



Common Council Chambers
8040 S. 6TH Street
Oak Creek, WI 53154
(414) 766-7000

COMMON COUNCIL MEETING ADDENDUM

JUNE 21, 2022
7:00 P.M.

Daniel Bukiewicz - Mayor
Steven Kurkowski - 1st District
Greg Loreck - 2nd District
Richard Duchniak - 3rd District
Lisa Marshall - 4th District
Kenneth Gehl - 5th District
Chris Guzikowski - 6th District

The City's Vision

Oak Creek: A dynamic regional leader, connected to our community, driving the future of the south shore.

16. **Resolution:** Consider Resolution No. 12340-062122, approving a Shared Maintenance and Access Agreement between the City of Oak Creek and F Street OCLV, LLC (Lakeshore Commons) (4th District).

Adjournment.

Public Notice

Upon reasonable notice, a good faith effort will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aid at no cost to the individual to participate in public meetings. Due to the difficulty in finding interpreters, requests should be made as far in advance as possible preferably a minimum of 48 hours. For additional information or to request this service, contact the Oak Creek City Clerk at 766-7000, by fax at 766-7976, or by writing to the ADA Coordinator at the Oak Creek Health Department, 8040 S. 6th Street, Oak Creek, Wisconsin 53154.

It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice



COMMON COUNCIL REPORT

Item: Shared Maintenance and Access Agreement ("SMAA") - Lakeshore Commons Neighborhood

Recommendation: That the Common Council adopts Resolution 12340-062122, A Resolution Approving the Shared Maintenance and Access Agreement between the City of Oak Creek and F Street OCLV, LLC.

Fiscal Impact: As with most new residential subdivisions in the City, resources are required to maintain public rights-of-way and other infrastructure assets. More resource-intensive items immediately with this subdivision include snow removal (roadways and trails), street light maintenance, and tree canopy/landscape responsibilities (along 5th Ave). Over time, the City will need to plan for pavement reconditioning and other asset repair/replacement, both above and below ground.

- Critical Success Factor(s):**
- Vibrant and Diverse Cultural Opportunities
 - Thoughtful Development and Prosperous Economy
 - Safe, Welcoming, and Engaged Community
 - Inspired, Aligned, and Proactive City Leadership
 - Financial Stability
 - Quality Infrastructure, Amenities, and Services
 - Not Applicable

Background: The Lakeshore Commons development is a unique, traditional neighborhood design community. There exists certain public rights-of-way and amenities that are to be City-owned and maintained as well as certain private drives, alleys, and amenities that will be maintained privately via a homeowner's association. There are also elements in the neighborhood that benefit from shared maintenance responsibility. The parties desired to generate a record via the SMAA to ensure ownership and maintenance responsibilities are clearly spelled out. As the City has experienced too often, over time, responsibilities of private ownership associations versus City responsibilities become blurred and "negotiated". In addition to identifying public common elements and archiving maintenance responsibilities, the SMAA calls out grants of easement for the City to perform necessary work, among other technical items. The main objective, denoting respective ownership and maintenance responsibilities, is summarized in Exhibit B to the SMAA.

Options/Alternatives: The Council could direct staff to negotiate different maintenance responsibilities for all or a portion of what has been discussed extensively with Developer, but staff recommends proceeding with the terms proposed in this draft SMAA.

Prepared and Respectfully submitted:



Andrew J. Vickers, MPA
City Administrator

Reviewed:



Matthew J. Sullivan, PE
City Engineer

Fiscal Review:



Maxwell Gagin, MPA
Assistant City Administrator / Comptroller

Reviewed:



Matthew J. Trebatoski, MPA
Interim Director of Public Works

Attachments: Resolution 12340-062122

Draft Shared Maintenance and Access Agreement

RESOLUTION NO. 12340-062122

RESOLUTION APPROVING THE SHARED MAINTENANCE AND ACCESS AGREEMENT BETWEEN THE CITY OF OAK CREEK AND F STREET OCLV, LLC (Lakeshore Commons)

BE IT RESOLVED by the Mayor and Common Council of the City of Oak Creek (the "City") that the Shared Maintenance and Access Agreement between the City and F Street OCLV, LLC (the "Agreement") is hereby approved.

BE IT FURTHER RESOLVED that the Mayor is authorized to sign and the City Clerk is authorized to attest in executing the Agreement.

BE IT FURTHER RESOLVED that modifications to the Agreement as may be necessary while maintaining the general intent thereof and that are approved by the City Administrator and City Attorney are hereby authorized.

Introduced at a regular meeting of the Common Council of the City of Oak Creek held this 21st day of June, 2022.

Passed and adopted this ____ day of _____, 2022.

Common Council President Kenneth Gehl

Approved this ____ day of _____, 2022.

Mayor Daniel J. Bukiewicz

ATTEST:

Catherine A. Roeske, City Clerk

VOTE: Ayes _____ Noes _____

SHARED MAINTENANCE AND ACCESS AGREEMENT

THIS SHARED MAINTENANCE AND ACCESS AGREEMENT (this “*Agreement*”) is entered into by and between the City of Oak Creek, an incorporated municipality (“*City*”), and F Street OCLV, LLC, a Wisconsin limited liability company (“*Developer*”) as of this ____ day of June, 2022 (“*Effective Date*”).

WITNESSETH:

WHEREAS, Developer is the owner of, and in the process of developing, that certain tract of land located in the City of Oak Creek, Milwaukee County, Wisconsin, as further described on Exhibit A attached hereto and made a part hereof, said property being referred to herein as the “*Property*”;

WHEREAS, upon recording of a condominium plat and declaration of condominium, the Developer will submit the Property and improvements as hereafter constructed thereon to the condominium form of use and ownership as provided in the Wisconsin Condominium Ownership Act as currently set forth under Chapter 703 of the Wisconsin Statutes, as may be amended from time to time (the “*Act*”). Upon recording the Property will become a mixed use condominium consisting of a certain single family residential as well as additional multi-family units (collectively, the “*Master Condominium*”). Such Master Condominium shall be controlled by an association of the Master Condominium unit owners (the “*Master Association*”);

WHEREAS, within the Master Condominium, the Developer intends to create a residential condominium related solely to the detached single-family units, villa-style units, and townhome-style units (the “*Residential Condominium*”, together with the Master Condominium, the “*Condominiums*”). Such Residential Condominium shall be controlled by an association of the Residential Condominium unit owners (the “*Residential Association*”, together with the Master Association, the “*Associations*”);

WHEREAS, Developer intends to permit the public to access and utilize certain areas of the Master Condominium (“*Public Common Elements*”) as more fully described in that certain Declaration of Condominium at Lakeshore Commons Master Condominium (“*Master Declaration*”);

WHEREAS, in consideration of the Public Common Elements, the City has agreed to maintain certain areas of the Master Condominium as more fully set forth in this Agreement, and Developer wishes to grant to City an easement over certain areas of the Master Condominium for the construction, maintenance and repair of certain portions of the Master Condominium as more fully set forth herein.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by each party hereto to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I
PUBLIC COMMON ELEMENTS

1.1 Public Common Elements. Certain areas of the Master Condominium, defined as the Public Common Elements, shall be available for public use as set forth in the Master Declaration. The Public Common Elements include the following amenities:

- a) all seating areas;
- b) all community gardens;
- c) the pedestrian bridge;
- d) the grilling station;
- e) the hammock park;
- f) the art installation; and
- g) the greenspace / park adjacent to the grilling station, hammock park, and art installation.

The Public Common Elements are depicted on Exhibit B, attached hereto and incorporated herein by reference. In exchange for the ability of the public to utilize the Public Common Elements, the City agrees to be responsible for certain maintenance obligations relating to the Master Condominium as set forth in Section 2, below.

ARTICLE II
MAINTENANCE OBLIGATIONS

2.1 Shared Maintenance. Subject to Section 2.5., the City and Developer agree that the maintenance obligations of each party with regard to the Public Common Elements shall be as set forth on Exhibit B, and as described below. All maintenance and repair as may be necessary from time to time shall be completed in a good and workmanlike manner in accordance with all applicable state, local, and federal ordinances, rules, regulations and laws. The areas depicted in orange on Exhibit B shall be shared maintenance areas by both the City and Developer (or Associations as the case may be) (the “*Shared Maintenance Areas*”). Each party’s maintenance obligations in the Shared Maintenance Areas are as follows:

- A. Subject to Section 2.5, the City shall, at the City’s sole cost and expense, be responsible for the following maintenance and repair obligations in the Shared Maintenance Areas: asphalt and concrete, snow and ice removal, replacement of capital items, including but not limited to seating, bollards, and appurtenances, maintenance of all trees and shrubs located within the 5th Avenue right-of-way.

- B. The Developer (or the Associations as the case may be) shall, at the Developer's (or the Associations' as the case may be) sole cost and expense, be responsible for the following maintenance and repair obligations in the Shared Maintenance Areas: removal of trash and litter, landscaping and maintenance of raised planters and gardens on a routine/as needed basis, and payment of any energy costs for bollard lighting.

2.2 Exclusive Association Maintenance. From and after the Commencement Date, as defined in Section 2.5, in addition to the maintenance and repair obligations described in Section 2.1, above, the Developer (or the Associations as the case may be) shall, at its sole cost and expense, be responsible for the exclusive maintenance and repair of all areas identified in yellow and green on Exhibit B, which shall include all maintenance and repair of the private roads, alleys, and sidewalks, including but not limited to: the roadway, curb and gutter, grates, signage, manholes, lighting, public safety items, landscaping, seating, and all vertical structures, and all maintenance of the private roads, alleys and sidewalks including, but not limited to, street cleaning, snow and ice removal, landscape and lawn mowing, and re-painting and striping.

2.3 Exclusive City Maintenance. In addition to the maintenance and repair obligations described in Section 2.1, above, the City shall, at its sole cost and expense, be responsible for the exclusive maintenance and repair of the public right-of-way highlighted in red on Exhibit B, which shall include all maintenance and repair, and/or replacement of the public right-of-way, including but not limited to: the roadway, curb and gutter, grates, signage, manholes, lighting, public safety items, landscaping, seating, and all vertical structures, and all seasonal maintenance of the public right-of-way including, but not limited to, street cleaning, snow and ice removal, landscape and lawn mowing, and re-painting and striping. Notwithstanding anything to the contrary set forth in this Agreement, in no event shall the City be responsible for maintenance or repair of any items under Sections 2.1 or 2.3 of this Agreement which arise from or relate to the acts or omissions of Developer, the Associations (including, without limitation, the members thereof), or any employee, agent, contractor, or invitee of the Developer or the Associations.

2.4 City Failure to Maintain or Repair/Breach. In the event the City fails to maintain or repair any portion of the Property required by City under this Agreement, the Developer or Associations shall provide City with a written list of the maintenance responsibilities which have not been properly performed by City and/or the terms that have been breached by the City. From and after the Commencement Date, in the event of an emergency when the health, safety or welfare of the citizens is at imminent jeopardy, the Developer or Associations may, without notification or identification, inspect and perform necessary maintenance and repairs. However, the Developer or Associations shall notify City of any inspection, maintenance, or repair undertaken within five (5) days after the completion of the activity. City shall reimburse the Developer or Associations for its reasonable and actual costs of the maintenance work performed. It is understood that the undertaking by Developer or Associations of any obligations of the City pursuant to this paragraph shall not operate to impose any future obligations of the Developer or Associations.

2.5 Commencement of City's Obligations. Notwithstanding anything to the contrary set forth in this Agreement, the City's obligations under this Agreement, including, without limitation, its maintenance and repair obligations set forth in Sections 2.1 and 2.3 of this

Agreement, shall not commence until the date (the “*Commencement Date*”) which (i) Developer has substantially completed construction of all of the facilities for which the City agrees to maintain and repair pursuant to the terms of this Agreement, which facilities shall be constructed in a good and workmanlike manner, and (ii) the City has inspected and approved the condition of the same.

ARTICLE III GRANT OF EASEMENT

3.1 Grant. Developer hereby grants and conveys to the City, its employees, contractors, subcontractors, agents, successors and assigns, a temporary, non-exclusive easement for the purpose of completing all of the City’s maintenance and repair obligations set forth in this Agreement, over, upon and across the areas of the Property necessary to perform the City’s obligations under this Agreement (the “*Easement*”). The Easement shall be solely used for the construction, maintenance, repair and replacement obligations of the City contained in this Agreement.

3.2 Restoration. Upon completion of the construction, maintenance, repair or replacement of any items required of the City pursuant to this Agreement, the City shall restore any part of the Property, Master Condominium, Residential Condominium, and Easement disturbed by the City’s activities to a substantially similar condition as existed prior to such construction, maintenance, repair or replacement activities, without cost to the Developer, its successors or assigns, or the Associations. The City shall use reasonable care to protect any structures, improvements and landscaping within the Property, Master Condominium, and Residential Condominium.

3.3 Rights Reserved. Developer, and Developer’s successors and assigns, shall retain (i) the right to use the Easement for any and all purposes that do not interfere with the full enjoyment by the City of the rights granted herein, together with (ii) all other rights in the Master Condominium, Residential Condominium, and the Property, subject to this Easement. No easement rights, except those expressly set forth herein shall be implied by this Agreement.

3.4 Termination of Easement. The Easement shall terminate upon the termination of this Agreement.

ARTICLE IV PROPERTY CONDITION AND DAMAGE

4.1 Property Condition. Developer represents and warrants that the portions of the Property required to be maintained by the City pursuant to this Agreement, including, without limitation, those Public Common Elements described in Section 2.1 and the other facilities described in Section 2.3, (i) have been or will be constructed in a good and workmanlike manner in accordance with all applicable state, local, and federal ordinances, rules, regulations and laws, and (ii) will be in good condition and repair as of the Commencement Date.

4.2 Damage and Repair. To the extent that any portion of the Property, the Master Condominium, Residential Condominium, or any property of the Associations or their respective unit owners is damaged due to willful conduct or intentional acts of the City, its employees, agents or invitees, then the City shall be liable for repairing such damage and paying for necessary costs incurred with the repairs thereto.

ARTICLE V INDEPENDENT CONTRACTOR/EMPLOYEES

No Partnership/Joint Venture. Nothing in this Agreement shall constitute or be construed to create a partnership or joint venture between City or its successors or assigns and Developer, Associations, or their respective successors or assigns. In entering in to this Agreement, and in acting in compliance herewith, each party is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.

ARTICLE VI INSURANCE

6.1 Developer/Associations Insurance. During the term of this Agreement, the Developer and/or Associations as the case may be, shall keep in full force and at its own expense the following insurance:

- (a) Commercial general liability insurance for claims of bodily injury and property damage due to the management, operation and maintenance of the Premises. Such insurance shall have a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence with a Two Million Dollar (\$2,000,000) aggregate limit and excess umbrella liability insurance in the amount of Ten Million Dollars (\$10,000,000). Manager shall be an insured, by definition, in the policy.
- (b) Property insurance insuring the improvements on the Property for perils covered by causes of loss; special form (all risk) for one hundred percent (100%) of the full insurable replacement value.

ARTICLE VII NOTICES

All notices and other communications given pursuant to this Agreement shall be in writing and shall be either (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, hand delivered by a reputable independent courier service providing proof of delivery, or sent by a nationally recognized overnight courier service, to the parties hereto at the address(es) therefor specified for each below, or (2) sent by email transmission to the intended addressee at the email address therefor specified below, followed by a confirmatory notice sent in another manner permitted hereunder. All notices sent by U.S. Mail shall be effective on the third (3rd) business day following the deposit; all notices delivered by overnight courier service shall be effective on the first (1st) business day following deposit; and all other notices shall be

effective upon delivery (even if such addressee refuses delivery thereof). The parties hereto may change their addresses by giving notice thereof to the other in advance in conformity with this provision.

If to Developer:

F STREET OCLV, LLC
c/o F Street Development Group, LLC
1134 N. 9th Street, Suite 200
Milwaukee, WI 53233
Attn: Josh Lurie
Telephone: 414-315-3190
Email: josh@fstreetgroup.com

If to the City:

City Clerk
City of Oak Creek
8040 S. 6th Street
Oak Creek, WI 53154
Telephone: 414-766-7000
Email: avickers@oakcreekwi.gov

And

City Attorney
8040 S. 6th Street
Oak Creek, WI 53154
Telephone: 414-766-7000
Email: cattorney@oakcreekwi.gov

ARTICLE VIII TERMINATION

9.1 Termination. This Agreement may be terminated by the Developer or the Associations, with or without cause, by providing the City with sixty (60) days' advance written notice of the election to terminate. Upon termination the City shall provide to the Developer or the Associations any and all materials or plans associated with or related to the City's maintenance and repair work required under this Agreement, as well as assign any and all warranties over to the Developer or Associations. Additionally, if requested by the Developer or the Associations, the City shall execute a release in recordable form, evidencing termination of this Agreement and releasing the same from the public record, which Developer or Associations may record with the appropriate register of deeds office.

ARTICLE IX MISCELLANEOUS

10.1 Assignment. Neither party shall assign this Agreement without the written consent of the other party, which will not unreasonably be withheld, conditioned, or delayed, except that

the Developer may assign any or all of the rights and benefits conferred on or reserved herein for Developer in its status as such, or the entire Agreement, to the Master Association and/or the Residential Association, by an instrument in writing specifically identifying the rights and benefits so assigned (or the entire Agreement) which is recorded in the Milwaukee County Register of Deeds Office, and which such assignment shall not require the consent of the City.

10.2 Governing Law. This Agreement shall be governed by Wisconsin law and any lawsuit arising out of same shall be filed in Milwaukee County, Wisconsin.

10.3 Recording. This Agreement shall be recorded with the Milwaukee County Register of Deeds.

10.4 Severability. Any determination by any court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

10.5 Covenants Run With the Land. All of the covenants, conditions, restrictions, terms and provisions hereof are and shall be deemed to be covenants running with the property described herein and shall burden and benefit such property as described herein and, with respect to such property, the City, Developer, the holders or owners of any mortgage, indenture, deed of trust or deed to secure debt encumbering any of such property, any purchaser at a foreclosure sale, any other person or entity acquiring any right, title or interest in such property, including a unit within the Master Condominium and Residential Condominium, and their respective heirs, executors, administrators, representatives, successors and assigns.

10.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

[The remainder of this page is intentionally left blank.]

officer acknowledged execution of the instrument to be the voluntary act and deed of the _____ and by him/her voluntarily executed.

Notary Public, State of Wisconsin

My commission: _____

DRAFT

EXHIBIT A
LEGAL DESCRIPTION
[TO BE INSERTED]

DRAFT

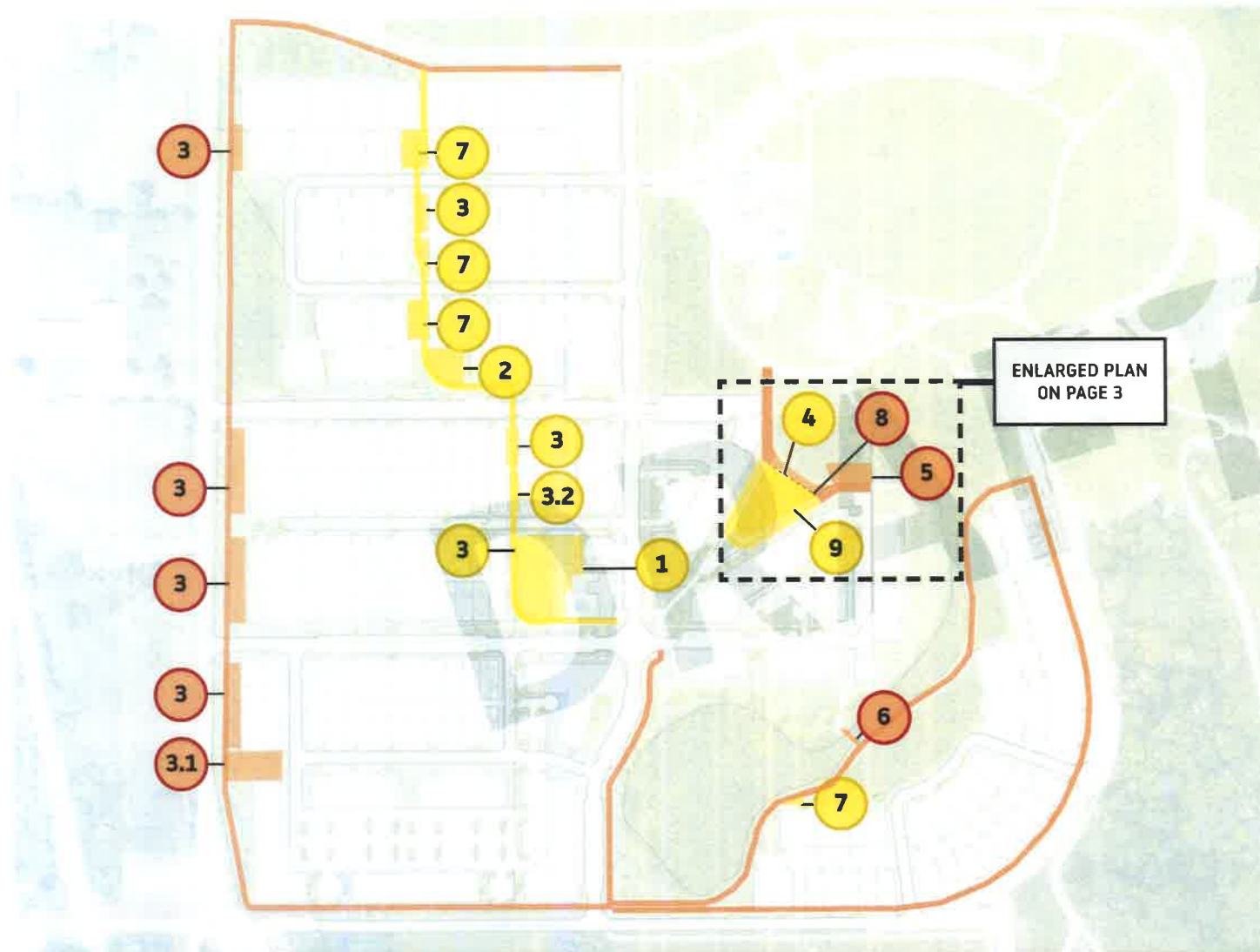
**EXHIBIT B
PUBLIC COMMON ELEMENTS AND MAINTENANCE OBLIGATIONS**

[SEE ATTACHED]

DRAFT

27369432.3

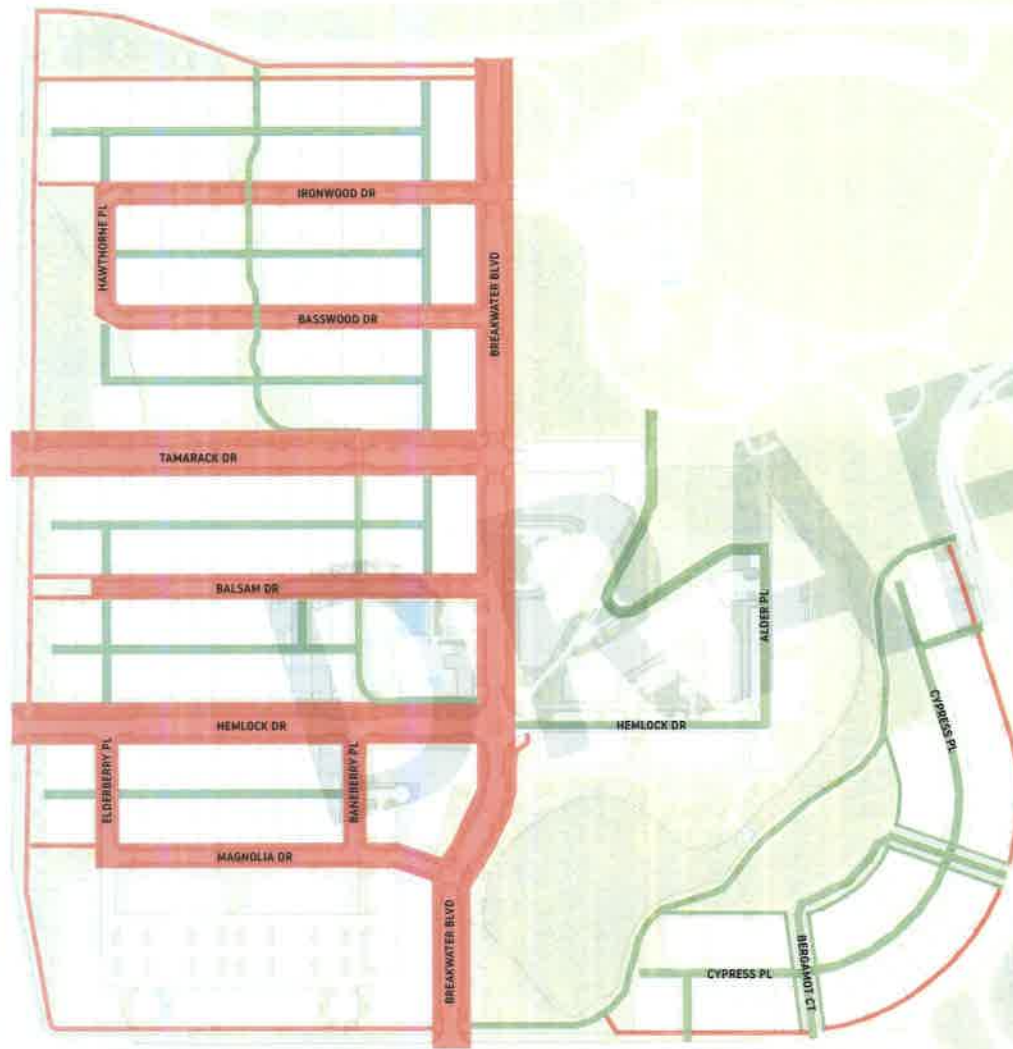
HB: 4869-5510-3780.4



- ### AMENITY PATH KEY
- 1 COMMUNITY COURTS
 - 2 DOG PARK
 - 3 SEATING AREA
 - 4 GRILLING STATION
 - 5 HAMMOCK PARK
 - 6 PEDESTRIAN BRIDGE
 - 7 COMMUNITY GARDENS
 - 8 ART INSTALLATION
 - 9 GREEN SPACE

- ### MAINTENANCE KEY
- **SHARED MAINTENANCE**
 - CITY**
 - 1) MAINTAIN ASPHALT/ CONCRETE LONG-TERM
 - 2) REMOVE SNOW
 - 3) REPLACE CAPITAL ITEMS = SEATING, BOLLARDS, APPURTENANCES
 - 4) MAINTAIN TREES WITHIN 5TH AVE R-O-W (SHOULD BE SETUP AS NATURAL/NATIVE/ LOW MAINTENANCE)
 - ASSOCIATION**
 - 1) EMPTY GARBAGE/REMOVE LITTER
 - 2) MAINTAIN LANDSCAPING/RAISED PLANTERS, GARDENS, ON A ROUTINE BASIS/AS NEEDED
 - 3) PAY FOR ANNUAL ENERGY COST OF BOLLARD LIGHTING
 - **100% ASSOCIATION MAINTENANCE**

ENLARGED PLAN ON PAGE 3



PUBLIC/PRIVATE KEY

— PUBLIC RIGHT OF WAY

The delegated party shall be responsible for general maintenance, repair, and/or replacement of the public right-of-way; including but not limited to: the roadway, curb and gutter, grates, signage, manholes, lighting, public safety items, landscaping, seating, streetlight repair/replace and energy costs and all vertical structures. General seasonal maintenance to include, but not limited to: street cleaning, snow removal, mowing and re-painting.

— PRIVATE ROAD, ALLEY & SIDEWALK

The delegated party shall be responsible for general maintenance, repair, and/or replacement of the private roads, alleys, and sidewalks; including but not limited to: the roadway, curb and gutter, grates, signage, manholes, lighting, public safety items, landscaping, seating, streetlight repair/replace and energy costs and all vertical structures. General seasonal maintenance to include, but not limited to: street cleaning, snow removal, mowing and re-painting.

