit 2) and the proposed operations of the short term rental (see Exhibit 3). Ms. Buehler agreed to garage parking so long as this expectation is applied to all residencies in the neighborhood. Ms. Buehler asked if the driveway extension could be amended, rather than removed, to be compliant with current code.

Mr. Naven explained that code compliance is reviewed in full when new special use requests are made. Mr. Naven discussed the requirements for driveway extensions and stated that there does not appear to be enough room in the side yard for a driveway extension.

Chairperson Wiesehan opened the public hearing at 1:33 PM.

With no public testimony, public hearing was closed at 1:33 PM.

Discussion on the Findings of Fact was held.

Motion:

Commissioner Martin made a motion to approve with staff recommendations; seconded by Commissioner Heard.

The motion was approved unanimously by a viva voce vote 5 to 0.

PZ 1069-2022

Hold a Public Hearing and forward a recommendation to City Council on the request of Christopher Oswald for Northern Cardinal Ventures, LLC, to amend an existing Special Use Ordinance No. 15,584, as amended, in a Class C-2 (Large Scale Commercial) District for a Shopping Center to allow an Adult Use Cannabis Dispensary with Waivers for the property located at 7628 N Route 91. This includes properties located at 7618 N Route 91, 7708 N Route 91, 7716 N Route 91, 7806 N Route 91, and 7810 N Route 91, (Parcel Identification Nos. 13-11-200-013, 13-11-201-002, 13-11-201-003, 13-11-201-005, 13-11-201-006, 13-11-202-001, 13-11-203-002, and 13-11-203-003), Peoria, IL (Council District 4)

<u>Senior Urban Planner, Josh Naven, Community Development Department</u>, read the case into the record and summarized the request to amend an existing Special Use for a Shopping Center to add an adult use cannabis dispensary at 7628 N Route 91 in a multi-tenant commercial building.

The Development Review Board recommends approval of the request for an Adult Use Cannabis Dispensary without waivers and the following conditions:

- 1. Bicycle parking shall be installed pursuant to Section 8.1.6. of the Unified Development Code.
- 2. All parking areas shall adhere to the regulations from Section 8.1. of the Unified Development Code with respect to parking surface and handicapped & general parking striping and signage.
- 3. Landscaping shall comply with Section 8.2 of the Unified Development Code. A landscaping plan shall be submitted for a compliance review.
- 4. Site lighting shall comply with Section 8.5 of the Unified Development Code.
- 5. Roof-top mechanical units shall be screened pursuant to City Code Chapter 5, Section 301.
- 6. All appropriate building permits shall be obtained for the remodeling of the facility.
- 7. All proposed signs shall adhere to current requirements and shall be reviewed through a separate building permit process.

Mr. Naven summarized the objection of Jay Scholl, of Davis & Campbell L.L.C., legal counsel to Furniture Row USA LLC, that was distributed to all Commissioners prior to the meeting (see Exhibit 4).¹

Commissioner Heard asked if the City has considered adding language in the ordinance about density.

Commissioner Unes expressed objection to the petitioner's request, stating that the City needs density requirements on cannabis dispensaries because they are popping up like candy stores.

Chrissie Kapustka, Interim Corporation Counsel to the City of Peoria, on behalf of the Community Development Department, stated that the Reciprocal Easement Operating Agreement (see Exhibit 4, 5) does not prohibit this use. Ms. Kapustka discussed the density requirements of the State of Illinois, the proximity requirements of the City, and the number of operating (2) versus approved (6) cannabis dispensaries in the City.

Chairperson Wiesehan reaffirmed this statement through examples of said approved cannabis dispensaries in the City that have yet to begin business operations.

Ms. Kapustka stated that, if approval was granted through the Illinois Adult-Use Cannabis Social Equity Program, then the cannabis dispensary is free to reside next to an existing facility.

Discussion was held between Commissioner Barry and Ms. Kapustka on the local and state requirements of cannabis dispensaries versus the retail sale of alcohol.

Christopher Oswald, on behalf of the petitioner, was present. Mr. Oswald stated they are withdrawing any requests for waivers and stated they are in the process of meeting the conditions of the Development Review Board. Mr. Oswald objected to the violations mentioned in Exhibit 4.

Chairperson Wiesehan intervened to state that this issue is a private matter to be dealt with between the property owners.

Discussion was held between Chairperson Wiesehan and Mr. Oswald concerning Mr. Oswald's communication with the surrounding neighbors.

Discussion was held between Chairperson Wiesehan and Justin Carrey, of Northern Cardinal Ventures, LLC., regarding the status of licensing through the State.

Mr. Oswald outlined the proposed security operations and signage of the business.

Leo Clavel, of Northern Cardinal Ventures, LLC., discussed the timeline of construction and the prospective opening date of April or May of 2023.

Chairperson Wiesehan opened the public hearing at 2:06 PM.

Peter Mangieri, owner of 7716 N. Route 91, objected to the cannabis dispensary on behalf of the current tenet, Double A's. Mr. Mangieri stated that the cannabis dispensary may close for similar reasons as the previous tenet of this building, the Tilted Kilt. Mr. Mangieri discussed further objections, including the location and high traffic of children and families in the area that utilize the Louisville Slugger facility and nearby hotels and restaurants.

Mr. Scholl objected to the cannabis dispensary because the use does not match the family-like nature of the surrounding development. Mr. Scholl explained that the agreement (see Exhibit 4, 5) is a factor to consider, not a prohibition of approval, because the inconsistent use may be detrimental to surrounding businesses.

¹ Exhibit 4 references the Reciprocal Easement and Operating Agreement and Declaration of Restrictions outlined in Exhibit 5

Discussion was held between Nathan Hoerr, CEO of Hoerr Nursery, located at 8020 N Shade Tree Dr., and Mr. Naven regarding the distribution requirements of public hearing notices.

Mr. Hoerr concurred with Mr. Mangieri's testimony.

Discussion was held between Mr. Hoerr and Ms. Kapustka regarding proximity requirements as they pertain to the surrounding developments.

Brian Mooty, on behalf of the Peterson Companies, LLC., owners of Wingate by Wyndham, located at 7708 N Route 91, stated that an agreement was made between the petitioner and the hotel owner regarding the installation of a privacy fence between the two businesses. Mr. Mooty requested the agreement be included in the Special Use upon approval.

John Hoerr, 7914 N Route 91, objected to the cannabis dispensary based on the potential adverse effects of cannabis dispensaries, such as vandalism, theft, and trespassing, and the potential risk of these actions occurring at Hoerr Nursery.

In response, Mr. Oswald explained that they will take measures to prevent said actions.

There being no further public testimony, Chairperson Wiesehan closed the public hearing at 2:24 pm.

Chairperson Wiesehan explained that Planning & Zoning Commission is bound by statutes created by City Council, and thus, the PZC must base their decisions on these ordinances.

Discussion on the Findings of Fact was held.

Motion:

Commissioner Heard made a motion to approve per staff recommendations and the agreement made between the petitioner and the Peterson Companies, LLC.; seconded by Commissioner Martin.

The motion was approved by a viva voce vote 4 to 1. Yea: Edward Barry, Eric Heard, Branden Martin, and Mike Wiesehan – 4. Nay: Richard Unes – 1.

PZ 1072-2022

Hold a Public Hearing and forward a recommendation to City Council on the request of the City of Peoria to Amend Appendix A, the Unified Development Code, relating to Family Care Facilities.

Assistant Director, Leah Allison, Community Development Department, requested to defer this case to the November meeting to allow more time for research and preparation.

Motion:

Commissioner Martin made a motion to approve with staff recommendations; seconded by Commissioner Barry.

The motion was approved unanimously by a viva voce vote 5 to 0.

DISCUSSION ON FUTURE ELECTION OF OFFICERS

Discussion was held between Ms. Allison and Commissioner Unes regarding term limits.

Commissioner Heard made motion to maintain the acting Chairperson, Mike Wiesehan; seconded by Commissioner Unes.

The motion was approved unanimously by a viva voce vote 5 to 0.

DAVIS & CAMPBELL L.L.C.

401 Main Street, Suite 1600 Peoria, Illinois 61602 309.673.1681 309.673.1690 fax

VIA EMAIL ONLY

City of Peoria Planning & Zoning Commission 419 Fulton St. Room 400 Peoria, IL 61602 lallison@peoriagov.org

Re: Case No. PZ 1069-2022 Written Objection

To Whom It May Concern:

By way of introduction, my name is Jay Scholl, and I am an attorney at Davis & Campbell L.L.C. in Peoria, Illinois. We serve as legal counsel to Furniture Row USA LLC ("Furniture Row"), which owns a parcel of real property immediately adjacent to the real property on which a proposed amendment is sought to Special Use Ordinance No. 15,584 ("Special Use Ordinance"). On its property, Furniture Row operates four retail furniture stores that employ almost two dozen individuals.

We write to raise an objection, on behalf of Furniture Row, to the proposed amendment to the Special Use Ordinance, as the proposed special use as a cannabis dispensary is: (i) inconsistent with the character of the surrounding development; (ii) overly dense in light of the approval last month of a similar facility less than one mile away; and (iii) prohibited by the applicable Reciprocal Easement Operating Agreement.

Inconsistent with Character of the Surrounding Development

First, the nature of this proposed cannabis dispensary is entirely opposed to the character of the surrounding development as a family-friendly area. The Shoppes at Grand Prairie Mall ("Grand Prairie") and the surrounding business area is an outdoor-focused, walking friendly area that attracts both children of all ages and adults. Grand Prairie provides both indoor and outdoor recreational areas for children and their families to play. Grand Prairie is the home to a ballet dance studio, Cornerstone Academy for the Performing Arts, which provides multiple classes to children of different ages and skill levels. Nearby, the Louisville Slugger Sports Complex holds children's sports games and competitions and serves as a major family tourism draw to the area. There are several hotels nearby to accommodate the family-focused tourism aspect of the business development area. Grand Prairie and its surrounding businesses have developed a strongly positive reputation within the Peoria community as a family-friendly shopping and entertainment location. Permitting the opening of a cannabis dispensary within that business development area runs entirely contrary to the purpose, reputation, and character of Grand

Prairie and its surrounding businesses. Allowing a cannabis dispensary to open in such a familyfriendly area may result in a significant decrease in family tourism and lower the number of children and families accessing businesses and play areas, causing significant harm to both the local community and the local businesses located at Grand Prairie.

Density of Cannabis Dispensaries

Second, this Planning and Zoning Commission at its September meeting permitted the amending of Special Use Ordinance Nos. 13,111 and 13,194 to allow a cannabis dispensary to open in Willow Knolls Shopping Center ("Willow Knolls"), less than a mile away from this proposed cannabis dispensary. The overall character of the area between Willow Knolls and Grand Prairie is vehicle-friendly and easily drivable, with War Memorial Drive connecting the two areas and rendering them mere minutes away from each other. Although two cannabis dispensaries located nearly a mile from each other may be an appropriate distance in a high-density urban area, in the North Peoria area, two cannabis dispensaries that are two minutes or less from each other is too high a density for the area to support. The Willow Knolls cannabis dispensary that has already been approved by this Planning and Zoning Commission will be easily capable of servicing the Grand Prairie area due to its proximity and easy drivability.

Violation of Reciprocal Easement Operating Agreement

Third, all the businesses within the Prairie Meadows and Prairie Crossing developments are subject to a Reciprocal Easement Operating Agreement that runs with the land. Section 4.1(a) of the Reciprocal Easement Operating Agreement states a permanent use restriction upon the properties within the Prairie Meadows and Prairie Crossing developments (emphasis added):

No portion of Prairie Meadows or Prairie Crossing shall be used for:

(a) Any massage parlor, strip show, lingerie exhibition or shop or establishment for the sale, display, viewing, or exhibition of pornographic or "adult" materials... or any so called "head shop" or other establishment for the sale of times [sic] or paraphernalia that may be utilized in connection with the use of illegal drugs.

The prohibition against "head shops," as included in the Reciprocal Easement Operating Agreement, clearly includes businesses which traffic in recreational and illegal drugs. Recreational cannabis, although no longer illegal within the State of Illinois, is still a Schedule I substance under the federal Controlled Substances Act and is still federally illegal to sell, possess, or consume. Furthermore, "head shop" is defined by the Merriam-Webster Dictionary to mean "a shop specializing in articles (such as hashish pipes and roach clips) of interest to drug users." Thus, a cannabis dispensary cannot open within the Prairie Meadows or Prairie Crossing developments without violating the permanent use restrictions within the reciprocal easement.

Conclusion

To conclude, permitting the amending of this Special Use Ordinance and allowing a cannabis dispensary to open within Grand Prairie's business development area runs contrary to the nature and character of the surrounding area and will have a negative impact on the family-friendly nature of the area. It will harm both the local community and the businesses operating in and around Grand Prairie. Furthermore, because of the overall population density and ease of travel within the area, permitting a second cannabis dispensary to open within a mile of another that was approved one month ago, is unnecessary. Anyone desiring to frequent the proposed cannabis dispensary in Grand Prairie would be less than a two-minute, one mile drive away from the cannabis dispensary that was just approved in Willow Knolls. Finally, the Reciprocal Easement Operating Agreement binding the businesses within the Prairie Meadows and Prairie Crossing prevents the opening and operation of "head shops", which includes cannabis dispensary to open within those developments. We therefore encourage this Planning and Zoning Commission to deny the application made to amend the Special Use Ordinance.

Very truly yours,

Jay H. Scholl Davis & Campbell L.L.C. 401 Main Street, Suite 1600 Peoria, IL 61602 Tele: (309) 673-1681 Fax: (309) 673-1690 jhscholl@dcamplaw.com

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Exhibit 5, pg. 1

1 04-10028 FILED PEORIA COUNTY STATE OF ILLINOIS RECIPROCAL EASEMENT AGREEMENT AND DECLARATION 04 MAR 19 14 18 OF RESTRICTIONS RECORDER OF DEEDS **Prepared By:** Karl B. Kuppler Hasselberg, Rock, Bell & Kuppler, LLP 4600 North Brandywine Drive, Suite 200 Peoria, Illinois 61614 After Recording Mail to: Karl B. Kuppler Hasselberg, Rock, Bell & Kuppler, LLP 4600 North Brandywine Drive, Suite 200 Peoria, Illinois 61614 4000 RECIPROCAL EASEMENT AND OPERATING AGREEMENT AND DECLARATION OF RESTRICTIONS

THIS RECIPROCAL EASEMENT AGREEMENT AND DECLARATION OF RESTRICTIONS ("Agreement") is entered into on the 12th day of 100(Ch, 2004, by and among Cullinan Companies, L.L.C., an Illinois limited liability company ("Cullinan"), and WCT Property, Inc., an Illinois Corporation ("WCT").

RECITALS

WHEREAS, WCT is the owner of a parcel of land consisting of approximately 10 acres in Peoria, Illinois which is legally described in Exhibit A attached hereto and made a part hereof (Prairie Crossing);

WHEREAS, Cullinan is the owner of a certain tract of land consisting of approximately 5 acres in Peoria, Illinois which is legally described in Exhibit B attached hereto and made a part hereof (Prairie Meadow);

WHEREAS, certain common area improvements are to be construed, maintained and repaired from time to time in order to serve and benefit Prairie Meadow; and

WHEREAS, certain common area improvements are to be constructed, maintained and repaired from time to time in order to serve and benefit Prairie Crossing; and

WHEREAS, WCT and Cullinan desire to grant to the owners and occupants within Prairie Meadow and Prairie Crossing, respectively, certain easements for the use and benefit of certain improvements within each respective Tract.



Exhibit 5, pg. 2

NOW THEREFORE, for and in consideration of the casements, covenants, conditions, and encumbrances contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

SECTION 1: IMPROVEMENTS TO PRAIRIE MEADOW

1.1 <u>Signalized Intersection</u>. Cullinan hereby acknowledges that a signalized intersection and an access drive (collectively the "Signalized Intersection") will be located opposite at the east access to American Prairie Drive and Route 91, Peoria, Illinois, as more particularly described and depicted on Exhibit C attached hereto (the "Signalized Intersection"). Cullinan hereby grants to WCT and its respective agents, occupants, guests, invitees, tenants, customers and employees a non-exclusive, perpetual easement for pedestrian and vehicular (including but not limited to delivery and service trucks) ingress and egress on, over and across the Signalized Intersection from and to Route 91 as depicted on Exhibit C.

1.2 Construction of Signalized Intersection Improvements. Upon and concurrent with the construction of the loop drive provided for in Paragraph 2.1, Cullinan shall construct the Signalized Intersection improvement described in Exhibit C. Construction shall begin after state approval of the intersection drawings and issuance of a state permit, which the parties anticipate by May 1, 2004. Cullinan and WCT shall share in the construction costs of the Signalized Intersection and WCT shall pay for 2/3 of the cost and Cullinan shall pay 1/3 of the cost of construction. Costs of construction shall include actual construction costs and engineering. At such time as Cullinan is prepared to start construction, WCT and Cullinan shall deposit the funds for construction and engineering based on the actual contracts for construction and engineering into an escrow account. The estimate by Clark Engineers, attached hereto as Exhibit D, details a breakdown of the estimated costs to be paid by each party. Requests for funds in excess of Exhibit D shall be accompanied by change orders, which shall be agreed by the parties.

1.3 <u>Maintenance of Signalized Intersection</u> Cullinan shall maintain (including but not limited to snow and ice removal and repair and replacement of bituminous pavemul/asphalt) in a good, clean and safe condition, reasonable wear and tear and casualty excepted, the Signalized Intersection. Cullinan shall have the right to subdivide Prairie Meadow. In such event each subsequent lot owner in Prairie Meadow shall have a non-exclusive, perpetual casement for pedestrian and vehicular (including but not limited to delivery and service trucks) ingress and egress on over and across the Signalized Intersection to and from Route 91 as depicted on Exhibit C. Each subsequent lot owner shall pay its proportionate share of maintenance. Cullinan shall have the right upon the sale of 100% of the outlots to create a Property Owners Association to perform the maintenance described herein. Each such party responsible for the maintenance and repair of the Signalized Intersection shall be responsible for the ratio Proportionate Share of the costs and expenses incurred to maintain and repair the Signalized Intersection. For purposes of this Agreement, each party's "Proportionate Share" shall be equal to the ratio by which the acreage of each subdivided Lot bears to the total acreage of Prairie Meadows. Cullinan shall collect for the costs of maintenance from the Lot Owners until such time as Cullinan retates a Property Owners Association to perform such maintenance.

1.4 Obstruction. Cullinan shall not unreasonably obstruct or interfere in any way

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Exhibit 5, pg. 3

with the free flow of pedestrian and vehicular ingress and egress on, over and across such Signalized Intersection, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control. During the course of any maintenance or repair to the Signalized Intersection, Cullinan shall use reasonable efforts to provide alternative ingress and egress from and to Route 91 so as to not unreasonably interfere with the normal course of business conducted on said Lots.

1.5 The obligations and benefits herein shall run with the land and shall inure to the successors and assigns of the parties hereto.

SECTION 2. IMPROVEMENTS TO PRAIRIE CROSSING

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2.1 Loop Drive. Upon and concurrent with the construction of the building improvements on Prairie Crossing, WCT Properties, Inc. shall construct at its cost and expense, or cause to be constructed, an access drive on, over and across that portion of Prairie Crossing (using substantially the same construction materials and substantially in accordance with the specifications used to construct the Signalized Intersection access drive) as described and depicted on Exhibit C attached hereto (the "Loop Drive"). The Loop Drive shall include a right in, right out access to Route 91. WCT hereby grants to Cullinan, and its respective agents, occupants, guests, invitees, tenants, customers and employees, a non-exclusive, perpetual easement for pedestrian and vehicular (including but not limited to delivery and service trucks) ingress and egress on, over and across the Loop Drive from and to Route 91.

2.2 <u>Mainterfance of Loop Drive</u>. WCT shall maintain (including but not limited to snow and ice removal and repair and replacement of bituminous pavement/asphalt) in a good, clean and safe condition, reasonable wear and tear and casualty excepted, the Loop Drive. WCT shall have the right to subdivide Prairie Crossing. In such event each subsequent lot owner in Prairie Crossing shall have a non-exclusive, perpetual easement for pedestrian and vehicular (including but not limited to delivery and service trucks) ingress and egress on over and across the Loop Drive as depicted on Exhibit C. Each subsequent lot owner shall pay its proportionate share of maintenance. WCT shall have the right upon the sale of 100% of the outlots to create a Property Owners Association to perform the maintenance described herein. Each party responsible for the maintenance of the Loop Drive shall be responsible for their respective Proportionate Share of the costs and expenses incurred to maintain and repair the Loop Drive. For purposes of this Agreement each party's "Proportionate Share of shall be the acreage of Prairie Crossing.

2.3 <u>Obstruction</u>. WCT shall not unreasonably obstruct or interfere in any way with the free flow of pedestrian and vehicular ingress and egress on, over and across such Loop Drive, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control. During the course of any maintenance or repair to the Loop Drive, WCT shall use reasonable efforts to provide alternative ingress and egress from and to Route 91 to and from Prairie Crossing so as to not unreasonable interfere with the normal course of business conducted on said Lots.

2.4 The obligations and benefits herein shall run with the land and shall inure to the

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successors and assigns of the parties hereto.

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SECTION 3: OTHER EASEMENTS.

3.1 <u>Storm Sewer Easement</u>. Cullinan hereby grants to WCT an easement for storm sewer and storm water trainage as follows:

(a) <u>Temporary Construction Easement</u>. If WCT is prepared to construct a building prior to Cullinan's construction on Prairie Meadows, Cullinan shall grant WCT a temporary construction easement along the East side of Prairie Meadows immediately adjacent to Route 6. WCT shall have the right to construct a drainage ditch to temporarily serve as a stormwater drain, carrying water to the Hoerr Lake provided that WCT obtains an easement from Hoerr. If WCT fails to obtain an easement to use the Lake, WCT shall retain its stormwater on Prairie Crossing.

(b) <u>Permanent Easement</u>. At such time as Cullinan is prepared to construct a building on Prairie Meadows, Cullinan shall construct a storm sewer of sufficient capacity to transport stormwater from Prairie Crossing and Prairie Meadows. Such storm sewer shall run from Prairie Meadows property line at a location selected by Cullinan, across Cullinan's property, across CILCO and to the Hoer Lake subject to WCT obtaining an easement from Hoerr to utilize the Hoerr Lake. Cullinan shall grant WCT a permanent non-exclusive easement to use the storm sewer. WCT shall pay to Cullinan two-thirds of the actual construction and engineering costs for the storm sewer and two-thirds of the cost for the easement over CILCO property. When construction of the storm sewer is complete, WCT shall cease use of the drainage ditch for stormwater and the temporary drainage easement shall terminate. At such time if Cullinan requests in writing, WCT shall fill the drainage ditch. WCT's obligations to reimburse Cullinan for costs with respect to the storm sewer shall be contingent upon WCT obtaining an easement from CILCO and Hoerr to utilize the Hoerr lake.

3.2 Sanitary Sewer and Water Easement. Cullinan hereby grants to WCT a 35' temporary construction easement and a 20' permanent non-exclusive easement for a sanitary sewer main and a water main along the Western edge of Prairie Meadows. WCT hereby grants to Cullinan a construction and permanent non-exclusive easement along the Northern property line of Prairie Crossing for a sanitary sewer and a water main. The sanitary sewer and water shall connect to an existing sanitary sewer and water main on the West side of Route 91 at American Prairie Drive, shall cross under Route 91, shall run along the Westermmost property line of Prairie Meadows, along the Northern property line of the cost of the extension, then at such time as Cullinan connects, Cullinan shall pay WCT one-third of the cost of the extension. If Cullinan constructs, then at such time as WCT construction. Costs of construction shall include the actual construction cost and the cost of engineering and permit fees. Each party shall pay their own tap on fees and connection fees due to the City of Peoria. The exact route and dimensions of the permanent storm sewer easement and the sanitary sewer for a sumitary sewer for a sumitary bistrict and to Illinois American Water Company and any fees due to the City of Peoria.

and water easement shall be shown on a plat to be recorded when the route and dimensions have been determined by Clark Engineers.

SECTION 4. USE RESTRICTIONS

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4.1 <u>Use Restrictions</u>. Each party hereto agrees that no portion of Prairie Crossing may be leased, used, or occupied as or for any of the following purposes:

(a) any building in excess of three stories in height; provided however a four story building meeting with Cullinan's express written approval (in Cullinan's sole discretion) may be permitted.

(b) for a period of four (4) years from the date of this Agreement, the use of Prairie Crossing shall be limited to one (1) retail "big box" store of a minimum of 20,000 square feet, hotel, restaurants and one (1) office building not to exceed 20000 square feet.

No portion of Prairie Meadows or Prairie Crossing shall be used for:

(a) any massage parlor, strip show, lingerie exhibition or shop or establishment for the sale, display, viewing or exhibition of pomographic or "adult" materials, including, without limitation, magazines, books, movies, videos and photographs or any so-called "head shop" or other establishment for the sale of times or paraphernalia that may be utilized in connection with the use of illegal drugs;

(b) flee markets or swap meets;

(c) any use which constitutes a public or private nuisance, produces noise or sound that is objectionable due to frequency, shrillness or loudness (including the use of exterior loud speakers, produces noxious odors or smoke, produces fire explosion or other hazards or produces toxic or noxious fuel or gas.

SECTION 5. OFF PREMISE SIGN.

Cullinan shall construct and maintain at Cullinan's cost an off premise sign at the location shown on Exhibit C. Cullinan shall be responsible for obtaining all permits required for construction of the sign and the sign shall comply with all City and State sign regulations. WCT agrees not to construct a sign along route 6 which would be so located as to prohibit Cullinan's off-premise sign under either City or State sign regulations.

SECTION 6. COST REIMBURSEMENT/ESCROW

6.1 Within 30 days of execution of this Agreement WCT shall pay to Cullinan the sum of \$19,175.75 as reimbursement to Cullinan for work performed on Prairie Crossing which benefits WCT.

6.2 The parties shall construct the public improvements (water, sewer, grading, roadways) utilizing Chris West of Cullinan for coordination services including bidding and construction coordination and supervision at a fee to be paid Cullinan of \$20,000. Cullinan shall pay 1/3 and WCT shall pay 2/3 of the fee. Each party shall deposit their share of the construction costs as provided herein into a construction escrow account for payment to the constructors. The escrow account will provide for lien waivers and title insurance over mechanics liens.

SECTION 7. PRAIRIE MEADOWS PROPERTY OWNERS' ASSOCIATION.

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7.1 Creation of Association. Cullinan shall have the right to grant and convey all its rights to enforce this Declaration and all conditions, reservations, restrictions and covenants stated herein to Prairie Meadows Property Owners' Association, at such time as in the sole judgment of Cullinan the Association is ready to assume those rights. Upon the conveyance and grant of its rights by Cullinan, the Association shall have and shall succeed to all rights and duties with the same powers as if the Association had been the Developer except for the rights under Section 5. Off Premise Sign which shall remain in Cullinan's power. Such grant of powers shall be made in writing by Cullinan and recorded as a Notice of Formation of the association in the office of the Peoria County Recorder and shall be deemed accepted immediately by the Association without action by it. Prior to the organization of under succeation, Cullinan shall have all rights which the resociation hereto, the right to levy assessments.

7.2 <u>Organization</u>. An Owners' Association (the "Association") shall be formed for the purpose of facilitating the administration and operation of the Premises.

(a) Each Owner's vote shall be equal to the square footage of the lot owned by the Owner as compared to the total square footage within Prairie Meadows.

(b) The Association shall be responsible for managing and maintaining the Signalized Intersection, any private roadways, driveways and storm sewers.

7.3 <u>Membership</u>. Upon the organization of the Association, each Owner shall be a member of the Association and each purchaser by acceptance of the deed therefore, covenants and agrees to become a member of the Association whether or not it shall be so provided in any such deed or other conveyance; provided, however, that any such preson or entity who hold such interest merely as security for the performance of an obligation shall not be a member.

Membership in the Association shall automatically terminate upon the sale, transfer or other disposition of a member's interest in the Premises at which time the new Owner of such title interest shall automatically become a member thereof. An owner may assign its right but not its obligation to an Occupant. No member shall have any right or power to disclaim, terminate or withdraw from his membership in the Association or form any of his obligations as such member.

7.4 <u>Cost Per Member.</u> All members of the Association agree to participate in their pro rata share of any charges by the Association levied to accomplish the purposes of the

Association. Pro rata share shall be determined by the amount square footage of the lot owned by the member versus the total square footage of lots within the Prairie Meadows. If payment of such pro rata share, after assessment by the Association, is not made by the date provided by Association, then such pro rata share, plus interest at ten percent (10%) per annum from the date due, plus attorney's fees incurred in collecting the amounts due shall be the obligation of the member; and until paid, the charges plus such interest and attorney's fees shall become a lien on the lot owned by the member.

7.5 <u>By-Laws.</u> At the time of the incorporation of the Association, Cullinan hereby agrees to establish By-Laws of the Association.

7.6 <u>Rules and Reservations</u>. The Association shall have the right to make additional rules and regulations the Premises, including use of property but shall not take away any rights granted under this Declaration.

SECTION 8. PRAIRIE CROSSING PROPERTY OWNERS' ASSOCIATION.

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8.1 Creation of Association. WCT shall have the right to grant and convey all its rights to enforce this Declaration and all conditions, reservations, restrictions and covenants stated herein to Prairie Crossing Property Owners' Association, at such time as in the sole judgment of WCT the Association is ready to assume those rights. Upon the conveyance and grant of its rights by WCT, the Association shall have and shall succeed to all rights and duites with the same powers as if the Association had been the Developer except for the rights under Section 5. Off Premise Sign which shall remain in WCT's power. Such grant of powers shall be made in writing by WCT and recorded as a Notice of Formation of the association is diffice of the Peoria County Recorder and shall be deemed accepted immediately by the Association without action by it. Prior to the organization pursuant to this Declaration, including without limitation thereto, the right to levy assessments.

8.2 <u>Organization</u>. An Owners' Association (the "Association") shall be formed for the purpose of facilitating the administration and operation of the Premises.

(a) Each Owner's vote shall be equal to the square footage of the lot owned by the Owner as compared to the total square footage within Prairie Crossing.

(b) The Association shall be responsible for managing and maintaining the Loop Road, any privale roadways, driveways and storm sewers.

14-10028

8.3 <u>Membership</u>. Upon the organization of the Association, each Owner shall be a member of the Association and each purchaser by acceptance of the deed therefore, covenants and agrees to become a member of the Association whether or not it shall be so provided in any such deed or other conveyance; provided, however, that any such person or entity who hold such interest merely as security for the performance of an obligation shall not be a member.

Membership in the Association shall automatically terminate upon the sale, transfer or other disposition of a member's interest in the Premises at which time the new Owner of such

title interest shall automatically become a member thereof. An owner may assign its right but not its obligation to an Occupant. No member shall have any right or power to disclaim, terminate or withdraw from his membership in the Association or form any of his obligations as such member.

8.4 <u>Cost PeriMember.</u> All members of the Association agree to participate in their pro rata share of any charges by the Association levied to accomplish the purposes of the Association. Pro rata share shall be determined by the amount square footage of the lot owned by the member versus the total square footage of lots within the Prairie Crossing. If payment of such pro rata share, after assessment by the Association, is not made by the date provided by Association, then such pro rata share, plus interest at ten percent (10%) per annum from the date due, plus attorney's fees incurred in collecting the amounts due shall be the obligation of the member; and until paid the charges plus such interest and attorney's fees shall become a lien on the lot owned by the member.

 $8.5 \quad \underline{By-Laws}. \quad At the time of the incorporation of the Association, WCT hereby agrees to establish By-Laws of the Association.$

8.6 <u>Rules and Reservations</u>. The Association shall have the right to make additional rules and regulations the Premises, including use of property but shall not take away any rights granted under this Declaration.

SECTION 9. MISCELLANEOUS PROVISIONS.

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9.1 <u>Easements and Restrictions Run With The Land.</u> The terms, covenants, conditions and provisions of this Agreement shall run with the land and be binding upon and inure to the benefit of and be an obligation of the respective parties and their successors and assigns, including the owner at anytime of any portion of Prairie Crossing or Prairie Meadow.

9.2 <u>No Merrer</u>. The easements, rights and obligations created hereunder shall not merge or be otherwise impaired or affected by reason of the common ownership of the burdened property or the benefitted property, or any portions thereof.

9.3 <u>No Public Rights</u>. This Agreement is not intended, nor shall it be interpreted, to create any public rights whatsoever in any of the easements or property on, over or across which any of the easements are located or otherwise.

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9.4 <u>No Partiership</u>, Joint Venture or Principal-Agent Relationship. Nothing in this agreement contained nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of joint venture, or of partnership, or of association between or among any of the parties to this Agreement.

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9.5 Breach.

(a) Parties With Remedies. In the event of a breach of this Agreement, only

the Associations and the record owners of Lots within Prairie Crossing and Prairie Meadows shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach.

(b) Remedies. If the owner of any Lot shall fail to perform any covenant or condition contained in this Agreement, the aggrieved party shall give the defaulting party at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of written notice of default (or if such default be not reasonably susceptible for being cured within said period of thirty (30) days after the service of written notice of default (or if such default be not reasonably susceptible for being cured within said period of thirty (30) days, and said defaulting party shall have not in good faith commenced curing such default within said thirty (3) day period and shall not thereafter prosecute curing such default with dilgence and continuity to completion) the aggrieved party may, in addition to all other remedies available herein or at law or equity, (i) institute legal proceedings for full and adequate relief from the consequences of said default or threatened defaulting party with the costs and expenses for completing such construction, maintenance or repair, plus an administrative fee not to exceed five percent (5%) of such costs and expenses. If such costs, expenses and fees may be filed against the Lot owned by said defaulting party, which lien may be forcelosed upon in the same Lot owned by said defaulting party, which lien may be forcelosed upon in the same same are an aretgage forcelosure and the non-defaulting party shall have the right to recover in addition thereto, the interest and all court costs and reasonable atomneys' fees.

(c). <u>Right of Entry.</u> The defaulting party hereby grants to the aggrieved party a non-exclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting party's Lot (excluding the right to enter any buildings demised to or owned by others) for all purposes reasonably necessary to enable the aggrieved party (acting directly or through agents, contractors, or subcontractors), to perform any of the terms, provisions, covenants or conditions of this Agreement which the defaulting party shall have failed to perform, after notice and time to cure, as aforesaid, but no notice and time to cure need be given in the event of any emergency.

9.6 Indemnification/Insurance.

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(a) <u>Indemnification</u>. The owner of each Lot hereby indemnifies and saves the owners of all of the other Lots within the Prairie Meadow and Prairie Crossing harmless from and against any and all liability, damage, causes of action, suits, claims, judgments costs and expenses (including but not limited to reasonable attorneys' fees) (collectively the "Claims") arising out of or otherwise due to the breach or failure to comply with the terms, conditions, covenants and restrictions set forth herein by said Lot owner, save and except for such Claims caused by the negligence or willful misconduct of the other party hereto.

(b) <u>Insurance</u>. The owner of each Lot shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage

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occurring upon, in or about its Lot, each party's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. The owner of each Lot shall provide the owners of the other Lots with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance carried by the party which may premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the Lot covered by this Agreement. Such insurance shall provide that the same may not be canceled without thirty (30) days prior written notice to the other parties. Policies of insurance provided for in this Section 7.6(b) shall name the owner of each Lot as additional insureds as their respective interest may appear, and each of them shall provide to the other certificates evidencing the fact that such insurance has been obtained.

9.7 Duty to Keep Easements Free of Liens. Each grantee hereunder shall allow no liens to attach to the easement property, and if such liens attach, the grantee shall promptly take appropriate action to have such liens removed, provided, however, the attachment of such lien shall not be due to the acts or negligence of the owner of such easement property. Notwithstanding the foregoing, the owner of any portion of the easement property may mortgage said property, provided that any such mortgage shall be subordinate to the easement rights created hereunder.

9.8 <u>Attorney's' Fees.</u> If any party herein brings an action to enforce this Agreement, the prevailing party shall be entitled to costs and reasonable attorney fees to be paid by the non-prevailing party.

9.9 <u>Incorporation of Recitals</u>. The Recitals set forth in this Agreement are by this reference incorporated herein and made a part hereof.

9.10 <u>Rights and Obligations of Lenders</u>. If by virtue of any right of obligation set forth herein a lien shall be placed upon any Lot, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Lot. Except as set forth in the preceding sentence, however, any holder of a first lien on any Lot, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

9.11 Execution, Modification and Cancellation. It is understood and agreed that until this Agreement is fully executed by the parties hereto there is not and shall not be an agreement of any kind between such parties upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of the owners of Prairie Meadows and Prairie Crossing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above first

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written

Callinan Companies LLC By: Its: President of Development

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Hies, Inc

STATE OF ILLINOIS)) SS. COUNTY OF LEARIO

I, the undersigned, a votary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that *Meff Giebe/haust*^m personally known to me to be the *Insident of Duest* Cullinan Companies, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such <u>Presiden</u>, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as such <u>Presiden</u>, and as the free and voluntary act of said corporation for the uses and purposes therein set forth; and on his oath stated that he was duly authorized to execute said instrument. instrument.

GIVEN under my hand and notarial seal this _____ day of _____ March____, 2004.

"OFFICIAL SEAL" SANDHAJ BIRDSALL NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 2/22/2005

"OFFICIAL SEAL" SANDRA # BIRDSALL NOTARY PUBLA, "STE OF ILLINOIS MY COMMISSION EXPIRES 2/22/2006

Jandra Y Budball Notary Public

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that <u>Ullie</u> <u>Torchia</u>, personally known to me to be the <u>Preside q</u> <u>I</u> of WCT Properties, Inc., an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such <u>President</u>, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as such <u>President</u>, and as the free and voluntary act of said corporation for the uses and purposes therein set forth; and on his oath stated that he was duly authorized to execute said instrument. stated that he was duly authorized to execute said instrument.

GIVEN under my hand and notarial seal this 12^{tt} day of March

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14-10028 Exhibit D - Reciprocal Easement Agreement.rti

Exhibit A

LEGAL DESCRIPTION

A part of the Northeast ¼ of Section 11, Township 9 North, Range 7 East of the Fourth Principal Meridian; being more particularly described as follows:

Principal Meridian, being more particularly described as follows: Commencing at the Northwest corner of the Northeast ¼ of said Section 11; thence South 89 degrees 53 minutes 16 seconds East along the North line of the Northeast ¼ of said Section 11, a distance of 833.33 feet to a point on the Westerly R.O.W. line of Interstate Route 474; thence South 16 degrees 31 minutes 02 seconds West along the Westerly R.O.W. line of Interstate Route 474, a distance of 157.21 feet; thence South 20 degrees 57 minutes 17 seconds West along the Westerly R.O.W. line of Interstate Route 474, a distance of 305.06 feet to the Pointe of Beginning of the tract to be described; thence continuing South 20 degrees 57 minutes 17 seconds West along the Westerly R.O.W. line of Interstate Route 474, a distance of 595.16 feet; thence South 25 degrees 05 minutes 25 seconds West along the Westerly R.O.W. line of Interstate Route 474, a distance of 400.50 feet; thence north 89 degrees 48 minutes 32 seconds West along the Westerly R.O.W. line of Interstate Route 474, a distance of 266.77 feet to a point on the Easterly R.O.W. line of Illinois Route 91; thence North 0 degrees 11 minutes 28 seconds East along the Easterly R.O.W. line of Illinois Route 91, a distance of 124.15 feet; thence North 89 degrees 48 minutes 32 seconds West along the Easterly R.O.W. line of Illinois Route 91, a distance of 10.0 feet; thence North 0 degrees 11 minutes 28 seconds East along the Easterly R.O.W. line of Illinois Route 91, a distance of 705.63 feet; thence North 89 degrees 48 minutes 32 seconds Rest along the Easterly R.O.W. line of Illinois Route 91, a distance of 10.0 feet; thence North 0 degrees 11 minutes 28 seconds East along the Easterly R.O.W. line of Illinois Route 91, a distance of 705.63 feet; thence South 89 degrees 48 minutes 32 seconds Rest, a distance of 656.38 feet to the Point of Beginning, situate, lying and being in the County of Peoria and State of Illinois.

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Permanent Index Number: 13-11-200-010

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Exhibit B

LEGAL DESCRIPTION

A part of the Northeast Quarter of Section 11, Township 9 North, Range 7 East of the Fourth Principal Meridian, being more particularly described as follows:

Commencing at the Northwest corner of said Section 11; thence South 89 degrees 53 minutes 16 seconds East along the North line of the Northeast Quarter of said Section 11, a distance of 833.33 feet to a point on the Westerly right of way line of Interstate Route 474, ithence South 16 degrees 31 minutes 02 seconds West along the Westerly right of way line of Interstate Route 474, a distance of 104.24 feet to the point of beginning of the tract to be described; thence continuing South 16 degrees 31 minutes 02 seconds West along the Westerly right of way line of Interstate Route 474, a distance of 104.24 feet to the point of 52.97 feet; thence South 20 degrees 57 minutes 17 seconds West along the Westerly right of way line of Interstate Route 474, a distance of 305.06 feet; thence North 89 degrees 48 minutes 32 seconds West a distance of 656.38 feet to a point on the Easterly right of way line of Illinois Route 91; thence North 0 degrees 51 minutes 28 seconds East along the Basterly right of way line of S2.01 feet; thence South 89 degrees 53 minutes 16 seconds East a distance of 779.42 feet to the point of beginning, as shown on the survey of Zumwalt & Associates, Inc., recorded July 12, 1988 in Tract Survey Book 23, Page 116, as Document No. 88-13708; situated in PEORIA COUNTY, ILLINOIS. Tax ID #254-13-11-200-009

AND ALSO BEING DESCRIBED AS:

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A part of the Northeast Quarter of Section 11, Township 9 North, Range 7 East of the Fourth Principal Meridian, being more particularly bounded and described as follows:

Commencing at a found brass disk being the Northwest corner of said Section 11; thence South 89°-53'-16" East (bearings assumed for description purposes only) along the North line of the Northeast Quarter of said Section 11, a distance of 831.86 feet to a point on the Westerly R.O.W. line of Interstate Route 474, a distance of 104.56 feet to a point on the Westerly R.O.W. line of Interstate Route 474, a distance of 104.56 feet to the Point of Beginning; thence continuing South 17°-06'-51" West along the Westerly R.O.W. line of Interstate Route 474, a distance of 51.50 feet; thence South 20°- 50'-23" West along the said Westerly R.O.W. line of Interstate Route 474, a distance of 305.06 feet to a found pipe; thence North 89°-55'-26" West, a distance of 655.27 feet to a found pipe, being on the Easterly R.O.W. line of Illinois Route 91; thence North 00°-52'-17" East, along the said Easterly R.O.W. line of Illinois Route 91, a distance of 335.01 feet; thence South 89°-53'-16" East, a distance of 73.86 feet to the Point of Beginning, as shown on the ALTA Survey dated May 6, 2002, done by Randolph & Associates, Inc., as Project No. 1231.002; situated in PEORIA COUNTY, ILLINOIS.

Permanent Index Number: 13-11-200-009

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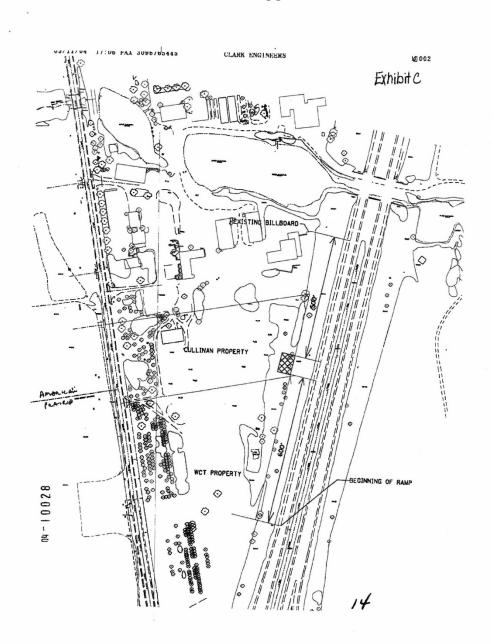


	Exhibit D		
	WCT	Cullinan	Total
Right In, Right Out	\$86,000		\$86,000
Signalized Intersection	\$41,334	\$20,667	\$62,001
Connect Signals to Loop	\$41,666	\$20,833	\$62,499
Loop Drive Payment	\$99,500		\$99,500
San. Sewer - 4 acres	\$75,100		\$75,100
Water - 4 acres	\$82,220		\$82,220
Торо	\$2,000	\$1,000	\$3,000
TOTALS	\$427,820	\$42,500	\$470,320

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