

**SITE IMPROVEMENT PERFORMANCE AGREEMENT  
LOT 1, BLOCK 1, MEADOWS OF ST. FRANCIS 4<sup>th</sup> ADDITION**

**THIS AGREEMENT**, entered into this \_\_\_\_\_ day of November, 2022 by and between the CITY OF ST. FRANCIS, a Minnesota municipal corporation (“City”) and DGOGSaintfrancismn07072021, LLC, a Missouri limited liability company (“Developer”).

**RECITALS**

**WHEREAS**, Developer has proposed construction of a retail store to be constructed on the following described property:

Lot 1, Block 1, Meadows of St. Francis 4<sup>th</sup> Addition according to Plat in Exhibit A to be recorded at the Office of the County Recorder, Anoka County, Minnesota; and

**WHEREAS**, the Developer is the fee owner the parcel of land described as Lot 1, Block 1, Meadows of St. Francis 4<sup>th</sup> Addition (the Subject Property) which lot measures approximately 2.13 acres; and

**WHEREAS**, the building and improvements on the Subject Property shall be constructed, maintained and operated in accordance with the site plan; and

**NOW THEREFORE**, in consideration of the promises and mutual promises hereinafter contained, it is agreed between the parties as follows:

1. Development Plans. The retail store shall be developed on the Subject Property in accordance with the site plans as referenced in Exhibit B dated September 14, 2022 and on file and of record at City and herein fully incorporated herein by reference and the conditions stated below (hereinafter the “Development Plans”). If the Development Plans vary from the written terms of this Agreement, the Building Development Plans shall control.
2. Right to Proceed. Unless a written exemption is provided by the City to Developer, within the Property, the Developer may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any

buildings until all the following conditions have been satisfied: 1) this Contract has been fully executed by both parties and filed with the City Clerk; 2) the Developer has submitted a title insurance policy to the City establishing that good and marketable title to the Property is in the name of the Developer; 3) Developer has obtained all necessary permits from all federal, state and local governmental entities; 4) Developer has submitted to City the Insurance Binder required herein; and 5) the City's administrator or community development director has issued a letter that conditions 1 through 4 herein have been satisfied and that the Developer shall proceed.

3. Municipal Improvements. The Development Plans include certain Municipal Improvements as set forth on the attached Exhibit B.

The Municipal Improvements shall be installed in accordance with City standards, ordinances, and plans and specifications which have been prepared by an Engineer registered in the State of Minnesota and reviewed and approved by the City Engineer. The Developer shall obtain all necessary permits from the Minnesota Pollution Control Agency (MPCA), Minnesota Department of Health, Anoka County Highway Department, Minnesota Department of Transportation (MnDOT), and any other applicable agencies before proceeding with construction.

4. Private Improvements. The Developer agrees that it shall cause to be constructed and installed certain private improvements ("Private Improvements") on the Subject Property. All Private Improvements are to be installed at Developer's sole cost and expense pursuant to this Agreement and the private improvements to the Subject Property shall include those improvements shown on the Development Plans.

Developer shall construct such Private Improvements in accordance with all applicable building codes, ordinances and City standards and the Development Plans furnished to the City and approved by the City Engineer. The Developer shall obtain all necessary permits before construction of the Building. City shall provide adequate field inspection personnel to assure acceptable quality control, which will allow certification of the construction work.

Within thirty (30) days after the completion of Building and before any security is released, the Developer shall supply the City with a complete set of reproducible "as built" plans which shall be provided in electronic AutoCAD files to the City Engineer. The cost of preparing these plans shall be paid for by the Developer.

5. Encroachment Agreement Regarding Private Improvements on City Property. The Developer and City acknowledge that a portion of the Development Plans will encroach on existing City property. The City hereby approves an encroachment on and over the City's Property by the Developer for the purposes of constructing, maintaining, using and operating the Private Improvements (the "Encroachment") subject to the terms of the Encroachment Agreement executed between the City and the Developer as listed in Exhibit C.

6. Grading, Landscaping and Drainage. The Developer shall be responsible for grading, landscaping and storm water management on the Subject Property as more fully set forth in this Agreement.
  - a. Landscaping. Developer shall maintain the sod and landscape of boulevard areas adjacent to the Subject Property as shown in the Development Plans through at least one growing season and to the satisfaction of City. The long-term maintenance of sod and landscaping of boulevard areas shall be the responsibility of Developer. Further, Developer shall be responsible for mowing, elimination of weeds and removal of any garbage or debris on the Subject Property. Developer shall also comply with the approved Landscaping Plan and conditions of the approved Development Plans.
  
7. Improvements. In developing the Property in accordance with the Development Plans, the Developer shall make and pay for the following public and private improvements (collectively, the “Improvements”):
  - a. lot grading and all temporary and permanent erosion control measures; storm sewer and infiltration basin;
  - b. sanitary sewer service and water service;
  - c. parking lot, including curb and gutter ;
  - d. City street patching;
  - e. surveying and staking;
  - f. Landscaping; and
  - g. parking lot lighting.
  
8. Time of Performance. The Developer shall install all public and private Improvements for the development by August 31, 2023.
  
9. Easement; Right of Entry. The Developer hereby grants to the City, its agents, representatives, employees, officers, and contractors, a right of entry to access all areas of the Property to perform any and all work and inspections necessary or deemed appropriate by the City during the installation of Improvements, or to take any corrective actions deemed necessary by the City. The right of entry hereby conveyed by the Developer to the City shall continue until the City accepts all of the Improvements. The City will provide the Developer with reasonable notice prior to exercising its rights hereunder, except in the case of an emergency.
  
10. Erosion Control. The erosion control plan for the Subject Property within the Development Plans has been reviewed and approved by City and shall be implemented by Developer prior to grading of the Subject Property. All areas disturbed by the excavation and backfilling operations shall be reseeded forthwith after completion of work in that area. If Developer does not comply with the erosion control plan and schedule or any erosion control requirements, City may, with reasonable notice, take

action as it deems appropriate in accordance with all applicable laws, ordinances or regulations or according to this Agreement.

- a. The erosion control measures specified in the Plans shall be binding on the Developer and its successors and assigns.

11. Grading Plan.

- a. Grading on the Property shall be in accordance with the approved grading and erosion control Plans and in conformance with the City's specifications. Within thirty (30) days after completion of grading, the Developer shall provide the City with an "as constructed" grading Plan including certification by a registered land surveyor or engineer that all grading has been performed and completed in accordance with the Plans.

- b. Grading shall be completed by June 30, 2023. Upon completion of grading, the City Engineer shall inspect the Property and determine whether grading has been performed in accordance with the Grading Plan.

12. Hours of Construction; Noise and Dust Control. The Developer shall limit grading and construction of Improvements within the Subdivision to between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday and 8:00 a.m. and 5:00 p.m. on Saturday. All other construction activities shall take place only during the hours permitted by the City Code. The Developer shall provide dust control to the satisfaction of the city engineer/staff through all construction within the Property and shall exercise due diligence with regard to the activities of third parties not under the Developer's control.

13. Pre-Construction Activity. Developer shall schedule a pre-construction meeting with City to review the proposed schedule for grading and construction of the building and related improvements as set forth on the Development Plans, and to coordinate the schedule with the City Engineer.

14. Ownership of Improvements. Upon completion of the work and construction required by this Agreement, improvements lying within public easements on the Subject Property shall become City property without further notice or action, except that those streets, which will be maintained as private drives (if applicable) shall remain under Developer's ownership subject to any and all necessary easements.

The Developer and its successor or assigns as fee owner of the Property shall be responsible for maintaining the Storm water Improvements and for observing all drainage laws governing the operation and maintenance of the Storm water Improvements. The Developer shall complete inspections of the Storm water Improvements at least once annually and shall keep record of all inspections and maintenance activities, and submit such records to the City upon request. Maintenance activities shall include but will not be limited to: street sweeping (to prevent the sediment from clogging the underground storm water conveyance system), removal of sediment from the underground storm water conveyance system, and cleaning of storm sewer lines. The Developer acknowledges

that the storm water improvements associated with this project includes an infiltration basin. If, at any time, the treatment capacity or storage volume of the infiltration basin diminishes or is significantly reduced, or if the infiltration basin does not infiltrate the stormwater water quality volume (as defined by the Minnesota Pollution Control Agency) within the required timeframe (48 hours) after a rain event, the Developer will reconstruct the infiltration basin as necessary. The cost of all inspections and maintenance shall be the obligation of the Developer and its successors or assigns as the fee owner of the Property.

15. Permanent Access and Maintenance Easement. The Developer or its successors or assigns grants the City, its agents and Contractor(s) the right to enter the Property to inspect and maintain the Stormwater Improvements as set forth in this agreement.
16. City's Maintenance Rights. The City may maintain the Stormwater Improvements, as provided in this paragraph, if the City reasonably believes that the Developer or its successors or assigns has failed to maintain the Stormwater Improvements in accordance with applicable drainage laws and other requirements and such failure continues for 30 days after the City gives the Developer written notice of such failure. The City's notice shall specifically state which maintenance tasks are to be performed. If Developer does not complete the maintenance tasks within 30 days after such notice is given by the City, the City shall have the right to enter upon the property to perform such maintenance tasks. In such case, the City shall send an invoice of its reasonable maintenance costs to the Developer or its successors or assigns, which shall include all staff time, engineering and legal and other costs and expenses incurred by the City. If the Developer or its assigns fails to reimburse the City for its costs and expenses in maintaining the Stormwater Improvements within 30 days of receipt of an invoice for such costs, the City shall have the right to assess the full cost thereof against all of the lots within the Property. The Developer, on behalf of itself and its successor and assigns, acknowledges that the maintenance work performed by the City regarding the Stormwater Improvements benefits the lots in the Property in an amount which exceeds the assessment and hereby waives any right to hearing or notice and the right to appeal the assessments otherwise provided by Minnesota Statutes Chapter 429. Notwithstanding the foregoing, in the event to an emergency, as determined by the City Engineer, the 30-day notice requirement to the Developer for failure to perform maintenance tasks shall be and hereby is waived in its entirety by the Developer, and the Developer shall reimburse the City and be subject to assessment for any expense so incurred by the City in the same manner as if written notice as described above has been given.
17. Clean Up. Developer shall promptly clean any and all dirt and debris from streets resulting from construction work by Developer, its agents or assigns during the work and construction required by this Agreement.
18. Administrative Fee. None.
19. Park and Trail Dedication. Park and Trail dedication requirements for this project are as follows: None.

20. Storm Water Fees, and Storm Water Basin. No Storm Water Fees are applicable to the Subject Property. Developer shall manage the storm water on the site in accordance with the Development Plans.
21. Sewer Availability Charges. The Sewer Availability Charges for the Subject Property are as follows: None.
22. Sewer Connection Fees. Sanitary sewer connection fees are paid at the time of issuance of a building permit. The sewer connection fees shall be determined at the time that building plans are submitted and reviewed by City.
23. Water Availability Charges. The Water Availability Charges for the Subject Property are as follows: None.
24. Water Connection Fees. Water connection fees are paid at the time of issuance of a building permit. The water connection charges shall be determined at the time that building plans are submitted and reviewed by City.
25. Street and Traffic Control Sign Fees. Not applicable. The Developer shall install all internal traffic control signs.
26. City Engineering, Engineering Administration, Construction Observation, and Legal Fee Escrow and City Fees.

Developer shall pay escrow for the City's engineering, engineering administration and construction observation services, following execution of this agreement, in the estimated amount set forth below. City engineering administration will include consultation with Developer and its engineer on status or problems regarding the Project, monitoring during the warranty period, general administration and processing of requests for reduction in security. Fees for this service shall be the actual amount billed for those service. Developer shall pay for construction observation performed by the City Engineer. Construction observation shall include part or full time observation, as determined by the City Engineer, and will be billed at hourly rates actually required for said inspection. In the event of prolonged construction or unusual problems, City will notify Developer of anticipated cost overruns for engineering administration and observation services.

The Escrow account shall include estimated escrow for City Engineering, Engineering Administration and Construction Observation limited to the Municipal Improvements, as follows:

## **ESCROW**

City Construction Administration and Observation Escrow: \$10,000.00

(actual billings to be paid)

**TOTAL**

**\$10,000.00**

These Escrow amounts shall be submitted to City prior to City executing this Agreement. Any Escrow amounts not utilized for legal and engineering charges incurred by the City under this Agreement shall be returned to Developer when all improvements have been completed, all financial obligations to City satisfied, and all required “as-built” plans have been received by City.

Engineering, planning and legal fees incurred prior to the execution of this Agreement shall be deducted from escrow already submitted with the site plan application or charged against the escrow herein established.

All other amounts listed as one-time fees are non-refundable and available immediately for City use when posted.

27. Security. To ensure compliance with the terms of this Agreement, and construction of all Municipal Improvements, Developer shall furnish City with a cash escrow or Irrevocable Standby Letter of Credit in the amount of \$135,000.00 said amount calculated as follows:

Storm Sewer Relocation	\$12,700.00
Street Patching & Sidewalk	\$20,600.00
Stormwater	\$31,050.00
Erosion Control	\$17,200.00
Landscaping	\$8,450.00
SUBTOTAL	\$90,000.00
<b>TOTAL SECURITY ( x 150%)</b>	<b>\$135,000.00</b>

The issuer and form of the security (other than cash escrow) shall be subject to City approval, which approval shall not be unreasonably withheld. The security shall be issued by a banking institution in good standing as determined by City and approved by the City Administrator. City shall have the ability to draw on the Security by overnight courier delivery to the bank or branch bank issuing the Letter of Credit.

City may draw down the security for any violation of the terms of this Agreement, or upon receiving notice of the pending expiration of the security. It shall be the responsibility of Developer to inform City at least thirty (30) days prior to expiration of



the security of the impending expiration and the status of the Project relative to the security and this Agreement. If, for whatever reason, the security lapses prior to complete compliance with this Agreement (other than during any warranty period), Developer shall immediately provide City with either an extension of the security or an irrevocable letter of credit of the same amount upon notification of the expiration. If the required improvements are not completed at least thirty (30) days prior to the expiration of the security, City may also draw down the security.

City may draw down the security for any violation of the terms of this Agreement (after any reasonable notice to Developer and cure periods). If the security is drawn down, the proceeds shall be used to cure any default. City will, upon making determination of final costs to cure any default, refund to the Developer any monies which City has in its possession which are in excess of the security needed.

Upon receipt of proof satisfactory to City that work has been completed and financial obligations to City have been satisfied, the security will be reduced from time to time down to the amount of warranty security as set forth in Section 26 of this Agreement.

The security shall not be reduced below ten percent (10%) of the posted security until all improvements have been completed, all financial obligations to City satisfied (which includes posting of warranty security), and required “as built” plans have been received by City. The intent of this Agreement that City shall have access to sufficient security, either security or warranty security, to complete the Project and insure warranty on all public improvements.

The security amount shall be submitted to City prior to execution of the Agreement.

28. Warranty. Developer warrants all work required to be performed by it against poor material and faulty workmanship for a period of two (2) years after its completion and acceptance by City. The amount of posted security for public improvements to be posted by Developer shall be in the amount of \$13,500.00. The amount has been determined by the City Engineer and is based upon 10% of the initial security amount.
29. Restrictions. The following restrictions apply to the Subject Property and all lots thereon shall be held, sold, and conveyed subject to the following conditions and restrictions, which are for the purpose of protecting the value and desirability of the Subject Property and insuring all conditions imposed by City in this Agreement are properly recorded against the Subject Property. Said conditions shall run with the real property and be binding upon all parties having a right, title or interest in the Subject Property or any part thereof, their heirs, executors, representatives, successors and assigns:
  - a. Developer shall comply with all other terms and conditions of the approved Development Plans.
30. Permits. To the extent required, the Developer shall obtain or require its contractors and subcontractors to obtain all necessary permits, including but not limited to the following:



- a. City of St. Francis Building Permits
- b. NPDES Permit from the MPCA

31. Developer's Default. In the event of default by the Developer as to any of the work to be performed by it hereunder, the City may, at its option, after written notice thereof and expiration of the cure period, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City, provided the Developer, except in an emergency as determined by the City (in which event no notice is necessary), is first given notice of the work in default, not less than five (5) days in advance. This Contract is a license for the City to act, and it shall not be necessary for the City to seek a Court order for permission to enter the land. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part upon the Property to recover the costs thereof. For this purpose, the Developer expressly waives any procedural and substantive objections to the special assessments, if any, including, but not limited to, hearing requirements and any claim that the assessments exceed the benefit to the property.
32. Insurance. The Developer agrees to take out and maintain or cause to be taken out and maintained until immediately after the City accepts the Improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its contractors or subcontractors. Limits for bodily injury and death shall be no less than \$2,000,000.00 for each occurrence; limits for property damage shall be no less than \$1,000,000.00 for each occurrence; or a combination single limit policy of \$2,000,000.00 or more. The City shall be named as an additional insured on the policy. The Developer shall provide the City with an insurance binder evidencing the required coverage prior to the City signing this Agreement. The insurance binder shall provide that the City must be given thirty (30) days advance written notice of the cancellation of the insurance.
33. Maintenance of the Property. The Developer shall be responsible for all mowing, controlling weeds and general maintenance within the Property. The Developer shall not leave, deposit or bury any cut trees, timber, debris, earth, rocks, stones, soil, junk, rubbish or any other waste materials on the Property. The Developer shall not be required to post a separate escrow to secure this obligation. The City shall provide the Developer with written notice and, except for emergencies, shall allow the Developer thirty (30) days to correct or take such other action as is necessary to perform the required maintenance or removal of waste material within the Property. Nothing herein shall obligate the City to perform maintenance or waste removal work within the Property but the City at its sole discretion, shall have the right to do so.
34. Compliance with Laws and City Approvals. The Developer agrees to comply with all laws, ordinances and regulations of Minnesota and the City applicable to the Plat and Development Plans. The Developer agrees to complete the Property in compliance with all City approvals. This Agreement shall be construed according to the laws of Minnesota. Breach of the terms of this Agreement by the Developer shall be grounds for

denial of building permits and certificates of occupancy, following the passing of applicable notice of cure provisions.

35. Agreement Runs with the Land. This Agreement shall run with the land and shall be recorded against the title to the Property. The Developer covenants with the City, its successors and assigns that the Developer has fee title to all the Property and that there are no unrecorded interests against the Property. The Developer hereby agrees to indemnify and hold the City harmless for any breach of the foregoing covenants.
36. Indemnification. The Developer hereby agrees to indemnify and hold the City and its officials, employees, contractors and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from approval of the Development Plans. The Developer hereby agrees to indemnify and hold the City and its officials, employees, contractors and agents harmless for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees, except matters involving acts of gross negligence by the City.
37. Responsibility for Costs.
  - a. Except costs for Developer's Internal Improvements, Developer shall pay all costs incurred by it or City in conjunction with the development the Subject Property and the building, including, but not limited to legal, planning, engineering, and inspection expenses in connection with the development and said Building.
  - b. Developer shall reimburse City for costs incurred in the enforcement of this Agreement, including engineering fees, planning fees, attorney's fees, and costs and disbursements.
  - c. Developer shall pay in full all bills submitted to it by City for obligations incurred under this Agreement and agreed to be paid by Developer under this Agreement within thirty (30) days after receipt. If the bills are not paid on time, and Developer does not reasonably dispute the payment of amount of such bill City may either reimburse itself from existing Escrow or Security or may halt all Building development work and construction until all bills are paid in full. Bills not paid within thirty (30) days shall accrue interest at the rate of twelve percent (12%) per year.
38. Miscellaneous.
  - a. Third parties shall have no recourse against City under this Agreement.
  - b. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
  - c. This Agreement shall run with the land, shall be recorded against the title to the Subject Property, and shall be binding on all parties having any right, title or interests in the Subject Property or any part thereof, their heirs, successors and assigns.

- d. Each right, power or remedy herein conferred upon City or Developer is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City or Developer, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by City or Developer and shall not be a waiver of the right to exercise at anytime thereafter any other right, power or remedy.
  - e. Developer shall pay for all local costs related to drainage improvements required to complete the construction of the Plat and building according to the Development Plans. Local costs are costs related to required internal drainage improvements such stormwater infrastructure.
  - f. Should development of the Subject Property or the building proceed at a pace slower than anticipated, and for that reason, specific terms of this Agreement become onerous or unduly burdensome to Developer, upon Developer's application, City will enter into negotiations regarding those specific terms and shall not unreasonably withhold consent to appropriate changes in the terms of this Agreement.
  - g. Developer shall demonstrate and maintain compliance with the 1991 Wetland Conservation Act, as applicable.
  - h. Developer shall be responsible for all on site drainage for the Subject Property, as well as for any affects their actions may have on adjoining properties.
39. Violation of Agreement. If while the escrow or security provided in this Agreement is outstanding, a violation of any of the covenants or agreements herein contained occurs and such violation is not cured within thirty (30) days after written notice thereof from City to Developer, City may draw upon the Developer s escrow or security to cure any violation of the Agreement and to reimburse City for any costs incurred in curing the violation.
40. Maintain Public Property Damaged or Cluttered During Construction. Developer agrees to assume full financial responsibility for any damage which may occur to public property including, but not limited to, street, street sub-base, base, bituminous surface, curb, utility system including, but not limited to, watermain, sanitary sewer or storm sewer when said damage occurs as a result of construction activity which takes place during development of the Subject Property by Developer or its contractors, except for damage caused by City, its employees, agents or contractors. Developer further agrees to pay all costs required to repair the streets and/or utility systems damaged or cluttered with debris when occurring as a direct or indirect result of the Developer's construction that takes place on the Subject Property. In the event that Developer is required to maintain or repair such damage and fails to maintain or repair the damaged public property referred to aforesaid within thirty (30) days after written notice from City or such longer period as may reasonably necessary or in the event of an emergency as shorter time period as

determined by City, City may, upon notifying Developer undertake making or causing it to be repaired or maintained. When City undertakes such repair, Developer shall reimburse City for all its reasonable expenses within thirty (30) days of its billing to Developer. If Developer fails to pay said bill within thirty (30) days, the security shall be responsible for reimbursing City.

41. Assignment. The Developer may not assign this Agreement without the written permission of the City, which permission shall not be unreasonably denied or delayed. No assignment shall be effective unless the assignee assumes in writing all obligations of the Developer under this Agreement and the documents related thereto and evidencing such assumption shall be in a form reasonably acceptable to the City.
42. Subordination. This Agreement must be recorded against the Subject Property and all other liens, interests or mortgages shall be subordinate to the terms and conditions this Agreement and said Agreement shall not be subject to foreclosure by any other lien, interest or mortgage.
43. Notices. Required notices to Developer shall either hand delivered to Developer, its employees or agents, or mailed to Developer by registered mail or sent by overnight delivery at the following address:

DGOGSaintfrancismn07072021, LLC  
1598 Imperial Center, Suite 2001,  
West Plains, MO 65775.  
Attention: Jacob Stauffer

Notice to City shall be in writing and shall be either hand delivered to or mailed by registered mail or sent by overnight delivery to the following address:

City of St. Francis,  
Attention: City Administrator  
23340 Cree Street  
St. Francis, MN 55070

44. Agreement Effect. This Agreement shall be binding and extend to the respective representatives, heirs, successors and assigns of the parties hereto.
45. Amendment. This Agreement shall be amended only by addendum executed by both parties to this Agreement.
46. Severability. If any portion, section, subsection, sentence or clause of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate any other section of this Agreement.

47. Non-waiver. Each right, power or remedy conferred upon the City or the Developer by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the City or the Developer at law or in equity, or under any other agreement. Each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City or the Developer and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.
48. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

REST OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURES ON FOLLOWING PAGES

**IN WITNESS WHEREOF**, Developer and City have executed this Agreement as of the day and year above first written.

**CITY OF ST. FRANCIS**

BY: \_\_\_\_\_  
Steven D. Feldman  
ITS: Mayor  
(SEAL)

BY: \_\_\_\_\_  
Jennifer Wida  
ITS: City Clerk

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF ANOKA                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Steven D. Feldman and by Jennifer Wida, respectively the Mayor and City Clerk of the City of St. Francis, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

\_\_\_\_\_  
NOTARY PUBLIC

**DGOGSaintfrancismn07072021, LLC**  
A Missouri corporation

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

STATE OF )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_ the \_\_\_\_\_ of DGOGSaintfrancismn07072021, LLC, a Missouri corporation, on behalf of the corporation.

\_\_\_\_\_  
NOTARY PUBLIC

DOCUMENT DRAFTED BY:  
BARNA, GUZY & STEFFEN, LTD.  
400 Northtown Financial Plaza  
200 Coon Rapids Boulevard  
Coon Rapids, MN 55433  
(763) 780-8500 (DRS)



**EXHIBIT A**

**MEADOWS OF ST. FRANCIS 4<sup>th</sup> ADDITION FINAL PLAT**



**EXHIBIT B**

**DEVELOPMENT PLANS FOR THE SUBJECT PROPERTY**

# DOLLAR GENERAL STORE SAINT FRANCIS, MINNESOTA

PARKING SPACES: 47/147  
 ENGINEER: SAINT FRANCIS ENGINEERING, LLC  
 PROJECT NO: 2017-001  
 DATE: 9/14/22  
 IMPERVIOUS AREA: 37,680 SF / 0.868 AC.



SQUARE FOOTAGE LEGEND	
TOTAL SQUARE FOOTAGE	10,640 S.F.
TOTAL LEASABLE FOOTAGE	10,640 S.F.
OVERALL BUILDING DIMENSIONS	76'-0" X 140'-0"
SALES FLOOR DIMENSIONS	74'-0" X 112'-10"
SALES AREA	8,513 S.F.
RECEIVING AREA	1,177 S.F.
BREAK RM. & OFFICE AREA	206 S.F.
REST ROOM, & HALL AREA	206 S.F.
MISCELLANEOUS	540 S.F.

ALL CONSTRUCTION SHALL CONFORM TO THE PRIVATE DEVELOPMENT STANDARDS FOR THE CITY OF ST. FRANCIS, MN DATED JULY 2013.

- GENERAL NOTES**
1. THE CONSTRUCTION COVERED BY THESE PLANS SHALL CONFORM TO ALL APPLICABLE STANDARDS AND SPECIFICATIONS OF THE PUBLIC WORKS DEPARTMENT OF THE CITY OF SAINT FRANCIS, MINNESOTA, UNLESS OTHERWISE NOTED.
  2. ALL WORKMANSHIP AND MATERIALS SHALL BE SUBJECT TO THE INSPECTION AND APPROVAL OF THE CITY ENGINEER AND THE CONTRACTOR SHALL NOTIFY ALL THOSE COMPANIES WHICH HAVE FACILITIES IN THE NEAR VICINITY OF THE CONSTRUCTION TO BE PERFORMED.
  3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF SAINT FRANCIS, MN.
  4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE STATE OF MINNESOTA.
  5. ALL DAMAGE TO EXISTING UTILITIES SHALL BE REPAIRED BY AND AT THE EXPENSE OF THE CONTRACTOR.
  6. THE CONTRACTOR SHALL UNDER NO CIRCUMSTANCES CLEAR OR DAMAGE ANY TREES OUTSIDE THE CLEARING LIMIT LINE SET BY THE CITY WITHOUT THE WRITTEN PERMISSION OF THE CITY ENGINEER OR PROPERTY OWNER.
  7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF SAINT FRANCIS, MN.
  8. THE CONTRACTOR SHALL KEEP THE STREETS CLEAN OF MUD AND DEBRIS.
  9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF SAINT FRANCIS, MN.
  10. EMERGENCY VEHICLE ACCESS VIA PARKING AISLES.

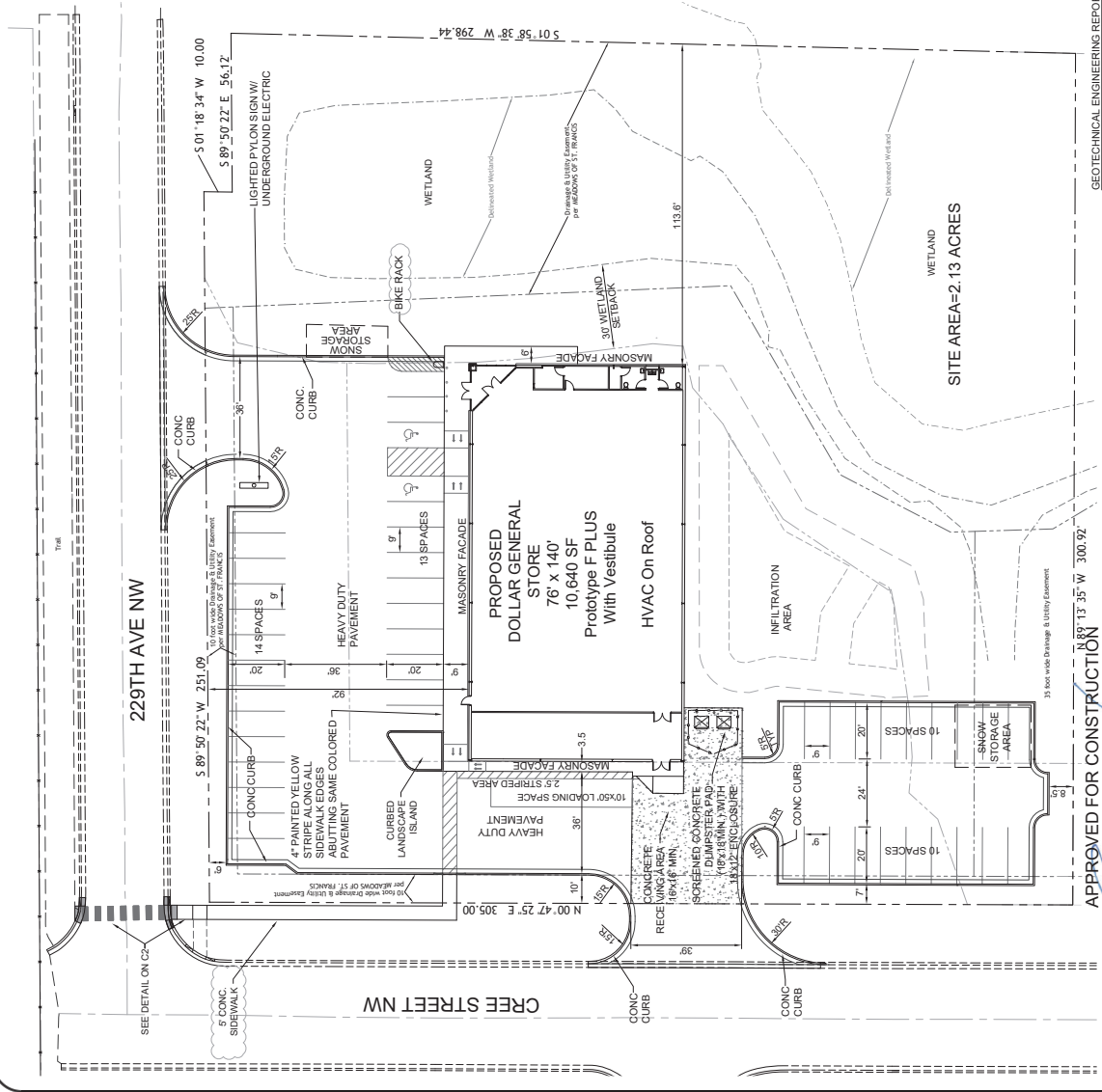
**SITE UTILITIES:**  
 WATER & SEWER: SAINT FRANCIS  
 GAS: KILCO WORKS  
 ELECTRIC: JENNIFER GULBERG AND SONS  
 PH 763-233-5200

**ELECTRIC:** CENTERPOINT  
**TELEPHONE:** CENTURYLINK



800-252-1166  
[www.gopherstateonecall.org](http://www.gopherstateonecall.org)

**UTILITY DISCLAIMER**  
 THE INFORMATION CONTAINED HEREIN IS BASED ON THE BEST AVAILABLE INFORMATION AND IS NOT A GUARANTEE OF ACCURACY. THE USER SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY OF ALL INFORMATION AND FOR OBTAINING ALL NECESSARY PERMITS FROM THE APPROPRIATE AGENCIES.



**APPROVED FOR CONSTRUCTION**  
 SHANE NELSON, PE 9/14/22  
 ASSISTANT CITY ENGINEER

**GEOTECHNICAL ENGINEERING REPORT**  
 Prepared by: KILCO ENGINEERING, LLC  
 Roseville, Minnesota

**PHASE 1 ENVIRONMENTAL SITE ASSESSMENT**  
 Prepared by: ENVIRONMENTAL WORKS, INC.  
 Springfield, Missouri

1596 BURTON CIRCLE, SUITE 200 WEST PLAINS, MO 65755  
 PHONE: (417) 241-8254  
[www.verlandeng.com](http://www.verlandeng.com)

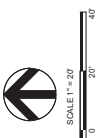
SITE PLAN

DOLLAR GENERAL  
 SAINT FRANCIS, MN

SHEET  
 C1



SEE CITY OF SAINT FRANCIS EROSION CONTROL PERMIT FOR REQUIREMENTS AND ADDITIONAL DETAILS.



- ST FRANCIS MN SWPPP NOTES:**
- STOCKPILES FOR SOIL STOCKPILES GREATER THAN 10 CUBIC YARDS, THE TOE OF THE PILE MUST BE MORE THAN 25 FEET FROM A ROAD, DRAINAGE CHANNEL OR STORMWATER INLET. IF LEFT FOR MORE THAN SEVEN (7) DAYS, THEY MUST BE STABILIZED WITH MULCH, VEGETATION TARRPS OR OTHER MEANS. IF LEFT FOR LESS THAN SEVEN (7) DAYS, EROSION CONTROL MATS MUST BE INSTALLED TO PROTECT THE STOCKPILE. STOCKPILES GREATER THAN 25 FEET FROM A ROAD, DRAINAGE CHANNEL OR STORMWATER INLET, AND LEFT FOR MORE THAN SEVEN (7) DAYS, IT MUST BE COVERED WITH TARRPS OR CONTROLLED IN SOME OTHER MANNER.
  - SWEEPING, TRAVELED SURFACES INCLUDING, BUT NOT LIMITED TO, STREETS, PARKING LOTS, SIDEWALKS AND TRAILS MUST BE CLEANED AND SWEEPED WHENEVER TRACKING OF SEDIMENTS OCCURS BUT NO LATER THAN THE END OF EACH BUSINESS DAY. ESTABLISHMENT OF A REGULAR SWEEPING SCHEDULE IS ENCOURAGED.
  - CITY INSPECTIONS: THE APPLICANT SHALL BE RESPONSIBLE FOR ALL REQUIRED EROSION AND SEDIMENT INSPECTIONS AND TO PROVIDE STORMWATER POLLUTION PREVENTION PLAN. THE CITY WILL PERFORM INSPECTIONS TO ENSURE CONFORMANCE WITH THE SWPPP. THE APPLICANT AND/OR BUILDER SHALL PROVIDE ACCESS TO THE SITE AND ADDRESS ANY DEFICIENCIES NOTED BY THE CITY TO MAINTAIN PROPER EROSION AND SEDIMENT CONTROL AT ALL SITES WITHIN THE TIMEFRAMES NOTED IN THIS PART AND THE CONSTRUCTION STORMWATER PERMIT. THE APPLICANT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND INSURANCE FOR THE CONSTRUCTION EROSION AND SEDIMENT CONTROL MEASURES ARE COMPLIANT WITH THE CONSTRUCTION STORMWATER PERMIT AND THIS PART. FOLLOW UP EROSION AND SEDIMENT CONTROL GRADING INSPECTIONS MUST THEN BE SCHEDULED AND PASSED BEFORE THE CONSTRUCTION STOP ORDER IS LIFTED OR ANY OTHER INSPECTIONS WILL BE DONE.

- GENERAL NOTES FOR SEDIMENTATION & EROSION CONTROL**
- THIS PLAN SHOWS THE LOCATION AND DETAILS FOR PRIMARY SEDIMENT CONTROLS TO BE CONSTRUCTED. THE CONTRACTOR IS RESPONSIBLE FOR CONTROLLING EROSION AND DISCHARGE OF SEDIMENT FROM THE SITE AT ALL TIMES DURING CONSTRUCTION. THE CONTRACTOR SHALL PROVIDE NECESSARY MEASURES DURING ALL PHASES OF HIS OPERATIONS REGARDLESS OF WHETHER THEY ARE SPECIFICALLY NOTED ON THIS PLAN AND SHALL MAINTAIN AND REPLACE CONTROLS AS NECESSARY DURING THE COURSE OF HIS OPERATIONS.
  - SILT FENCES, OR OTHER INITIAL SEDIMENT CONTROLS SHOWN ON THIS PLAN MUST BE INSTALLED PRIOR TO ANY OTHER WORK.
  - THE CONTRACTOR SHALL CLEAN STREETS BOTH INTERIOR AND ADJACENT TO THE SITE, AS NEEDED AFTER EACH RAINFALL, AND AT THE END OF CONSTRUCTION.
  - THE CONTRACTOR IS RESPONSIBLE FOR CONTROLLING DUST DURING CONSTRUCTION AND SHALL WATER CONSTRUCTION AREAS WHENEVER CONDITIONS WARRANT.
  - ALL DISTURBED AREAS NOT RECEIVING OTHER PERMANENT STABILIZATION SUCH AS PAVEMENT, ROOFS, SOD, ETC., SHALL BE SEEDED AND MULCHED, AS SPECIFIED BELOW BEFORE TEMPORARY SEDIMENT CONTROLS CAN BE REMOVED AND PRIOR TO FINAL APPROVAL OF CONSTRUCTION.

- SEQUENCE DESCRIBING STORMWATER QUALITY MEASURE IMPLEMENTATION RELATIVE TO LAND DISTURBING ACTIVITIES:**
- INSTALL CONSTRUCTION ENTRANCE FOR SITE ACCESS.
  - INSTALL SILT BARRIERS AT PERMETER AND ESTABLISH WETLAND BUFFER FENCE.
  - INSTALL STOCKPILE TOPSOIL PRIOR TO GRADING.
  - GRADE SWALES & DETENTION BASIN, & IMMEDIATELY STABILIZE WITH TOPSOIL SEED & MULCH, OR DITCH CHECKS.
  - CONSTRUCT DETENTION BASIN WITH EROSION CONTROL MATS.
  - COMPLETE GRADING SITE GRADINGS WITH EROSION CONTROL MATS.
  - CONSTRUCTION OF THE STRUCTURE, CURB AND PAVEMENT.
  - INSTALL GRASS AND SOD AS SOON AS FEASIBLE FOR EACH DISTURBED AREA.
  - FINAL CLEAN UP AND ACCESS SEDIMENT IN DETENTION AREAS AND REDRESS WITH PERMANENT VEGETATION.
  - AFTER VEGETATION IS WIDELY ESTABLISH, REMOVE TEMPORARY EROSION CONTROL MEASURES.
- TOTAL ESTIMATED SCHEDULE FOR SITE CONSTRUCTION IS 3 MONTHS, WITH ESTABLISHED VEGETATION BEING 2-4 WEEKS LATER.

UTILITY DISCLAIMER  
[www.gopherstateonecall.org](http://www.gopherstateonecall.org)

800-252-1166

UTILITY DISCLAIMER  
EXISTING UNDERGROUND UTILITIES AND BURIED STRUCTURES IN THE VICINITY OF THE WORK TO BE PERFORMED HEREON ARE INDICATED ON THE DRAWINGS BY THE Gopher State OneCall System. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES AND STRUCTURES PRIOR TO THE BEGINNING OF WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE ACCURACY AND COMPLETENESS THEREOF. Gopher State OneCall does not warrant the accuracy and completeness of the information provided.

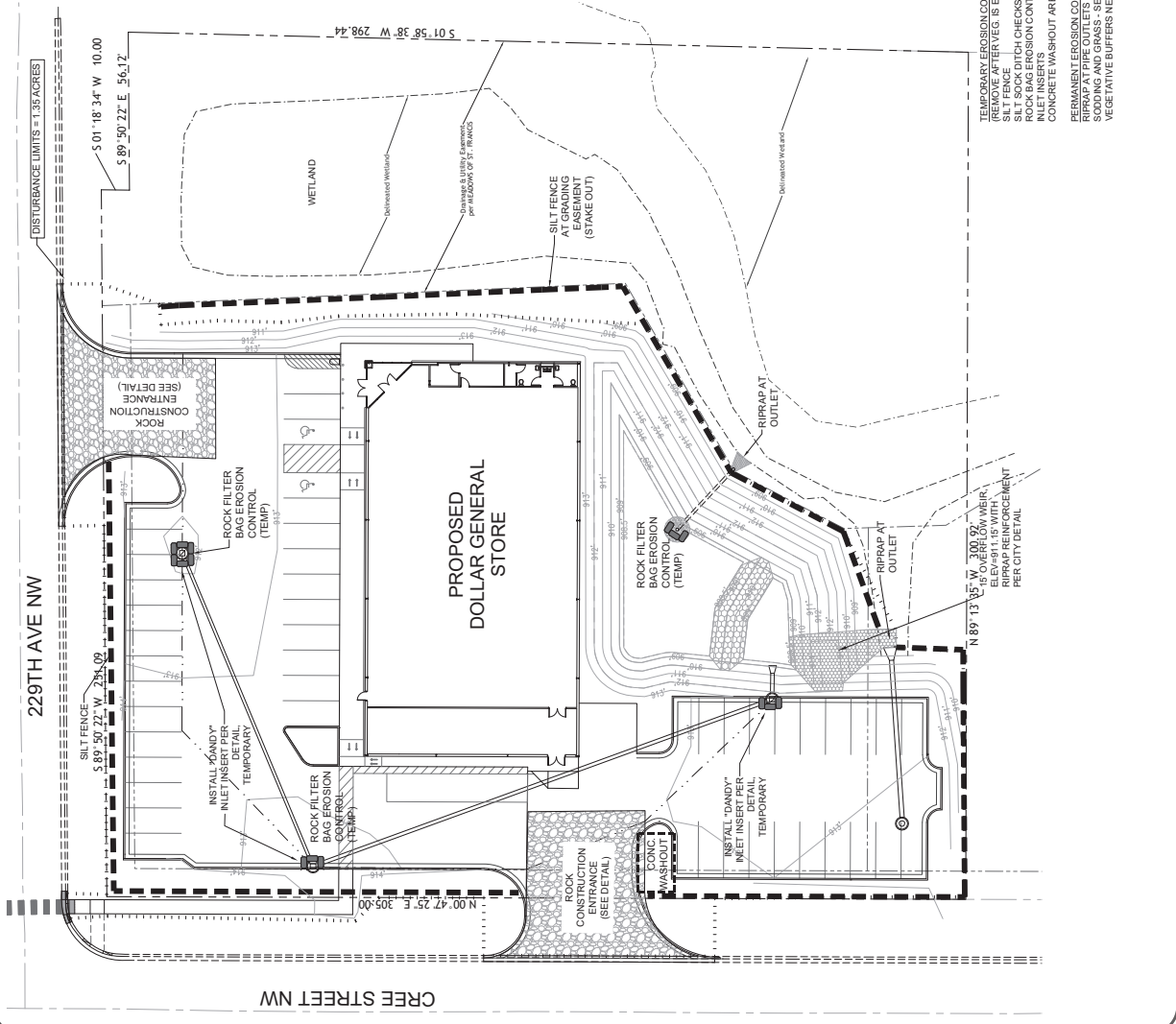
Permit Name: **RECONSTRUCTION**  
Signature: *[Signature]*  
Date: **11/11/2011**

**CONTACTS**

OWNER/DEVELOPER:  
OVERLAND ENGINEERING, LLC  
1598 IMPERIAL CENTER SUITE 2001  
WEST PLAINS, MO 65755  
PH 417-254-7970

ENGINEER:  
OVERLAND ENGINEERING, LLC  
1598 IMPERIAL CENTER SUITE 2009  
WEST PLAINS, MO 65755  
PH 417-254-8100

CONTRACTOR:  
BU BAAS BUILDERS  
380 S GARFIELD ST  
CAMBRIDGE, MN 55008  
PH 507-353-9112



- TEMPORARY EROSION CONTROLS**  
(REMOVE AFTER VEGET. IS ESTABLISHED):  
SILT FENCE  
DITCH CHECKS  
ROCK BAG EROSION CONTROL  
CONCRETE WASHOUT AREA  
RIPRAP AT PIPE OUTLETS  
SODDING AND GRASS - SEE SHEET C5  
VEGETATIVE BUFFERS NEAR WETLAND









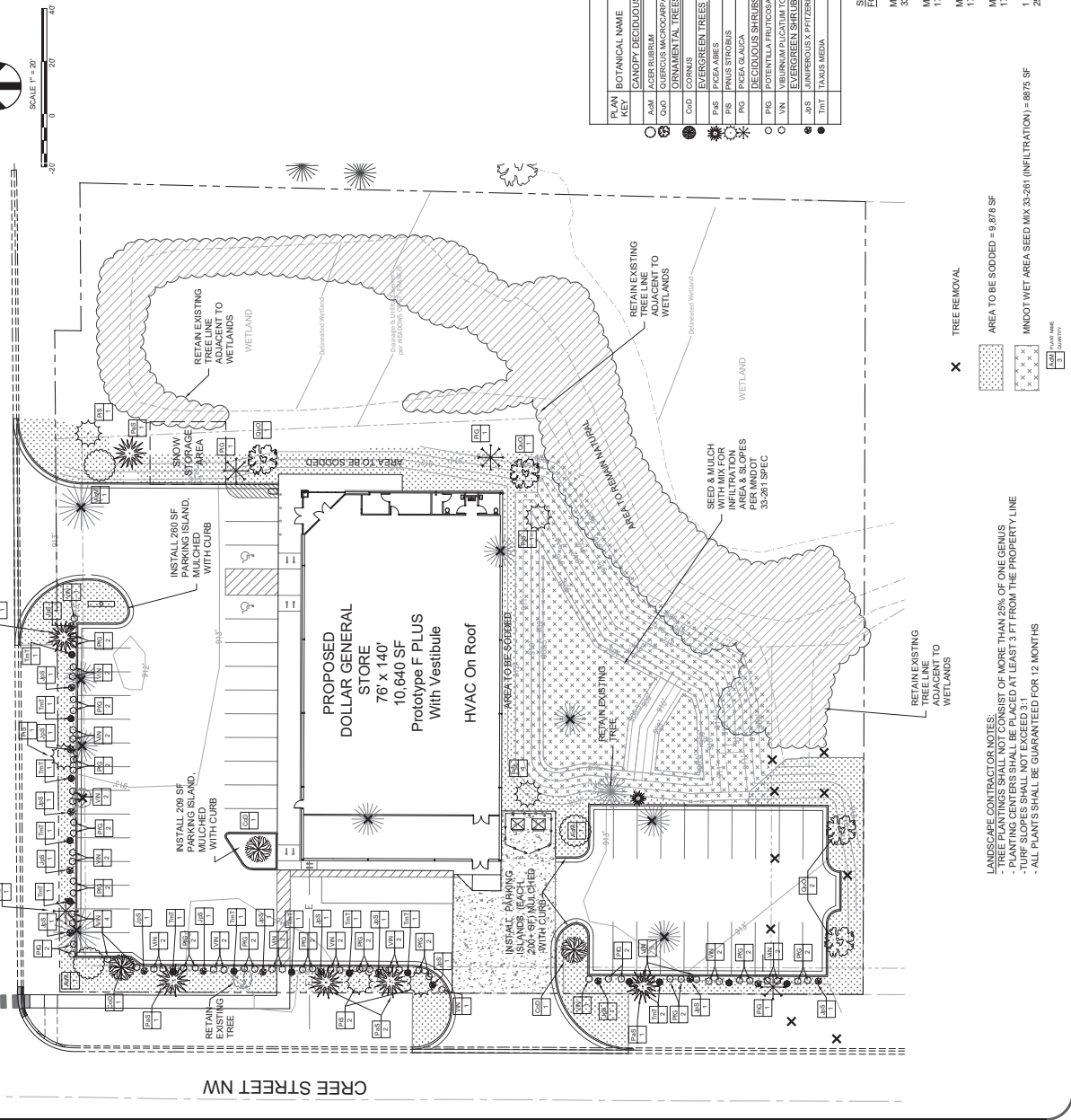
NO.	DATE	DESCRIPTION	BY
1	6/17/22	REV FOR 25% MAX GENUS	RP

**LG STD. SEEDING, SODDING, LANDSCAPING, AND IRRIGATION REQUIREMENTS:**

- LAWN SEEDING AND SODDING NOTES:**
- ALL LAWNS FROM FACE OF THE BUILDING AND ON THE SIDE WHERE THERE IS PARKING OR A STREET ARE REQUIRED TO BE FULLY SODDED, ALL OTHER LANDSCAPE AREAS TO RECEIVE SEED.
  - AREAS TO RECEIVE SEED OR SOD SHALL BE CLEAN OF DEBRIS AND FREE OF WEEDS.
  - SEED MIX TO BE DROUGHT TOLERANCE FESCUE OR REGIONAL SPECIFIC BLEND, ¼ TO ½ OF THE SEED MIXTURE TO BE ANNUAL RYE TO AIDE IN LIMITING EROSION OF PERENNIAL SEED DURING GERMINATION.
  - STRAW SHALL BE THRESHED STRAW OF HAY, OATS, WHEAT, BARLEY, OR RYE. SPREAD AT A RATE OF 2 1/2 TONS PER ACRE. STRAW, NETTING, AND OTHER ANTI-EROSION MATERIALS TO BE REMOVED IMMEDIATELY AFTER SEEDING. WATER REGULARLY TO KEEP LAWN AREAS MOIST TO MAXIMIZE GERMINATION AND MAINTAIN OPTIMUM GROWTH AND SURVIVAL TO ACHIEVE AN ACCEPTABLE STAND OF ESTABLISHED LAWN PRIOR TO THE STORE POSSESSION DATE. FREE OF ERODED OR BARE AREAS.

- LANDSCAPE NOTES:**
- CONTRACTOR SHALL PROVIDE LANDSCAPING IN ACCORDANCE WITH JURISDICTION REQUIREMENTS.
  - ALL SOIL USED FOR PLANTING SHALL CONSIST OF REGIONALLY APPROPRIATE SOILS.
  - ALL PLANTING BEDS SHALL HAVE A MINIMUM 3" DEPTH OF MULCH, WITH EDGING AS REQUIRED.
  - TREES LOCATED IN SOD AREAS SHALL HAVE A MULCH RING AROUND THEM WITH EDGING.
  - ALL PLANTINGS SHALL BE THOROUGHLY WATERED BY THE LANDSCAPE CONTRACTOR AT THE TIME OF THE PLANTINGS.
  - PRIOR TO FINAL ACCEPTANCE OF STORE BY DOLLAR GENERAL, THE SITE SHALL BE CLEAN OF ALL DEBRIS AND TRASH, AND MEET ALL REQUIREMENTS OUTLINED ABOVE.
  - MAXIMUM SLOPE CUTS SHALL NOT EXCEED 4:1. ALL DISTURBED GRADES GREATER THAN 8:1 SHALL BE STABILIZED BY SODDING. SODDING PINS ARE TO BE USED ON ALL AREAS REQUIRING STABILIZATION.
  - VEGETATION ENTRY SHOULD BE LOW TO ENSURE VISIBILITY OF STORE.
  - IF TREES ARE REQUIRED IN FRONT OF BUILDING, SELECT SMALL LEAFED, NON DENSE SPECIES THAT WILL NOT INTERFERE WITH THE VISIBILITY OF STORE. THE SPACING SHALL CREATE VISUAL CORRIDORS TO STORE.

- IRRIGATION NOTES:**
- ALL LANDSCAPE AREAS AND LAWNS ADJACENT TO PAVED AREAS AND/OR STREETS SHALL BE IRRIGATED.
  - IRRIGATION SYSTEM TO INCLUDE ALL SPRAY HEADS, VALVES AND CONTROLLERS.
  - A SEPARATE METER AND BACKFLOW PREVENTER WILL BE REQUIRED.
  - LOCATE HEADS A MINIMUM OF 2'-0" FROM EDGE OF PAVEMENT / CURB.



**PLANT SCHEDULE**

PLAN KEY	BOTANICAL NAME	COMMON NAME	SIZE	QTY
AM	CANOPY DECIDUOUS TREES	SEA HALE	2" DBH	3
AO	ORNAMENTAL TREES	BUR OAK	2" DBH	4
CO	ORNAMENTAL TREES	DODWOOD	2" DBH	3
ES	EVERGREEN TREES	NORWAY SPRUCE	6" HL	6
PI	PIKEA ABIES	WHITE PINE	6" HL	6
PI	PIKEA STROBIS	WHITE SPRUCE	6" HL	4
PI	PIKEA GLAUCA	GOLDFINGER POTENTILLA	2	32
PI	POTENTILLA FRUTICOSA	NEWPORT YUBURNUM	2	32
VI	VERDIUMPLICATUM TOMENTOSUM	SEA GREEN LAMPER	2	12
VI	VERDIUMPLICATUM TOMENTOSUM	TANBARD YEW	2	12

**SECTION 10-20-4 LANDSCAPING REQUIREMENTS FOR B2 COMMERCIAL ZONING**

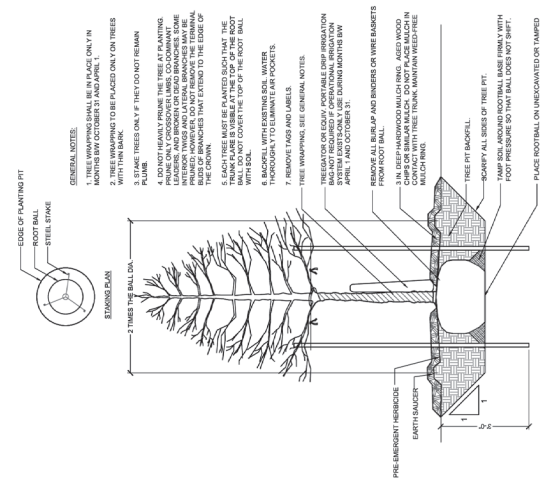
- MIN REQUIRED TREES = 10640 / 320 = 33.3
- 33.3 / 2" MIN CALIPER TREE = 17 TREES
- MIN NUMBER OF DECIDUOUS TREES: 17 x 25% = 5 TREES; PROVIDED 7 TREES
- MIN NUMBER OF EVERGREEN TREES: 17 x 25% = 5 TREES; PROVIDED 7 TREES
- MIN NUMBER OF ORNAMENTAL TREES: 17 x 10% = 2 TREES; PROVIDED 3 TREES
- 1 TREE PER 80 FT OF PARKING PERIMETER: 25000 = 45, 5 TREES PROVIDED



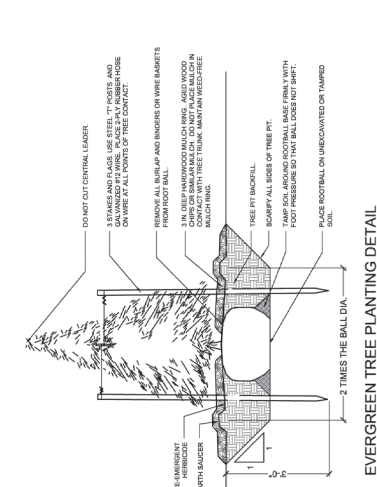
800-252-1166  
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**UTILITY DISCLAIMER**  
Gopher State One Call is a utility locating service. It is not responsible for the accuracy of the information provided. It is the responsibility of the user to verify the location of all utilities before any excavation work is performed. Gopher State One Call is not liable for any damage or injury resulting from the use of this service.

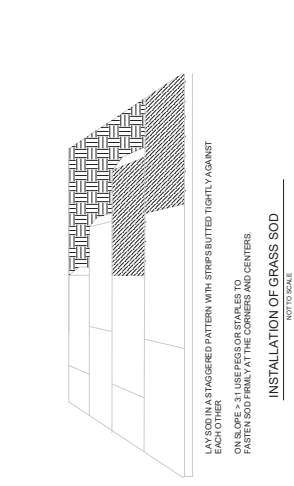
NO.	DATE	DESCRIPTION	BY



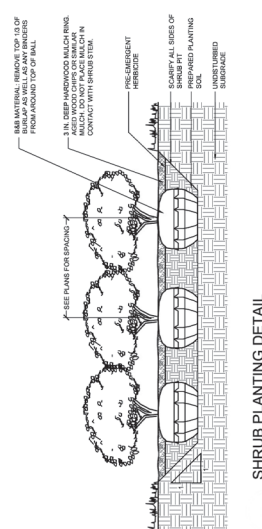
**TREE PLANTING DETAIL**  
 SCALE: N.T.S.



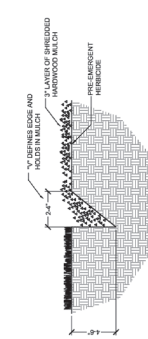
**EVERGREEN TREE PLANTING DETAIL**  
 SCALE: N.T.S.



**INSTALLATION OF GRASS SOD**  
 NOT TO SCALE



**SHRUB PLANTING DETAIL**  
 SCALE: N.T.S.



**V-CUT LANDSCAPE BED EDGE DETAIL**  
 SCALE: N.T.S.

- LANDSCAPE NOTES:**
1. ALL PLANTING BEDS SHALL HAVE A MINIMUM 7" DEPTH OF MULCH, WITH EDGING AS REQUIRED.
  2. ALL TREES LOCATED IN SOD AREAS SHALL HAVE A MULCH RING AROUND THEM WITH EDGING.
  3. ALL PLANTINGS SHALL BE THOROUGHLY WATERED BY THE LANDSCAPE CONTRACTOR AT THE TIME OF THE PLANTINGS.
  4. MAXIMUM GRADING SHALL NOT EXCEED 3:1.
  5. CONTRACTOR IS RESPONSIBLE FOR ESTABLISHING ALL VEGETATION AND REGIONAL APPROPRIATE LANDSCAPING.

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer in the State of Minnesota.

Print Name: **ROBERT J. FARBODT**  
 Signature: *[Signature]*  
 Date: **7-1-21** License # **49582**







## EXHIBIT C

### ENCROACHMENT AGREEMENT FOR PRIVATE USE OF PUBLIC PROPERTY

This Encroachment Agreement For Private Use of Public Property (hereinafter Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2022, between the CITY OF ST. FRANCIS, Minnesota, a Minnesota municipal corporation (the “City”), and DGOGSaintfrancismn07072021, LLC, a corporation under the laws of the State of Missouri (“Owner”).

#### RECITALS:

- A. The Owner is the fee owner of property located in the City of St. Francis, Minnesota (the “Owner’s Property”), legally described as:
- B. The Owner’s Property is abutted by City Property that includes a City storm water pipe.
- C. Owner and City have entered into the certain SITE IMPROVEMENT PERFORMANCE AGREEMENT dated the \_\_\_\_\_, 2022 (hereinafter “Site Agreement”) related to Owner’s construction on the Property of a commercial building for a Dollar General Store (“Improvements”).
- D. As part of its Improvements, the Owner desires to construct and install a parking lot and parking lot curb, and other necessary Improvements within the City Property as located, identified, and described on the plans (“Plans”) attached hereto as **Exhibit A-1** (“Encroachment”).
- E. City is willing to permit the Encroachment as depicted on Exhibit A-1, subject to the terms and conditions of this Agreement.

#### AGREEMENT

In consideration of the foregoing and the mutual covenants herein, the parties agree as follows:

- 1. RECITALS. The recitals set forth above are incorporated herein.
- 2. PUBLIC PROPERTY. The Owner acknowledges that the Improvements encroach on City Property.

3. ENCROACHMENT CONSTRUCTION. City grants Owner the right to and Owner hereby assumes the responsibility to construct, maintain, and repair, the Encroachment in accordance with all applicable laws and regulations (collectively referred to as the “Encroachment Construction”) in the locations identified on **Exhibit A-1** and subject to the terms set forth in this Agreement. Responsibility for the Encroachment Construction shall be that of the Owner. The Owner shall perform, as and when necessary, and pay the cost for, the construction, maintenance and repair of the Encroachment as may be reasonably necessary to maintain the Improvements in good and aesthetic condition and repair. The City shall retain the right to manage the City Property as provided in state statutes and city code. The City shall also retain the right to monitor the Encroachment Construction to confirm that it is being completed in accordance with the Plans.

4. ENCROACHMENT REMOVAL. In the event that any portion of the Encroachment needs to be removed or relocated because, in the professional judgment of the City Engineer, it interferes with the City’s use, maintenance, or repair of the City Property, then the Owner shall perform and pay the cost for such removal. If the Owner fails to remove the Improvements, and the City incurs costs to remove them, then the Owner shall be responsible to the City for the costs associated with the removal of those Improvements.

5. INDEMNITY. The Owner shall indemnify, defend and hold the City and its employees, contractors, agents, representatives, elected and appointed officials, and attorneys harmless from any and all claims, damages, losses, costs and expenses, including attorneys’ fees, arising from, based on, or related to the encroachment of the Encroachment on the City Property, including, but not limited to, any claim asserted against the City as a result of the installation, placement, building erection, maintenance, occupation or use of the Encroachment and/or failure of the Owner to maintain the Encroachment in such a condition as to prevent against injury to persons or property, except that this indemnity shall not apply to any claims arising out of the sole gross negligence or willful misconduct of the City or its employees or agents.

6. INSURANCE. During the course of the initial construction of the Encroachment, Owner and its general contractor shall maintain a commercial general liability insurance policy, naming City as an additional insured, which provides coverage for damage to the property of others or injury or death to persons. Such coverage shall be on an occurrence basis and shall include contractual liability coverage with respect to the indemnity obligation in Paragraph 5 above. Said policy shall contain a clause which provides the insurer will not non-renew, or materially change the policy without first providing the City thirty (30) days prior written notice. The Owner shall provide the City with a Certificate of Insurance for such coverage that specifically details the conditions in Paragraphs 5 and 7 of this Agreement. Following completion of the initial construction of the Encroachment, and for so long as the Encroachment remains on, under, or within City Property, Owner shall maintain commercial general liability insurance with the following minimums: \$1 million individual occurrence and \$2 million aggregate insurance. Said policy shall contain a clause which provides the insurer will not non-renew, or materially change the policy without first providing the City thirty (30) days prior written notice.

7. WAIVER OF CLAIMS. The Owner knowingly and voluntarily waives and releases any and all claims against the City arising from, based on, or related to Owner being



permitted to maintain the Encroachment in the City Property as permitted by this Agreement, including but not limited to claims of abandonment, diminution in value, takings and contractual claims arising out of this Agreement, except any claims which are the result of the sole negligence or willful misconduct of the City or its employees or agents. The Owner acknowledges being represented by legal counsel in connection with this Agreement, and that the Owner has read and understands the terms of this Agreement.

8. **CONDITION OF PUBLIC PROPERTY.** The Owner acknowledges the City has made no representations or warranties regarding the condition of the City Property or its suitability for the uses permitted by this Agreement.

9. **NO VESTED RIGHTS.** This Agreement shall confer on Owner only those rights expressly granted herein and shall not constitute or be construed as creating or establishing any other right of the Owner to the area encroached upon.

10. **TERMINATION.** In the event the Owner fails to comply with paragraphs 3, 4, 5 or 6, of this Agreement, then upon 60 days written notice to the Owner of such failure(s), the City may terminate this Agreement. The provisions of paragraphs 4 and 5 of this Agreement shall expressly survive any termination of this Agreement. The City shall not terminate this agreement if the Owner cures such failures within the 60 days written notice period.

11. **ADDITIONAL ENCROACHMENT CONDITIONS.** Owner hereby agrees to the following additional conditions:

- A. The Encroachment shall be located as depicted in the attached **Exhibit A-1**.
- B. Owner shall secure from City all required municipal permits prior to any construction of the Encroachment within the City Property.
- C. The Encroachment and all work completed in relation thereto shall be in accordance with the City's current standards and ordinances and other applicable laws and/or regulations in effect as of the Effective Date.
- D. The Owner shall coordinate to remove or relocate any portion of the Encroachment within City Property at the Owner's sole expense that the City deems, in its sole discretion, needs to be relocated or removed as a result of repairs, improvement or changes to the City Property.
- E. The Owner must provide record drawings of the Encroachment and any other portion of the Encroachment left in-place to the City upon completion of the work.

12. **BINDING EFFECT AND ASSIGNMENT.** This Agreement shall run with the Owner's Property in perpetuity and bind and inure to the benefit of the Owner's Property, the parties hereto and their respective successors and assigns.

13. ENTIRE AGREEMENT. This Agreement contains all the terms and conditions relating to the Encroachment and replaces any oral agreements or other negotiations between the parties. No modifications of this Agreement shall be valid until they have been placed in writing and signed by all parties hereto.

14. RECORDING. The Owner shall cause this Agreement to be filed for record against the Owner's Property with the Anoka County Recorder and Registrar of Titles (as applicable) immediately after execution.

SIGNATURES ON FOLLOWING PAGES

**IN WITNESS WHEREOF**, Developer and City have executed this Encroachment Agreement as of the day and year above first written.

**CITY OF ST. FRANCIS**

BY: \_\_\_\_\_  
Steven D. Feldman  
ITS: Mayor  
(SEAL)

BY: \_\_\_\_\_  
Jennifer Wida  
ITS: City Clerk

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF ANOKA                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Steven D. Feldman and by Jennifer Wida, respectively the Mayor and City Clerk of the City of St. Francis, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

\_\_\_\_\_  
NOTARY PUBLIC



**EXHIBIT A-1**  
**ENCROACHMENT PLANS**

*To be added*