

ORDINANCE NO. 2020-118

**ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A DEVELOPMENT AND REAL ESTATE TRANSFER AGREEMENT WITH HIGH POINTE CUSTOM HOMES, LLC FOR CERTAIN PROPERTY LOCATED IN LEBANON**

WHEREAS, The City of Lebanon, Ohio (the "City") has encouraged the development of real property located at North Mechanic Street and New Street by High Pointe Custom Homes, LLC (the "Developer") through the Request for Qualifications process; and

WHEREAS, the adopted Think Downtown! Downtown Master Plan specifically recommends the redevelopment of City owned property as a Community goal to enhance the economic vitality of the Central Business District; and

WHEREAS, the Developer plans to construct up to 20 town homes and 2 single family homes on vacant property owned by the City along North Mechanic Street and New Street as outlined in the proposed development agreement (the "Project"); and

WHEREAS, a condition of the development of this property is the sale and transfer of 1.362 acres of property owned by the City (the "Owner") to the Developer in support of the proposed site development plan; and

WHEREAS, Pursuant to the authority granted under the Ohio Revised Code, the Owner desires to transfer the Real Estate to the Developer on the terms outlined in the attached agreement; and

SECTION 1. That the City Manager be authorized and directed to execute a Development Agreement between the City of Lebanon and the High Pointe Custom Homes, LLC in substantially the same form as the agreement attached hereto as "Exhibit 1".

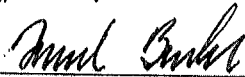
SECTION 2. This Ordinance is shall become effective at the earliest date allowed by law.

Passed:

December 8, 2020

  
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Mayor

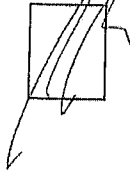
Attest:

  
\_\_\_\_\_  
Clerk of Council

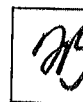
Sponsor

Mr. Messer, Mr. Shope  
Council Members

City  
Manager



City  
Auditor



City  
Attorney



## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into effective as of the 19<sup>th</sup> day of JANUARY, 2021 (the "Effective Date") by and between THE CITY OF LEBANON, OHIO, an Ohio municipal corporation, having a mailing address at 50 South Broadway Lebanon, OH 45036 (the "City") and HIGH POINTE CUSTOM HOMES LLC, an Ohio limited liability company, having a mailing address 4234 Mason Pointe Dr. Suite#100, Mason Ohio, 45040 ("Developer"), under the following circumstances:

### RECITALS:

A. The City currently owns land located within the City of Lebanon, Warren County, Ohio, as approximately shown on Exhibit A, and legally described on Exhibit B, both attached hereto and incorporated herein by reference (the "City Property").

B. By Ordinance No. 2020-118, the City Council of the City has determined that the City Property is surplus property not needed for use by the City.

C. Subject to the terms and conditions contained in this Agreement, Developer is willing to acquire the City Property, and to develop and construct the City Property as a residential project consisting of: (i) not more than 20 townhomes and 2 standalone homes including associated parking, all as more particularly described on Exhibit C (the "Project").

D. The City believes that the Project and related improvements are consistent with the 2017 Downtown Lebanon Master Plan, and are in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements, which purposes include, but are not limited to, furtherance of the City's goals to revitalize the part of the City's downtown area in which the Property is located, to provide public access, parking, and other amenities, and to facilitate residential development in close proximity to the City's downtown area, all of which are expected to enhance City tax revenues.

E. The City Manager is authorized pursuant to Section 131.11(G) of the Lebanon, Ohio Codified Ordinances to dispose of the City Property under terms and conditions which the City Manager determines to be in the best interest of the City.

F. The parties desire to enter into this Agreement in order to reflect certain agreements between them with respect to the conveyance of the City Property to the Developer, to the Project generally, and to the improvements to be made by each of them, available City incentives relative to certain components of the Project, and other agreements and obligations, all pursuant and subject to the terms and conditions contained herein.

**NOW, THEREFORE**, for and in consideration of the mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties hereto, the City and Developer agree as follows:

**Introduction; Recitals.** Each of the parties hereby acknowledges and agrees that the statements made by it in the foregoing recitals are, to its actual knowledge and belief, true and accurate and the same are hereby included herein by this reference as if fully set forth in this Introduction section of the Agreement.

1. **Transfer of Property.** Subject to the terms of this Agreement, within the project phasing plan as agreed upon by the City and the Developer to occur of (i) the satisfaction or waiver of the "Developer Contingencies" and the "City Contingencies" (each as hereinafter defined) or (ii) the "Contingency Date" (as hereinafter defined), but subject to the terms and conditions contained in this Agreement, the City shall transfer to Developer fee simple title to the City Property by Quit Claim Deed, subject only to: real estate taxes and assessments not yet due and payable; easements, conditions, and restriction of record as of the date of this Agreement or as otherwise agreed upon by the parties prior to the Contingency Date; zoning and building laws and regulations; the Deed Restrictions (defined herein) and the other items to be created in accordance with the terms hereof (collectively, all such items hereinafter being referred to as the "Permitted Exceptions"). Nothing contained herein shall be deemed to be a waiver by the Developer of the right to terminate this Agreement prior to the Contingency Date due to its determination that the City Property is unacceptable to Developer for the Project for any reason. The following terms and conditions shall apply to such transfer of the Property and the closing of such transfer (the "Closing"):

(a) The purchase price to be paid by the Developer and accepted by the City for the City Property shall be Fifty Thousand Dollars (\$50,000) paid concurrently with the percentage of construction progress, each building representing \$12,500 or \$10,000 per year over 5 years, whichever happens first. The transfer of City Property shall coincide with the Project phasing plan as agreed upon by the City and the Developer.

(b) The City shall deliver to Developer exclusive possession of the City Property upon completion of the Closing, which shall take place at the offices of the City's attorneys on a date and time (subject to the first paragraph of this Section 1) to be selected by Developer and the City with at least five (5) business days advance written notice to City.

(c) In addition to the Quit Claim Deed, the parties agree to execute and deliver at Closing the Deed Restriction and such assignments, affidavits, certified ordinances, certificates, and other instruments as are reasonably necessary to complete the Closing, and which are typical for commercial real estate transfers and as otherwise required by this Agreement, provided, however, that the City shall not be obligated to provide any affidavit or other instrument creating indemnification obligations on the part of the City.

(d) Real estate taxes, assessments, or other expenses will be prorated at Closing as is customary for commercial real estate transfers, with the Developer receiving credit for real estate taxes and assessments charged for periods prior to Closing but that will be due and payable after Closing.

(e) Developer shall pay all closing costs and expenses, including costs of title or escrow closing agent and costs of any title insurance desired by the Developer.

2. **Construction of Project.** Developer shall construct and install upon the Property acquired by the Developer, the Project. The Project, including the engineering and design, therefore, the plans and specifications, and the construction and installation, shall be completed: (a) in conformance with the Deed Restrictions and all applicable codes, ordinances, and laws; (b) in a good and workmanlike manner; and (c) to the extent required by applicable law, including the City zoning code, in conformance with the plans and specifications approved in advance by appropriate City officials. Subject to delay caused by Force Majeure events described below, Developer shall commence construction of the first phase of the Project within twelve (12) months after the date of Closing, and shall substantially complete all such phases of construction within forty-eight (48) months after commencing construction. The Project and related improvements will be constructed and installed in compliance with the final, approved plans and specifications as approved by the City. Developer shall prepare and submit to appropriate government agencies all applications for such approvals as are required to develop and construct the Project in accordance with applicable laws, rules, regulations, codes and ordinances and the following specifications for the Project:

(a) Developer shall construct or cause to be constructed and delivered not more than 20 townhomes and two(2) stand-alone single-family homes on the property.

(b) Developer shall construct approximately 14 parking spaces on the property.

(c) The Property shall be developed in a manner that is consistent with the site development concept plan as provided for in **Exhibit C** hereto. This includes the percentage of greenspace shown in the concept plan, building heights and orientation, parking locations, and all other aspects of the plan.

(d) The buildings shall be constructed in a manner that is consistent with the proposed building elevations shown in **Exhibit D**. This shall include proposed building materials, architectural details, quality of materials, feature variation, and overall appearance. The maximum amount of material other than brick or stone (i.e. hardie board) to be used on each building is 25%.

Any deviation from the specifications set forth in subsections (a) – (e) of this Section 2, shall require the written consent of the City, which shall not be unreasonably withheld.

### 3. **Inspection of Property.**

(a) At any time after the Effective Date but prior to the Contingency Date, the Developer, at Developer's expense, shall have the right to enter onto the property to conduct such inspections as the Developer may deem appropriate to determine if the condition and suitability of the property are satisfactory to the Developer. Notwithstanding the foregoing, the City shall conduct soil borings at its cost in the general locations of building plots and paving areas and to provide the results of such borings to Developer.

(b) Developer will rely upon the data from the soil borings and any of its own inspections to determine the condition and suitability of the City Property. Developer acknowledges and agrees that neither City nor any agent, attorney, employee, or representative has made any representation whatsoever regarding the City Property, or any part thereof, including (without limiting the generality of the foregoing) representations as to the physical nature or condition of the City Property. In the event that unsuitable soil conditionals are discovered during excavation, which were reasonably unforeseen based on soil boring data, The Developer and City agree to split the resulting costs of any bad ground 50/50 up to a total maximum cost of \$50,000 for the City. The Developer further acknowledges that City is under no obligation to repair any damage or defects to the Property at or above the surface level that have accrued at the time of Closing.

(c) Developer will keep the property free from liens arising out of the Developer's inspection, pay all expenses incurred in connection with the Developer's inspection, and shall restore any damage to the property caused by Developer inspections. Developer shall provide the City with at least one full business day's prior written notice of any inspection or test and, with respect to any intrusive inspection or test (*i.e.*, core sampling or drilling), must obtain the City's prior written consent (which consent shall not be unreasonably withheld or delayed), City's failure to respond within twenty-four (24) hours shall be deemed to be an approval for the requested activity. Notwithstanding the foregoing, prior to performing any inspection or test, Developer must deliver a certificate of insurance to the City evidencing that it has in place reasonable amounts of comprehensive general liability insurance and workers compensation insurance for its activities (and the activities of and their respective contractors, agents and representatives) on the City Property, and in terms and for amounts equal to at least \$1,000,000 per occurrence, \$2,000,000 aggregate any accident arising in connection with the presence of them, its contractors, agents, and representatives on the City Property and, which insurance shall name the City as an additional insured thereunder. Developer shall bear the entire the cost of all such inspections or tests performed by or on its behalf, and shall be responsible for the disposal of any wastes generated by those tests in accordance with all applicable laws.

4. **Public Improvements.** Subject to conditions set out in Section 4(e) below, the City agrees to undertake the following public improvements (collectively, the "Public Improvements"):

(a) Public sidewalk access to N. Broadway Ave. City shall construct sidewalk access from the Project to N. Broadway in a manner consistent with what is shown on Exhibit E with a specific schedule to be agreed upon by City and the Developer prior to the Contingency Date.

(b) Streetscape Improvements. City shall construct streetscape improvements along N. Mechanic St. for the block containing the Project in a manner consistent with the scope of improvements identified in Exhibit E with a specific schedule to be agreed upon by City and the Developer prior to the Contingency Date.

(c) Conditions to Public Improvements. The City has established a preliminary cost estimate for the proposed Public Improvements of not to exceed \$250,000 In no event shall the City be obligated to expend more than \$250,000 for the Public

Improvements, and if the cost of the Public Improvements is expected at any point to exceed an aggregate amount of \$250,000 then: (i) the Developer may elect to fund any shortfall in such costs; and/or (i) the Developer and City may agree to modify and scale back the Public Improvements so that the costs remain within the \$250,000 budget. Developer shall have first right of refusal to perform the construction of said Streetscape Improvements as shown on Exhibit E.

**5. Indemnification and Insurance.**

(a) Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend, indemnify and hold the City, its officers, council members, employees, and agents (collectively, the "Indemnified Parties") harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorney's fees), demands, judgments, liability and damages (collectively, "Claims") suffered or incurred by or asserted against the Indemnified Parties, or any of them, as a result of or arising from injuries, deaths or loss or damage to property to the extent caused by the acts or omissions of Developer, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of Developer in connection with the development and construction of the Project and on or around the City Property; provided, however, that Developer's obligations under this paragraph shall only apply to Claims that accrue or arise due to events which occur or actions taken during the period from the commencement of inspection or construction related activities on or around the City Property by Developer through its substantial completion and the issuance of certificates of occupancy for not less than eighty percent (80%) of the total residential units planned to be included within the Project.

(b) Until such time as all construction work associated with the Project has been completed, Developer shall maintain or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least Three Million Dollars (\$3,000,000) per occurrence, combined single limit, naming the City as an additional insured, (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed, (iii) worker's compensation insurance in such amount as required by law, and (iv) all insurance as may be required by Developer's construction lenders. Developer's insurance policies shall: (x) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, authorized to do business in Ohio, and having an A.M. Best rating of A VII or better, and (y) provided that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Developer may cause any or all of the above-described insurance requirements to be satisfied by requiring one or more of its contractors to provide such insurance coverages.

**6. Tax Abatement Agreement.** The City acknowledges that a critical component of the consideration for Developer entering into this Agreement and developing the City Property as the Project and to perform all of its other obligations under this Agreement, is that all real estate taxes on the improvements associated with the Project be abated at an amount of fifty (50) percent for ten (10) years under Chapter 3735 of the Ohio Revised Code (the "Tax Abatement"). The City shall reasonably cooperate with the Developer in its efforts to obtain and implement the Tax Abatement, including, without limitation, in connection with Developer's obtaining of all necessary State of Ohio and other governmental approvals and in

connection with the Community Reinvestment Area Compensation Agreement (described below), as required under Chapter 3735 of the Ohio Revised Code. The provisions of this Section shall survive the expiration or earlier termination of this Agreement, provided the City Property is transferred to Developer.

7. **Tap and Permit Fees.** The City agrees to waive all associated water, sewer, and electric tap fees in addition to transportation and park impact fees.

8. **General City Cooperation.** The City acknowledges that, in connection with the development and construction of the Project, from time to time, the Developer will be submitting to various City departments site plans showing proposed locations of buildings, building footprints and other structures and improvements, plans for landscaping, parking lots, paving improvements, and stormwater management and utility lines, facilities and systems and applications for necessary approvals and building permits for the same. The City agrees, subject to all normal and applicable department rules, regulations and processes, and to applicable law, all of which apply to all persons who do business with the City, that it will cooperate with Developer and review and approve all applications and submissions for the Project, including, without limitation, any zoning related approvals or actions, in the normal course of business as the same is regularly brought before and handled by the City. In addition, the City shall cooperate with and assist the Developer in all of its efforts with respect to the development, construction, and operation of the Project and the efforts by the Developer to satisfy its conditions hereunder, including coordinating and assisting with efforts with the Warren County Port Authority, the Board of Education of the Lebanon City School District, and other third parties and agencies.

9. **Defaults.** Except as otherwise provided in this Agreement, in the event of any default or breach of any of the terms or agreements herein contained, by either party hereto, such party shall, upon written notice from the other, proceed to cure or remedy such default or breach within thirty (30) days after receipt of such notice, or in the event the default or breach does not involve the payment of money and cannot be cured within said thirty (30) days, then cure shall be made within such longer period of time as may be reasonable under the circumstances and the party will not be deemed in default of this Agreement provided the cure is promptly commenced (to the extent commercially practical to do so) within the original thirty (30) day period and diligently pursued to completion thereafter. In the event the default or breach is not remedied in the time periods and manner provided in this paragraph, then the aggrieved party may take such actions as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance or injunctive action. All remedies shall be nonexclusive to all other remedies allowed at law, in equity, or as otherwise provided in this Agreement. In addition to the foregoing remedies, the Deed Restrictions shall include language requiring the reversion of title to the City Property back to the City in the event the Developer fails to substantially complete construction of the Project on or before within twenty-four (24) months after the Building and Zoning Departments final approvals and permits have been issued for the Project.

10. **Contingencies.**

(a) **Developer Contingencies.** Developer shall have no obligation to acquire the City Property or to develop and construct the Project unless and until all of the following contingencies (collectively, the "Developer Contingencies") have been satisfied or waived by Developer in writing June 30, 2021 (hereinafter the "Contingency Date"):

(i) The Developer and the City shall have reached agreement on and shall have approved all of the plans and specifications for the Project and all components thereof, including that Developer shall be satisfied that the City Property, as developed, will be sufficient to comply with space for not more than 20 townhomes and 2 stand-alone single-family homes.

(ii) All necessary building and construction permits and approvals required for the Project and all components thereof shall have been issued with only such conditions as are contemplated in this Agreement or as are otherwise acceptable to the Developer, in its sole good faith and reasonable discretion, and any applicable appeal or referendum periods for the same shall have expired without any such appeal or referendum having been initiated.

(iii) Developer shall have reviewed and approved the CRA and all binding documents and components of the same affecting the City Property and the Project and all approvals necessary for the CRA (to the extent then available) shall have been obtained with only such conditions as are acceptable to the Developer in its sole good faith and reasonable discretion.

(iv) The City shall have delivered to Developer a letter from City's Finance Director certifying that the City has sufficient funding available and secured to satisfy its payment and other obligations under this Agreement.

(v) Developer shall be satisfied, in its sole good faith and reasonable discretion, with the results of Developer's due diligence efforts with respect to the City Property and the Project, including, without limitation, title, survey, and utility availability.

(vi) Developer shall have reviewed and approved the plans and specifications for the Streetscape Improvements, which shall conform substantially to **Exhibit E** hereto.

(b) **City Contingencies.** City shall have no obligation to sell the City Property or to complete the Public Improvements unless and until all of the following contingencies (collectively, the "City Contingencies") have been satisfied or waived by City in writing on or prior to the Contingency Date:

(i) On or before the Contingency Date, the Developer shall have notified the City in writing that the Developer has waived or satisfied all of the Developer Contingencies. In addition, any agreements entered into or approvals granted by the City as contemplated by this Agreement may include a contingency to the effectiveness thereof that Developer must satisfy or waive the Developer Contingencies, and that Developer must close on the acquisition of the City Property and commence, proceed with, and complete the



development of the Project pursuant to this Agreement.

Notwithstanding the immediately preceding paragraph, the City agrees, prior to satisfaction or waiver of the Developer Contingencies, to provide Developer with updates as to the result of the efforts to be undertaken by the City pursuant to this Agreement promptly upon each request therefor by Developer and, in the normal course of the City's procedures and business, to work with Developer with respect to plans and specifications and process the same for approval and permitting purposes and to work with the Developer in an attempt to reach the agreements contemplated hereunder.

(iii) On or before the Contingency Date (June 30, 2021) all necessary zoning, subdivision, and planning approvals for the Project and the Public Improvements and all components thereof shall have been approved by the City Council, Planning Commission, or City staff, as applicable, by all appropriate legislative or administrative action, and any applicable appeal or referendum periods for the same shall have expired without any such appeal or referendum having been initiated.

(iv) On or before the Contingency Date, the City shall be satisfied with the form and content of the Deed Restrictions.

**(d) Right to Terminate.**

(i) Termination by Developer. Unless all of the Developer's Contingencies set forth above in subsections (a)(i) through (xi) are satisfied or waived in writing by the Developer on or before the Contingency Date, then the Developer shall have the right to terminate this Agreement by written notice to the City. In addition, if prior to the Contingency Date, the Developer determines that any or all of the Developer's Contingencies will not be satisfied by the above-described Contingency Date, the Developer may elect to terminate this Agreement by written notice to the City prior to such date. Any or all of the Developer Contingencies may be waived by the Developer, but only by a written instrument executed by the Developer; provided, however, that if the Developer does not terminate this Agreement, pursuant to its right above in this paragraph, by the Contingency Date, Developer shall be deemed to have satisfied or waived the Developer Contingencies.

(ii) Termination by City. Unless all of the City's Contingencies set forth above in subsections (b)(i) through (iv) are satisfied or waived in writing by the Developer or City as applicable, on or before the Contingency Date, then the City shall have the right to terminate this Agreement by written notice to the Developer. In addition, if prior to the Contingency Date, the City determines that any or all of the City's Contingencies will not be satisfied by the above-described Contingency Date, the City may elect to terminate this Agreement by written notice to the Developer prior to such date. Any or all of the City Contingencies may be waived by the City, but only by a written instrument executed by the City.

(iii) Upon any termination of this Agreement by the Developer pursuant to this Section above, neither party hereto shall have any further obligations to the other hereunder except for those specifically stated to survive such termination.

11. **Estoppel Certificate.** Each party hereto agrees that, within fifteen (15) days after receipt of written request from the other party, it will issue to such requesting party, or its prospective mortgagee or successors, an estoppel certificate stating, to the best of such party's knowledge, as of such date:

(a) whether it knows of any default under this Agreement by the requesting party, and if there are any known defaults, specifying the nature thereof;

(b) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;

(c) whether this Agreement is in full force and effect; and

(d) any other reasonable matters relating to the transactions described in this Agreement.

12. **Termination of Agreement.** Upon completion of the substantial completion of the Project and the performance by both parties hereto of all other obligations of the City and the Developer hereunder, or in the event of termination of this Agreement as a matter of right pursuant to any of its terms, the parties agree to execute, in recordable form if requested by either party, a statement confirming termination of this Agreement.

13. **Easements, Covenants, and Restrictions.** Prior to the ContingencyDate, City and the Developer shall reach agreement on the form and content of such easements, covenants, and restrictions as the parties determine to be necessary in order to effectuate their respective obligations described in this Agreement, including the Deed Restrictions (defined herein).

14. **Representations, Warranties, and Covenants of Developer.** Developer makes the following representations, warranties, and covenants, effective as of the date of this Agreement and also as of the date of the Closing, to induce the City to enter into this Agreement:

(a) Developer is a limited liability company duly organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(b) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has, by proper action, been duly authorized, executed, and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Developer.

(c) The execution, delivery, and performance by Developer of this Agreement and the consummation of the transactions contemplated hereby will not violate the organizational documents of Developer, or any mortgage, indenture, contract, agreement, or other undertaking to which Developer is a party or which purports to be binding upon

Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(d) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, at law or in equity or before or by any governmental authority.

(e) Until the construction of the Project is substantially completed, Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute or governmental proceeding or investigation affecting Developer that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition and of any notice of default to Developer from any of its lenders.

15. **Management and Ownership of Development.** Developer acknowledges and agrees that among the City's inducements to enter into this Agreement with Developer was the Developer's reputation as an experienced developer of residential projects. Therefore, Developer agrees that: (a) the restrictions set forth in this Agreement on Developer's rights to assign, sell, and delegate management of the Project are reasonable and necessary to the success of the Project; (b) except for an assignment by the Developer of this Agreement prior to Closing to an entity under common control with the Developer and formed to own and develop the City Property and the Project, which is specifically permitted, Developer shall not sell or ground lease any of the City Property or allow any change of the ownership of Developer (except as contemplated by this Agreement) or assign its rights or delegate its obligations under this Agreement unless such actions are mutually agreed upon by The City and the Developer.

16. **Miscellaneous.**

(a) **Severability.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

(b) **Waiver.** The failure of either party to insist, in any one or more instances, upon a strict performance of any of the terms and conditions of this Agreement, or to exercise or fail to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future of such right or option, but the same shall continue and remain in full force and effect. The continued performance by either party of this Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision hereof, shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.

(c) **Notices.** All notices herein authorized or required to be given to the City shall be sent certified or registered mail, return receipt requested or by overnight courier service, postage prepaid, or by hand delivery as follows:

If to the City:

City of Lebanon  
Attn: City Manager  
50 South Broadway  
Lebanon, OH 45036

With a copy to:

Mark Yurick, City Attorney  
50 South Broadway  
Lebanon, OH 45036

If to Developer:

High Pointe Custom Homes, LLC  
Attn: Mike Williams  
4234 Mason Pointe Dr. Suite#100  
Mason OH 45040

or to such other address as either party may from time to time designate in accordance with this Section.

(d) **Entire Agreement.** This Agreement sets forth the complete understanding and agreement of the parties with respect to the transaction that is the subject of this Agreement. No oral statements, representations or agreements other than this Agreement shall have any force or effect and the City and the Developer agree that they will not rely on any representations or agreements other than those contained in this Agreement.

(e) **Further Assurances.** Either party, upon the request of the other party, shall execute and deliver such further documents and instruments as such other party may reasonably deem appropriate to carry out the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Agreement.

(f) **Survival.** All agreements, representations, warranties, and indemnifications hereunder shall be considered to have been relied upon and shall survive the execution, delivery, completion of performance, expiration, and earlier termination of this Agreement.

(g) **Headings.** The headings in this Agreement are for the purposes of reference only and shall not affect or define the meanings hereof.

(h) **Exhibits.** The Exhibits attached hereto are a part of this Agreement.

(i) **Applicable Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio.

(j) **Counterparts.** This Agreement may be signed in multiple identical counterparts with the same effect as if the signatures thereof and hereto were upon the same instrument.

(k) **Mechanics Liens.** Neither party shall permit any mechanics' or other liens to be filed against the other party's property as a result of such party's construction activities. If a mechanics' lien shall at any time be so filed, the party performing such work shall, within sixty (60) days after notice of the filing thereof, cause the same to be discharged of record by posting a bond therefor or by such other action as causes the lien to be discharged.

(l) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(m) **Time.** Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement for which time is a stated factor.

(n) **No Third-Party Beneficiaries.** The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(o) **No Brokers.** The City and Developer represent to each other that they have not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Agreement.

(p) **Amendments.** This Agreement may be amended only by a written amendment signed by both parties.

(q) **Official Capacity.** All representations, warranties, covenants, agreements, and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement, or obligation of any present or future officer, agent, employee, or attorney of the City in other than his or her official capacity.

(r) **Construction of Agreement.** Each of the undersigned parties has cooperated in the drafting and preparation of this Agreement and each has been represented by separate legal counsel during such process. Therefore, in any construction to be made of this Agreement, the same will not be construed against any party hereto on the basis that the party was the drafter.

(s) **Survival of Separate Agreements.** Notwithstanding any other provision of this Agreement to the contrary, nothing contained herein shall supersede, terminate, or otherwise affect the respective rights and obligations of the City and Developer

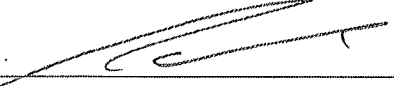
under that certain Agreement for Preliminary Site Work for the Project or any other agreement hereinafter entered into between the parties.

(t) **Force Majeure.** "Force Majeure" shall mean any act of God, fire, earthquake, flood, explosion, war, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, facilities, materials, or supplies, strikes, lockouts, action of labor unions, condemnation, laws, orders of governmental authorities, litigation involving a party hereto relating to zoning, subdivision or other governmental action or inaction pertaining to Project, or any portion thereof, inability to obtain government permits or approvals, and other similar matters not within the commercially-reasonable control of the party charged with the subject obligation affected by any of the above. Notwithstanding the foregoing to the contrary, lack of funds necessary to perform shall not qualify as a Force Majeure event excusing or delaying performance by either party hereunder, and failure to obtain permits or approvals required from the City shall not qualify as a Force Majeure event for any City obligations under this Agreement.

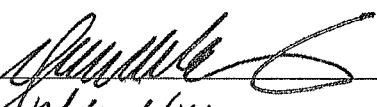
EXECUTED on the date first above written.

\*\*\*\*\*SIGNATURE PAGE FOLLOWS\*\*\*\*\*

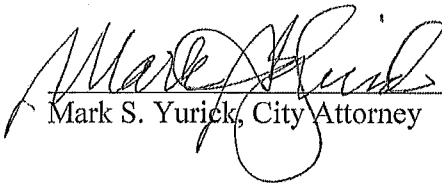
THE CITY OF LEBANON, OHIO,  
an Ohio municipal corporation

By:   
Name: Scott C. Brunka  
Title: City Manager

HIGH POINTE CUSTOM HOMES, LLC,  
an Ohio limited liability company

By:   
Name: Alder Williams  
Title: Managing Member

Agreement approved as to form:

  
Mark S. Yurick, City Attorney

**EXHIBITS**

**Exhibit A** – City-Owned Property on North Mechanic

**Exhibit B** – Legal Descriptions of City-Owned Property

**Exhibit C** – Site Development Plan

**Exhibit D** – Building Elevations and Renderings

**Exhibit E** – Streetscape and Park Improvements to be installed by City



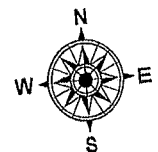
**EXHIBIT A**

City-Owned Property on North Mechanic



NOTE:  
All items shown are at approximate locations.  
All data requires field verification.

**CITY-OWNED PROPERTY**  
**NORTH MECHANIC STREET**  
**39.437921, -84.207015**  
**1.35 ACRES**



1 inch = 100 feet

**EXHIBIT B**

Legal Descriptions of City-Owned Property

Parcel List

12064310070

12064310080

12064310091

12064310092

12064310102

12064310110

12064310101

12064310120

12064310130

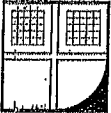
12064310140

12064310190

12064310180

**EXHIBIT C**

Site Development Plan

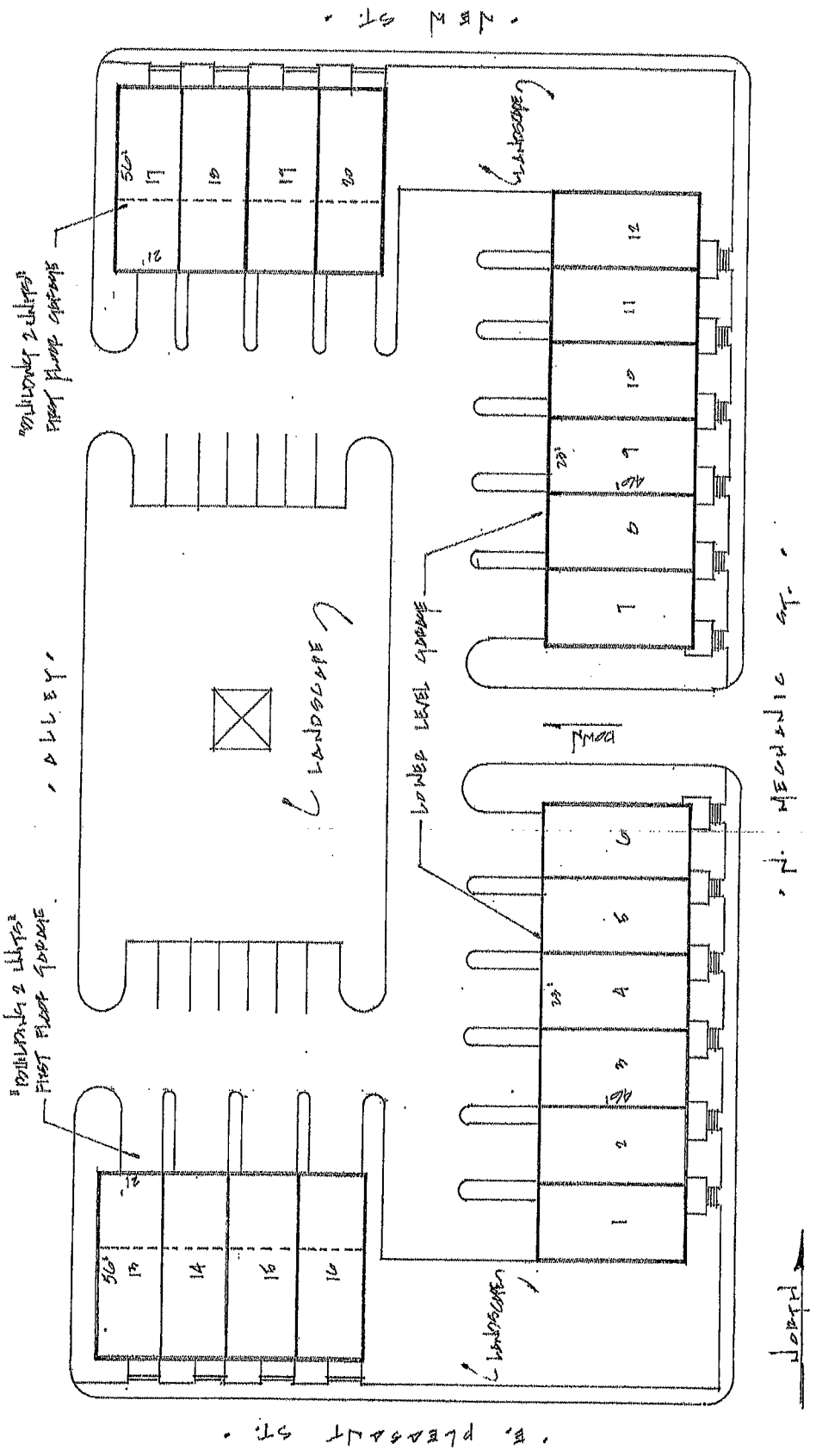


HIGH POINTS  
CUSTOM HOMES  
4334 MAHON POINTE DR., STE. 100  
WARREN, OHIO 44090  
PHONE: 919-628-2200

JOSEPH A. BROWN  
REGISTERED ARCHITECT/PLLC  
P.O. BOX 1048  
WARREN, KENTUCKY 40085  
PHONE: 606-671-6111

NEW TOWNHOMES  
FOR  
HIGH POINTS CUSTOM HOMES  
PLEASANT SQUARE LEBANON, OHIO

EXHIBIT C  
A-1  
Sheet 1 of 3



SITE DEVELOPMENT PLAN

SCALE: 1" = 30'-0"

**EXHIBIT D**

Building Elevations and Rendering

DATE	BY	REVISION

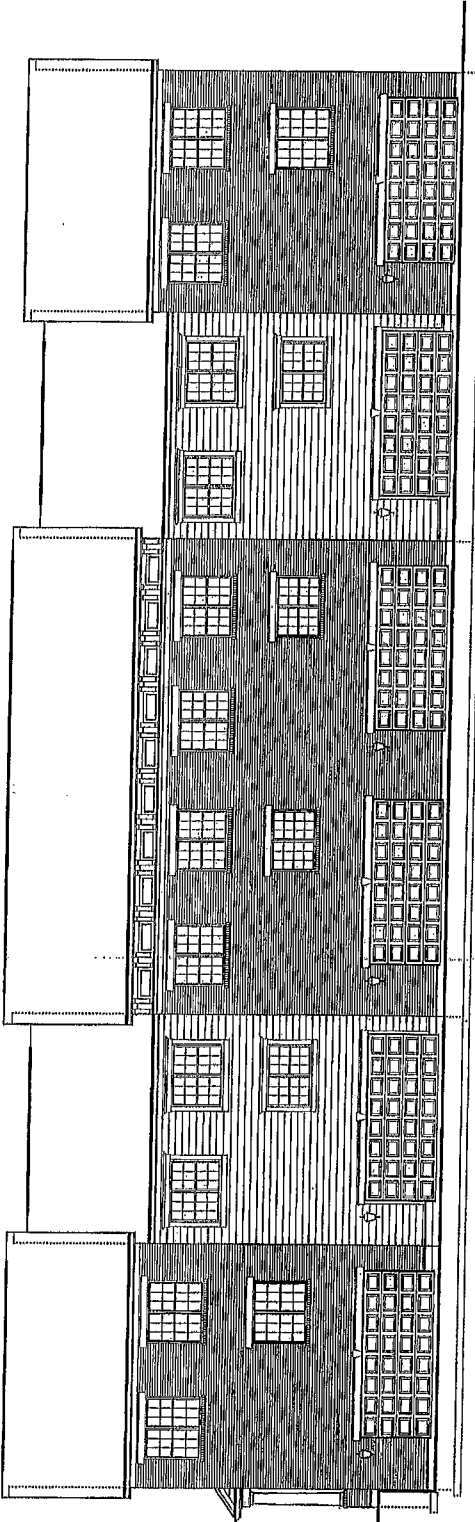
**HIGH POINTE CUSTOM HOMES**  
 1234 MASON POINTE DR. STE. 100  
 MASON, OHIO 43040  
 PHONE: 614-685-2100

**JOSEPH A. BROWN**  
 REGISTERED ARCHITECTURE, L.L.C.  
 P.O. BOX 1048  
 WARSAW, KENTUCKY 40385  
 PHONE: 502-687-6711

**NEW TOWNHOMES**  
 FOR  
**HIGH POINTE CUSTOM HOMES**  
 PLEASANT SQUARE LEBANON, OHIO

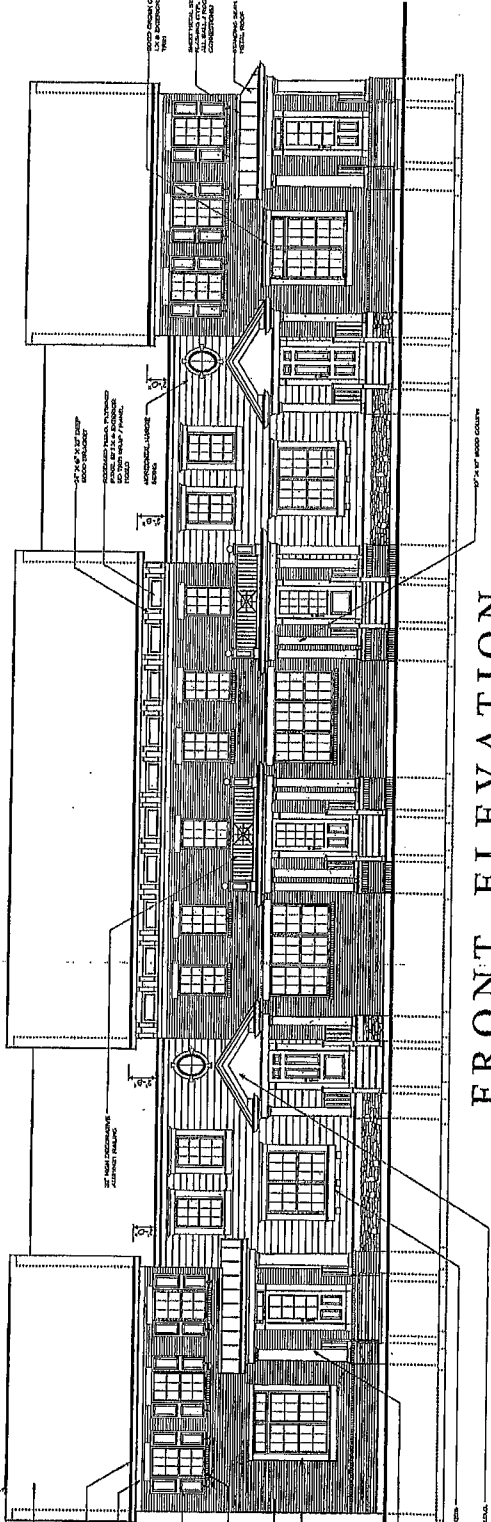
**EXHIBIT D**

**A-2**  
 SHEET 2 OF 4



**REAR ELEVATION**

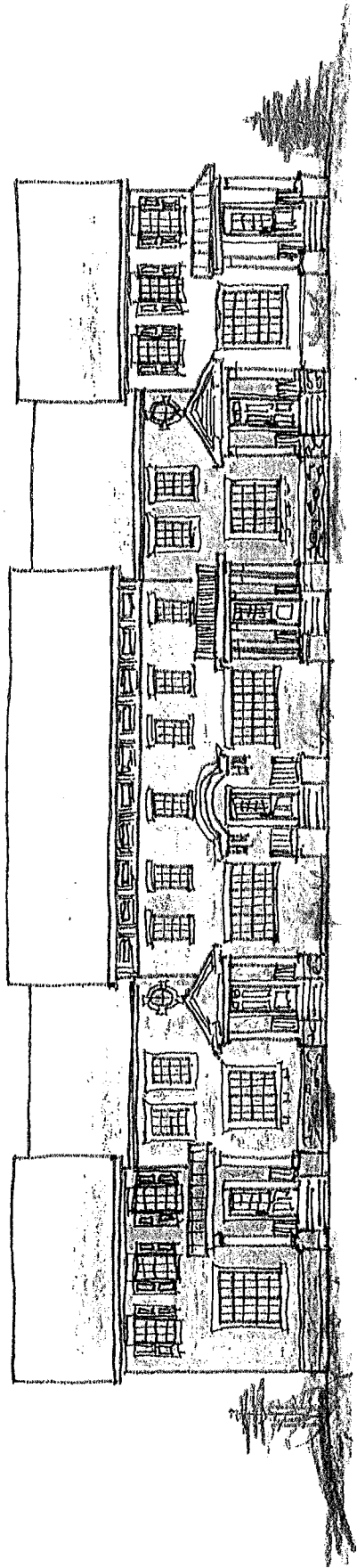
SCALE: 3/16" = 1'-0"



**FRONT ELEVATION**

SCALE: 3/16" = 1'-0"

EXHIBIT D

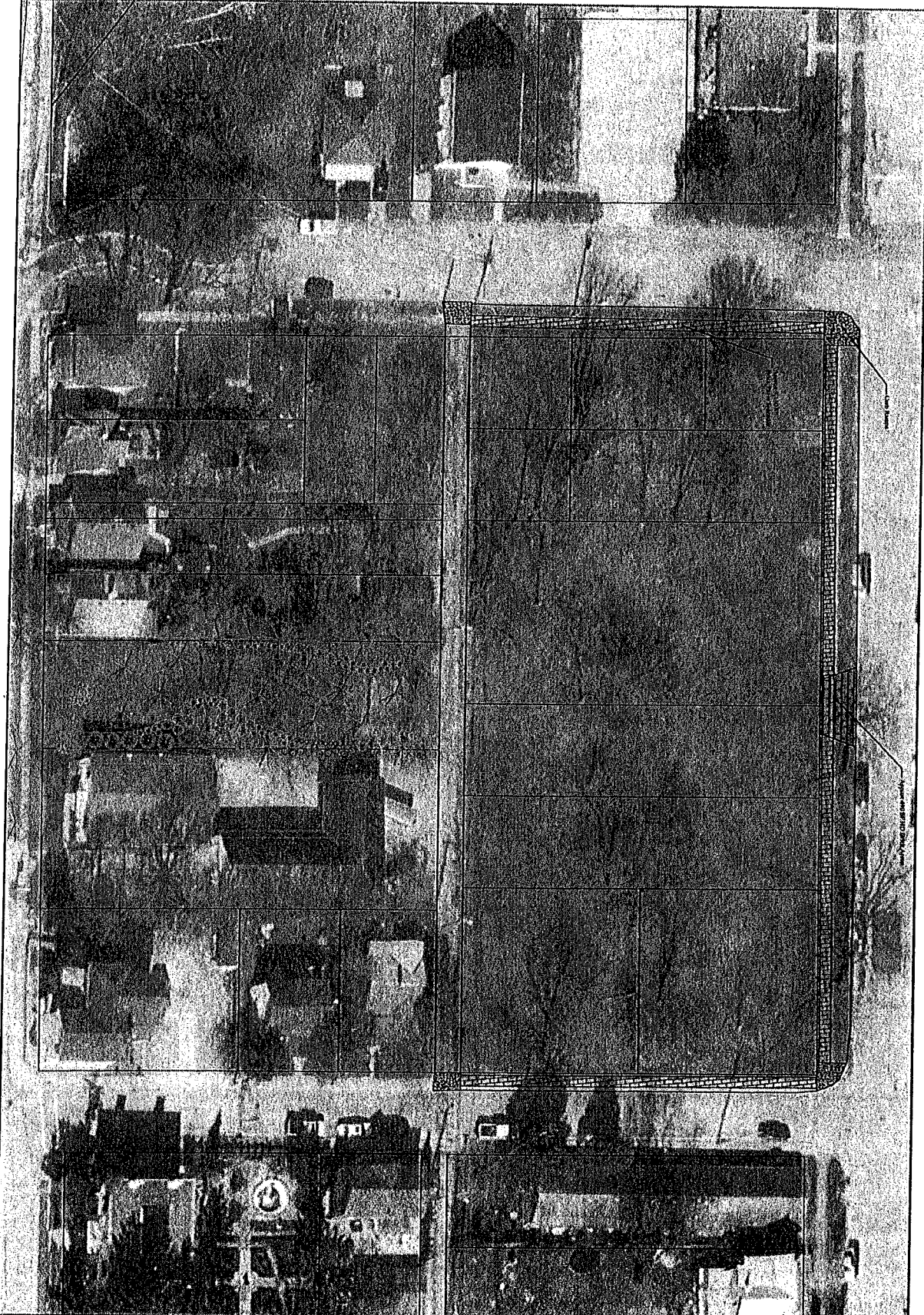


- FRONT ELEVATION -

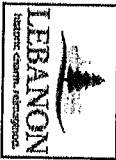


**EXHIBIT E**

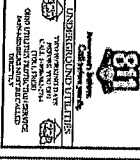
Streetscape and Park Improvements to be installed by City



1/2" = 1' - 0" (SEE PLAN)



INDEPENDENT CONTRACTORS  
NOT TO BE USED IN CONNECTION WITH ANY OTHER PROJECTS  
THIS PLAN IS THE PROPERTY OF LERANON AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF LERANON.



# EXHIBIT E

Project:  
Mechanic Street  
Streetscape  
Preliminary Layout

Project Number:	1
Date:	7/17/2010
Scale:	1/2" = 1' - 0"