

ORDINANCE NO. 1141

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CLIVE, IOWA, 2019 BY AMENDING THE OFFICIAL ZONING MAP AND ZONING DISTRICT BOUNDARIES BY REZONING CERTAIN PROPERTY GENERALLY LOCATED AT 11040 HICKMAN ROAD FROM C-2 COMMUNITY COMMERCIAL TO PUD PLANNED UNIT DEVELOPMENT

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF CLIVE, IOWA:

SECTION 1. CLASSIFICATION. The Official Zoning Map and the zoning district boundaries thereon indicated as set forth in the "ZONING ORDINANCE" of the "CODE OF ORDINANCES OF THE CITY OF CLIVE, IOWA, 2019", and as saved from repeal by Chapter 5 of Title VI of the "CODE OF ORDINANCES OF THE CITY OF CLIVE, IOWA, 2019," which by this reference are incorporated herein as if fully set forth in the body hereof, and the Clive Comprehensive Plan are hereby amended and changed by rezoning the real estate legally described on Exhibit A attached hereto (the "Property") from C-2, Community Commercial to PUD, Planned Unit Development.

SECTION 2. ADDITIONAL ZONING RESTRICTIONS. As part of this Ordinance and the rezoning established herein, certain permanent conditions and restrictions are hereby imposed upon the Property, which conditions and restrictions are in addition to existing regulations for the PUD Zoning Classification. Said restrictions are set forth in the Zoning Change and Development Agreement (the "Agreement") by and between the City of Clive, Iowa, and Barta Hospitality Group, Inc. The Mayor is hereby authorized and directed to execute said Agreement on behalf of the City of Clive, Iowa; and the City Clerk is hereby authorized and directed to attest to the signature of the Mayor and to affix the City seal to the same. All such conditions and restrictions are established and such Agreement executed and entered into, pursuant to and in accordance with the provisions of Section 414.5 of the 2003 Code of Iowa, as amended.


SECTION 3. REPEALER. All parts of the "CODE OF ORDINANCES OF THE CITY OF CLIVE, IOWA, 2019" in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY. If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this Ordinance as a whole or any section, subsection, provision, sentence, clause, phrase or part thereof not adjudged invalid or unconstitutional.

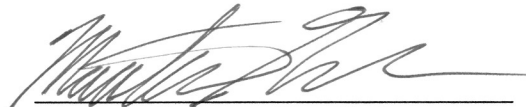
SECTION 5. EFFECTIVE DATE. This Ordinance shall be in effect from and after its final passage, approval and notice of its passage is given as provided by law.

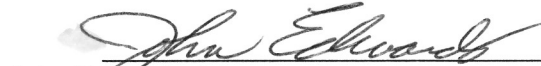
PASSED AND APPROVED by the City Council on the 14 day of December, 2023.


Matthew Graham, City Clerk


John Edwards, Mayor


Ordinance No. 1141 authenticated this 14 day of December, 2023.


Matthew Graham, City Clerk


John Edwards, Mayor

Officially ~~posted~~ on the 27 day of December, 2023, at _____ m.
Published

CERTIFIED BY:


Matthew Graham, City Clerk

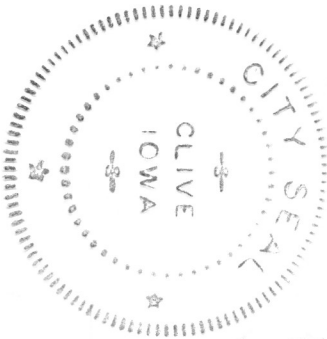


Exhibit A

Legal Description of Property

LOT 1 OF SCHNEIDER COMMERCIAL PARK PLAT 1, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF CLIVE, POLK COUNTY, IOWA.

Prepared by: Doug Ollendike, Clive Community Development Director, 1900 NW 114th Street, Clive, IA 50325
Return to: Matthew Graham, Clive City Clerk, 1900 NW 114th Street, Clive, IA 50325

ZONING CHANGE AND DEVELOPMENT AGREEMENT

THIS ZONING CHANGE AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into this 14 day of December, 2023, by and between the CITY OF CLIVE, IOWA, an Iowa municipal corporation (hereinafter referred to as the "City"), and Barta Hospitality Group, Inc., a Wisconsin limited liability company (hereinafter referred to as the "Property Owner").

WHEREAS, the Property Owner owns certain real property located within the City limits which is legally described as Lot 1 of Schneider Commercial Park Plat 1, an Official Plat, now included in and forming a part of the City of Clive, Polk County, Iowa (the "Property"), and

WHEREAS, the Property is currently zoned C-2 (Community Commercial District) and the existing building/site on the Property is currently being used as a permitted commercial extended stay hotel (the "Hotel") in compliance with all applicable local, State and Federal requirements; and

WHEREAS, the Property Owner has consented to the submission of a Rezoning Petition and Development Plan by The McCoy at 8035, LLC, a limited liability company (hereinafter referred to as the "Buyer"), supporting a request for consideration of a zoning change to allow for the conversion of the Hotel to a multi-family residential development (the "Residential Development"); and

WHEREAS, the City and the Property Owner desire that the Property be rezoned from C-2 (Community Commercial District) to PUD (Planned Unit Development), prior to development of the Residential Development in accordance with, and in consideration of, the provisions of this Agreement and Section 414.5 of the Iowa Code; and

WHEREAS, the City's PUD regulations require the Property Owner to enter into a development agreement with the City that addresses the primary objectives of the development as well as providing specific guidelines and design standards for the development and use of the Property; and

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the sufficiency of which is agreed upon by the City and the Property Owner, it is hereby agreed between the Property Owner and the City as follows:

1. Rezoning. The Property shall be rezoned from C-2 to PUD.
2. Restrictions on Uses. Notwithstanding this zoning change from C-2 to PUD, the City and the Property Owner acknowledge and agree the Property's use shall be limited to the principal permitted uses allowed in the C-2 and R-3 zoning districts; provided, however, attached dwelling townhomes, detached dwelling townhomes, and single-family residences shall not be permitted. In addition, in no event shall the Property be used for both short term lodging and long-term lodging at the same time. For the purposes of this Agreement, "short term lodging" means a rental or lease of a dwelling unit for fewer than six (6) months.
3. Development Plan. As required by the PUD regulations, the Property Owner has consented to the submission of a Development Plan (the "Development Plan") by Buyer to the City, as provided in Exhibit A attached to this Agreement and by this reference made a part of this Agreement, that identifies the primary design standards required for the development of the Property. The Property Owner agrees that the development of the Property shall be in full compliance with the Development Plan and this Agreement. In addition to the foregoing, the development of the Property shall at all times comply with all applicable requirements of the City of Clive Zoning Ordinance.
4. Site Plans Required. The Property Owner agrees that prior to requesting approval of building permit(s) for the conversion of the existing buildings on the Property to the Residential Development, the Property Owner will submit to the City a site plan for review and consideration by the City Council. The intent of the site plan shall be to identify all proposed site and exterior building improvements and to ensure that the improvements are consistent with Development Plan and this Agreement. Except where necessary to communicate a specific improvement detail, full survey and engineering design shall not be required.
5. Building Code Analysis Required. The Property Owner agrees that prior to requesting approval of building permit(s) for the conversion of the existing building on the Property to the Residential Development, the Property Owner will submit to the City a Building Code Analysis which shall document that the building, common areas and dwelling units are compliant with the City's Existing Building Code, the City's Rental Housing Code, and that the residential occupants are safe from environmental health concerns such as asbestos, lead and toxic mold exposures.
6. Bulk Regulations. The following bulk regulations shall apply to the Property as generally shown on the Development Plan and as provided below:
 - (a) Maximum height of any principal building shall be sixty feet (60')

(b) Minimum lot area shall be 2.4 acres

(c) Minimum setbacks shall be as follows:

- i. Minimum front yard setback (north property line) shall be twenty-five feet (25').
- ii. Minimum rear yard setback (south property line) shall be thirty-five feet (35') except that for every foot that the front yard is increased over 25 feet, the rear yard may be decreased proportionately.
- iii. Minimum side yard (east and west property line) shall zero feet (0').
- iv. Minimum parking lot setback to property lines shall be of ten feet (10') in the front yard and five feet (5') in the side yard and rear yard. Any existing parking lot located within the setback shall be permitted to remain in its current location until such time of substantial repair or improvement of the parking surfaces impact by the minimum setbacks.

(d) Maximum Number of Dwelling Units. The maximum number of dwelling units that may be occupied on the Property shall be one hundred twenty (120).

(e) Minimum Dwelling Size. Studio apartment units shall have a minimum dwelling size of 265 square feet. One bedroom apartment units shall have a minimum dwelling size of 530 square feet. Apartment units with more than one bedroom shall have a minimum dwelling unit size of 600 square feet.

(f) Accessory Structures and Buildings. Any newly constructed accessory structure or accessory building constructed on the Property shall be designed to match the architectural character of the principal structures and shall be in conformance with the Clive Zoning Ordinance. Any existing accessory structure or building located on the property and maintained in good repair shall be permitted to remain in its current location.

7. Parking Requirements. A minimum of 1.25 parking stalls per dwelling unit are required to be provided on-site at all times. Accommodations for bicycle parking shall be provided as part of the site plan at the rate of one bike rack per ten (10) dwelling units up to a maximum of (10) rack spaces.
8. Buffer and Open Space Requirements. A minimum of fifteen percent (15%) open space is required on the Property. A minimum of 1.5 trees per 1,000 square feet of required open space is required. Additional landscape plantings (ornamental trees, shrubbery, grasses, perennials, and annuals) shall be incorporated along the fence line at the south property line adjacent to the dog run area as well as incorporated around the outdoor patio area.

9. Signage. Ground mounted sign shall be permitted in accordance with the Subdivision Signs section of the Zoning Ordinance. Building signage shall be permitted in accordance with the Building Mounted Signs section of the Zoning Ordinance. Consistent with a previously approved Variance in January 2002, an additional building mounted sign not exceeding 144 square feet shall be permitted on the west elevation of the building.
10. Building Design Standards. The current architectural design and exterior material composition of existing building on the Property is permitted provided such buildings are maintained in a good condition. In the event of substantial improvement or redevelopment of the existing building(s), the Property Owner shall comply with the then building design standards at that time.
11. Property Management. The Property Owner agrees to maintain the Property in accordance with the approved site plan and Rental Housing Code. To ensure that the Property is continuously maintained, the Property Owner agrees to provide an office that is regularly staffed on the Property with accommodation for adequate rental and maintenance staff. Additionally, the Property Owner agrees that any rental dwelling units on the Property will be certified by the Clive Crime Free Multi-Family Program. Certification shall be obtained within 12 months from the issuance of building permit(s) for the conversion of the existing building on the Property to the Residential Development. An extension may be granted by the City in the event that the March 2024 Property Manager Training is not available to the Property Owner.
12. Recreational Facilities Fee. The Property Owner agrees to satisfy the requirements of the City's Recreational Facilities ordinance provisions through the install and maintenance of common area amenities as identified in Exhibit B attached to this Agreement and by this reference made a part of this Agreement. As access to those common area amenities is generally limited to the tenants of the property, the Property Owner agrees to pay to the City the sum of \$50,000.00. The Recreational Facilities Fee shall be paid to the City at the time of issuance of the first Certificate of Occupancy for the Residential Development.
13. Warranty of Title. The Property Owner hereby represents and warrants to the City that the Property Owner is the fee title owner of the Property and the Property Owner hereby covenants to defend Property Owner's title to the Property for purposes of this Agreement.
14. Binding. The parties agrees that this Agreement shall be binding upon, and shall inure to, the benefit of the heirs, successors, and assigns of the respective parties hereto, and all of the terms and conditions of this Agreement shall constitute conditions, covenants and restrictions running with the land in perpetuity for the Property; provided, however, upon the petition of the then owner of the Property or any portion thereof, the parties hereto agree that the terms of the ordinances of the City and the laws and regulations of the State of Iowa governing rezoning shall control any change in the zoning and development of the portion of the Property owned by the person(s) so petitioning. Accommodate
15. Severability. If any part of this Agreement is for any reason unenforceable or inapplicable, the other provisions of this Agreement will remain in full force and effect in the same


manner as if such unenforceable or inapplicable provisions had never been contained herein.

16. Effective. This Agreement is subject to and contingent upon City approval of the rezoning of the Property in accordance with paragraph 1 of this Agreement. In the event the City does not approve said zoning change, this Agreement shall be automatically null and void and the Property shall remain zoned C-2.
17. Commencement of Project/Reversion of Zoning. The Property Owner's obligations hereunder shall only be effective upon the Property Owner's conversion of the Hotel to a multi-family residential development. Failure of the Property Owner to obtain approval for a site plan, building permits for the construction of all site/building improvements identified in the approved site plan and substantially commence construction of such improvements within six (6) months of the City's approval date of this Agreement, shall be deemed sufficient cause for the City to rezone the Property to the C-2 (Planned Office Park Commercial District) zoning classification. The Property Owner hereby waives any objection to any such future rezoning pursuant to the terms of this paragraph and agrees to use the Property in conformance with the C-2 requirements in the event that the Property is rezoned C-2.
18. Recording. This Agreement shall be recorded with the Polk County, Iowa, Recorder, as an exhibit to the ordinance rezoning the Property and shall constitute a valid and effective agreement pursuant to the terms and conditions of Section 414.5 of the Iowa Code.
19. Assignment. The Property Owner shall be permitted to assign its rights and obligations under this Agreement, in their entirety, to the Buyer upon successfully transferring ownership of the Property to Buyer and shall be fully released from all obligations hereunder upon doing so. The Property Owner may not assign its rights and obligations to any other party without the written consent of the City, which the City may grant or deny in its sole discretion.


(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS.)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CITY OF CLIVE, IOWA

By: 
John Edwards, Mayor


Attest:

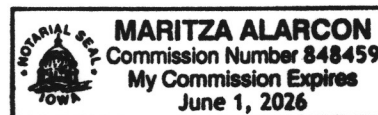

Matthew Graham
City Clerk



STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this 18 day of December, 2023, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared John Edwards and Matthew Graham, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Clive, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in ^{ordinance} Resolution No. 1141 adopted by the City Council, under Roll Call of the City Council on the 14 day of December, 2023, and that John Edwards and Matthew Graham acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.


Notary Public in and for the
State of Iowa
My Commission expires 6.1.26



Barta Hospitality Group, Inc., a Wisconsin limited liability company

By: _____

Name: _____

Title: _____

[Signature]
Jatin Barta
MANAGING MEMBER

STATE OF Ohio)
COUNTY OF Delaware) ss:

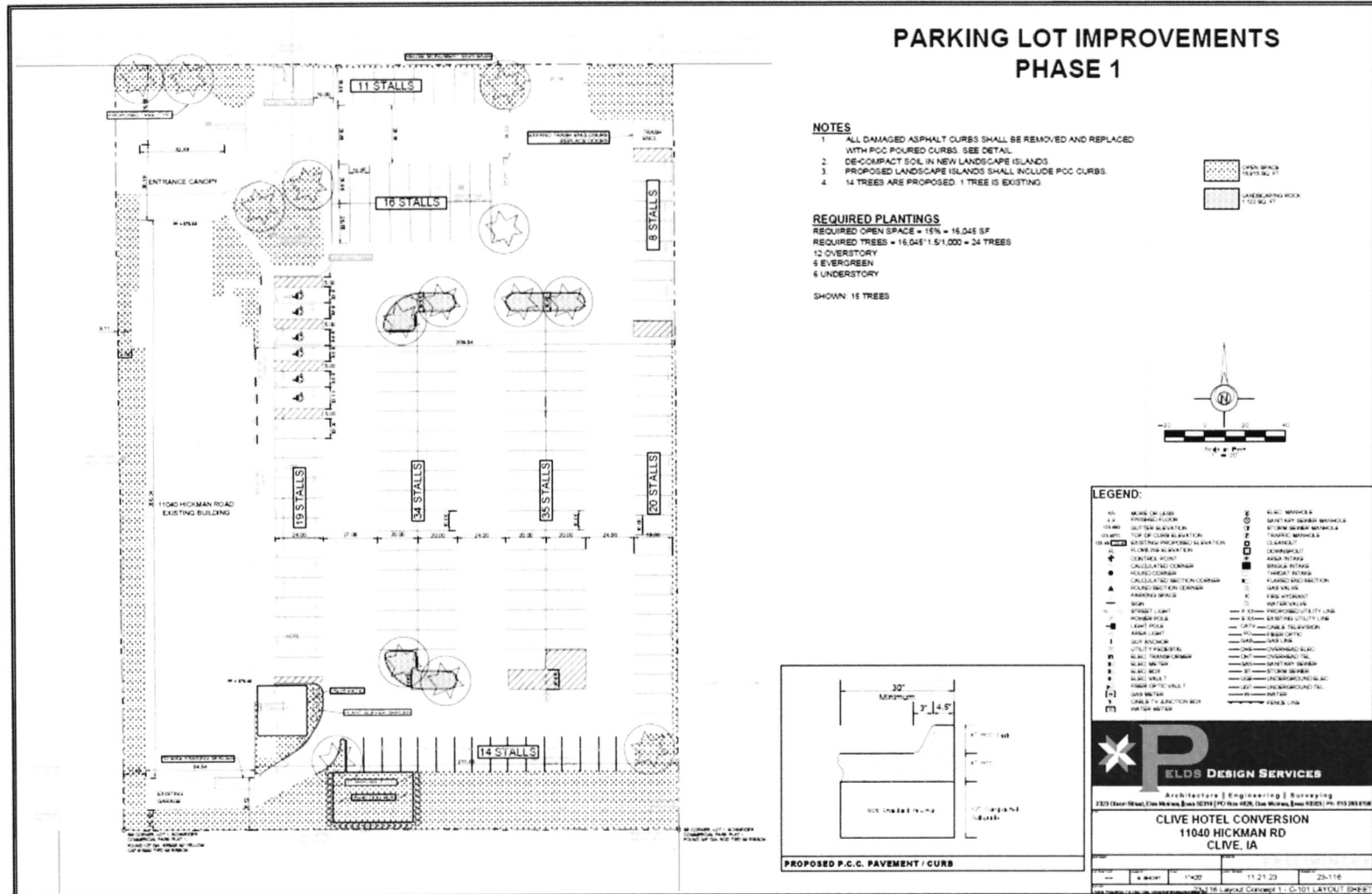
This record was acknowledged before me this 7th day of December, 2023, by
Jatin Barta as Managing Member of Barta Hospitality Group, Inc., a
Wisconsin Iowa limited liability company.



KAREN L. CANTERBURY
Notary Public
State of Ohio
My Comm. Expires
July 31, 2027

Karen L. Canterbury
Notary Public in and for the
State of Ohio

Exhibit "A" - Development Plan Page 1
Full Size Copy on File with the City of Clive



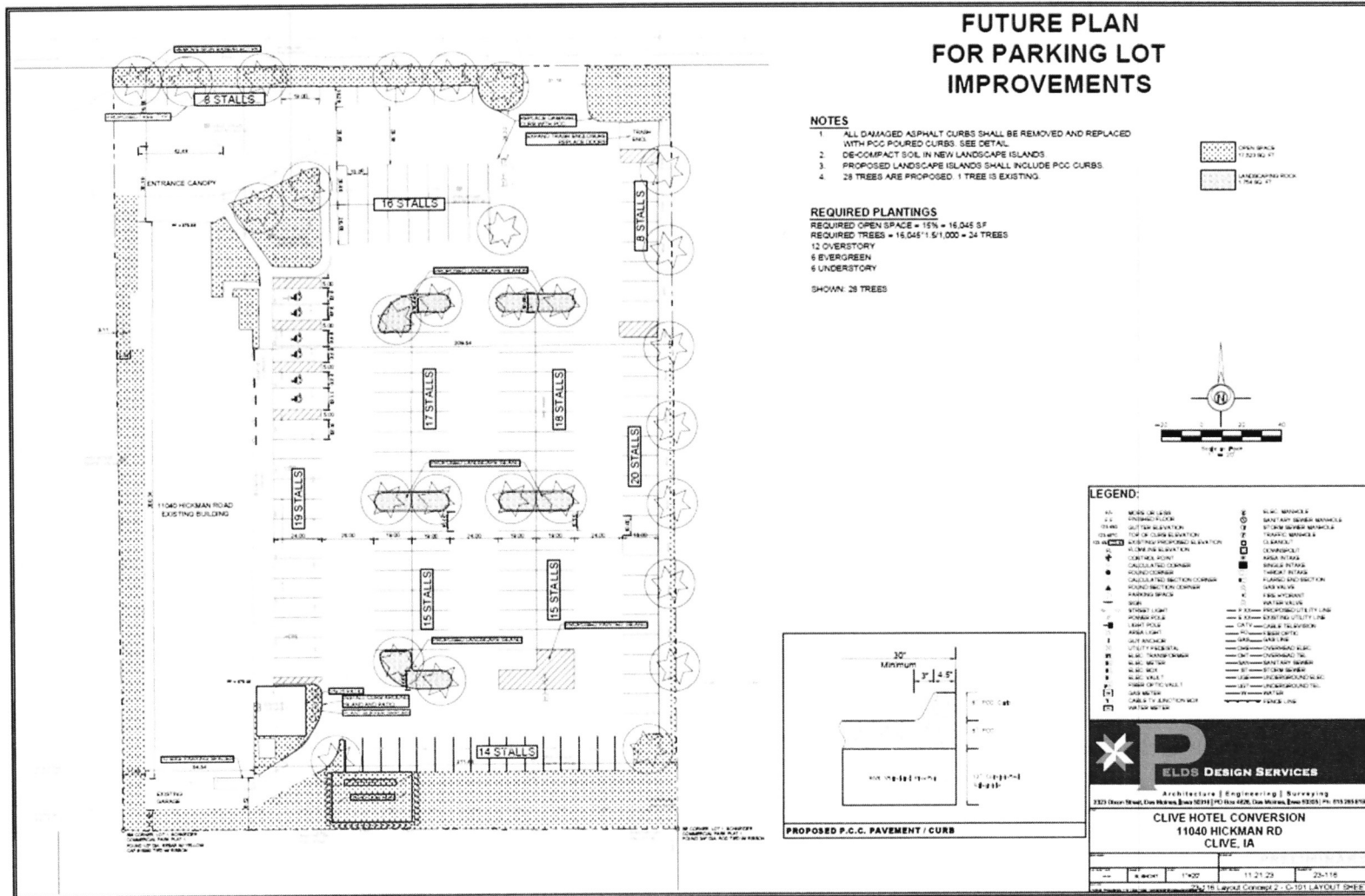


Exhibit “B” – Common Area Amenities

Project	Project Budget	Project Description
Fitness Center	\$ 77,000.00	Adding a new fitness center on the West side of the existing hotel lobby. Buildout of new walls, redirect HVAC, electrical, new rubber floors, 2 new commercial treadmills, 1 new commercial elliptical, dumbbell set and bench with other fitness equipment pieces. New glass entry door and glazing for lobby. Adding a key fob system for secure access.
Laundry Room	\$ 63,000.00	Adding 3 new laundry facilities to site and upgrading 3 existing facilities. 12 new machines with mobile connection capacity for payment and info on machine availability. Creating ADA accessibility to machines. Running new electric, plumbing and venting for new machines.
Lifestyle Patio	\$ 55,000.00	Adding 20' X 20' outdoor BBQ/patio area. Tear out of existing patio, new concrete slab with block seat walls and built in grill with additional seating and pergola system. A buffer will surround the perimeter of patio with 3' curbing and landscaping to help define and protect the area from snow plows and vehicles. New landscaping around the perimeter will be installed according the design on site plan.
Mail and Package Room	\$ 25,000.00	Adding a new interior mail and package delivery area leveraging USPS cluster boxes along with package lockers for tenant deliveries.
Lobby Area	\$ 25,000.00	Create game room and lounge area. Addition of pool table or shuffle board type of gaming along with TV and multiple seating areas for residents
Dog Run and Dog Wash	\$ 25,000.00	Add 20'x40' dog run. Black chain link fence with bench seating. Additional landscaping with variety of grasses and perennials around the perimeter of the dog run. Add a stainless steel Dog Wash station.
Total	\$ 270,000.00	