

**THE COLONY DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF TOLEDO
AND
TOLEDO COLONY APARTMENTS, LLC AND COLONY-CONCORD HOTEL, LLC**

This Development Agreement (the “Agreement”) for public and private improvements in the Colony is entered into by and among the **City of Toledo**, an Ohio municipal corporation, with an address of One Government Center, Suite 2200, Toledo, Ohio 43604 (“City”) and **Toledo Colony Apartments, LLC** and **Colony-Concord Hotel, LLC**, each an Ohio limited liability company with an address of The Empire Building, Attention: Franklin E. Kass, 150 E. Broad Street, 2nd Floor, Columbus Ohio 43215 (collectively, the “Developer”). As used herein, “Parties” refers to, collectively, City and/or Developer.

RECITALS:

WHEREAS, Developer has committed to invest an estimated \$50,000,000.00, collectively, in the development of the (i) Residential Development and (ii) Commercial Development (each as defined below) on a portion of the property known as the Colony located in the City of Toledo (“Project”). The project site consists of approximately 10.8 acres located in the City of Toledo, Lucas County, Ohio, same being legally described and depicted on Exhibit A attached hereto (“Project Site”).

WHEREAS, the Project will further the development of the Colony and represents an important economic development opportunity for the City, involving both public and private investment along the West Central Avenue corridor, and will generate new jobs on the Project Site.

WHEREAS, the Project consists of the construction of new residential apartments, a new hotel, and new and revitalized commercial and retail space on the Project Site. The hotel portion of the Project will include approximately 120 hotel rooms and is anticipated to operate as a Home2 Suites by Hilton (the “Commercial Development”). The residential portion of the Project shall include approximately 262 residential units and is expected to be known as the Colony Lofts, along with a club house, restaurant and a space for a retail oriented business (the “Residential Development”).

WHEREAS, the City by Ordinance _____ enacted on _____, 2020 granted a Planned Unit Development for the Residential Development.

WHEREAS, certain public road, water and sewer improvements are necessary as part of the Project.

WHEREAS, the City is supportive of the Project and pursuant to Ordinance _____ enacted on _____, 2020, has authorized this Agreement and financial support for public improvements necessary to the success of the Project.

NOW, THEREFORE, the City and Developer agree as follows:

SECTION 1
THE COLONY PROJECT OVERVIEW AND DEFINITIONS

1.1. **Project Site.** The Project Site generally consists of the approximately 10.8 acres located in the City of Toledo and bounded by ProMedica Parkway, Jermain Street, Upton Avenue and I-475, as more specifically shown and described in Exhibit A.

1.2. **Project.** The Project consists collectively of the Residential Development and the Commercial Development on the Project Site.

1.3. **Residential Development.** The Residential Development portion of the Project, known as the Colony Lofts, consists of the construction of approximately 262 apartments in multiple buildings with adjacent parking as well as a club house, restaurant and potential retail oriented space as specified in the Planned Unit Development approved pursuant to City of Toledo Ord. _____. A copy of the Planned Unit Development is attached hereto as Exhibit C.

1.4. **Commercial Development.** The Commercial Development consists of the construction of a new 120 room Homes2 Suites by Hilton Project Site as specified in the site plan approved by the Toledo City Plan Commission on February 13, 2020.

1.5. **Public Improvements.** The Project public infrastructure improvements (“Public Improvements”) are comprised of:

(i) **Storm Sewer** - Relocation and upsizing of the existing 48 inch storm sewer (the “Existing Storm Sewer”) to a 72 inch storm sewer for the benefit of the City Storm sewer system servicing the 584 acre East Bowen Ditch watershed, inclusive of the 10.8 acre Project Site (the “Storm Water Improvements”).

(ii) **Water Line Relocation and Hydrants** – Relocation of the water line in Briar Cliff and construction of a looped water line through the Residential Development with two hydrants. In addition, three new hydrants shall be added along Central Avenue to reduce spacing to below 350’ (collectively, the “Water Line Improvements”).

All in accordance with the site plan as approved by the Toledo City Plan Commission with respect to the Commercial Development and the Planned Unit Development for the Residential Development with agreement from the City Division of Transportation, Toledo Fire and Rescue Department and Toledo Department of Public Utilities, and the drawings and specifications approved by the City Division of Engineering Services.

SECTION 2
RESPONSIBILITIES OF THE DEVELOPER

2.1. **Construction of Project.** The Developer agrees to acquire the necessary property and construct the Project on the Project Site as defined in Section 1. Project construction shall be completed within forty eight (48) months of the relocation of the Existing Storm Sewer. A Project timeline is set forth on Exhibit B attached hereto (the "Project Timeline"). Developer's construction of Project shall be in accordance with all terms and conditions of zoning, plats, site plans, and Planned Unit Development approvals by the Toledo City Plan Commission and Toledo City Council. Developer and City acknowledge and agree that fee ownership of all or portions of the Project Site may be transferred by Developer to the Toledo-Lucas County Port Authority (the "Port Authority") pursuant to the terms of certain revenue bond financing intended to be provided by the Port Authority for the benefit of the Project; provided, that, the obligations of, and benefits provided to, Developer pursuant to this Agreement shall be solely retained by Developer and not transferred, or deemed transferred, to the Port Authority.

2.2. **Grant of Access.** Developer shall grant access, or secure a grant of access to, and on, the Project Site to the City as may be reasonably necessary for the purpose of conducting any inspections of the Project as authorized under Ohio law and/or the Toledo Municipal Code or construction of the Public Improvements.

2.3. **Investment.** Developer shall invest or cause to be invested not less than Thirty Million Dollars (\$30,000,000.00) in the construction of the Residential Development and not less than Twenty Million Dollars (\$20,000,000.00) in the construction of the Commercial Development.

2.4. **Jobs Creation Requirement.** Developer estimates that the Project shall result in three hundred (300) construction jobs during the construction period. Developer commits that (i) the Residential Development will create at least forty five (45) new full-time equivalent jobs and thirty (30) part time jobs within one (1) year after the completion of the Residential Development and (ii) the Commercial Development will create at least eleven (11) new full-time equivalent jobs within one (1) year after the completion of the Commercial Development.

2.5. **Licenses and Permits.** The Developer shall ensure that all construction work on the Project is permitted and carried out in accord with Federal, State of Ohio and City of Toledo laws and regulations. Developer shall obtain all necessary, licenses, consents, approvals, permits, entitlements and other authorizations required under applicable laws (including without limitation Environmental laws), from each governmental authority as applicable in connection with the acquisition, construction, installation, equipping, improvement and occupancy of the Project.

2.6. **Other.** Developer shall have such other responsibilities as specified in any other section of this Agreement.

2.7. **Delegation of Duties.** Developer may execute any of its obligations under this Agreement by through agents, contractors, employees or attorneys-in-fact; provided however,

that no such delegation shall limit or reduce in any way Developer's duties and obligations under this Agreement.

SECTION 3
RESPONSIBILITIES OF THE CITY

3. **Construction of Public Improvements.** City agrees that it shall construct and install within the time periods set forth in the Project Timeline, as may be adjusted by mutual agreement of the Parties from time to time, the Public Improvements in accordance with Section 4 of this Agreement with respect to all Public Improvements constructed on or within existing City property, roadway or right-of-way or in an easement dedicated to the City. Notwithstanding the foregoing, the parties anticipate that completion of the Public Improvements will not require acquisition of any property not owned by either the Developer or City, and if such further acquisitions are required, the Developer shall acquire such property at its sole expense. Developer shall grant the City any easements or other property rights reasonably necessary to ensure the City's ownership rights in the Public Improvements upon completion of construction and installation.

3.1. **Grant of License for Access.** Subject to the terms and conditions for this Agreement, during the construction period of the Project, the City shall grant Developer a license over City owned real property as may be necessary to access and provide security for the Project Site to complete construction, installation, equipping and improvement of the Project.

3.2. **Inspections.** City shall perform such inspections related to the Project as required by law.

3.3. **Payment for Public Improvements.** The City and Developer shall be responsible for the cost associated with the Public Improvements as follows:

3.3.1. *Storm Water Improvements.* The estimated cost for the relocation and upsizing of the Existing Storm Sewer to a 72 inch storm sewer as approved by the City's Division of Engineering Services is one million four hundred forty-nine thousand eight hundred and forty dollars (\$1,449,840)(the "Storm Water Improvement Expense"). City shall secure funding for expenses associated with the upsizing of the storm water sewer up to a maximum amount of seven hundred forty nine thousand, eight hundred and forty dollars (\$749,840). Developer shall pay to the City seven hundred thousand dollars (\$700,000) for the cost to relocate the storm sewer which amount shall be paid by the Developer within 90 days of the Effective Date or at the election of the Developer by way of a special real property assessment which election shall be made by Developer's execution and delivery to the City of a Petition for Assessment for Storm Water Improvements within 30 days of Developer's receipt from the City of the final relocation plans, specifications and cost estimate. Said special assessment having a term not to exceed twenty (20) years, attaching solely to the Residential Development tax parcel and at an interest rate agreed to by the Developer. If additional funding is necessary to complete the Storm Water Improvements the City shall secure the same, subject to appropriation by Toledo City Council.

3.3.2. *Water Line Improvements.* City shall secure funding for eligible expenses associated with the relocation of the water line in Briar Cliff, relocation of portions of other water mains that may need to be offset as a result of this project, and construction of the looped water line through the Residential Development with two hydrants and the installation of three new hydrants along Central Avenue to reduce spacing to below 350' up to a maximum amount of four-hundred and fifty thousand dollars (\$450,000.00). If additional funding is necessary to complete the Water Line Improvements the City shall secure the same, subject to appropriation by Toledo City Council.

3.3.3. *Eligible Utility Expenses.* Subject to the maximum dollar limits specified in this Section 3 and in accordance with Toledo Municipal Code Sections 933.11, 941 and 943, the City shall secure funding for the construction and materials costs for water and sewer improvements constructed in the right-of-way or in an easement dedicated to the City. For existing lines, eligible costs include connection fees and the cost of connecting to the line in the right-of-way or in a dedicated easement. The following costs are not eligible for reimbursement:

- i. Utility infrastructure costs that were incurred prior to the Toledo City Council's approval of assistance under Ord. _____ enacted on _____; and
- ii. Engineering and design costs; and
- iii. Costs for running a utility connection from the City right-of-way or easement to a structure on private property.

3.4. **Acceptance of Property/Public Improvements.** The Developer shall provide and the City shall accept, in accordance with law, transfers, in either fee or by easement, of property owned by the Developer as may be necessary to facilitate construction, completion and dedication of the Public Improvements.

3.5. **Operation and Maintenance of Public Improvements.** The water lines and storm sewer lines in the public right-of-way, public roadway and in any easements granted herein shall be owned, operated and maintained by the City.

3.6 **Off-Site Storm Water Detention.** At the request of the Developer, and at no cost to the City, the City will (i) provide its best efforts to coordinate with the Ohio Department of Transportation ("ODOT") to facilitate the Developer's acquisition of real property owned by ODOT at the intersection of Central Avenue and Jackman Road (the "ODOT Parcel") for the creation of a water quality bioswale to support the Project and (ii) support the Developer in obtaining any required zoning changes, permits or approvals related to the creation of the bioswale.

3.7. **Community Reinvestment Area Tax Incentive.** The Developer shall file an application for each tax parcel used for the Project with the City's Department of Economic Development for a property tax exemption through the Community Reinvestment Area program (the "CRA Exemption"). The City agrees to grant a CRA Exemption for one hundred percent

(100%) of the Project's assessed improvement value for a period of fifteen (15) years subject to the following conditions: (a) Developer shall enter into a School District Payment Agreement(s) with the Toledo Public School District ("TPS"); and (b) a duly authorized ordinance(s) is approved by Toledo City Council.

3.8. Street Vacations. Subject to application and approval processes specified under the Charter and Municipal Code of the City of Toledo, the City agrees to the following vacations:

- (i) Vacation of a 5' wide strip of Central Avenue adjacent to lots 5-7 in the Plat of West Central Shores (V-445-19).
- (ii) Vacation of Briar Cliff Road, adjacent to lots 7 & 8 of West Central Shores and lots 181-184, 201 & 202 in the Plat of Kingston (V-446-19).
- (iii) Vacation of Rathbun Drive, adjacent to lots 108 & 109 and 157 & 158 in the Plat of Kingston (V-448-19).
- (iv) Vacation of portions of Kelly Avenue adjacent to lot 20 in the Plat of Fairfax (V-447-19).
- (v) Vacation of Doris (V-332-15).
- (vi) Vacation of Kelly Avenue and adjacent alley (V-333-15).
- (vii) Vacation of alley East of Kelly Avenue (V-333-15).
- (viii) Vacation of ProMedica Parkway from Monroe Street to Central Avenue (V-330-15).
- (ix) Vacation of Jermain between Wellesley Avenue and Monroe Street (V-331-15).

The City agrees to waive the acquisition costs (purchase price based on the value of the vacated area) in connection with the vacations under this Section 3.8. Developer will be responsible for customary application fees, engineering costs, and deed recording fees in connection with the vacations.

3.9 Private Utility Removals. The City agrees to directly request and pursue in a manner consistent with the City's customary practices and procedures and in accordance with the Developer's guidance and the Project timeline the following items:

- (i) Removal of the Toledo Edison overhead utility run removal in alley between ProMedica and Upton, north of Central.
- (ii) Removal of the AT&T utility run in alley between ProMedica and Upton, north of Central.
- (iii) Removal of the Buckeye fiber optic cable duct bank removal in Briar Cliff.

- (iv) Removal of Columbia Gas utility line in Briar Cliff.
- (v) Removal of the overhead lines on the north side of Jermain.
- (vi) Removal of the Buckeye Cable fiber optic duct bank utility run north of Jermain Drive between ProMedica and Briar Cliff.

3.10. **Sanitary Sewer Taps.** The City shall approve and permit a minimum of one (1) sanitary sewer tap per residential building and one (1) additional sanitary sewer tap for the restaurant and retail improvements for the Residential Development and one (1) sanitary sewer tap for the Commercial Development. Additional sanitary sewer taps may be considered upon final engineering design and will be subject to approval by the Division of Engineering Services.

3.11. **Obligations Contingent.** The City's obligations under this Agreement are contingent upon and subject to Developer's reasonable completion of the Project in accordance with applicable law and the terms of this Agreement.

SECTION 4 **PUBLIC IMPROVEMENTS**

4.1. **Property Costs.** All costs related to the acquisition of property for the Project to be used for the Public Improvements, which is not otherwise owned by the City, and is to be transferred by the Developer to the City upon completion of the Public Improvements in accordance with Sections 1.5 and 2.4 of this Agreement, including costs for platting, and any necessary transfers of property for dedication for public use, shall be paid by the Developer without recourse to the City.

4.2. **Design and Engineering, Bid Costs.** All costs for engineering, design, drafting of plans and specifications, and construction cost estimates, necessary for construction of the Public Improvements, except as may be provided directly by the City of Toledo Engineering staff, shall be paid for by the Developer without recourse to the City.

4.3. **City Access/Correction of Materials Non-compliance with Plans.** Developer shall allow the City and its agents, at all times during normal business hours and upon such prior notice and procedures as are mutually agreed to by Developer and the City, the right of entry and free access to the Project Site, to inspect all work done, labor performed and materials furnished related to the Public Improvements, and to require to be replaced or otherwise corrected any material or work that materially fails to comply with the respective approved plans, designs and specifications for the Public Improvements at the sole cost of Developer or its agents, employees, or contractor(s).

4.4. **City Ownership Upon Completion.** Developer shall grant the City such fee, easement or other property interests reasonably necessary to ensure the City's ownership of the Public Improvements upon completion of construction and installation of the Public Improvements.

SECTION 5 **CONSTRUCTION ACCESS**

5.1. **City Access.** At certain times during the construction of the Project by the Developer, the City, its employees, agents and contractors, shall, at no cost to the City, have a temporary license, right of way, access, ingress and egress, and use of the Project Site, as reasonably necessary, to carry out its public obligations, including inspection of the Project, subject to all other terms and conditions of this Agreement.

5.2. **Developer Access.** During the construction of the Project, including the Public Improvements, the Developer, its employees, agents, and contractors shall at no cost to the Developer, have a temporary license, right-of-way, access, ingress and egress, and use of that portion of the Project Site owned, transferred or dedicated to the City for the Public Improvements, to the extent reasonably necessary, solely for the equipping, construction and installation of the Project, and the provision of necessary security during the construction period, subject to all other terms and conditions of this Agreement.

5.3. **Coordination.** The Parties shall coordinate with each other regarding construction schedules and site access and use.

5.4. **Compliance with Plans.** In no event shall the Parties undertake any alterations of the Project Site that differ from the approved Project plans or otherwise deviate from the plans in a manner that impacts the overall Project's compliance with approved plans or the property of the other party, except upon the prior written approval of the other party.

5.5. **Standard of Conduct.** Each party accessing the property of the other shall at all times conduct its work in a good, safe and workmanlike manner, in conformity with commercially reasonable standards, and in accordance with all applicable laws, rules, ordinances and regulations.

SECTION 6 **WARRANTIES, LIABILITY, INDEMNIFICATION AND INSURANCE**

6.1. **Title to Property.** The Developer agrees that upon its transfer of title or dedication to the City of any property pursuant to this Agreement, all title to such property shall be free and clear of all liens and legal encumbrances except as may be agreed to by the City and the Developer agrees to provide title work evidencing such at its sole cost.

6.2. **Construction of Project.** The Developer shall indemnify, hold harmless and defend the City against for all claims, liabilities, damages or losses of any kind or nature against the City arising out of or related to the negligence, actions, errors or omissions or willful misconduct of the Developer, its employees, agents and contractors related to the construction of the Project, including the Public Improvements. This requirement shall not be deemed to limit Developer's or City's ability to recover any such costs against third parties.

6.3. **City's Obligations for Public Improvements.** Subject to applicable law, including Ohio Revised Code Chapter 2744, the City shall be solely liable for all claims,

liabilities, damages or losses of any kind or nature arising out of or related to the actions or omissions of the City, its employees, agents and contractors related the Public Improvements. The requirements of this Section shall not be deemed to limit Developer's or City's ability to recover any such costs against third parties.

6.4. **Damages for Inadequate Contract Performance.** In the event either party fails to perform its obligations as set forth in this Agreement, neither party shall be liable to the other for any amounts representing loss of income, or indirect, incidental, consequential, exemplary or punitive damages of the other party, except that this provision does not limit or restrict the operation of the indemnification provision under Sections 6.2 and 6.3.

6.5. **Representation.** The Developer represents and warrants that it has not entered into agreements or commitments which conflict with its obligations under this Agreement, or with the rights granted to City herein.

6.6. **Survival.** The provisions of this Section 6 shall survive the termination of this Agreement.

SECTION 7 TERM AND TERMINATION

7.1. **Term of Agreement.** The effective date of this Agreement shall be as of the date of the execution of this Agreement by the Mayor of the City of Toledo as indicated below and shall continue for a period of four (4) years.

7.2. **Termination for Default.** Either party may terminate this Agreement in writing, if the other party fails to materially fulfill its obligations under this Agreement in a timely manner (an "Event of Default"). However, no such termination may be effected unless such Event of Default remains uncured for thirty (30) days after the party declaring the Event of Default provides written notice of such Event of Default and intention to terminate in accordance with the terms of this Agreement; provided, however, that if such Event of Default is reasonably susceptible of cure, but cannot be cured within such thirty (30) day period, then, so long as the defaulting party promptly commences cure and thereafter diligently pursues such cure to completion, then the cure period provided for herein shall be extended for a reasonable period not to exceed an additional ninety (90) days within which the defaulting party may complete such cure. In the event of default by the Developer, such that Developer fails to substantially complete the Residential Development, Developer shall be liable to the City in an amount equal to the amount the City spent for construction and installation of the Public Improvements.

SECTION 8 PROPRIETARY INFORMATION, NON-DISCLOSURE AND PUBLIC RECORDS

8.1. **Applicability of Sunshine Law to the City of Toledo.** Developer acknowledges that City is subject to Ohio Revised Code (R.C.) Section 149.43 ("The Public Records Act") that requires political subdivisions of the State to grant public access to information about the affairs of government and the official acts or public officials and employees. Disclosure under the Public Records Act is subject to certain exemptions, including an exemption that protects trade

secret information from release. "Trade secrets" are protected by the operation of R.C. Sections 1333.61 to 1333.69 (the "Trade Secrets Act"). The Trade Secrets Acts, Section 1333.61(D) defines "trade secret" as follows:

"Trade secret" means information, including the whole or any portion of phase of any scientific, or technical information, design, process, procedure, formula, pattern, compilation, program device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

8.2. Confidential Information. Developer and City acknowledge that in the course of the performance of their respective obligations pursuant to this Agreement, each party may obtain confidential information and/or trade secret or proprietary information of the other party or its affiliates or customers.

8.3. Non-Disclosure by City. The City will not share with or convey to any person, entity or governmental agency information provided by Developer that is considered and identified to be a trade secret by Developer and that may be included in the "trade secret" definition under the Trade Secrets Act, unless disclosure is required by law or Developer gives prior written approval for such disclosure. In the event that the City is required to disclose any information Developer considers to be a trade secret pursuant to applicable law, prior to disclosing such information, the City shall notify Developer in writing. City shall not be obligated to maintain in confidence any information that is not a trade secret including information that is publicly known or becomes publicly known through no fault of the City, or that comes to the City from a third party in a manner not in violation of any obligation of confidentiality by such third party to Developer.

8.4. Non-Disclosure by Developer. Developer agrees to use only for the purposes of this Agreement, and not to disclose to third parties without permission from City, information Developer receives from City relating to public utility infrastructure or such other shared information specified by City as confidential information which is not a not a public record under the Ohio Revised Code. Developer shall not be obligated to maintain in confidence any information that is considered a public record under the Ohio Revised Code or any information that is publicly known or becomes publicly known through no fault of Developer, or that comes to Developer from a third party in a manner not in violation of any obligation of confidentiality by such third party to City. Developer will notify City if it receives a request for information pertaining to this Agreement or in the event that it discloses confidential information to any third party.

8.5. **Acknowledged Public Record.** Developer and City acknowledge that this Agreement with all attachments and exhibits is and shall be a public record subject to disclosure. Developer and City acknowledge that all applications made to the City related to zoning, plan approvals, permits, grants, tax incentives, and information, invoices and reimbursement for costs of Public Improvements by City are and shall be public records subject to disclosure. Developer and City agree that neither this Agreement, nor a memorandum of the same, shall be placed of record.

SECTION 9
MISCELLANEOUS

9.1. **Equal Employment Opportunity.** Each party agrees that it will not discriminate against any customer, employee or applicant for employment because of race, religion, color, sex, age, national origin or disability.

9.2. **Compliance with Law.** Each party agrees that it will perform its obligations under this Agreement in accordance with all applicable laws, rules and regulations now or hereinafter in effect. The Authority shall procure and maintain at its cost, or cause to be procured or maintained, all licenses, permits, and other similar authorization required for construction and completion of the Redevelopment.

9.3. **Notice.** Any notice or other communications required or permitted under this Agreement will be in writing and will be deemed sufficiently given when delivered in hand, via overnight express delivery with signature required, or three (3) days after being mailed by first-class United States mail, postage prepaid, and in each instance addressed as follows:

| | |
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| If to the City, to: | Department of Economic Development City of Toledo One Government Center, Suite 2250 Toledo, Ohio 43604 Attn: Brandon Sehlhorst |
|---------------------|--|

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|-----------------|--|
| With a copy to: | Department of Law City of Toledo One Government Center, Suite 2250 Toledo, Ohio 43604 Attn: Law Director |
|-----------------|--|

| | |
|-------------------------|---|
| If to the Developer to: | Toledo Colony Apartments, LLC Colony-Concord Hotel, LLC The Empire Building, 150 E. Broad Street, 2nd Floor Columbus Ohio 43215 Attn: Franklin E. Kass |
|-------------------------|---|

9.4. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

9.5. **Interpretation and Governing Law.** This Agreement has been reached as a result of arm's length negotiations with each party represented by counsel, and therefore no presumption of draftsmanship shall be used in interpreting this Agreement, but it shall be construed as though prepared by both parties. This Agreement shall be governed by and interpreted under the laws of the State of Ohio, and any action or proceeding arising from this Agreement shall be commenced in a court of competent jurisdiction located in Lucas County, Ohio.

9.6. **No Third Party Beneficiaries.** This Agreement shall not grant any status or right to any third party, including specifically any owner of any property, to make any claim as a third party beneficiary, or for deprivation of any right, violation of any vesting or rights, or inverse or other condemnation. This Agreement is for the sole benefit of the parties hereto.

9.7. **Employees and Liabilities.** This Agreement shall not be construed as creating an employer-employee relationship, a partnership or a joint venture. It is understood that persons engaged or employed by the City or the Developer, respectively, as employees, agents, or independent contractors with respect to the Public Improvements and the Project shall be engaged or employed solely by the respective party. Each party is alone responsible for the work, direction, compensation and personal conduct of their respective employees, agents or independent contractors. Nothing in this Agreement shall impose any liability or duty upon a party to persons, firms, or corporations employed or engaged by the other party in any capacity whatsoever, unless otherwise specifically provided for herein.

9.8. **Entire Agreement, Amendment.** The Agreement contains all representations and the final understanding of the Agreement between the parties and supersedes all prior negotiations, understandings and agreements between the parties, whether written or oral. No changes to this Agreement shall be valid unless made be a written amendment executed by the parties.

9.9. **Severability.** The invalidity of unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

9.10. **Captions.** Captions in this Agreement are included for convenience of reference only, are not a part of this Agreement, and will not be used in interpreting or construing this Agreement.

9.11. **Waiver.** The waiver by any party of, or the failure of such party to take action with respect to, any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any other term, covenant or condition, or subsequent breach of the same, or any other, term covenant or condition.

9.12. **Force Majeure.** Neither party shall be required to perform any term, condition or covenant in this Agreement so long as such performance is prevented by any cause not reasonably within the control of that party and which by the exercise of due diligence that party is unable, wholly or in part, to prevent or overcome. For purposes of this Agreement, “force majeure” shall mean the occurrence acts of God, flooding, strikes, lockouts or other labor trouble, materially adverse weather conditions, fire or other casualty, governmental preemption in connection with a national emergency, any rule, order or regulation of any governmental agency or any department or subdivision thereof, or inability to secure materials or labor because of any such emergency, rule, order, regulation, war, civil disturbance or other emergency, cause or event beyond the reasonable control of the Force Majeure Claimant.

9.13. **Counterparts.** This Agreement may be executed in one or more counterparts each of which, when assembled together, shall constitute one and the same original.

9.14. **Authority to Act.** The signatory or signatories hereto on behalf of each Party warrant and represent that they have been duly authorized to execute this Agreement and legally bind their respective Party hereto.

9.15. **Exhibits Incorporated.** The following exhibits are incorporated by reference:

Exhibit A – Plat of Project Site Area

Exhibit B – Schematic of Improvements with Timeline

Exhibit C – Planned Unit Development

[This Area Left Intentionally Blank]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement by their duly authorized signatories on or as of the date written below.

CITY: City of Toledo, an Ohio Municipal Corporation

By: _____
Wade Kapszukiewicz, Mayor

Date

APPROVED AS TO CONTENT:

Director of Economic Development Date

Director of Public Utilities Date

APPROVED AS TO FORM:

Department of Law Date

DEVELOPER:

Toledo Colony Apartments, LLC

By: Franklin E. Kass
Name: Franklin E. Kass
Title: Authorized Officer
Date: _____

Colony-Concord Hotel, LLC

By: Franklin E. Kass
Name: Franklin E. Kass
Title: Authorized Officer
Date: _____

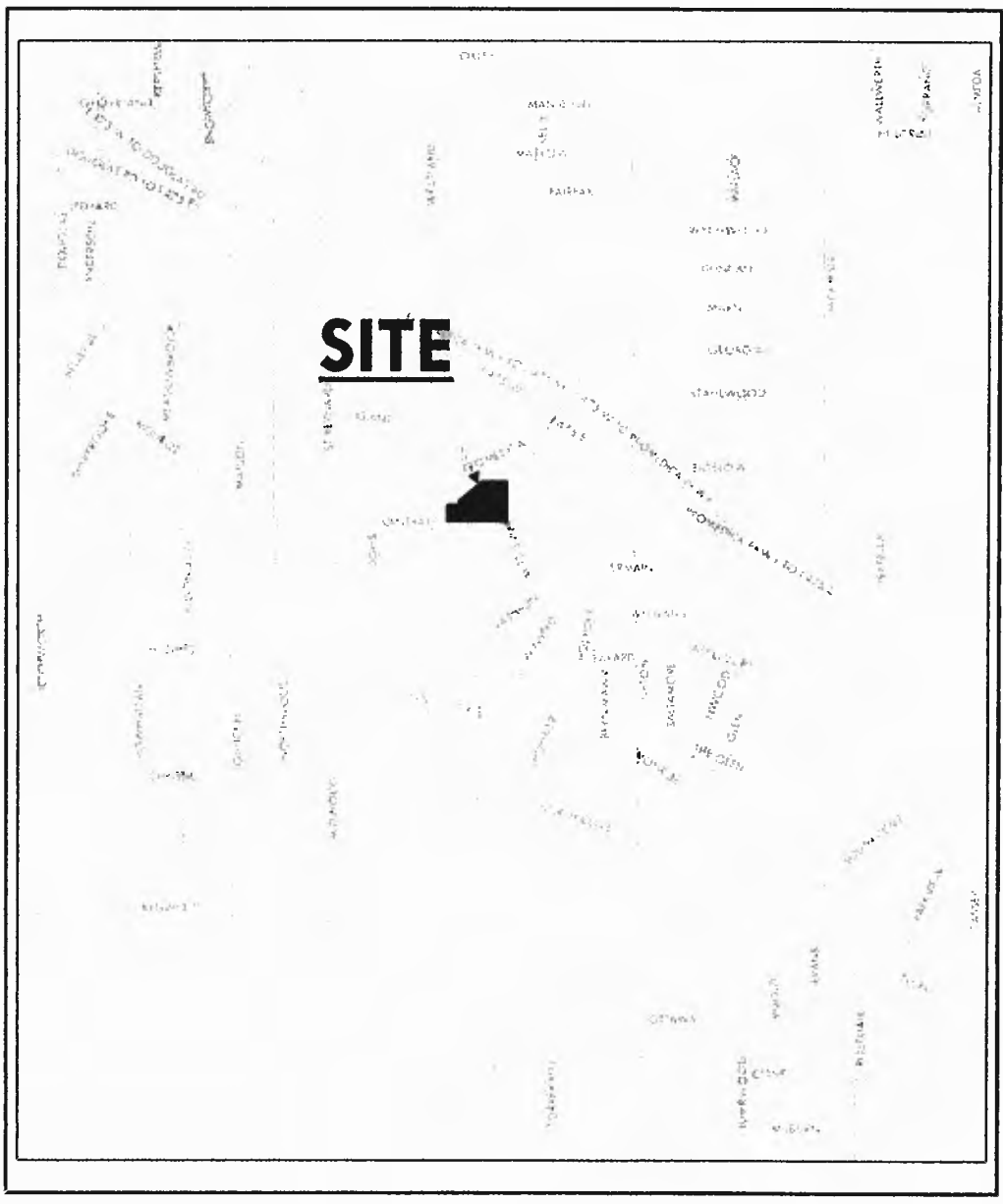
Exhibit A

Project Site

| Property Address | Tax District & Parcel Number | Assessor Number |
|-------------------------------|------------------------------|-----------------|
| 1901 W Central Avenue, Toledo | 18-46091 | 04-227-001 |
| 2061 W Central Avenue, Toledo | 16-11721 | 04-382-001 |
| 2951 Jermain Drive, Toledo | 09-12624 | 04-239-005 |
| 2943 Jermain Drive, Toledo | 09-12621 | 04-239-024 |
| 2945 Jermain Drive, Toledo | 09-12617 | 04-239-006 |
| 2941 Jermain Drive, Toledo | 09-12614 | 04-239-007 |
| 2937 Jermain Drive, Toledo | 09-12611 | 04-239-008 |
| 2931 Jermain Drive, Toledo | 09-12607 | 04-239-009 |
| 2929 Jermain Drive, Toledo | 09-12601 | 04-239-010 |
| 2921 Jermain Drive, Toledo | 09-12594 | 04-244-009 |
| 2948 Jermain Drive, Toledo | 09-12517 | 04-240-019 |
| 2938 Jermain Drive, Toledo | 09-12571 | 04-240-016 |
| 2932 Jermain Drive, Toledo | 09-12564 | 04-240-015 |
| 2928 Jermain Drive, Toledo | 09-12561 | 04-240-014 |
| 2922 Jermain Drive, Toledo | 09-12557 | 04-240-013 |
| 2918 Jermain Drive, Toledo | 09-12554 | 04-240-012 |
| 192835 Rathbun Drive, Toledo | 09-12524 | 04-240-003 |
| 2831 Rathbun Drive, Toledo | 09-12527 | 04-240-004 |
| 2825 Rathbun Drive, Toledo | 09-12531 | 04-240-005 |
| 3860 Monroe Street, Toledo | 09-12534 | 04-240-006 |
| 2022 W Central Avenue, Toledo | 05-00091 | 03-216-009 |
| 2036 W Central Avenue, Toledo | 05-00104 | 03-216-013 |
| 2038 W Central Avenue, Toledo | 05-00107 | 03-216-014 |
| 2040 W Central Avenue, Toledo | 05-00111 | 03-216-015 |
| 2044 W Central Avenue, Toledo | 05-00114 | 03-216-016 |
| 2046 W Central Avenue, Toledo | 05-00911 | 03-216-017 |
| 0 Kelly Avenue, Toledo | 05-00489 | 03-217-043 |

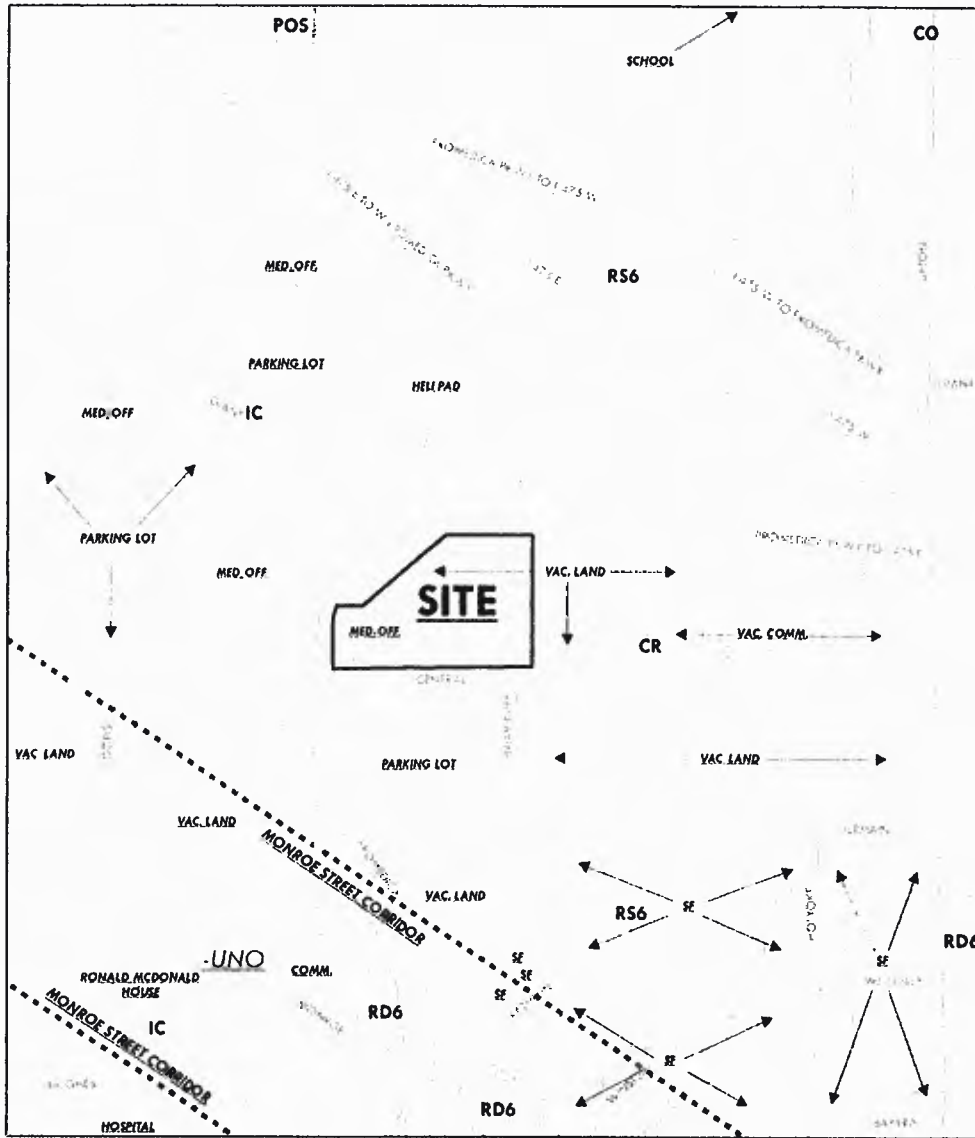
GENERAL LOCATION

**SPR-38-19
ID 45**



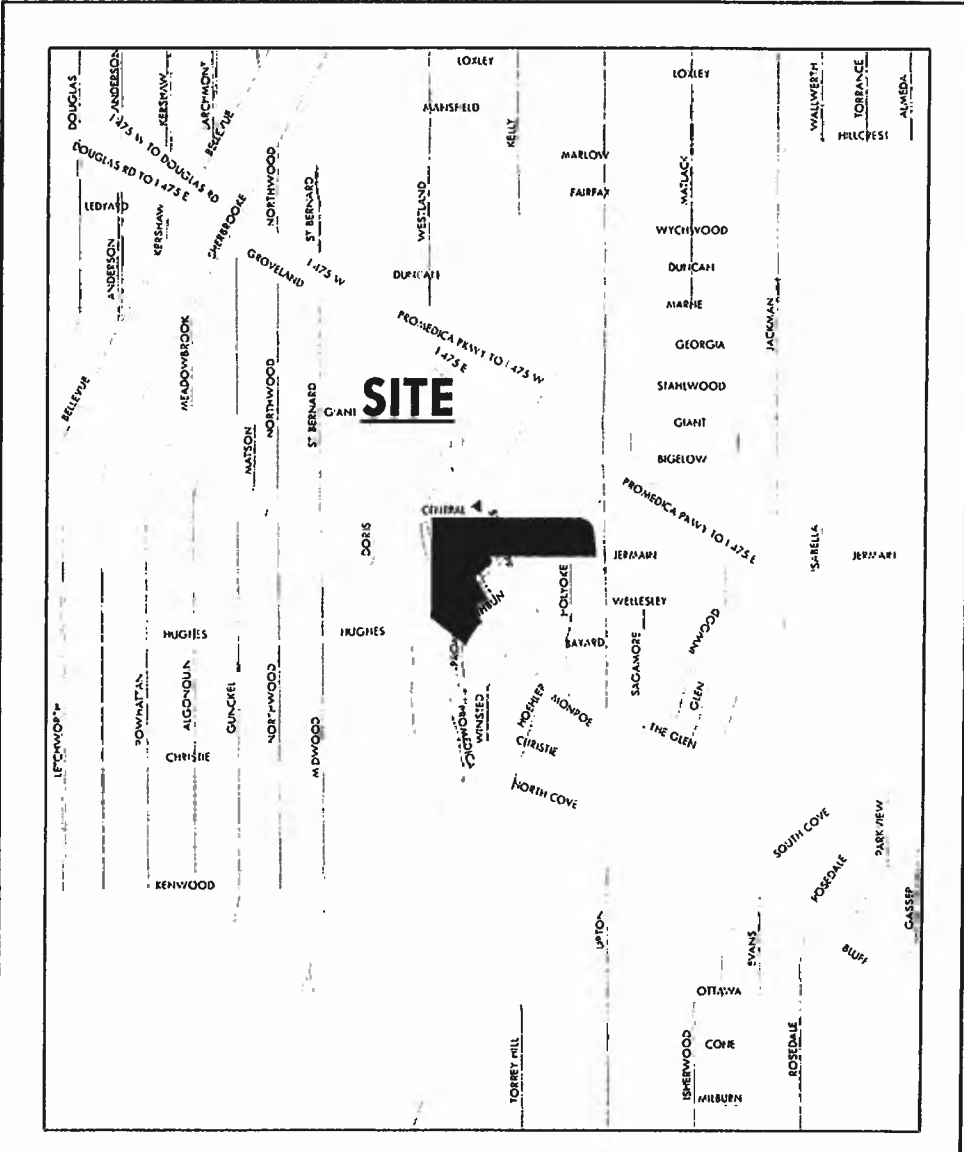
ZONING AND LAND USE

SPR-38-19
ID 45



GENERAL LOCATION

PUD-8007-19
ID 45



ZONING AND LAND USE

PUD-8007-19
ID 45

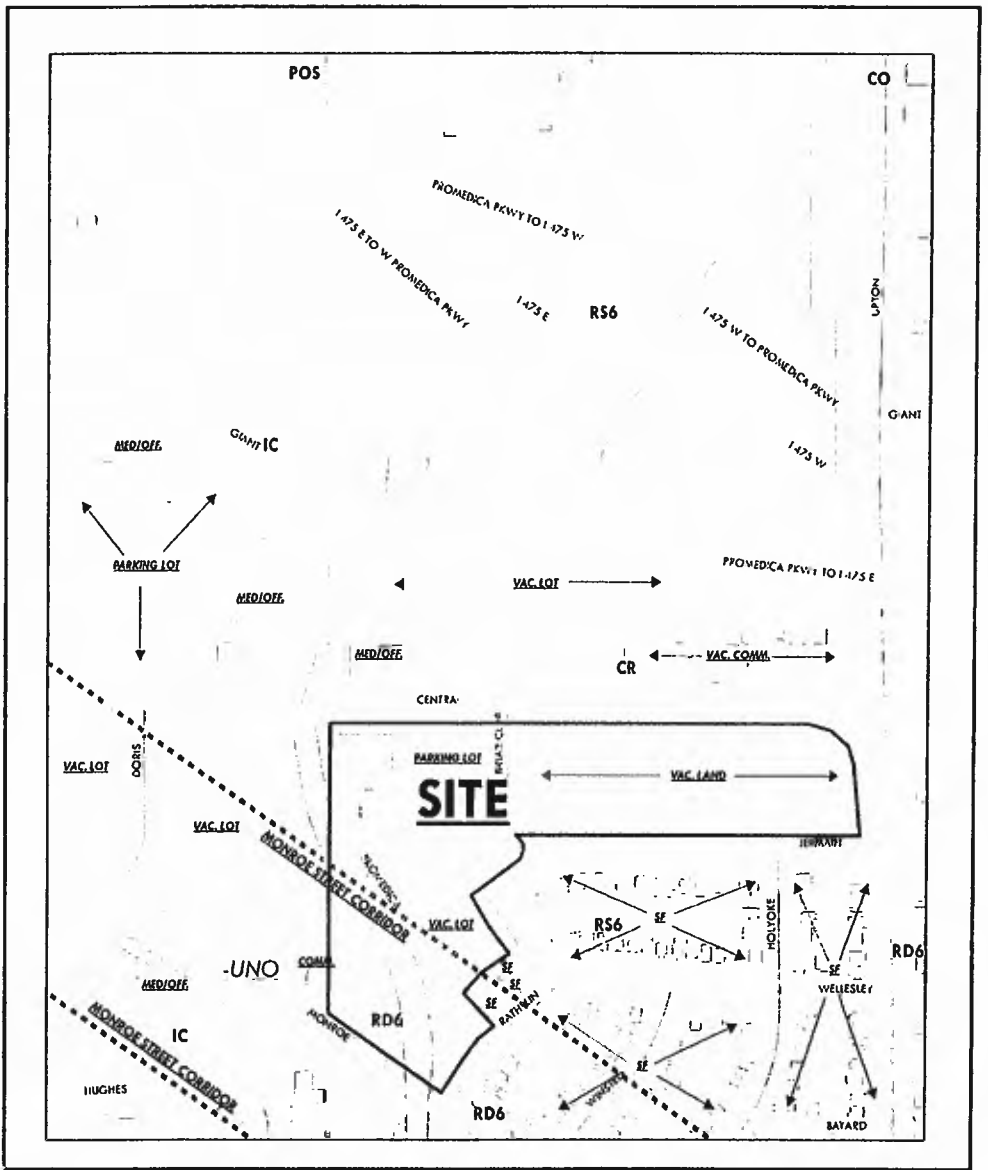


Exhibit B

Schematic of Improvements with Timeline

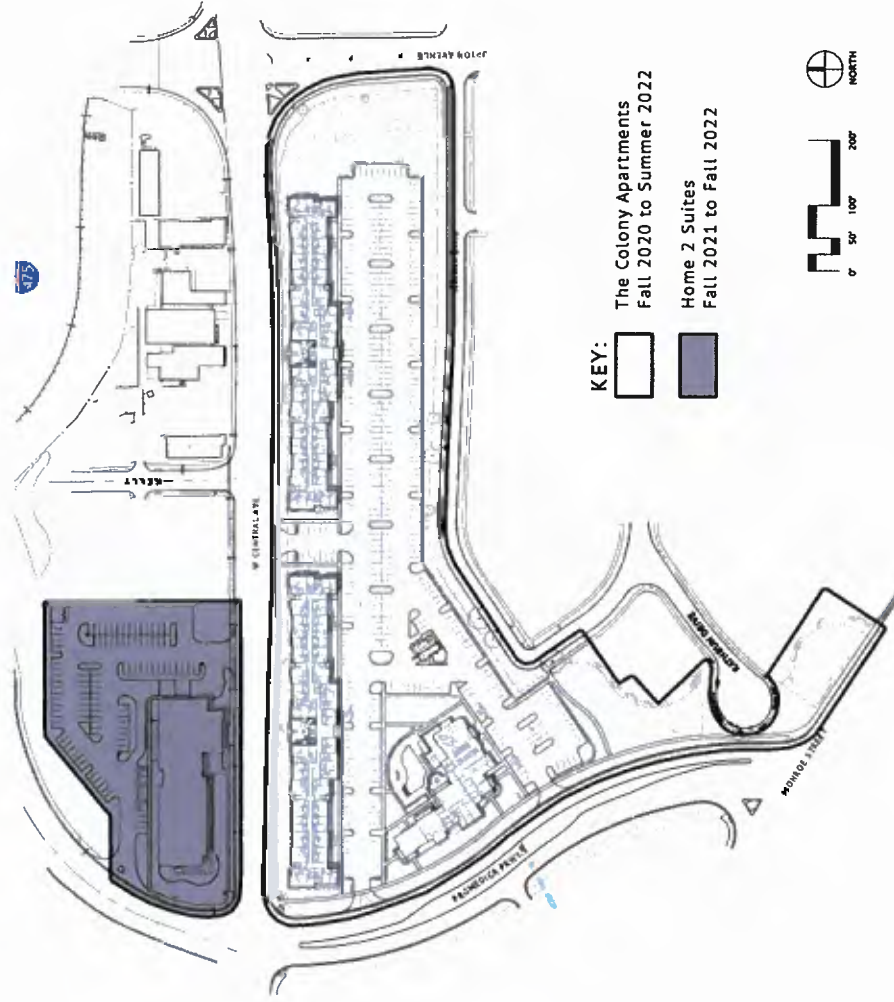
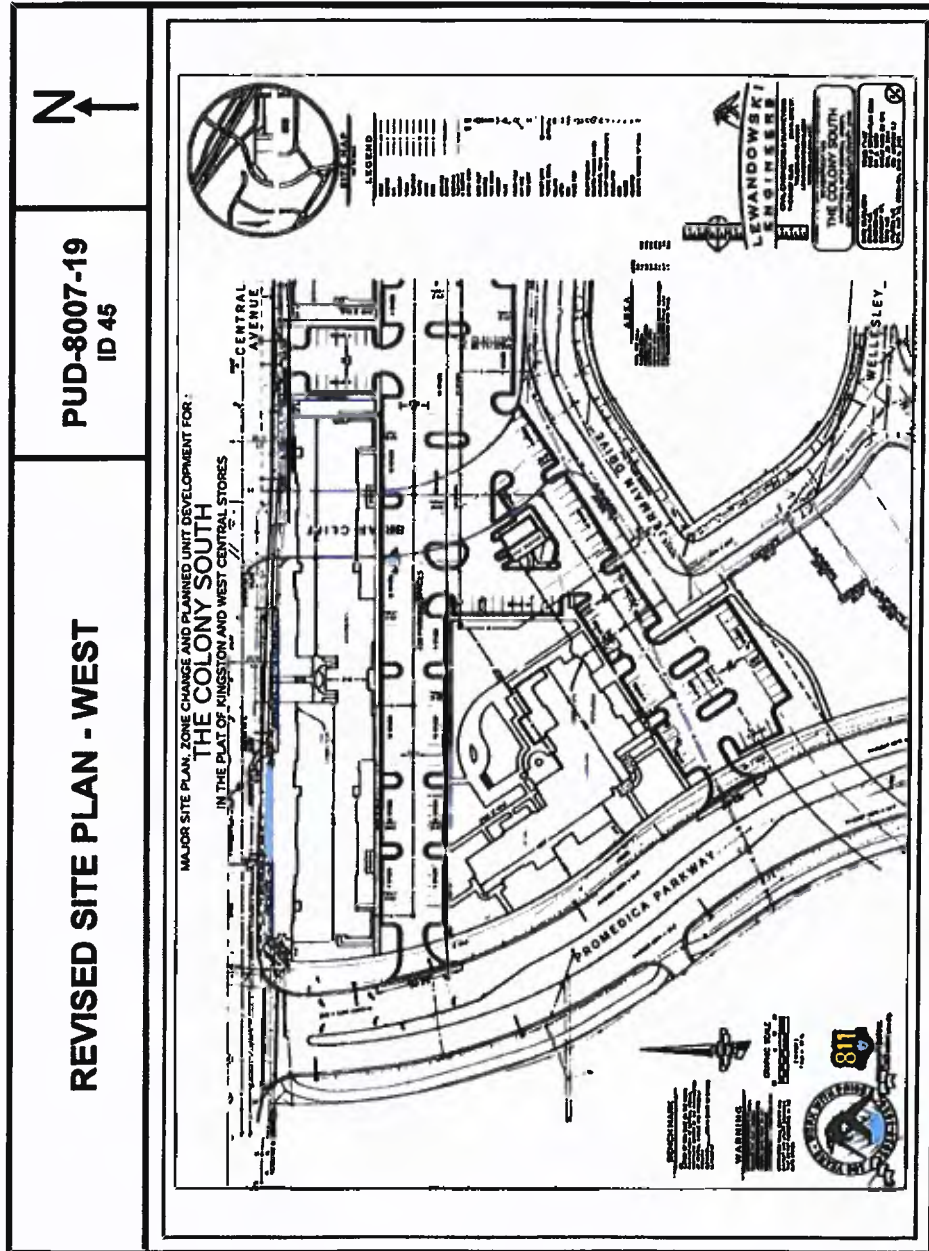


Exhibit C

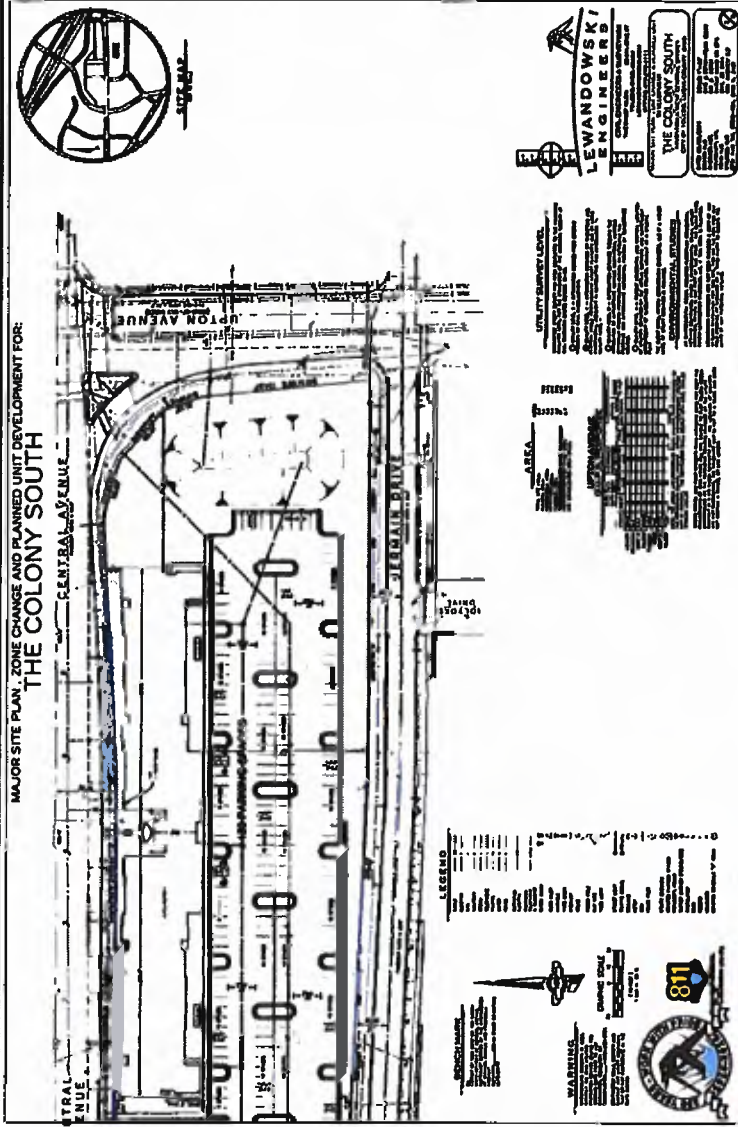
Planned Unit Development

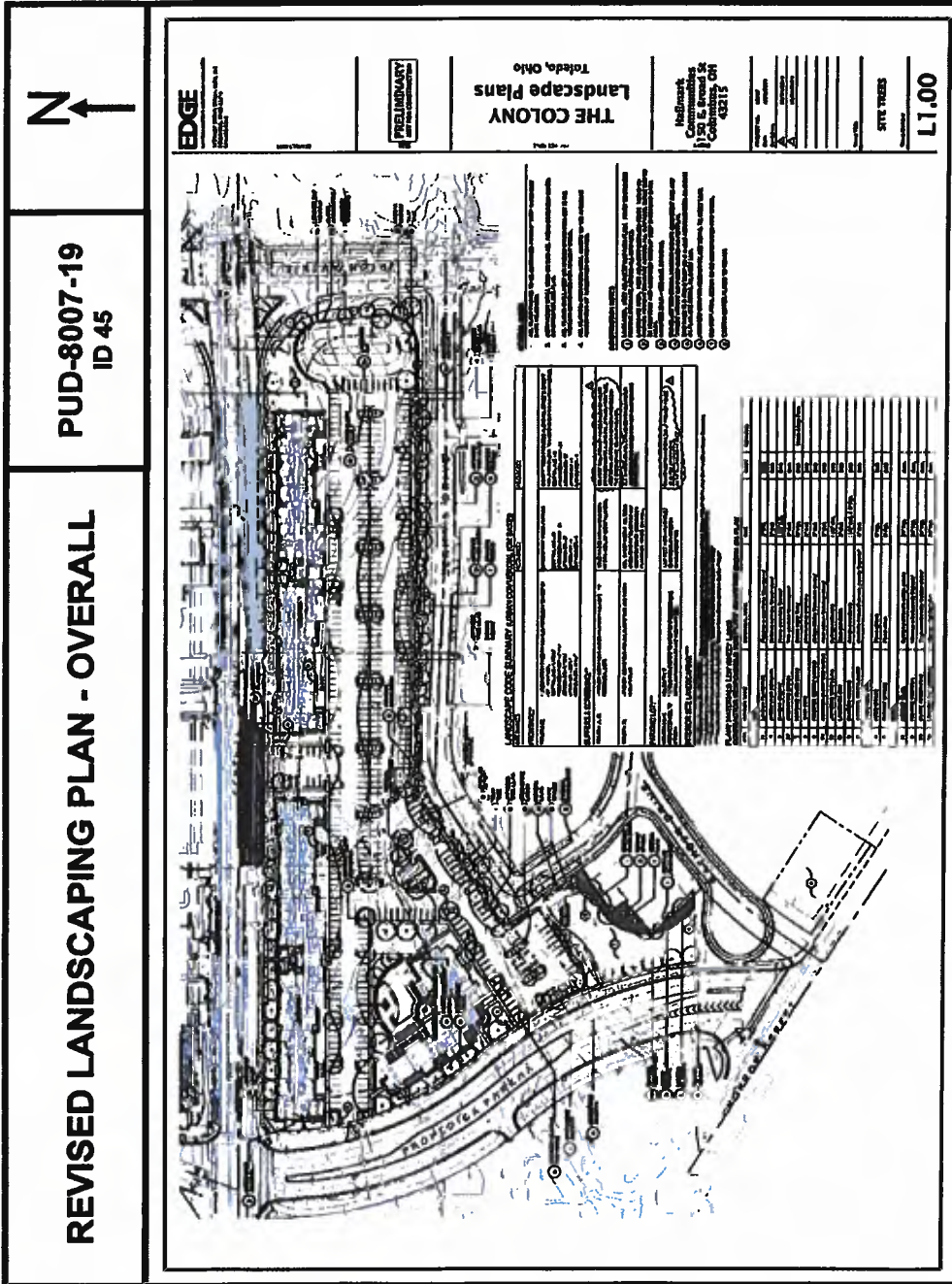


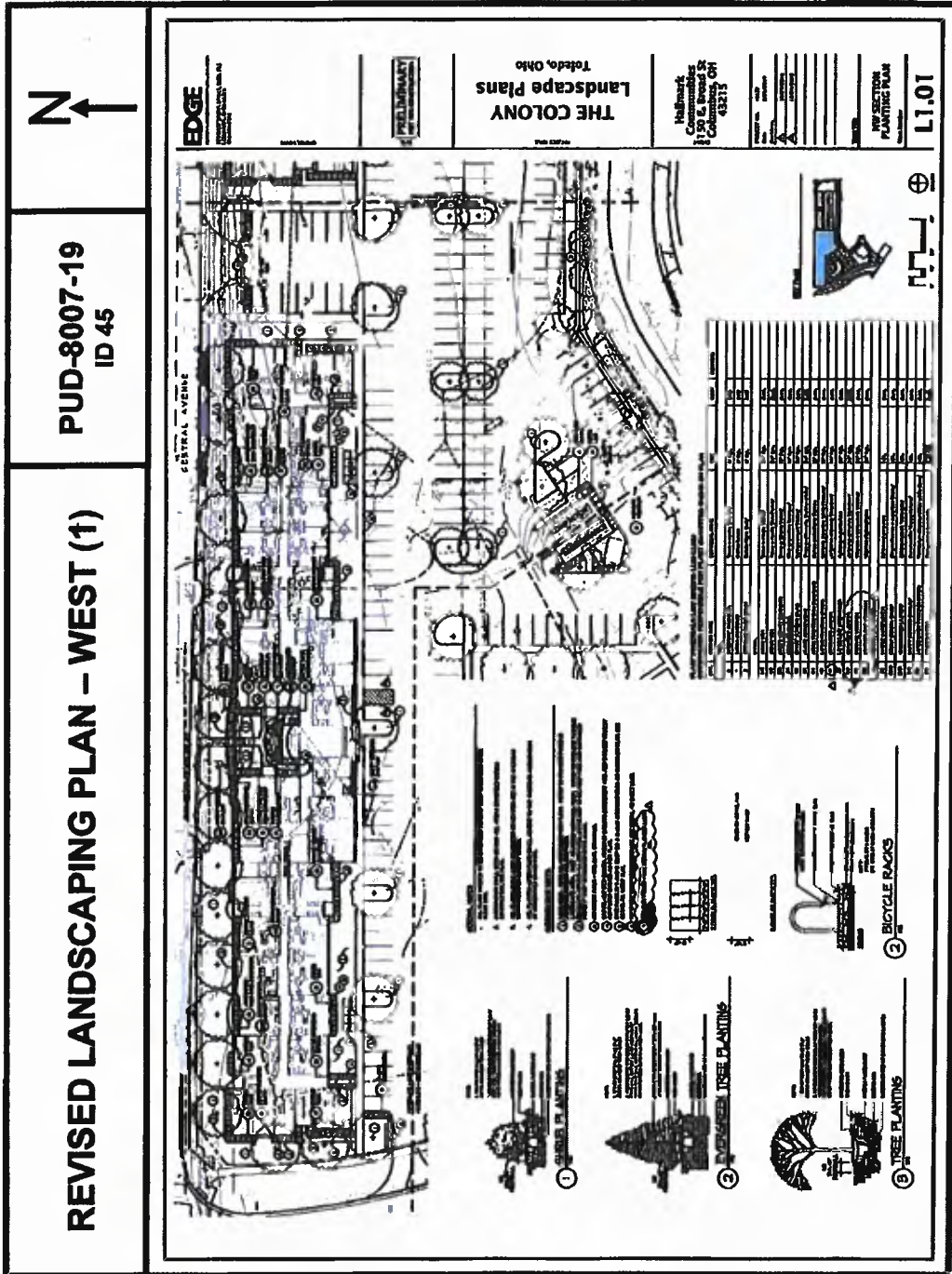


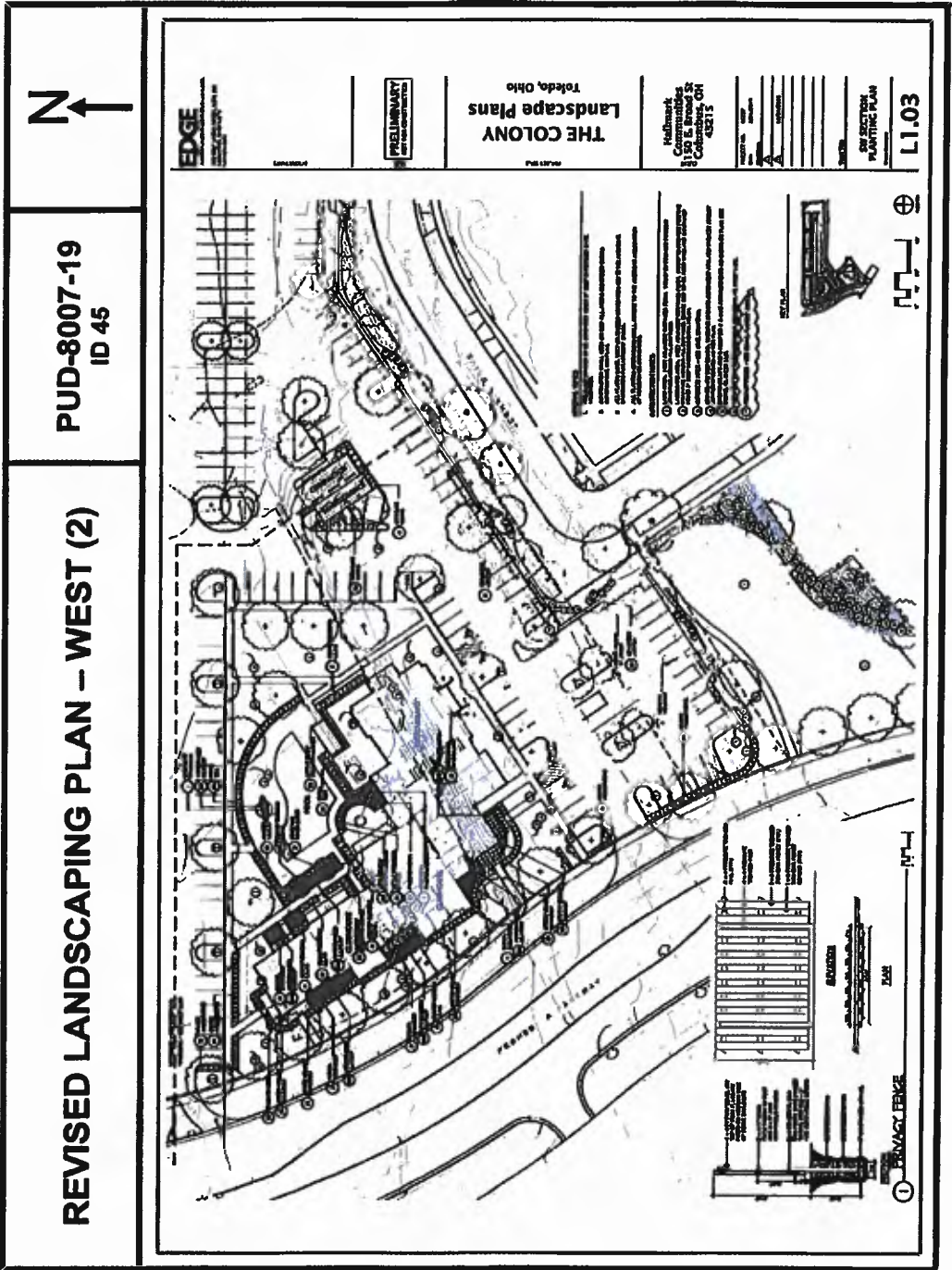
PUD-8007-19
ID 45

REVISED SITE PLAN - EAST



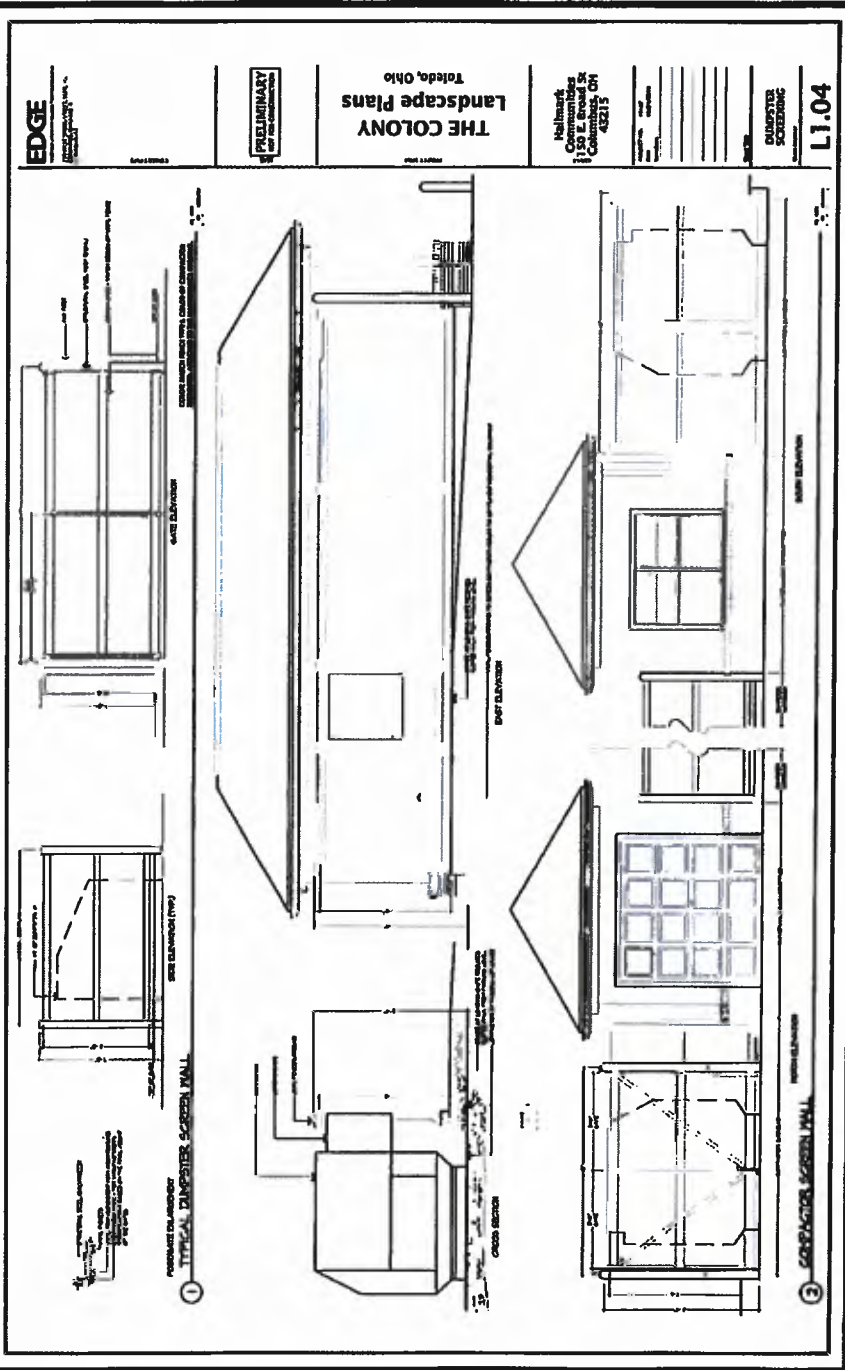






REVISED LANDSCAPING PLAN -- DUMPSTER SCREENING

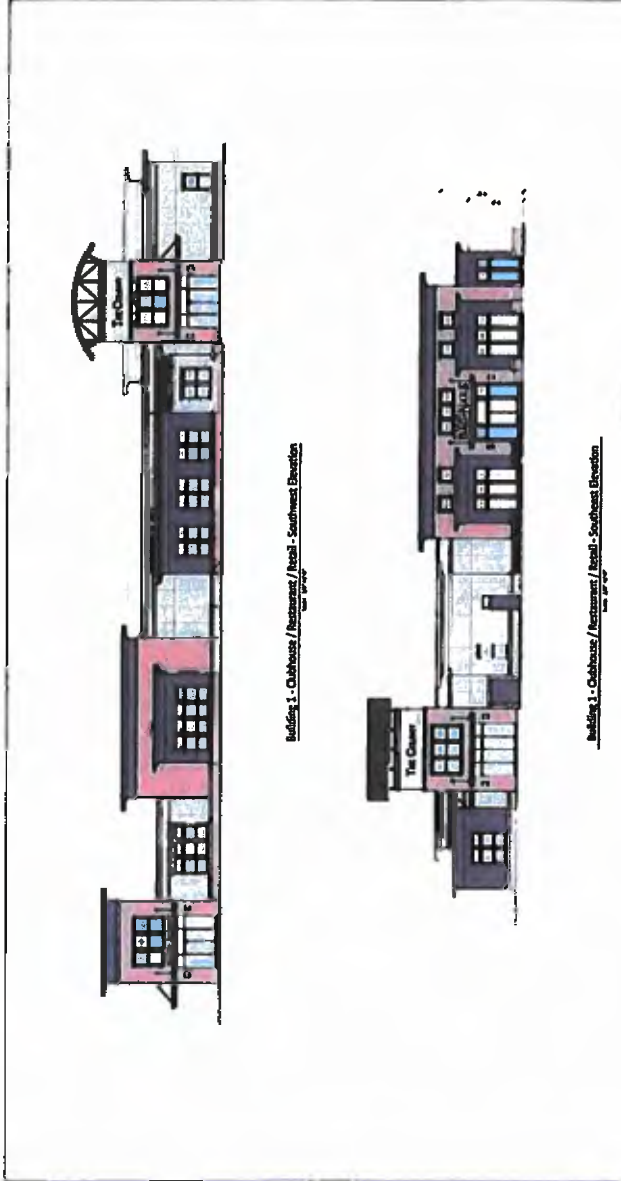
PUD-8007-19
ID 45



ELEVATION

PUD-8007-19
ID 45

Hallmark - The Colony at Toledo
West Central Avenue, Toledo, Ohio



DEAN A. WENZ

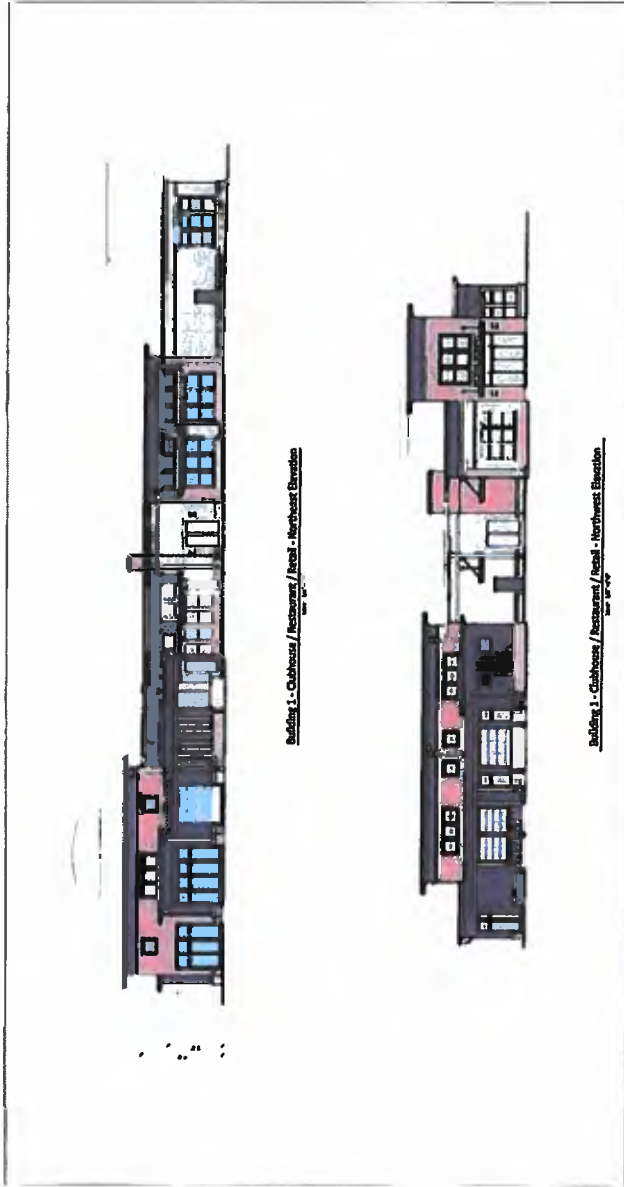
ARCHITECTS

240 East Main Street
Toledo, Ohio 43609 Phone: (419) 251-6288 www.dawarchitect.com

ELEVATION

PUD-8007-19
ID 45

Hallmark - The Colony at Toledo
West Central Avenue, Toledo, Ohio



Building 1 - Clubhouse / Restaurant / Retail - Northwest Elevation

Building 1 - Clubhouse / Restaurant / Retail - Northwest Elevation

DEAN A. WENZ
ARCHITECTS

2143 East Main Street
Toledo, Ohio 43604 Phone (419) 237-6688 www.deanwenz.com

PUD-8007-19
ID 45

ELEVATION

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A - Building Type A Exterior Elevation



A - Building Type A Exterior Elevation Continued

DEAN A. WENZ

ARCHITECTS

340 East Main Street Toledo, Ohio 43609 Phone (419) 231-6855 www.wenzarchitects.com

PUD-8007-19
ID 45

ELEVATION

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West Central Avenue, Toledo, Ohio



B - Building Type A Exterior Elevation
1/2" = 1' - 0"

B - Building Type A Exterior Elevation Continued
1/2" = 1' - 0"

DEAN A. WENZ

ARCHITECTS

540 East Main Street
Toledo, Ohio 43605 Phone (419) 254-6655
www.wenzarchitects.com

ELEVATION

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West Central Avenue, Toledo, Ohio



C - Building Type A Exterior Elevation





D - Building Type A Exterior Elevation

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ARCHITECTS

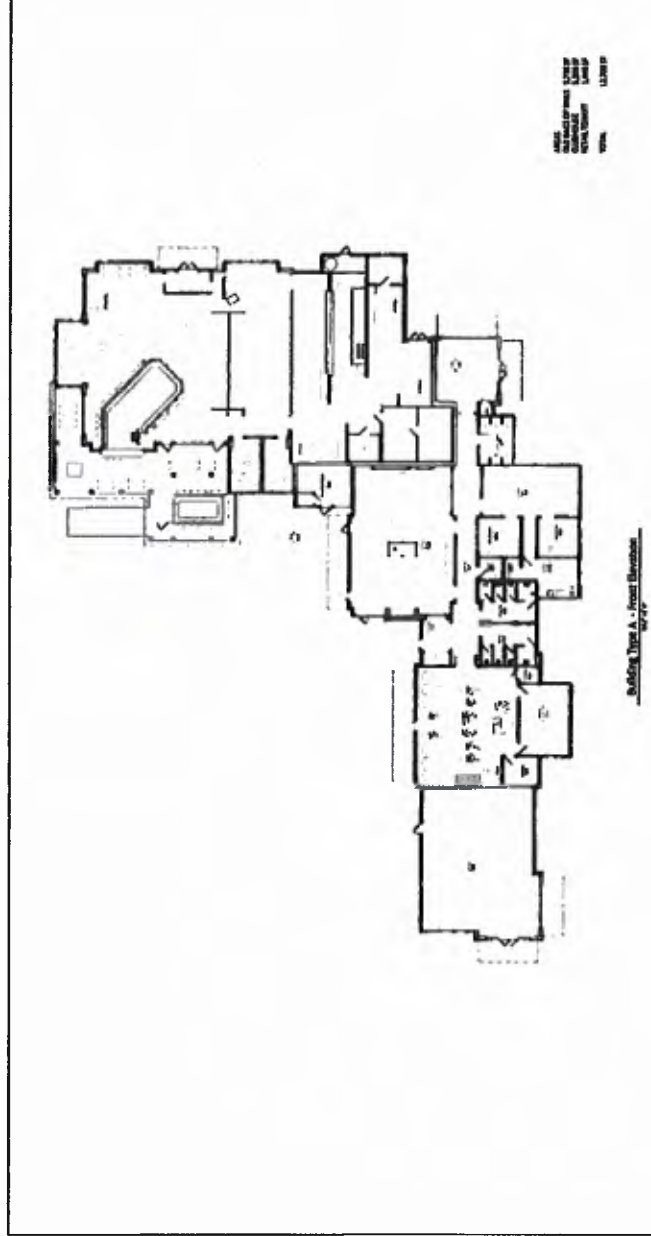
246 East Main Street Toledo, Ohio 43609 Phone (419) 234-6263 www.deanarch.com

| | |
|---|-----------------------------|
| ELEVATION | PUD-8007-19 ID 45 |
| <p>Hallmark - The Colony at Toledo West Central Avenue, Toledo, Ohio</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  <p>C - Building Type A1 Exterior Elevation See 1st Flr Plan</p> </div> <div style="text-align: center;">  <p>D - Building Type A2 Exterior Elevation See 1st Flr Plan</p> </div> </div> <div style="text-align: right; margin-top: 20px;"> <p>DEAN A. WENZ ARCHITECTS 340 East Main Street Toledo, Ohio 43609 Phone (419) 274-6888 www.dawenz.com</p> </div> | |

BUILDING LAYOUT

PUD-8007-19
ID 45

Hallmark - The Colony at Toledo
West Central Avenue, Toledo, Ohio



DATE: 12.20.07
DRAWN BY: J. WENZ
CHECKED BY: J. WENZ
SCALE: 1/8" = 1'-0"

Building Type A - Forest Hill Station

DEAN A. WENZ
ARCHITECTS

2443 East Main Street, Bucyrus, Ohio 43209 Phone (614) 294-6881 www.deanawenz.com

BUILDING LAYOUT (2)

