

## **City of Eudora Modified Public Meeting Procedure**

The City of Eudora will hold its regular Planning Commission meeting on Wednesday, September 2, 2020 beginning at 7:00 P.M. Due to the concerns of spread of COVID-19, the Planning Commission meeting will be held at City Hall, but some Planning Commission members will participate remotely. To meet the spirit and intent of the Kansas Open Meetings Act (KOMA), anyone can listen to the meeting live via a conference call. This access can be gained as follows:

Dial-in number (US): (701) 802-5407

Access code: 7548666#

If anyone wishes to make a public comment, they may do so by sending or e-mailing their comment to Planning Commission Secretary, Eric Strimple by 5:00 P.M. on Wednesday, September 2, 2020. Public comments can also be mailed to the Secretary at P.O. Box 650, Eudora, Kansas 66025 (please keep in mind delivery time; if they do not arrive by 5:00 P.M. Wednesday, September 2, 2020 they will not be read), submitted via the utility bill drop box on the east side of City Hall, or e-mailed to [estrimple@cityofeudoraks.gov](mailto:estrimple@cityofeudoraks.gov). The public comments will be read by the Secretary during the public comment portion of the meeting. All public comments must include the name and address of the person submitting the comment. Please remember that public comment is limited to 5 minutes per person.

Members of the Planning Commission, presenters, or staff will identify themselves when speaking so that everyone will know who is speaking at the time.

# AGENDA

## CITY OF EUDORA PLANNING COMMISSION

**Wednesday, 2 September 2020**

Regular Monthly Meeting at 7:00 p.m.

City Hall, 4 East 7th Street, Eudora, Kansas 66025

### Planning Commission Members

Grant Martin, Chairman  
Danielle Young  
Jason Hoover  
Johnny Stewart  
Tim Pringle  
Eric Strimple, Non-member Secretary  
Josh Harger, Vice-Chairman  
Dr. Ryan Rock

- **Call to Order: 7:00 p.m.**
- **Roll Call and Pledge of Allegiance**
- **General Business:**
  - a) Consider the minutes of the last regularly scheduled meetings (5 August 2020).
  - b) Reports:
    - i. Codes Administrator
      - 1. Curt Baumann
    - ii. City Manager's Office
      - 1. Barack Matite
- **Public Comment Period:** Non-agenda Items  
*Speakers limited to three (3) minutes for non-agenda items only. No action will be taken.*
- **Public Hearings:**
- **New Business:**
  - a) Nottingham Center Final Plat Development- Nottingham commercial development (1428 Elm Street).
- **Old Business:**

**Calendar:** Next Planning Commission meeting is Wednesday, 07 October 2020

### Adjournment

*Please call 785-542-3124 if unable to attend meeting, thank you.*

## Eudora Planning Commission Meeting Minutes

August 5, 2020

Grant Martin, Chair	Present
Danielle Young	Present, remote
Johnny Stewart	Absent
Jason Hoover	Present, remote
Tim Pringle	Present
Dr. Ryan Rock	Present, remote
Josh Harger, Vice Chair	Present, remote

### Additional Attendees:

Curt Baumann, Codes Administrator  
Dave Knopick, City Planning Consultant  
Barack Matite, City Manager  
Mary Miller, Douglas County Planner  
Chad Voigt, Douglas County Engineer

Quorum for Planning Commission noted and posted.

Meeting called to order at 7:00 PM by Chairman Martin.

The pledge of allegiance was recited.

### General Business:

- A. Swearing in of Jason Hoover, reappointed to the Planning Commission. Commissioner Hoover was sworn in by Secretary Eric Strimple.
- B. Consider minutes of the last regularly scheduled meetings, (04 March 2020)- **Commissioner Pringle made a motion to approve the 04 March 2020 meeting minutes as distributed**, Commissioner Harger seconded, all ayes, motion carried 6-0.
- C. Reports
  - a. Codes Administrator
    - i. Curt Baumann- Baumann stated the commission received four months of reports but he did not have the July report ready. He provided totals for July and the year so far, with 35 permits issued in July, 277 permits for the year, 15 of them being new housing starts.

b. City Manager

- i. City Manager, Barack Matite- Matite stated that since the last Planning Commission meeting there had been staff transitions in the City Administration office. Assistant City Manager, Leslie Herring, left the city to take a position in Westwood, KS as their City Administrator and Clerk. Jeffery Rhoades was promoted after his year in the management fellow program. He is now the Management Analyst. He also introduced management fellow intern, Lauren Freeman.

Matite mentioned multiple grants that the City has been awarded including a 1.3-million-dollar cost share grant for the Church Street improvements project and a grant for the completion of a walking trail at Luci Kaegi Park from the Kansas Department of Wildlife and Tourism.

Matite stated that construction on the Bluejacket Trail will begin on August 17, 2020 and should be completed by October of this year. He added that the Winchester waterline project should be completed within the next month.

He added that the about a month ago, the City Commission approved a resolution of intent to issue IRB bonds for a Canadian company, Modern Manufacturing, looking to expand to Eudora. If Eudora is selected, the company hopes to take over 1202 Cardinal Drive and would bring approximately 40 jobs.

Matite stated that there has been good progress with the Nottingham project and if all goes well public announcements will be made within the next few months.

Commissioner Pringle asked what type of work Modern Manufacturing does. Matite stated that they work on railroad products and make huts and lights you see along railroad tracks.

Public Comment Period: None heard

Public Hearings:

- A. **Public hearing: Final Development Plan application for the proposed Casey's within the Nottingham commercial development located at 1428 Elm Street, Eudora, KS** – City manager Matite stated that the city has been working with Casey's as part of the Nottingham redevelopment project and they will be the first tenants in the development.

Matite stated that a Preliminary Development Plan was presented and approved earlier in the year and as part of the process individual tenants will submit Final Development Plans, which is what Casey's will be presenting at the meeting.

Matite stated, there were a few deviation requests by Casey's that the city development team approved, but staff members were present to answer any questions.

Jeff Laubach with SBB Engineering, civil consultant for Casey's provided the Final Development Plan for the project, located at on the SW corner of 14<sup>th</sup> and Church St. General aesthetics of the sight was presented. He noted that the sight would have 6 pumps, or 12 fueling stations in a single row format, versus double stacking the pumps to help with congestion.

Laubach stated the store in Eudora will be approximately 4200 sq. feet in size, with general internal design as neighboring communities' stores.

He stated the trash enclosure will be located on the west side of the property and the underground tanks will be in the NE corner of the property. He added that there will be sidewalks on all sides of the property, with some being public and some being private sidewalks, and a bike rack will be placed on site for biking customers.

He noted there were modifications to the store look from the prototype store, noting brick on all sides of the store, a dumpster enclosure matching the brick of the store, and screening on back of the store to screen the rooftop units.

He briefly presented the fire truck access plan, utility plan, and landscape plan; that he stated, meet the requirements of the preliminary plan. He also noted outdoor lighting will be LED lights.

Laubach presented the sign package packet stating one key deviation from the development requirements. The monument sign to be placed on the SE corner of the property, per guidelines, should have a maximum height of 6', but Casey's is requesting it to be 13', to allow for branding and gas pricing.

He also noted another deviation request on the build. He stated the tenant finish requirements state that the roof tiles be slate, but due to cost, Casey's is proposing a shingle that simulates a slate roof.

Chairman Martin opened the Public Hearing.

Mark Grosdidier stated he is concerned about the access into the Casey's site from 14<sup>th</sup> and Locust and that he feels there will be added traffic through the residential area, and potentially decreasing property values of homes, including three that he owns on Locust.

Andy Gabbert with Renaissance Infrastructure Consulting spoke about the general traffic improvements planned for Church St in front of Casey's. He stated that there would be a dedicated left turn into the Nottingham project at the entrance that also will service the exit from the Sonic area across the street. He added that leaving the Nottingham project there will be a full turn allowing people to turn left or right.

Gabbert stated that there will be a dedicated left turn lane to turn onto 14<sup>th</sup> Street. He added that the private exit at 14<sup>th</sup> and Locust will have a right and left turn lane along with a through option as well.

No further comments. Chairman Martin closed the Public Hearing.

New Business:

- A. Final Planned Development application – Casey's General Stores, Inc.** – Dave Knopick, planning consultant, stated the application for the Final Development Plan for Casey's was received on June 12, 2020, and had been reviewed by staff and the development team. He stated that comments were provided by staff and the development team and provisions have been provided back to staff from the Casey's team.

Knopick stated the goal of the Planning Commission was to review the plans and see if the plans are consistent with the preliminary plan. Knopick noted the review criteria listed in the staff report that would deem a substantial change from the preliminary plan and noted that staff did not find any.

Knopick noted the list of tenant criteria guideline deviations requested by Casey's has been reviewed by staff and the development team and all are comfortable with the requests listed. He added the other deviations requested are with signage. Below are the proposed sign deviation requests.

**Signage – Monument sign:** Proposed monument sign dimensions exceed city sign regulations.

City Monument sign regulation	Casey's Monument sign
Max area – 64 sq. ft	Total area – 78.24 sq. ft
Max Ht. – 6 ft	Ht. – 13 ft

**Signage - Gas Canopy signs:** Three signs are proposed to be attached to the gas canopy. In the past one such sign has been allowed per business.

Chairman Martin brought the item back to the Commission for discussion.

Vice Chair Harger asked if the simulated slate shingle was an asphalt shingle. Laubach stated, yes.

Vice Chair Harger voiced concern about only having 45' between the gas island and the eastern edge of the parking lot due to feedback he has heard in town. He feels there may be issues with people blocking the flow of traffic when they have boats or trailers. Laubach

stated that Casey's standard width is 45'-50', and the Eudora location did not provide room to give more than 45' space.

Harger asked if there was a reason, they would not consider a single line of pumps running north and south. Laubach stated that Casey's has not done that type of configuration in recent years.

Chairman Martin asked all commissioners if there were any issues with the deviation request for a 13' monument sign, all commissioners noted no issues with the request.

Chairman Martin asked Laubach what would happen with the old Casey's underground tanks. Laubach stated the tanks would be removed, site cleaned up and more than likely be placed for sale with deed restrictions on what can go there. Martin asked if there was a timeline that could be provided. Laubach stated clean up would begin shortly after the opening of the new store.

**Commissioner Pringle moved to recommend approval of the final development plan application, including the identified deviations, with the following conditions:**

- 1. Clean up any general typographical / technical errors and add information as necessary to address previous staff review comments.**
- 2. Plat (final plat approval and recording / filing required prior to building permit issuance) the property encompassed by the proposed development in accordance with City regulations.**
- 3. Provide evidence of the establishment of the agency for the ownership and maintenance of any common open space and all assurances of the financial and administrative ability of such agency, as well as the provision of any covenants / restrictions (tenant criteria) as part of the final plat review and approval process.**
- 4. Address all design, development and construction details in a manner that meets City requirements through the final plat, public improvement plan, building / construction plan and other applicable permitting processes.**
- 5. Meet all applicable federal, state, and local regulations and acquiring applicable permits.**

Commissioner Hoover seconded, all ayes, motion carried, 6-0

Old Business:

- A. Review Conditional Use Permit Application: CUP 19-00568 (Within 3 miles of Eudora in Douglas County located at 1258 E 2300 Rd.) of Hamm Quarry to expand the current quarry operations.** – Dave Knopick, City Planning Consultant stated that the Commission has seen this item before, during the January 8, 2020 meeting and reviewed it at the request of

Douglas County. This item is outside the City, but in the 3-mile extra territorial area of Eudora. Knopick stated due to COVID-19 the hearing by the Douglas County Commission to hear the application was delayed and new supplemental information and public comments were provided to the county. Knopick added that due to the time frame that has past, along with the additional information that was supplied, the Douglas County Planning Commission wanted to give the Eudora Planning Commission an opportunity to see the additional items.

Knopick stated that county planning staff and the applicant are present to answer any questions from the planning commission. After all presentations and comments the planning commission will have a chance to add to the three criteria sent to the county if they see the need.

Chairman Martin turned the meeting over to HAMM Quarry attorney, Patrick Watkins.

Watkins stated there were several individuals present to assist with any questions. Watkins suggested to the commission to have Mary Miller, Douglas County Planner, present her report first and allow HAMM representatives to fill in gaps or answer concerns after her presentation.

Miller stated the applicant has applied for a Conditional Use Permit and is requesting three changes to the site:

1. To expand the quarry into a 50-acre parcel to the west, known as the Shelton Parcel
2. Increase the area that can be open and mined from the 50-acres.
3. Increase the sale hours.

Miller stated the quarry is within the 3-mile radius of Eudora and parallel to the Johnson County line, and notifications were given to residents in both Eudora and Johnson County. Miller stated what is known as the Petefish property at the quarry, began operations in 1966 and is now used as the operation center. She noted to the north of the Petefish property is a leased parcel known as the Neis property and in the original CUP that there could be no quarry to the east of the creek that runs through the site, or within 100' to the west of the creek. Miller stated the Shelton parcel, to the west of the Neis lease, is the parcel HAMM would like to add for mining.

Miller presented aerial maps to the commission to give visuals for the locations of setbacks and no blast zones.

Miller stated the reason the application is wanting to increase the dig area from 30 acres to 50 acres is to safely dig to a deeper level, allowing ledges to safely get equipment down to do the removal.

Miller stated for reference that the area surrounding the quarry are AG-1 and a few areas that are AG-2. She did note within the three miles there are many uses of land including a subdivision closer to Eudora and a rural subdivision in the county. Miller stated that the

truck route was established by the original CUP and quarry activity is limited to N 1200 Rd to access E 2200 Rd, but noted the applicant is wanting to use the existing access on the Shelton parcel as a limited quarry access, such as staff and blast company access to the site, with no large quarry vehicles using the entrance. She noted that Eudora township approved the entrance if no heavy trucks would be using it.

Miller noted with the applicant requesting increased hours, but the Eudora Planning Commission not wanting to see any increase in the intensity of daily operations county staff and the applicant proposed adjustments to the operating times of the quarry, to maintain no increase of the overall hours.

Miller noted the depth of the proposed ponds could be detrimental to the area, with the pond in the first phase being approximately 185 feet deep. County engineers noted with the depth of the ponds it would take approximately 8 years to fill, and that it would be a safety risk and recommended having the ponds fenced off with signs noting 'no trespassing' until they are filled to the planned water level. She noted the slope of the ponds would be 3:1 and with the requirements for the ponds outliving the life of the CUP a pond protection agreement would be executed between the quarry operator and the county and would be a condition of approval.

Miller noted the county planning commission forwarded the application for approval with 22 recommendations, she also noted that the CUP is tied to HAMM so if the quarry is sold then the CUP will have to be reviewed.

Chairman Martin asked Watkins to speak on behalf of HAMM quarry.

Watkins introduced all representatives from HAMM present, in person and remote. He noted that Mary Miller provided a comprehensive review of the proposed CUP. He stated that HAMM has been working with county planning staff since 2019 to gain approval that would allow the Eudora quarry to stay in operation. He added that the team is trying to be responsive to all the requests for information and conditions.

Miller stated that over the last few weeks they have received many comments on the proposal and noted that the county engineer addressed some of the maintenance and improvements to the roads, 2300 and 1200 Rd., and felt they were reasonable requests.

Watkins noted that after reclamation of the properties their plans have both ponds to remain at 3:1 until 25' below water level, which means there will be approximately 75' of gentle slopes before the pond drops off, but noted the estimates are up for change depending on the condition of the rock layers. He noted that the Neis property is a lease so when reclamation happens it will be a conversation with the state and the landowner.

Chairman Martin opened the floor for public comment.

Catherine Ellsworth, 2609 S. Fir Ter., Eudora, noted a strong opposition to the expansion of the quarry. Noting there is almost nothing that HAMM can say that would make her feel comfortable to the plan because it is adjacent to the urban growth area, making it too close to town.

Ellsworth noted in the reclamation plan from HAMM, the pond is supposed to be 200' feet deep. She added after visiting with multiple residence surrounding the quarry that no one was notified of the proposed changes. She stated that a resident by the quarry counted 300 trucks in one day and that there is no reason to not believe the residents. She asked the commission to proceed cautiously.

Chairman Martin asked the public attending remotely if they had any comments, none heard. Chairman Martin closed the public comments and brought the item back to the Planning Commission for discussion.

Chairman Martin asked if there were any additional comments from staff after the presentation. Knopick stated the commission may want to clarify the reclamation process of the property. It is staffs understanding that this land cannot be used as a landfill during the reclamation process. Secondly the increased anticipated traffic level.

Chairman Martin began. He stated after reviewing all the information provided, he had items of concern. He would like to see:

1. E. 2300 Rd used to access K10 for all quarry activities and eliminate the use of E 2200 Rd. noting concerns of E 2200 Rd with the schools located on E 2200 Rd and the cost to maintain the road on the city.
2. A path going from the quarry, either via County Line Rd or E 2300 Rd to the E 2300 Rd exit on K10, with gravel improved to chip and seal or asphalt and any bridges upgraded to handle the heavy traffic.
3. Note a condition that the quarry will not be used as a landfill.

Commissioner Young noted her concern with the use of E 2200 Rd and the schools as well.

Commissioner Pringle asked when HAMM was aware, they wanted to go down 200'. Was it something that came up within the last six months or was it known before they presented to the planning commission in January? Noting if it was before January, he felt the commission was miss led. He also noted concern of leaving a pond that deep for the landowner after the lease expires and the potential liability issue.

Watkins stated that the whole purpose of the request for 50 acres is to expand and allow them to get to the lower ledges and presented the same materials from the beginning.

Commissioner Pringle noted not recalling those details in January that were presented. Pringle asked if there was any intent to make it shallower before letting it fill up. Watkins

stated that there was no notification to them that the item was coming to the planning commission in January.

Commissioner Pringle stated moving traffic to E 2300 Rd would cause issues with dust and traffic there and does not have issues with the current path to E 2200 Rd on N 1200 Rd.

Commissioner Pringle asked if HAMM had any other quarries that went down 200'. Ryan Blosser, President of HAMM stated they did not, but Bob Roles with JCA may be able to answer that about other quarries in the area.

Roles noted that Johnson County Aggregates and HAMM quarry in Olathe are both mining the same ledges in those quarries. Commissioner Pringle asked how much area is required to mine at that depth. Roles stated he would have to review the CUP for those quarries.

Commissioner Harger asked for clarification for the approximate size of the pond once it is reclaimed. Watkins stated 14 acres on the Neis property is the estimated size.

Commissioner Harger asked about the pond on the Shelton property. Austin Quick, with Blackstone Environmental stated the proposed pond is 8-acres in water surface area.

Commissioner Harger asked if HAMM had any reclaimed quarry in recent years with a pond of that size. Ryan Blosser stated that in Herrington, KS there is a reclaimed property with a pond that is roughly 10 acres in size.

Commissioner Harger noted that he is concerned about the traffic using Church Street.

Commissioner Rock asked what the proposed traffic path is. Chairman Martin stated that the current traffic pattern would remain with traffic going west on 1200 Rd to access E 2200 Rd. Commissioner Rock asked if there was a traffic study conducted and if there was an estimate of how many trucks would be traveling the road a day.

Ramon Gonzales, Eudora HAMM quarry stated that his estimate is 87 trucks a day, but there may be peak days.

Commissioner Rock noted the issues of the trucks pulling out onto E 2200 Rd and the traffic traveling north going at 45 mph.

Commissioner Rock asked if the landfill could happen without any other applications. Mary Miller stated there is a condition in the original CUP stating the quarry cannot be used as a sanitary landfill. Ryan Blosser added that the current quarry is too far below grade to be used as a landfill, but under the current CUP they would be permitted to bring in inert fill, like dirt or rock from projects. Knopick added that inert fill is a standard routine of many quarries.

Commissioner Pringle asked if the Neis Estate has voiced any concern about the pond and its depth on the property. Watkins stated that he is not sure if a direct conversation has been had.

Watkins stated that HAMM has looked at E 2300 Rd and the cost would not warrant it based on the size of expansion requested.

Chad Voigt, engineer with Douglas County Public Works stated that taking E 2300 Rd to K10, would be 2 miles of road to improve and maintain, versus one mile of road, keeping the current travel path. He stated that to carry truck traffic the road would have to have 3-6" of asphalt on the road to bring it to the level needed. He added that E 2300 Rd does not make sense to the county.

Voigt noted that the county has already improved the intersection at N 1200 Rd and E 2200 Rd to make it better for the trucks to turn onto E 2200 Rd. He added that from the county's standpoint E 2200 Rd is a truck route and there are royalties to help maintain the road.

Commissioner Hoover stated his main concerns were the use of the property as a landfill, which has been answered. Hoover stated he has had some neighbors of the quarry that are concerned about the ground water and their wells.

Watkins stated that reports that have been received that mining at this level is good because of the dense rock. He added that HAMM is required to offer a hydrology study for any wells or springs within ½ mile and will offer the study again before the next blast on the Shelton parcel.

Austin Quick, Blackstone Environmental noted studies received so any issues would not be seen for a long period of time.

Commissioner Rock asked what would happen if the traffic does not work using N 1200 Rd, can it be looked at and what recourse would the city have. Knopick stated it would go back to the county.

Commission Pringle asked if the CUP is reviewed. Mary Miller stated that it is reviewed every five years, but it is hard to add additional conditions to an existing CUP. Current conditions not being met though may be addressed and brought to the county.

Knopick asked the commission if they would like to have wording in the effects of having a traffic study done annually and provide it to the county. Chairman Martin said, yes.

Commissioner Harger stated that he was under the impression was that the quarry was coming to an end and felt the commission should not deviate too much from the rerouting request.

Commissioner Pringle would have liked to know what the Olathe quarry had planned with holes of that depth and also wanted it on record that he doesn't think the depth of the site is a good idea for the Neis family.

Ryan Blosser stated with reclamation they will be required to return the site to a 3:1 or flatter and cover the site with vegetative soil, seed and stabilize it. Blosser stated that the depth goes to the operations, and as far as the pond, someone could drown in 6" of water. Blosser also added that HAMM knows that the pond is an issue and that safeguards would have to be in place until the pond is at a safe level, but there is not enough material to fill the hole, just water. HAMM is open to conversations on additional safeguard requirements.

Chad Voigt stated the county reviewed the study on how long it would take to fill the pond and agreed it would be 6-8 years, assuming 39" of rain a year and that there will not be any leaks into the rock bed. Voigt added that 6-8 years is optimistic and more realistically could take 10-12 years., with the quarry ending in 13 years with reclamation beginning at that time.

Commissioner Harger stated he feels that the 5-year review is unnecessary to be in the letter if improvements are not going to take place now.

City Manager, Matite asked the commissioners if they wanted the wording to note that improvements be looked at now for E 2300 Rd. All commissioners agreed.

**Commissioner Pringle made a motion to add the following recommendations to the original letter submitted to Douglas County on January 8, 2020 and be forwarded to Douglas County Commission.**

**1. To clarify comment #2 above: The reference to - no increase in intensity or expansion of daily operations or volume of material extracted or change to traffic ingress/egress - includes that there not be any increase in the average daily truck traffic generated by quarry activities than is currently occurring. The quarry operator should provide the County with traffic records establishing the current average truck trip generation and also file such records on an annual basis for review. Any increase should be cause for a compliance review and reconsideration of the CUP due to potential impacts on roadways and traffic in the area.**

**2. The property being quarried and proposed to be quarried will not be used for landfill purposes at any point in time. Although the use of clean fill may be considered if a revised reclamation plan that results in shallow or no ponds is proposed. Such revised reclamation plans should be considered by Douglas County and the City of Eudora Planning Commission to be a proposed amendment to the CUP and require a public review process, as well as meet or exceed any State requirements.**

**3. The depth of proposed pit is of extreme concern. The proposed depth of the ponds resulting from reclamation efforts as well as the time it may take to fill the ponds is also a concern as stated by the County Engineer. Every effort should be made to ensure that adequate safety measures are explored prior to beginning the reclamation phase of the quarry and that such measures are employed during and after reclamation. These efforts should be on-going and include the exploration of other reclamation options that do not include the creation of deep ponds. Any failure to explore such measures and options in a "good faith" manner on the part of the applicant / operator of the quarry working with Douglas County should be cause for reconsideration of the CUP.**

**4. East 2300 Road from North 1200 Road to the K-10 interchange should be improved to an appropriate paved surface roadway. Such an improvement project should be placed in the Douglas County Capital Improvements Plan now and given priority**

**status. There are currently concerns about the mixing of quarry generated truck traffic on Church Street / 2200 Road with daily traffic generated by Eudora High School and the growth of Eudora to the south along the Church / 2200 Road corridor. Improvements along 2300 Road could serve a portion of the quarry related trucking and reduce traffic impacts at the North 1200 Road / Church Street – 2200 Road intersection and along the Church Street / 2200 Road corridor, as well as help to mitigate the need for future intersection / corridor maintenance and improvement projects.**

Commissioner Young seconded, all ayes, motion carried, 6-0.

**Commissioner Pringle made a motion to adjourn the meeting,** Commissioner Hoover seconded, all ayes, motion carried, 6-0.

Meeting adjourned 9:58 PM.

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Grant Martin, Chairman

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Eric Strimple, Secretary

# Staff Report

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**TO:** City of Eudora Planning Commission  
**FROM:** Dave Knopick, AICP - Planning Consultant for the City of Eudora  
**SUBJECT:** Final Plat application for Nottingham Center commercial development located at 1428 Elm Street, Eudora, KS  
**MEETING:** September 2, 2020

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## BACKGROUND

On July 28, 2020 the City of Eudora received a Final Plat for the Nottingham commercial development on property addressed as 1428 Elm Street. The preliminary plat for the Nottingham commercial development was considered and approved previously with the preliminary development plan earlier this year.

This proposed final plat is for the entire 14.65 acres and would divide the property into two parcels (Lot 1 and Lot 2); Tract A for access, drainage and utility purposes to be owned and maintained by the Owners Association; and Tract B to be held for future subdivision by the City of Eudora. The proposed final plat also includes the identification of various easement and right-of-way areas that would be dedicated for the provision of access, drainage and utilities to and around the entire development site. In addition to the proposed final plat document the Declaration of Association and Easements, Covenants, Conditions and Restrictions has been provided by the current owner to be filed with the final plat if approved.

The application materials were reviewed by City Staff for compliance with the applicable City of Eudora regulations and policies. Review comments were provided to the applicant and the applicant subsequently provided responses and revisions to the submitted application materials on August 24, 2020. These revisions and responses were found to be acceptable by City Staff and are reflect in the proposed plat document included in the attached packet of materials.

## REVIEW CRITERIA / CONSIDERATIONS

In regard to the review of the final plat application material, the City Staff has determined that (per Section 17-402 (c) ... *no final plat shall be considered if it differs materially from the preliminary plat as previously approved by the Planning Commission.* ...) the proposed final plat is not materially different than the preliminary plat that was previously approved.

Although the proposed final plat does divide the property into two lots and two tracts in a different configuration then the original eight parcels and two tracts shown in the preliminary plat, the intent is to allow for future subdivision of Tract B and Lot 2 in keeping with the phased approached to the development on the entire property while retaining flexibility to meet the potential needs of future tenants. This approach is acceptable in light of the approved preliminary development plan and plat, and means that revised final plat(s) / replatting may be required to accommodate future development of Tract B and Lot 2.

## Staff Report

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Additionally, the staff has found that the conditions that were part of the approval of the preliminary plat have been met via the provisions of the proposed final plat and the Declaration of Association and Easements, Covenants, Conditions and Restrictions.

### **RECOMMENDATION**

Staff recommends that the Planning Commission consider a motion to approve the final plat application including the Declaration of Association and Easement, Covenants, Conditions and Restrictions and forward the final plat to the City Commission for acceptance of the dedication of streets and other public ways, service, and utility easements and any land dedicated for public use per Section 17-402 (c) (4) with the following conditions:

1. Clean up any general typographical / technical errors and add information as necessary to address previous staff review comments and meet Douglas County requirements for filing / recording such plat documents. Such final version of the plat document shall be provided for City Staff review / approval prior to executing signatures on the document.
2. Provision of the certificates, outlined in item (2) E – L of Section 17-403 (b), as evidenced by the signatures on the final plat document and supporting documents prior to filing / recording.
3. Per Section 17-403 (b) 3 – 5 the following items be adequately addressed to the satisfaction of City Staff:
  - a. Prior to filing of the final plat with the Register of Deeds, the licensed engineer or licensed land surveyor responsible for the survey and final plat shall certify to the city officer that all lots shown have been pinned.
  - b. Prior to filing of the final plat with the Register of Deeds, the applicant shall submit Homeowners Association documents to the Codes Administrator for review by the City attorney.
  - c. Prior to filing of the final plat with the Register of Deeds, construction plans shall be submitted to the Codes Administrator and approved by the City Engineer and Public Works Director.
4. Meet all applicable federal, state and local regulations and acquiring applicable permits.

Noting that per Section 17-402 (c) (6):

If a building permit for substantial construction has not been applied for and issued for any portion of a subdivision within five years of filing with the Douglas County register of deeds the final plat shall be null and void.



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(Space above Line for Recorder's Use)

**NOTTINGHAM CENTER  
DECLARATION OF ASSOCIATION AND OF  
EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS**

**THIS DECLARATION** is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by THE CITY OF EUDORA, KANSAS (hereinafter referred to as "Declarant").

**RECITALS**

1. Declarant currently owns the property more fully described in Exhibit A which is attached hereto, consisting of approximately 14.675 acres in Douglas County, Kansas (referred to herein as the "Subject Property"). The Subject Property is intended to be or has been subdivided into Lot 1, Lot 2, and Tract B, and may be further subdivided into additional lots (each, a "Lot" and collectively, the "Lots"), and that certain Tract A (the "Common Area"), all as shown on Exhibit B which is attached hereto and incorporated herein by this reference.

2. Declarant desires to subject all of the Subject Property to agreements and covenants, each and all of which is and are for the benefit of the Subject Property and for each owner thereof and which shall apply to, be enforceable by and bind any owner or occupant of all or any portion of the Subject Property.

**NOW, THEREFORE**, Declarant hereby covenants and agrees that, effective upon the recording hereof in the office of the Register of Deeds of Douglas County, Kansas, the Subject Property, and each and every portion thereof is, and shall be held, transferred, sold, conveyed and occupied subject to the agreements, covenants, restrictions, easements, reservations, conditions and limitations hereinafter set forth, to-wit:

**ARTICLE I**  
**DEFINITIONS OF TERMS USED**

In addition to such other terms as may be defined elsewhere in this Declaration, the following terms shall have the following meanings in this Declaration:

**1.01** "Association" shall mean the association (incorporated or otherwise) of the Owners (as defined in Section 1.06 hereof) of the Subject Property provided for herein.

1.02 "Common Area" shall mean Tract A, making up part of the Subject Property, and such tracts in the future designated as common areas, which shall be for entry ways, internal roads, drainage facilities and other facilities benefitting all of the Subject Property.

1.03 "Declaration" shall mean this instrument.

1.04 "Improvements" shall mean and include a building or buildings, outbuildings appurtenant thereto, parking areas, loading areas, fences, walls, hedges, signs, lawns, mass plantings, other landscaping and any structure of any type or kind now or hereafter located on any portion of the Subject Property.

1.05 "Owner" or "Owners" shall mean the person or persons whose estate or interests aggregate fee simple absolute ownership of a parcel of the Subject Property.

1.06 "Permittees" of an Owner shall mean the lessees, sublessees and licensees of such Owner and anyone else holding or occupying said Owner's portion of the Subject Property, and the officers, directors, agents, customers and invitees of any of them.

1.07 "Person" shall mean an individual, general partnership, limited partnership, corporation, limited liability company or other entity.

1.08 "Restrictions" shall mean the restrictions as set forth herein under ARTICLE IX and other parts hereof.

## **ARTICLE II** **MEMBERSHIP IN ASSOCIATION**

The Owners of Lots within the Subject Property shall be the members of an Association, which is hereby created and established, to be known as the Nottingham Center Association. Whenever so determined by the Association, the Association shall be incorporated under the laws of the State of Kansas as a corporation not organized for profit, which corporation and rights and duties of the members thereof shall be subject to the provisions hereof and such other terms and conditions as the members shall determine. Membership in the Association shall be limited to the Owners of Lots within the Subject Property as such ownership exists from time to time.

## **ARTICLE III** **GENERAL CHARACTER AND PURPOSE OF DECLARATION**

It is the intent of this Declaration to provide agreements, covenants, restrictions, reservations, standards and easements to ensure that the Subject Property will contain a park-like setting for business, commerce and other related purposes, with landscaped, open areas, attractive, high-quality structures, and harmonious use, development and improvement of all the Subject Property, in order: to protect the Owners and Permittees against improper and undesirable use of surrounding property; to protect against depreciation in value of property; to encourage the erection of attractive Improvements with appropriate locations; to prevent haphazard and inharmonious improvement of property; and to provide generally a high quality type of improvement and development of the Subject Property. This section will be used by the Association as a standard in judging performance and interpreting the provisions of the Declaration

and in granting or disallowing approval of development by Owners and their Permittees in the Subject Property; provided however, that the Association shall always be reasonable in exercising its powers hereunder.

**ARTICLE IV**  
**ASSOCIATION MEMBERSHIP**

**4.01 Membership Qualification.** The Owner of each platted Lot is entitled to one membership in the Association. If more than one person collectively constitutes an Owner of a Lot, such persons shall decide how to cast their membership's votes.

**4.02 Voting Rights.** Each Owner's membership shall have one (1) full vote for each square foot (or fraction thereof) of the Lot of the Subject Property owned in fee simple by such Owner. Every Owner entitled to vote may vote in person or by proxy.

**4.03 Duties and Powers.** The presence of Owners holding at least one half (1/2) of the eligible votes shall constitute a quorum at a meeting of the members of the Association. Actions of the Owners shall be by a majority of the votes cast by the Owners in attendance in person or by proxy at any meeting at which there is a quorum present. The Association shall have the right to perform the duties, assume the obligations, levy and collect the assessments and exercise, implement and carry out the rights, powers and authorities provided for hereunder. The Association shall have the right to promulgate bylaws, operating agreements, or procedures for the conduct of the Association's affairs consistent with the provisions hereof. Such procedures will provide for written notice of meetings of the Owners to be given to all Owners at least five (5) days prior to any such meeting in accordance with the provisions hereof; provided that such notice may be waived by the Owners. The Association shall provide for the enforcement of the covenants herein set forth, shall establish policies and procedures for the review and approval of plans and specifications in accordance with this Declaration, shall have the right to provide for making or maintaining any Improvements which the Association may deem necessary or desirable and shall otherwise establish such procedures and policies reasonably necessary or desirable to provide for the general welfare of the Association in accordance with the spirit and letter of this Declaration, including the power to make variances in these covenants, but only in accord with the language and purpose of Article III hereof and all applicable laws, ordinances and regulations. The Association may delegate any or all of such duties and powers to such committees, boards of directors and officers as may be established in such operating agreements or procedures.

**4.04 Period of City Control.** Notwithstanding the foregoing, until the expiration of the Period of City Control, the City of Eudora, Kansas (the "City"), shall have the right to act on behalf of the Association, to exercise all rights of the Association, and to appoint and remove all members of the Association and/or its board. The "Period of City Control" shall commence with the recording of this Declaration and shall continue until the earlier of: (i) the date by which City has transferred and conveyed at least 50% of the square footage of the Lots within the Subject Property to third-party owners; or (ii) the date that City elects, in its discretion, to transfer, relinquish and/or surrender all of its rights as to the Association in this Declaration (except in its capacity as an Owner).

**ARTICLE V**  
**POWERS AND DUTIES**

**5.01 General Powers and Duties.** The Association shall have such rights, powers or authorities as are reasonably necessary or convenient in order to accomplish the objective of this Declaration, and, without limiting the generality of the foregoing, shall have the following powers whenever in the reasonable exercise of its discretion the Association may deem them necessary or advisable; provided, however, that except as is expressly provided otherwise in Section 7.04 hereof, nothing contained herein shall be construed as imposing any duty on the Association to enforce any agreements, covenants, restrictions or reservations contained herein or granted to the Association by any other document, instrument or agreement, such enforcement to be left solely to the discretion of said Association, to-wit:

(a) **Common Area.** To own and control the Common Area for the benefit of the Lots and their Owners, and pay taxes and assessments thereon, if any.

(b) **Building Restrictions.** To enforce either in the Association's name or in the name of the Owners, any or all covenants, agreements and/or restrictions created or imposed by this Declaration, either in the form as originally placed thereon or as modified subsequently; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications of said covenants, agreements and/or restrictions being made by the Association.

(c) **Snow Removal.** To provide for the plowing and removal of snow from sidewalks or parking lots within the Subject Property if and to the extent that similar services are not provided by public authorities or the individual Owner or that such services provided by public authorities or individual Owners are not adequate in the reasonable judgment of the Association.

(d) **Landscaping.** To care for, spray, trim, protect, plant and replant trees and shrubbery and sow and re-sow grass within the Common Area.

(e) **Vacant and Unimproved Property.** To mow, cut and remove weeds and to have the power to mow, care for and maintain grass from and on vacant and unimproved portions of the Subject Property; to pick up and remove therefrom loose material, trash and rubbish of all kinds, and to do any other things necessary or desirable in the reasonable judgment of the Association to keep such vacant and unimproved property neat in appearance and in good order. Notwithstanding the foregoing, the Association shall exercise all reasonable efforts to require the Owners of the vacant or unimproved property in question to perform the activities described in this subsection at the cost and expense of said Owner or Owners. The Association shall only perform said activities in the event of default by said Owner or Owners and without waiving any rights against said Owner or Owners.

(f) **Easements.** To exercise control over any rights, powers and privileges under such easements as it may acquire from time to time.

(g) **Street, Utilities and Storm Water Facility Maintenance.** To contract for

or accept charges related to maintenance and upkeep of the roadways and their related amenities, such as landscaping, and utility services that are not publicly maintained. To maintain all storm water facilities on the Subject Property, including but not limited to drainage facilities (wet or dry) and storm sewers that are not publicly maintained.

(h) **Security Services.** To provide for such security as the Association may reasonably deem appropriate.

**5.02 Standard of Responsibility.** In exercising its powers and discharging its duties hereunder, the Association shall operate in good faith, reasonably and in a manner reasonably determined to be in the interests of the Subject Property as a whole; provided that neither any of the Owners as members of the Association nor any officers or directors thereof shall be liable to any Owner, Permittee or other person by reason of any action or omission by the Association.

**5.03 Association's Address.** The Association shall notify all Owners of: the places, times and purposes of the regular and any special meetings of the Association; the place where payments of assessments shall be made and all other business in connection with the Association may be transacted, from time to time; and the use of any new address by the Association.

**5.04 To Observe All Laws.** The Association shall observe all laws, and if at any time any of the provisions of this Declaration shall be found to be in conflict therewith, then such parts of this Declaration as are in conflict with such laws shall become null and void, but no other part of the Declaration which is not in conflict therewith shall be affected thereby. The Association shall have the right to make such reasonable rules and regulations and to provide such means and employ such agents as will enable it to adequately and properly carry out the provisions of this Declaration, subject however to the limitations herein.

**5.05 Good Standing.** Upon prior written request of any Owner of land within the Subject Property the Association shall, within thirty (30) days after receipt of such request, provide such Owner with a statement certifying whether all assessments due and owing have been paid, whether any improvements constructed in or on the land within the Subject Property are acceptable, and whether the Owner is in good standing in the Association.

## **ARTICLE VI** **METHOD OF PROVIDING GENERAL FUNDS**

**6.01 Annual Assessment.** For the purposes of providing a general fund to enable the Association to exercise the powers and render the services herein provided for, all of the Lots, as now or hereafter constituted, shall be subject to the obligation to pay an annual assessment levied by the Association (the "Annual Assessment"). The Association shall fix the amount of the Annual Assessment for any given year and shall levy the same on the first day of each fiscal year, of the Association, in an amount, per each square foot of the Lots (or fractions thereof) as now or hereafter constituted, which is reasonably deemed necessary for the Association's needs in said year.

**6.02 Limitation.** Subject to the provisions of Section 6.05 hereof, the Association shall at no time expend more money within any one fiscal year than the total amount of the Annual Assessment for that particular year, plus any surplus which it may have on hand from previous

Annual or Special Assessments. The Association shall not enter into any obligation whatsoever binding the Annual or Special Assessments of any future years to pay for any such obligation, and no such obligation, whether contractual or otherwise, shall be valid or enforceable against the Association.

**6.03 Fiscal Year.** The fiscal year of the Association shall be as determined from time to time by the Association, and until changed, the same shall be the calendar year.

**6.04 Due Date.** The first, full Annual Assessment shall be for the fiscal year beginning on the first day of January next following recording hereof and shall be due and payable within thirty (30) days after that date. Thereafter the Annual Assessment shall be due and payable within thirty (30) days of the date on which notice of the amount thereof is sent to each Owner. Failure of the Association to levy the Annual Assessment on or before the first day of any given fiscal year shall not invalidate any Annual Assessment later made for that particular year, nor shall failure to levy as Annual Assessment for any one year affect the right of the Association to do so for any subsequent year. Prior to making and collecting the first assessment as hereinabove provided, the Association shall have the right to make and collect a partial assessment in the manner herein provided for on a pro rata basis for the period of time ending on December 31, 2020. Thereafter, all assessments shall be made annually as herein provided. The Association may, at its election, and with respect to any fiscal year, allow the Annual Assessment to be paid in equal quarterly installments in an amount equal to 1/4 of the Annual Assessment for that fiscal year. Such quarterly installments shall be due and payable in advance on the first day of each quarter during any such fiscal year. Notice that the Association will permit quarterly payments of an Annual Assessment shall be given at least ten (10) days prior to the commencement of the fiscal year in question. The permitting of quarterly installments for any fiscal year shall in no way prevent the Association from requiring single annual payments for any succeeding fiscal year.

**6.05 Special Assessments.** The Association shall have the right, at any time or from time to time, to levy special assessments in addition to the Annual Assessments ("Special Assessments"); provided however, that any such special assessment must receive the affirmative majority vote of the Owners given pursuant to and in accordance with the voting provisions set forth in Section 4.03 hereof. Special Assessments shall be in such amount and shall be payable in such manner and at such times, including without limitation, in installments extending beyond the fiscal year in which the Special Assessment is levied, as is determined by the Association and approved by a majority vote of the Owners.

**6.06 Annual Accounting.** The Association shall give an annual accounting to the Owners.

## **ARTICLE VII** **LIEN ON REAL ESTATE**

**7.01 Creation of Lien.** The Annual or Special Assessments provided for in Article VI hereof shall become a lien on the real estate against which it is levied as soon as it is due and payable. The lien of such Annual and Special Assessments shall be subordinate only to the lien of any mortgage created prior to the date which assessment is due and payable.

**7.02 Delinquent Assessments.** Annual or Special Assessments shall become, and be considered, delinquent at the following times:

(a) With respect to Annual Assessments payable annually, or any Special Assessments payable in a lump sum, if the assessment is not paid by the Owner liable therefor within thirty (30) days after the date of the giving by the Association of written notice that the same is due and payable; and

(b) If any installment of an Annual Assessment payable quarterly, or any Special Assessment payable in installments, is not paid within thirty (30) days after the date by which the Association gives written notice to the Owner liable therefor that the same is due and payable, the Association may declare the entire assessment (whether Annual or Special Assessments), including any future installments thereof then unpaid, to be immediately due, payable and delinquent.

**7.03 Interest.** Delinquent assessments shall bear interest from the date the same becomes delinquent at such rate as is specified by the Association in the notice of such assessment at the time the assessment is levied; provided that such rate shall not exceed the lower of the rate of twenty percent (20%) per annum or the highest rate then permitted to be enforced against such Owner by law.

**7.04 Enforcement.** When any assessment becomes delinquent, the obligation to pay both the principal thereof and the interest thereon shall constitute a lien on said real estate and may be enforced as such in a proceeding in any court in Kansas having jurisdiction of suits for the enforcement of liens against real property located in Douglas County, Kansas. It shall be the duty of the Association to bring suits in the Association's name to collect all or any part of any delinquent assessments and to enforce such liens before the expiration thereof pursuant to Section 7.05 hereof. In any such suit the Association may recover therein court costs plus reasonable attorney's fees expended in filing and prosecuting such suit. The Association may, at its discretion, file certificates of nonpayment of assessments in the Douglas County Register of Deeds Office whenever any assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the Owner of the property described therein a fee of \$500.00, which fee is hereby declared to be a lien on the real estate so described in said certificate and shall be enforceable and collectible in the same manner as the original assessments provided for herein and the interest thereon. All rights and remedies contained herein are in addition to any other rights and remedies provided at law or in equity.

**7.05 Termination.** Liens for delinquent assessments shall continue for a period of five (5) years from the date such assessment became delinquent but no longer, unless within such time a suit shall have been instituted for the collection of the assessment in which case the lien shall continue until the termination of the suit, and until the sale of the property under execution of the judgment establishing the same.

**ARTICLE VIII**  
**NOTICES**

**8.01 Manner.** All notices permitted or required in this Declaration shall be in writing and shall be deemed given when deposited in the United States mail, with first class postage, or with first class postage and certification or registration fees, thereon prepaid, addressed as required by Section 8.02.

**8.02 Addressees.** Notices to an Owner of any parcel of the Subject Property shall be addressed to the address to which tax statements for said parcel would be sent on such date by the taxing authorities of Douglas County, Kansas.

**ARTICLE IX**  
**RESTRICTIONS**

**9.01 General Restrictions.** All of the Subject Property shall be subject to the following restrictions:

(a) **Uses.** All of the Subject Property shall be used for purposes which are lawful under then applicable laws, ordinances, rules, regulations and orders of the United States, the State of Kansas, the County of Douglas, and any political subdivision of any of the foregoing. No obnoxious or offensive trade or activity shall be conducted on the Subject Property which is or, with the passage of time, will become a nuisance or a violation of any law, ordinance or regulation. Except during construction, reconstruction, maintenance or demolition thereof, no Improvement on the Subject Property shall be used or occupied for any purpose which: (i) creates a noise level in excess of that created by the then normal daily traffic measured at any boundary line of the platted lot on which such Improvement is constructed (each such boundary being referred to as a "Lot Line"), (ii) creates a vibration for a period longer than three minutes in any one hour which is perceptible at any Lot Line, (iii) creates smoke exceeding any applicable regulatory limits, (iv) creates unusual quantities of dust, dirt, particulate matter, odor, obnoxious gasses, heat and unscreened glare which is perceptible at any Lot Line, (v) creates fire hazards or industrial wastes in excess of those permitted under then applicable law or (vi) is conducted outside a building or buildings completely enclosed by walls and roof, except as to accessory or incidental uses permitted by then applicable zoning ordinances and regulations.

(b) **Waste and Refuse.** All waste and refuse areas in or on the Subject Property shall conform with all then applicable laws, ordinances and regulations and shall be erected or established only with the prior written approval of the Association. No waste material or refuse shall be dumped upon or permitted to remain on any part of the Subject Property other than in approved waste and refuse areas. Any approved area must be screened from view from all Lot Lines.

(c) **Condition of Premises.** Each Owner and its Permittees shall carefully maintain the portion of the Subject Property, and all Improvements of whatever nature thereon, which it owns or occupies, in a safe, clean and wholesome manner and in first

class condition and repair at all times.

(d) **Private Drives and Parking Areas.** Each Owner shall, at its own expense, maintain or cause to be maintained in good condition any and all portions of any drives and parking areas situated on such Owner's portions of the Subject Property.

(e) Notwithstanding anything herein to the contrary, and in addition to the other covenants, restrictions and agreements herein set forth, the Subject Property, and all parts thereof, shall be developed as a first-class office, commercial and high-quality retail center.

**9.02 Subject Property Restrictions.** The Subject Property, in addition to being subject to the restrictions set forth in Section 9.01 hereof, shall be subject to the following restrictions:

(a) **Review and Approval.** No building, structure, or improvement of any kind (including but not limited to any of same that would constitute Improvements hereunder) shall be installed, erected, placed, assembled, altered or permitted to remain on any part of the Subject Property until and unless the final, detailed plans and specifications for the same showing the nature, shape, size, color, architectural design, material, location and landscaping, parking and paving plans have been first approved in writing by the Association. Approval or disapproval may be predicated upon the Association's determination as to whether said building, structures or improvements conform to (i) the general character of the Subject Property as described in ARTICLE III hereof and/or (ii) the Design Manual (defined below). There shall be no material changes to approved plans and specifications unless such changes are approved by the Association in the same manner as the original plans and specifications. Neither the Association nor any member, director, officer, employee or agent of it shall have any liability for damages to anyone so submitting plans for approval or making any other request of the Association, or to any Owner, lessee or sublessee of property in the Subject Property by reason of mistake in judgment, negligence or nonfeasance of itself or any agent or employee the Association may engage which arises out of or in connection with the approval or disapproval of, or failure to approve, any plans or other request. Upon receipt of any proposed plans or requests by the Association, the Association shall provide written notice thereof to all Owners of Subject Property. Such Owners shall then be given reasonable opportunity to review such plans or requests, and from time to time to comment thereon in writing; provided, however that the Association shall not be bound by any such comments and nothing herein shall be deemed to require that the Association hold a hearing or similar proceeding regarding any such plans or requests. The Association shall have thirty (30) days from the delivery of such plans, requests, or from delivery of any supplemental material requested by the Association as hereinafter provided to (i) approve the plans or requests (with conditions as appropriate), (ii) disapprove the plans or requests, or (iii) request further relevant material from the person(s) submitting such plans or requests. If no action has been taken by the Association upon the termination of such thirty (30) day period after the submission of any such plan, request or supplementary material, such plan or request shall be deemed approved as submitted (as amended, if amended by the supplementary material). Notwithstanding the foregoing, nothing herein shall be deemed to modify or amend any public or other proceedings required by the City of Eudora, Kansas (acting in its municipal capacity), or be construed as constituting the approval, or not

requiring the approval, of applicable governmental authorities.

(b) **Design Manual.** The Association shall have the right and power (but not the duty), at any time and from time to time, to establish a Design Manual for the Subject Property, and once having established the same, to, in whole or in part, amend, modify or otherwise change said Design Manual (including, without limitation, amendments, modifications or changes that have the effect of terminating or deleting said Design Manual in whole or part); said Design Manual as herein described is referred to herein sometimes as the "Design Manual".

(c) **Enforcement Costs.** Any Person violating Section 9.01 or this Section 9.02 shall be liable for all costs incurred by the Association in remedying such violation, including but not limited to, reasonable attorney's fees and court costs. Without limiting the power or right of the Association under ARTICLE V or any other part of this Declaration, the costs of enforcing the provisions of this ARTICLE IX may be assessed by the Association against any party in violation thereof.

**9.03 Drainage Easements.** Declarant reserves for itself and grants to the Owners an easement upon each Lot for the benefit of all Lots for stormwater drainage across those areas of each Lot upon which the drainage patterns and systems now exist as of the date of recording of this Declaration, including but not limited to, curbs and gutters, stormwater pipes, structures, inlets, detention basins, swales and related stormwater facilities; provided, however, that such facilities shall not be located under the existing or proposed location of buildings, structures, or other improvements. Nothing herein shall prevent an Owner from relocating the established drainage patterns on such Owner's own Lot provided such relocation does not unreasonably interfere with the drainage of other Lots, nor interfere with the orderly discharge of water from the Subject Property by means of same. In the event any Owner contemplates any future improvements that may in some way affect the existing stormwater system on any other Lot, whether by increasing the amount of drainage across another Lot, by reducing the drainage capacity upon which other Lots depend, or by requiring an increase of the drainage capacity across another Lot by improving or adding to the existing drainage system, such improvements must first be approved in writing by the Association and by the Owner of the Lot(s) to be affected (not to be unreasonably withheld, conditioned or delayed), and the drainage easement herein established shall be extended to include such new improvements without further action. All improvements and relocations shall be at all times in compliance with the ordinances, rules, and regulations of all applicable governing authorities.

**9.04 Utility Easements.** Each Owner of a Lot is hereby granted a nonexclusive right, privilege and easement appurtenant to its Lot over and across the remainder of the Subject Property for the purpose of installation, maintenance, repair and use of underground utilities (including, but not limited to, sanitary sewers, storm sewers and irrigation systems) serving such Lot; provided, however, that such utilities shall not be located under the existing or proposed location of buildings, structures, or other improvements. The Owner installing underground utilities pursuant to this Section 9.04 shall be responsible for the cost and expense of such installation, including, without limitation, "tap" and connection fees to the appropriate municipality or agency; (ii) shall cause all work in connection therewith to be completed in a good and workmanlike manner as quickly as possible to minimize interference with the business operations of the Owners

of the Subject Property or any Lots therein; (iii) shall not increase the cost of the utility services to other parties served by such utility and shall not interrupt, diminish or otherwise interfere with the utility services to other Owners served by such utilities; and (iv) shall, in connection with its usage of any existing utility service, increase the capacity of any such utility service (both within and outside its Lot) as is reasonable under the circumstances so that the utility system can continue to accommodate both its existing connections and all anticipated connections. If, pursuant to the terms hereof, any Owner installs underground utilities across the Lot of a second Owner, the installing Owner shall: (i) obtain the approval of the Owner of such Lot as to the proposed location of any such utilities prior to installation, not to be unreasonably withheld; (ii) maintain or cause to be maintained any such utility; (iii) repair at its expense any damage to Improvements or landscaping caused by such installation and maintenance; and (iv) perform such installation and maintenance in a manner so as to minimize any disruption of business on the Lot on which the utility is located. The Owner of the Lot over which utilities are installed pursuant hereto shall have the right to relocate any such utilities on its Lot at its sole cost and expense, provided that such relocation shall not interrupt, diminish, or otherwise interfere with the utility services to the other Owners served by such utilities. All improvements and relocations shall be at all times in compliance with the ordinances, rules, and regulations of all applicable governing authorities.

## **ARTICLE X** **ENFORCEMENT AND DURATION OF RESTRICTIONS**

**10.01 Enforcement.** The agreements, covenants, restrictions and reservations herein set forth are and shall be covenants running with and binding upon the Subject Property, and upon the Owners of any part thereof, and their respective Permittees and shall be enforceable by any Owner or the Association in a proper judicial proceeding, either in equity or at law, and such party or parties shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce or order the observance of the restrictions and conditions herein set forth. The failure to enforce any of the restriction herein set forth, at the time of violation, shall in no event be deemed to be a waiver of the right to do so as to any subsequent violation. Except as expressly provided otherwise in Section 7.04 hereof nothing contained herein shall be construed as imposing any duty on the Association to enforce the agreements, covenants, restrictions and reservations contained herein and the decision of whether or not the Association shall seek such enforcement shall be left solely to the discretion of the Association. If, in the opinion, of the Association, it shall be necessary to secure the services of an attorney to enforce the provisions of this Declaration, the prevailing party in any such enforcement proceeding shall, to the extent permitted by law, be entitled to attorney's fees and all other costs incurred in connection with any such contemplated or actual legal proceedings and such fees and costs shall become a lien against the portion of the Subject Property which is the subject of such proceedings. If such costs and attorney's fees are not paid within ten (10) days from the date of written notice thereof by the Association to the owner of the portion of the Subject Property in question, said fees and costs shall thereupon constitute a lien against the such property in question, enforceable as provided herein.

**10.02 Severability.** Invalidity of any of these covenants or any part thereof by judgments or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

**10.03 Construction.** The captions, sections numbers and article numbers appearing in this Declaration are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Declaration or in any way modify or affect this Declaration.

**10.04 Duration of Restrictions.** Subject to ARTICLE XI hereof, each of the agreements, covenants, restrictions and reservations herein contained shall be binding upon the parties hereto and upon their respective heirs, successors and assigns and upon each of them, and all parties and persons claiming under the undersigned until December 31, 2030, and shall, subject to Section 11.02 hereof, be automatically renewed for successive ten (10) year periods thereafter.

**ARTICLE XI**  
**AMENDMENT AND TERMINATION**

**11.01 Amendment.** This Declaration may be modified and amended by written instrument approved and executed by the Association and approved and executed by the Owners owning at least 66% of the square footage of the Lots within the Subject Property and recorded in the office of the Register of Deeds of Douglas County, Kansas; provided, however, that as long as Declarant owns any of the Subject Property, no such modification or amendment shall be effective unless consented to in writing by Declarant.

**11.02 Termination.** This Declaration may be terminated and all of the Subject Property may be released from all of the terms, provisions and obligations herein set forth and contained, by the Owners owning at least 66% of the square footage of the Lots within the Subject Property executing and acknowledging an appropriate agreement or agreements and filing the same for record in the office of the Register of Deeds of Douglas County, Kansas; provided, however, that as long as Declarant owns any of the Subject Property no such termination shall be effective unless consented to in writing by Declarant.

**ARTICLE XII**  
**COVENANTS RUNNING WITH THE LAND**

**12.01 Successors and Assigns.** All of the provisions of this Declaration shall be deemed to be covenants running with the land, constituting the Subject Property and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

**12.02 Expansion and Transfer Rights of Declarant.** Declarant shall have the right, but not the obligation, to submit any other real property from time to time owned by Declarant to the provisions of this Declaration. Declarant and its successors shall have the right, privilege and power, at such time as Declarant conveys or otherwise transfers all of the Subject Property then owned by Declarant to assign, transfer and set over to another person(s) as its successor all of Declarant's respective rights, benefits, powers, privileges, duties, responsibilities and obligations hereunder, and upon any such assignment, transfer and setting over, the transferor shall be forever relieved, released and discharged of and from any and all such rights, benefits, powers, privileges, duties, responsibilities and obligations hereunder arising after the date of any such assignment, transfer or setting over.

*[Signature Page Follows Directly]*





**EXHIBIT A**

[Legal Description of the Subject Property]

**DESCRIPTION**

A tract of land in the platted CITY OF EUDORA, and being all that part of Block 161 and a part of vacated right-of-way accruing thereto, Lots 3 through 20 in Block 162 and vacated right-of-way accruing thereto, Lots 1 through 20 in Block 163 and vacated right-of-way accruing thereto, Lots 1 through 20 in Block 188 and vacated right-of-way accruing thereto, Lots 1 through 20 in Block 189 and vacated right-of-way accruing thereto, a part of Block 190 and part of vacated right-of-way accruing thereto, all in the City of Eudora, Douglas County, Kansas more particularly described as follows:

Beginning at the Northwest corner of said Block 163, said point being on the South right-of-way line of Fourteenth (14th) Street and the East right-of-way line of Elm Street; thence along said South right-of-way line, North 88°12'46" East a distance of 492.03 feet to the Northeast corner of said Block 188, said point being on the West right-of-way line of Church Street; thence along said West right-of-way line, South 01°41'42" East a distance of 1247.87 feet; thence southerly continuing along said West right-of-way line, along a tangent curve to the left having a radius of 550.84 feet and a central angle of 14°49'16" for a distance of 142.49 feet; thence leaving said West right-of-way line, North 89°08'56" West a distance of 124.73 feet; thence North 89°17'58" West a distance of 95.80 feet; thence South 88°11'21" West a distance of 115.25 feet; thence North 41°35'55" West a distance of 135.52 feet; thence North 01°43'55" West a distance of 146.06 feet; thence South 88°12'46" West a distance of 87.00 feet to a point on the East right-of-way line of Elm Street and being the Northwest corner of said Block 161; thence along said East right-of-way line, North 01°44'01" West a distance of 463.61 feet to the Southwest corner of Lot 2 in said Block 162; thence leaving said East right-of-way line and along the South line of said Lot 2, North 88°12'46" East a distance of 107.50 feet to a point on the centerline of a vacated alley; thence along the centerline of said vacated alley, North 01°44'01" West a distance of 130.90 feet to a point on the centerline of vacated Fifteenth (15th) Street; thence along the centerline of said vacated street, South 88°12'46" West a distance of 107.50 feet to a point on said East right-of-way line of Elm Street; thence along said East right-of-way line, North 01°44'01" West a distance of 534.30 feet to the Point of Beginning, containing 639,227 square feet, or 14.675 acres, more or less.

Platted (or to be platted) as follows:

FINAL PLAT

**NOTTINGHAM CENTER**

A REPLAT OF PART OF BLOCK 161 AND A PART OF VACATED RIGHT-OF-WAY ACCRUING THERETO, LOTS 3 THROUGH 20 IN BLOCK 162 AND VACATED RIGHT-OF-WAY ACCRUING THERETO, LOTS 1 THROUGH 20 IN BLOCK 163 AND VACATED RIGHT-OF-WAY ACCRUING THERETO, LOTS 1 THROUGH 20 IN BLOCK 188 AND VACATED RIGHT-OF-WAY ACCRUING THERETO, LOTS 1 THROUGH 20 IN BLOCK 189 AND VACATED RIGHT-OF-WAY ACCRUING THERETO, A PART OF BLOCK 190 AND PART OF VACATED RIGHT-OF-WAY ACCRUING THERETO, ALL IN THE CITY OF EUDORA, DOUGLAS COUNTY, KANSAS

# EXHIBIT B

[Depiction of Lots and Common Area]

