

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") made this 19th day of December, 2019, by and between SYLVIA KARAGEORGE, and PETE T. KARAGEORGE, ("Seller") and THE CITY OF HARRISONBURG, VIRGINIA, a municipal corporation ("Purchaser").

For and in consideration of the mutual covenants herein set forth, the parties agree as follows:

1. Agreement to Sell and Convey.

Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, a portion of that certain tract or parcel of land currently containing approximately 2.52 acres, more or less, and lying east of South Main Street and abutting East Kaylor Park Drive in the City of Harrisonburg, Virginia together with all improvements thereon, and being a portion of Harrisonburg City Tax Map number 103-A-12. The parcel to be conveyed by the Seller to the Purchaser is the 2.52 acres, more or less, which is the northwest portion of the Tax Map Parcel 103-A-12 and shall be subdivided from such tax map parcel. The new subdivision lot line shall be located ten (10) feet east of the structure located on the parcel to be conveyed and run from the property owned by 3210 Main, LLC on the south and East Kaylor Park Drive on the north. The approximate new subdivision lot line is shown on an aerial photograph attached hereto as Exhibit A. The costs of preparing and obtaining approval of the subdivision plat shall be paid by Purchaser. The subdivision plat, including final configuration of the property, shall be subject to the review and

approval of both parties. The improvements to be conveyed shall not include fixtures, furniture, equipment or any personal property in the restaurant building on the property. The parcel to be conveyed is referred to in this agreement as the "Property". This Real Estate Purchase Agreement must be fully executed by 5:00 p.m. on January 3, 2020 or it shall be deemed void.

2. Purchase Price.

Seller shall convey to Purchaser and Purchaser shall purchase from Seller the Property for a purchase price of Two Million Two Hundred Thousand Dollars (\$2,200,000.00) (the "Purchase Price") of which a down payment of One Thousand (\$1,000.00) (the "Down Payment") shall be made within 10 days of the execution of this Agreement. Seller's real estate agent shall hold the Down Payment in escrow. The Purchaser shall deliver payment of the Purchase Price, subject to any deduction herein authorized, by cash, wire transfer, or certified check to the Seller on the date of closing. Should the sale of this property not close and the reason for the sale not closing is not the fault of the Purchaser, then the Down Payment shall be returned to the Purchaser. If the reason for not closing is the fault of the Purchaser, then the Seller shall be paid the Down Payment. In addition to the Purchase Price, the Purchaser shall prior to closing, at its cost, secure subdivision approval, and shall provide a water connection to Seller's residue parcel at no cost or connection fees to Seller at a point between the two existing structures on Seller's residue parcel on the side of that parcel adjoining East Kaylor Park Drive. Purchaser further agrees that at no cost to Seller to cause, within twelve (12) months of the full execution of this Agreement, East Kaylor Park Drive to be constructed

and improved, including paving, to public street standards from its intersection with S. Main Street to at least a point beyond the rear boundary line of Seller's residue parcel to provide public road access to Seller's residue parcel from East Kaylor Park Drive. Purchaser agrees to execute and Deliver to Seller at closing the agreement attached hereto as Exhibit D to affirm the continuing obligation post-closing regarding the road construction (the "Road Construction Agreement"). In order to facilitate the road construction, Seller agrees to execute and deliver to Purchaser at closing the letter dated December 5 which is attached hereto as Exhibit E. In the event Purchaser begins the road construction prior to closing and represents to Seller at that time that it will continuously prosecute that road construction work without interruption once commenced, Seller agrees to execute and deliver said letter to Purchaser at the time of the road work commencement.

3. Conditions to Closing.

a) Title.

- (i) Seller agrees to convey good and marketable title to the Property by deed containing General Warranty and English Covenants of Title. The Property shall be sold free from all mortgages, deeds of trust, liens, security interests and other encumbrances. Title shall be good, marketable and insurable, without any exception that would render title unmarketable, at regular rates by a title insurance company of the Purchaser's choice. Purchaser will pay the cost of title insurance.
- (ii) If there is a defect in title, Purchaser shall notify Seller in writing within forty-five (45) days after execution of this Agreement and

Seller shall be required to correct said defect provided that it can be done within thirty (30) days. In the event the defect cannot be cured as provided herein, and Seller does not choose to otherwise correct the defect, Seller shall not be deemed in default and Purchaser may accept title as-is or terminate this Agreement.

b) Physical Condition; Study Period.

Purchaser and its authorized agents may inspect the Property at any reasonable time after the execution of this Agreement. Purchaser may, at its sole cost and expense, conduct any survey, environmental or engineering assessment it deems, in its sole opinion, necessary or desirable. Seller shall permit Purchaser, its employees, contractors or agents to enter upon the Property and in any improvements thereon for the purpose of inspection, taking samples, testing, making borings, asbestos studies, or otherwise surveying the Property and shall otherwise cooperate with any such assessment. If, as a result of any studies conducted by Purchaser or its agents, any physical conditions are discovered on the Property, which interfere with Purchaser's ability to use the Property for Purchaser's intended purpose, Purchaser shall have the right to terminate this Agreement and to the return of the Down Payment. Seller represents and warrants that to the best of his knowledge it has not received any notices from any governmental body or agency of the Property being in violation of any environmental laws and Seller has no actual knowledge of the Property being in violation of any such laws. Purchaser shall take all reasonable care to avoid interference with Seller's use of the Property during entry onto the Property and shall return the Property to its original state prior to entry. Exercise of any right to terminate under the terms of this

paragraph shall be made by notice from Purchaser within one ninety (90) days after the execution hereof or shall be deemed waived. In the event Purchaser does not exercise its right to terminate under this paragraph, the Property will be conveyed in its "AS-IS" condition without any warranty or representation by Seller.

4. c) (i) The successful subdivision approval; (ii) the water connection to Seller's residue parcel as called for by paragraph 2; and, (iii) the execution and delivery by Seller of the Road Construction Contract called for by paragraph 2. Representations and Warranties.

a) Seller's Representations and Warranties.

(i) Ownership. Seller warrants and represents that he is the sole fee simple owner and contract purchaser of the Property and has all necessary authority to sell the Property; there are no other contracts for sale or options involving the Property; no other party has any right, title, or interest in the Property. Between the date Seller executes this Agreement and Settlement, Seller shall not subject the Property to or consent to any leases, liens, encumbrances, covenants, conditions, restrictions, easements, rights of way, or agreements, or take any action affecting or modifying the status of title or otherwise affecting the Property.

(ii) Actions or Suits. Seller warrants and represents that there are no actions or suits in law or equity or proceedings by any governmental agency now pending or, to the knowledge of the Seller, threatened against Seller in connection with the Property, and there is no outstanding order, writ, injunction or decree of any court or governmental agency affecting the Property, except that Order entered in a case styled Pete & Pete, LC v. 3210 Main LLC, CL16-002104 in the Circuit Court of Rockingham

County, a copy of which is attached hereto as Exhibit B. Moreover, Seller's predecessor in interest is a party to a Shared Parking Agreement dated June 10, 2014 with 3210 Main, LLC, a copy of which is attached hereto as Exhibit C.

(iii) Proffers and Commitments. Seller represents that there has not been made and will not be made, without Purchaser's consent, any proffers or other commitments relating to the Property, which would impose any obligation on Purchaser or its successors and assigns, after Settlement, to make any contribution of money or dedications of land or to construct, install, or maintain any improvements of a public or private nature on or off the Property.

(iv) Other Agreements. Seller and Purchaser each warrant and represent that the execution and delivery of this Agreement, the completion of the transaction contemplated hereby, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, or conflict with, any agreement, indenture, or other instrument to which Seller or Purchaser are a party or by which it or the Property is bound, or any judgment, decree, order or award of any court, governmental body or arbitrator, or any law, rule or regulation applicable to Seller or Purchaser, excepting those reflected in Exhibits B & C hereto.

b) Purchaser's Representations and Warranties.

(i) Authority. Purchaser has full power, authorization, and approval to enter into this Agreement and to carry out its obligations hereunder.

(ii) No Conflict. Neither the execution nor the delivery of this Agreement or the documents contemplated hereby nor the consummation of the conveyance of the Property to Purchaser, will conflict with or cause a breach of any of the terms and

conditions of, or constitute a default under, any agreement, or obligation by which the Purchaser is bound.

5. Settlement.

a) Settlement shall be on or before one hundred eighty(180) days after the execution of this Agreement (“Settlement”) unless this Agreement is terminated pursuant to Section 3. Settlement shall be held at the office of the City Attorney for the City of Harrisonburg, 409 South Main Street, Harrisonburg, Virginia, or at such other place in Harrisonburg, Virginia as the Purchaser may designate. Seller shall deliver to Purchaser, at Settlement, a fully executed General Warranty and English Covenants of Title Deed conveying the Property in fee simple to Purchaser (the “Deed”).

b) Seller shall deliver to Purchaser at Settlement an affidavit, on a form acceptable to Purchaser or Purchaser’s title insurance company signed by Seller that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics’ or materialmen’s liens against the Property, or if labor or materials have been furnished during the statutory period, an affidavit that the costs thereof have been paid in full and no other person or entities have the right of possession of the Property.

c) Seller agrees to execute at Settlement any affidavit or forms required by the Internal Revenue Service or the Virginia Department of Taxation to report this transaction and/or to exempt the Purchaser from any withholding requirements under applicable law.

d) Seller agrees to deliver to Purchaser the following at or prior to Settlement:

(i) The fully signed Deed;

(ii) A signed closing or settlement statement prepared or approved by Purchaser; and

(iii) Any other documents reasonably required by Purchaser.

e) Purchaser agrees to deliver to Seller the following at or prior to Settlement:

(i) A signed closing or settlement statement prepared or approved by Purchaser;

(ii) Payment of the Purchase Price as required in Section 2; and

(iii) Any other documents reasonably required by Seller.

6. Expenses of Settlement.

a) Purchaser shall be responsible for any survey and studies of the Property, for its own attorney's fees as well as other charges customarily paid by a purchaser of real estate in Virginia, to the extent the Purchaser is not lawfully exempt therefrom.

b) Seller shall pay for the preparation and/or review of the Deed, any other documents it is required to provide hereunder, any real estate commission on the sale of the Property, and their own attorney's fees as well as the Virginia Grantor's Tax.

Purchaser represents that it has not engaged a real estate agent or broker in connection with this transaction.

c) All real estate taxes, assessments, utility charges and rent, if any, shall be prorated as of Settlement.

7. Risk of Loss.

All risk of loss or damage to the Property by fire, windstorm, casualty, or other cause is assumed by Seller until Settlement. In the event of destruction of the Property before Settlement, Purchaser shall have the option of either:

- a) Terminating this Agreement and recovering the Deposit, or
- b) Affirming this Agreement, in which event Seller shall assign to Purchaser all of Seller's rights under any policy or policies of insurance applicable to the Property.

8. Rollback Taxes.

In the event Purchaser changes the use of the Property so as to trigger any "rollback taxes", Purchaser shall be responsible for payment of any such rollback taxes.

9. Default.

In the event of any default, the non-defaulting party shall be entitled to pursue any remedies at law or in equity in connection with the default of the other party. The election to terminate this Agreement under the terms hereof shall not constitute a default. If either party defaults under this Agreement, the defaulting party shall be liable for expenses incurred by the non-defaulting party, including reasonable attorney's fees, incurred in successful enforcement of this Agreement whether or not litigation is involved.

10. Prior Agreements; Merger.

This Agreement supersedes any and all prior understandings and agreements between the parties relating to the Property and constitutes the entire agreement between them. No representations warranties, conditions or statements, oral or written, not contained herein shall be considered a part hereof. This Agreement may not be amended, altered or modified except by an instrument in writing signed by the party sought to be charged therewith.

11. Survivability.

Subject to the provisions hereof, this Agreement shall bind and inure to the benefit of the parties hereto, in the case of Purchaser, his successors and assigns. No assignment of this Agreement shall be permitted except with written consent of the other party, which consent shall not be withheld unreasonably. Upon Purchaser's completion of its due diligence and its determination to proceed to closing, this Agreement does not survive closing, but is merged with the deed at closing.

12. Legal Costs and Expenses.

In the event that either Seller or Purchaser elects to incur legal expenses to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover such legal expenses, including, without limitation, reasonable attorney's fees, costs, and necessary disbursements, in addition to any other relief to which such party shall be entitled.

13. Miscellaneous.

- a) Purchaser and its representatives shall have the right to make a further inspection immediate before Settlement and Purchaser's obligation to settle is subject to the condition of the Property complying with the provisions of this Agreement.
- b) The divisions of this Agreement into sections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

14. Completed Performance.

Notwithstanding any other provision to the contrary contained herein, this Agreement must be fully performed, and the closing occur, within one (1) year from the

date hereof. If not fully performed by such date, this Agreement may be terminated by either Party upon 10 day's written notice to the other Party and have no further force and effect.

15. Notices.

Any notice required or permitted to be given hereunder shall be deemed to have been properly given if sent by United States certified or registered mail, return receipt requested, postage prepaid, or if delivered in hand, as follows:

If to purchaser: City of Harrisonburg
Eric D. Campbell, City Manager
409 South Main Street
Harrisonburg, VA 22801

With a copy to: G. Chris Brown
City Attorney
409 South Main Street
Harrisonburg, VA 22801

If to Seller: Pete. T. Karageorge
1069 Erickson Ave
Harrisonburg, VA 22801

Sylvia Karageorge
c/o Aspacia Dintini
305 Morven Park Rd. N.W.
Leesburg, Va. 20176

With a copy to: Robert A. Ziogas, Esq.
PO Box 2887
Roanoke, Va. 24001

or to such other persons or addresses as the parties may hereafter direct by written notice.

Notices except those hand delivered, shall be deemed delivered two (2) days after being

deposited with the United State Postal Service. Hand delivered notices shall be deemed delivered upon actual delivery to the person noted.

16. Governing Law.

Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

17. Approval by City Council.

This Agreement shall not be deemed to be accepted by the Purchaser until it is approved in open session at a Harrisonburg City Council meeting, which shall be done no later than sixty (60) days of the date of this Agreement, or Seller shall have the right to terminate the Agreement.

18. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument. Scanned, emailed countersignatures shall be as valid and binding as the originals.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals:

SELLER:


Sylvia Karagorac



Pete T. Karageorge

PURCHASER:

City of Harrisonburg

By: _____

Its: City Manager

Pete T. Karageorge

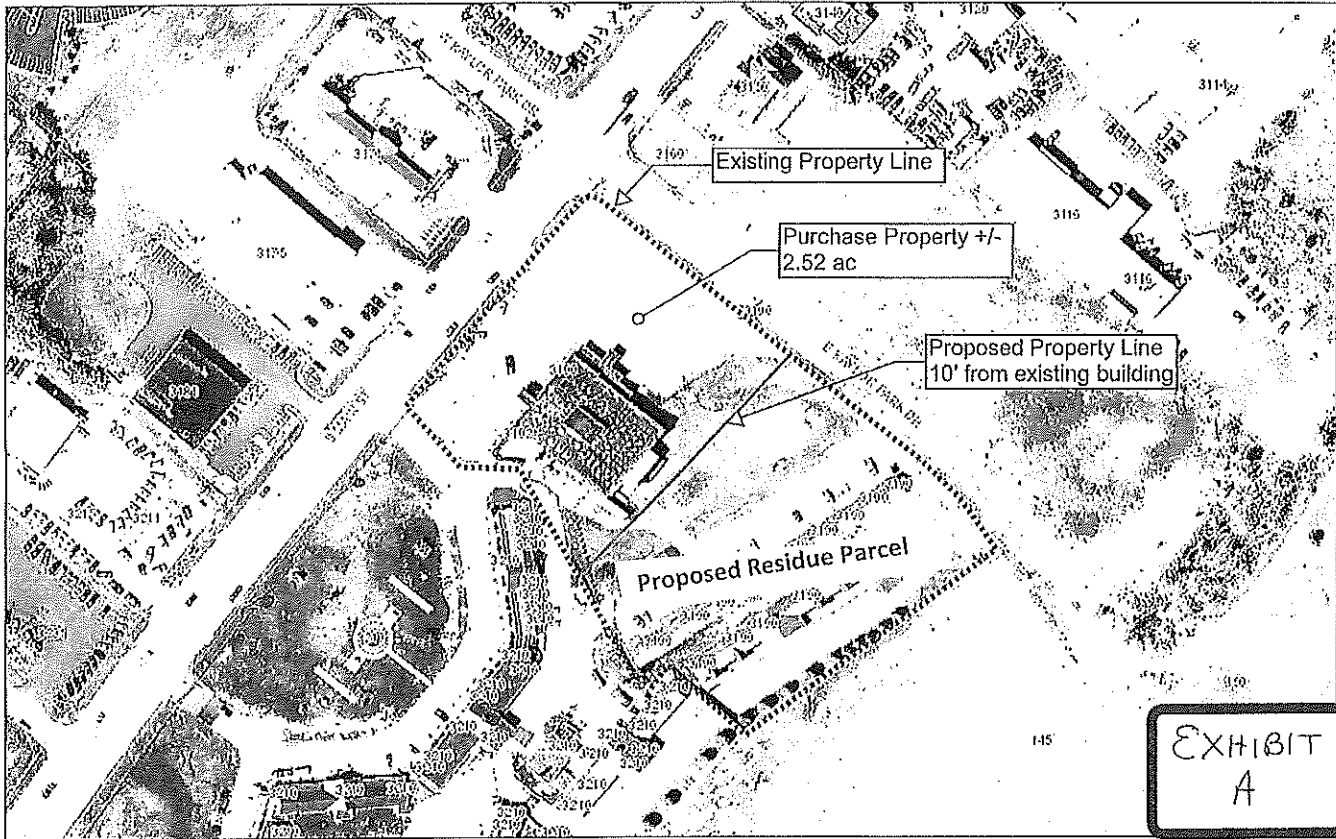
PURCHASER:

City of Harrisonburg

By: *David Campbell*

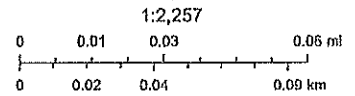
Its: City Manager

Pano's Property

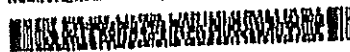


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City Limits	Streets	JMU	MINOR ARTERIAL STREET
Real Estate	COLLECTOR STREET	LOCAL STREET	MINOR COLLECTOR STREET
	INTERSTATE	MAJOR COLLECTOR STREET	PRINCIPAL ARTERIAL STREET



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, City of Harrisburg
 VITA, West Virginia GIS, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA |



VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

PETE & PETE, LC, et als.,

Plaintiff,

v.

Case No. CL16-2104

3210 MAIN, LLC,

Defendant.

FINAL ORDER INCORPORATING BY REFERENCE PLAT OF RIGHT OF WAY

This matter came before the Court upon the Complaint filed by Pete & Pete, LC, Pete T. Karageorge, Pete C. Karageorge, Sylvia Karageorge, and PCK, Inc. (collectively, "the Plaintiffs") versus 3210 Main, LLC; the Answer and Counterclaim filed by 3210 Main, LLC; Plaintiffs' Amended Complaint filed with leave of Court; the Answer and Affirmative Defenses to the Amended Complaint filed by 3210 Main, LLC; the Trial conducted in this case on March 21, 2017; and the Court's Letter Opinion issued on April 7, 2017, which is attached to this Order as Exhibit A and hereby incorporated by reference.

The Court's Letter Opinion concluded with the following language:

Having provided the declaratory relief sought by Plaintiffs, I now also grant Plaintiffs' request for a permanent injunction against blocking access to the above-described easements.

At the March 21, 2017 trial, the parties agreed to reach an agreement on the exact locations of the three easements if the Court first determined the existence and general locations of each easement. I therefore ask that the parties do so and enter an endorsed Order reflecting the Court's ruling, incorporating this letter opinion, and listing the specific locations of each of the three easements.

It has taken an entire year for the parties to meet, delineate the boundaries of the easements and agree on a survey, but they have now done so.

EXHIBIT
B

W/E/S III

Attached to this Order as Exhibit B and hereby incorporated by reference is a Plat dated February 5, 2018 by Hal T. Benner, Benner & Assoc., Inc., entitled, "Access Easement Plat On Tax Map Parcels 103 (A) 10, & 103 (A) 12". This will be referred to as "the Attached Plat," for the balance of this Order.

There are three Easements or Rights Of Way clarified in this Order:

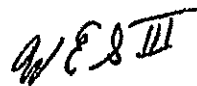
1. Joint Access Easement: The Court finds that the joint access easement (sometimes referred to by the parties as the shared access easement) was created by the February 18, 2000 Deed between grantors Belle Meade Restaurant Corporation and Tucker Highway Motor Lodge, Inc. and grantee Pete & Pete, LC. The February 18, 2000 Deed conveyed the "Pano's restaurant parcel" to Pete & Pete, LC. The February 18, 2000 Deed described the joint access easement as

... an easement for the joint use of the current access to South Main Street which is situate partially at the western corner of the property conveyed and partially on the adjoining property, which entrance provides access to both properties, any expense to be shared equally by the parties, their successors or assigns.

("the Joint Access Easement").

Based on the four corners of the February 18, 2000 Deed and a plain reading of its language, the Court finds, and hereby Orders, that the Joint Access Easement is located only at the front corner where the properties adjoin on South Main Street and terminates at the point identified as "SOUTHWESTERN CORNER OF WALL" on the Attached Plat. Its size must be sufficient to allow both properties unrestricted two-lane access to South Main Street at the front property corner, which is paved on both sides of the property line.

2. Rear Access Easement: The Court finds that the same February 18, 2000 Deed also granted a rear access easement, defined as:



an easement for access to the rear entrance, with the GRANTOR, its successors and assigns, reserving the right to relocate same so long as reasonable and convenient access is provided

(the "Rear Access Easement"). The Court finds, and hereby Orders, that the location and boundaries of this Rear Access Easement are shown by the hatched lines on the Attached Plat.

3. Motel Easement: The Court finds, and hereby Orders, that the third easement, known as the "motel easement," stems from the May 28, 2014 Deed between grantor 3210 Main, LLC and grantees Pete & Pets, LC. This deed conveyed roughly 1.787 acres (the Pano's motel parcel) from 3210 Main, LLC to Pete & Pete, LC for purposes of creating a subdivision plat. The May 28, 2014 Deed also conveyed an easement, as indicated by the following language:

Further conveyed herein is an access easement to Grantee over Grantor's road system along the Southern boundary of the Grantee's adjacent property and the Property to provide access to the Property. This easement shall terminate upon Grantor's redevelopment of its property, such that there is no asphalt pavement extending over the boundary lines of the Grantor's property and the Property.

(the "Motel Easement"). The Court finds, and hereby Orders, that the location and boundaries of the Motel Easement are also shown by the hatched lines on the Attached Plat, and are coterminous with the Rear Access Easement.

Finally, the parties wish to clarify for the record that on the Attached Plat is shown a "DUMPSTER PAD" and boundary line fence which were constructed by Defendant for the convenience of Defendant, and which the Attached Plat show as encroaching in small part on the property of Plaintiffs. The parties agree that the encroachment by the Dumpster Pad and boundary line fence is permissive only, not as a matter of right, and shall not be the basis of a claim of adverse possession.

WES III

The Court directs that this Order be recorded with the land records in the Clerk's Office with Pete T. Karageorge, Pete C. Karageorge, and Sylvia Karageorge, and 3210 Main, LLC, each being indexed as Grantor and Grantee. The Clerk is further directed to send attested copies of this Order to counsel of record.

This is a Final Order.

ENTERED this 23rd day of May, 2018.

5/24/18

Judge, Circuit Court of Rockingham County

SEEN AND AGREED:

William E. Schmidheiser, III (VSB 19047)
Lenhart Pettit

wes@lplaw.com
Co-Counsel for Plaintiffs and Counterclaim
Defendants Pete & Pete, LC, Pete T.
Karageorge, Pete C. Karageorge, Sylvia
Karageorge, and PCK, Inc.

SEEN AND OBJECTED TO FOR THE REASONS STATED IN THE LEGAL MEMORANDA AND OTHER PLEADING AND ON THE RECORD AT THE HEARINGS AND TRIAL:

Kevin M. Rose (VSB 35930)
Michael W. Sharp (VSB 89556)
BotkinRose PLC
krose@botkinrose.com
msharp@botkinrose.com
Counsel for Defendant 3210 Main, LLC

SEEN AND AGREED:

Jason A. Botkins (VSB 70823)
Litton & Sipe, LLP
Jason.botkins@littonsipe.com
Co-Counsel for Plaintiffs and Counterclaim
Defendants Pete & Pete, LC, Peter T.
Karageorge, Pete C. Karageorge, Sylvia
Karageorge, and PCK, Inc.

COMMONWEALTH OF VIRGINIA

THOMAS J. WILSON, IV, JUDGE
BRUCE D. ALBERTSON, JUDGE
CLARK A. FITZGIBB, JUDGE
ROCKINGHAM COUNTY CIRCUIT COURT
50 COURT SQUARE
HARRISONBURG, VA 22801
(540) 544-3122



CIRCUIT COURT OF
CLARKE, FREDERICK, PAGE,
ROCKINGHAM, STURMANTON
AND WARREN COUNTIES
AND CITY OF HARRISONBURG

TWENTY-SIXTH JUDICIAL CIRCUIT

April 7, 2017

Exhibit A

Jason A. Botkins, Esquire
Litten & Sipe, LLP
410 Neff Ave.
Harrisonburg, VA 22801

William E. Schmidhaiser, Esquire
Lenhart Pettit
90 N. Main St., Suite 201
P.O. Box 1287
Harrisonburg, VA 22803

Kevin M. Rose, Esquire
BotkinRose PLC
3190 Peoples Dr.
Harrisonburg, VA 22801

Re: *Pete & Pete, LC, et als. v. 3210 Main, LLC*
Case No. 16-2104

Dear Counsel:

This matter came before the Court on March 21, 2017 for a trial on Plaintiffs' requests for injunctive and declaratory relief, as well as damages. Prior to trial, the parties submitted a Consent Order in which the plaintiffs non-suited their claims for compensatory and punitive damages. Accordingly, the only matters before the Court on March 21, 2017 were the permanent injunction claim and the requested declaratory relief.

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Background

The Court has been asked to determine the existence and general locations of three easements, referred to as the joint or shared access easement, rear access easement, and motel easement. Three pieces of property are involved, including the Motel 6 property owned by Defendant; the Pano's restaurant parcel owned by Plaintiffs; and the Pano's motel parcel (adjacent to the eastern side of the Pano's restaurant parcel), also owned by Plaintiffs. These properties are located on State Route 11 (South Main Street), just north of the Mile 243 Interchange on Interstate-81.

Originally, these three adjacent parcels formed a single 12.556-acre tract, which belonged entirely to the Belle Meade Restaurant Corporation (Belle Meade). In 2000, Belle Meade conveyed a two-acre parcel to Plaintiff Pete & Pete, LC. This transaction was evidenced by a February 18, 2000 deed, which also created the joint access and rear access easements at issue. *See Pls.' Ex. 3.* This two-acre tract has consistently been referred to as the Pano's restaurant parcel.

Defendant 3210 Main, LLC became the owner of the remaining 10.556 acres in 2004. In 2014, it subdivided the 10.556-acre tract, allowing Pete & Pete, LC to purchase a 1.787-acre tract that included motel units. This transaction was evidenced by a May 28, 2014 deed. *See Pls.' Ex. 8.* The 1.787-acre tract, which has been referred to as the Pano's motel parcel, lies adjacent to the two-acre Pano's restaurant parcel such that Plaintiffs now own a single 3.787-acre tract of land.

This lawsuit was filed in August 2016 after Defendant began erecting a fence along a portion of its northern boundary line. The fence blocked a portion of the rear access easement and, if completed, would extend through the middle of the asphalt driveway that exists between the Pano's restaurant and the Motel 6 properties. Shortly after Plaintiffs filed this suit, Defendant agreed to suspend further construction of the fence pending outcome of this litigation, though the

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already-erected portion remained in place. A Consent Order was entered on August 29, 2016 to reflect this agreement.

The Court conducted a hearing on November 30, 2016 on Plaintiffs' Amended Motion for Preliminary Injunction. The Court then issued a December 8, 2016 letter opinion and a December 14, 2016 Order directing Defendant to remove the remaining portions of the fence. Defendant promptly complied.

Plaintiffs now seek a permanent injunction preventing Defendant from re-erecting a fence or other barrier that would block Plaintiffs' access to any portion of the three easements. Plaintiffs also ask for clarification of certain language in the 2014 deed regarding the termination of the motel easement. To aid in the Court's decision, the parties stipulated to the admission of certain exhibits from the November 30, 2016 temporary injunction hearing, as well as the transcript of that proceeding.

Joint Access Easement

The joint access easement (sometimes referred to by the parties as the shared access easement) was created by the February 18, 2000 deed between grantors Belle Meade Restaurant Corporation and Tucker Highway Motor Lodge, Inc. and grantees Pete & Pete, LC. *See* Pls.' Ex. 3. The deed conveys the Pano's restaurant parcel to Pete & Pete, LC. The deed describes the joint access easement as

an easement for the joint use of the current access to South Main Street which is situate partially at the western corner of the property conveyed and partially on the adjoining property, which entrance provides access to both properties, any expense to be shared equally by the parties, their successors or assigns.

Plaintiffs argue that this easement begins at the Route 11/South Main Street entrance and continues in an easterly direction, between the southern side of

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Plaintiffs' restaurant property and the northern side of Defendant's motel property. This is in contrast to the demonstrative Exhibit C attached to Plaintiffs' Amended Complaint. In that exhibit, now admitted as Defendant's Exhibit 18, the joint access easement begins at the Route 11 entrance but extends only to the point necessary for incoming patrons to access either parking lot. Defendant argues for this location.

I find that the defendant's position has merit. Based on the four corners of the deed and a plain reading of its language, I find that the joint access easement is located only at the corner where the properties adjoin on South Main Street, as shown in black on Defendant's Exhibit 18. Its size must be sufficient to allow both properties unrestricted two lane access to South Main Street at this property corner, which is paved on both sides of the property line. On the evidence, this easement does not provide the "rear access" to the Pano's restaurant building; instead, that access is provided by the rear access easement described below.

Rear Access Easement

The same February 18, 2000 deed also grants a rear access easement, defined as "an easement for access to the rear entrance, with the GRANTOR, its successors and assigns, reserving the right to relocate same so long as reasonable and convenient access is provided." Pls.' Ex. 3. Plaintiffs argue that this easement extends from the Route 11 access point in an easterly direction, between the southern side of the Pano's restaurant property and the northern side of Defendant's Motel 6 property, until it reaches the entrance to the Pano's motel parcel (at which point one could then access the rear entrance of the Pano's restaurant). This is the route illustrated in green in Defendant's Exhibit 18 and in pink in Plaintiffs' Exhibit 2. Defendant, on the other hand, argues that the easement runs along the undeveloped East Kaylor Park Drive, to the north of the Pano's restaurant and Pano's motel parcels.

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The route described by Plaintiffs is consistent with the aerial photographs submitted as Plaintiffs' Exhibits 9-18. For example, the 2002 aerial photographs clearly show an asphalt or gravel path extending from the Pano's motel parcel, along the south side of the now-filled-in swimming pool, and reaching the rear door of the Pano's restaurant. See Pls.' Exs. 11-12. This path provides access to the side and rear of the restaurant building. Based on the testimony of numerous witnesses (including witnesses at the November 30, 2016 temporary injunction hearing), the property owners consistently used this path to provide access for garbage and delivery trucks. This strongly suggests that the parties intended that the rear access easement be located in that position, rather than along East Kaylor Park Drive. Furthermore, if the easement had been located along East Kaylor Park Drive, the old swimming pool would have been in the way.

This route is also consistent with the testimony of James Baker, Director of Public Works for the City of Harrisonburg. Baker clarified at the November 30, 2016 temporary injunction hearing that East Kaylor Park Drive is an "unapproved non-complete street that was platted by a subdivider developer. It's not been completed so it's not for public use." Hr'g Tr. 54:8, November 30, 2016.

Defendant argues that if the rear access easement is located in the position described by Plaintiffs, then the entire easement was extinguished by merger when Plaintiffs purchased the Pano's motel property in 2014. However, even though some portions of the easement were terminated upon the merger of the Pano's restaurant and Pano's motel parcels, some portions of the easement remain outside the bounds of Plaintiffs' properties. Furthermore, Defendant was unable to direct the Court to any authority to support the proposition that an easement is extinguished in its entirety under these circumstances.

Accordingly, I find that the rear access easement originally extended from the Route 11 access point in an easterly direction, between the southern side of the Pano's restaurant property and the northern side of Defendant's Motel 6 property, curving north and continuing along the now-gone swimming pool, to the rear of

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the restaurant building. The green path shown in Defendant's Exhibit 18 reflects this location. Of course, the merger of the Pano's restaurant and Pano's motel parcels terminated those portions of this easement that are within the Plaintiffs' property. Accordingly, the easement now ends once the servient user gains access to the Pano's motel parcel via the asphalt "driveway" indicated in Defendant's Exhibit 18. The width of this easement while on the property of the defendant is the width of the pavement, less the portion marked for parking. This width must accommodate the commercial traffic that has historically used that route.

Motel Easement

The third easement, known as the "motel easement," stems from the May 28, 2014 deed between grantor 3210 Main, LLC and grantee Pete & Pete, LC. See Pl.'s Ex. 8. This deed conveyed roughly 1.787 acres (the Pano's motel parcel) from 3210 Main, LLC to Pete & Pete, LC for purposes of creating a subdivision plat. The deed also conveyed an easement, as indicated by the following language:

Further conveyed herein is an access easement to Grantee over Grantor's road system along the Southern boundary of the Grantee's adjacent property and the Property to provide access to the Property. This easement shall terminate upon Grantor's redevelopment of its property, such that there is no asphalt pavement extending over the boundary lines of the Grantor's property and the Property.

Plaintiffs initially argued that this easement extended from the Route 11 access point through the small driveway located along the south side of the Pano's restaurant parcel and the north side of the Motel 6 parcel, and then diverged, with one section turning north in to the front of the Pano's motel parcel and the other section turning south and continuing through the Motel 6 property before eventually looping back toward the back portion of the Pano's motel parcel. However, Plaintiffs now concede that this easement does not split and there is no

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portion of the easement that crosses over the back portion of the Motel 6 property to reach the back portion of the Pano's motel property.

Parties disagree, however, as to whether Defendant's actions—namely, refurbishing several rooms—have terminated the easement. Plaintiffs question whether these acts are sufficient to qualify as "redevelopment" under the terms of the deed and whether any removal of the asphalt must be ancillary to redevelopment (rather than motivated by an intent to trigger the easement's termination). Thus, the question before the Court at this stage is where the motel easement sits and whether it has been extinguished by "redevelopment."

The drafter of the deed, Dean Nichols, testified that the parties needed to comply with the City's subdivision ordinances in order to consummate the transfer of property. The redevelopment termination language served to overcome certain property development regulations within the subdivision ordinances. For example, the City required a fence or landscaping barrier between the properties' "interconnecting asphalt" or, in the absence of such a barrier, a ten-year "shared parking agreement." The parties elected to enter into the ten-year agreement. However, both parties wanted to maintain flexibility regarding future development of their respective properties, and they wanted to provide for the possible elimination of the shared parking agreement prior to the ten-year expiration date. Thus, the agreed-upon shared parking agreement states, "This agreement shall expire upon the earlier of ten (10) years from the date of the Agreement or the development of either party's property resulting in the separation of the access and parking asphalt crossing the boundary lines of the parties." *See* Def.'s Ex. 13. This closely mirrors the redevelopment termination language of the motel access easement in the 2014 deed which, from a drafting standpoint, pre-dates the shared parking agreement.

The City was apparently satisfied with this redevelopment/development language. Clearly, the City was unwilling to allow the subdivision without the access easement *and* the shared parking agreement (which, by its terms, was

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necessary to facilitate the access). This leads me to infer that something substantial was needed to cancel the agreement, meaning something connected with genuine substantial redevelopment, not something superficially done merely to trigger the cancellation of the agreement (such as simply removing a strip of asphalt). If that were the case, the agreement would be a bit of a "sham" to facilitate subdivision approval. Considering the nature of the properties and the fact that the word "redevelopment" is used in connection with commercial properties, I find that the term requires removal of the asphalt as a step in furtherance of redevelopment.

However, the fact that the parties were compelled to enter into the shared parking agreement does not preclude the agreement from benefitting one or both parties, nor does it prevent one party from realizing post-closing that the elimination of the agreement would act to its detriment. Each party is entitled to enforce the agreement according to its terms.

Accordingly, I find that the motel easement was not extinguished by the refurbishment of the Motel 6 rooms. According to the clear and unambiguous language of the deed, the motel easement terminates upon "Grantor's redevelopment of its property, such that there is no asphalt pavement extending over the boundary lines" of the two properties. There has been no redevelopment at this time.

Having determined that the easement has not been extinguished under the terms of the deed, the Court must also determine the general location of the easement. At the time the parties entered into the 2014 transaction, they wanted to avoid erecting a fence or landscaping barrier between the two properties; instead, they wanted to maintain and continue the interconnection of asphalt. The parties wanted to create the access easement, as reflected in the 2014 deed and referenced in the shared parking agreement. The subject documents memorialized those intentions, whatever motivated them.

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The evidence also shows that the parties intended for Plaintiffs to have access to the Pano's motel parcel via the roadway between the restaurant and the Motel 6 properties. The Court notes that Mr. Nichols testified that this was the easement he was trying to create when he drafted the 2014 deed; it was not intended to be located on the north side of the Plaintiffs' properties.

Accordingly, based on the evidence before me, I find that the motel easement exists in the same location as the rear access easement. It begins and ends in the same locations, as well. In other words, it also follows the green line in Defendant's Exhibit 18 until it crosses onto the 1.787-acre parcel at the asphalt pathway in front of the row of motel rooms closest to the restaurant.

Furthermore, as noted above, a merger of the Pano's Restaurant parcel and the Pano's Motel parcel did not extinguish those portions of the easement extending onto the 3210 Main LLC property.

Conclusion

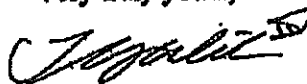
Having provided the declaratory relief sought by Plaintiffs, I now also grant Plaintiffs' request for a permanent injunction against blocking access to the above-described easements.

At the March 21, 2017 trial, parties agreed to reach an agreement on the exact locations of the three easements if the Court first determined the existence and general locations of each easement. I therefore ask that the parties do so and

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enter an endorsed Order reflecting the Court's ruling, incorporating this letter opinion, and listing the specific locations of each of the three easements.

Very truly yours,



Thomas J. Wilson, IV
Judge

TJW/wcs
cc: Court File

Exhibit ~~A~~
SHARED PARKING AGREEMENT

THIS SHARED PARKING AGREEMENT dated June 10, 2014, by and between PETE & PETE, LC, a Virginia limited liability company, and 3210 MAIN, LLC, a Virginia limited liability company, sets forth as follows:

1. The parties own contiguous property as shown on the plat attached as Exhibit A, with Pete & Pete, LC acquiring a 1.787 acre area from 3210 Main, LLC as shown thereon.
2. As shown on Exhibit B, the 1.787 acre area newly acquired by Pete & Pete, LC from 3210 Main, LLC's property, have asphalt paving for access and parking which runs from one property to the other. For purposes of complying with the City of Harrisonburg Zoning Ordinance, Sections 10-3-26 and 10-3-30.1(2), the parties hereby agree to this Shared Parking Agreement.
3. The parties acknowledge that while the Deed to Pete & Pete, LC contains an access easement for purposes of providing access to the 1.787 acre parcel, the parties have adequate parking on their respective parcels to satisfy the City of Harrisonburg Zoning Ordinance requirements.
4. This Shared Parking Agreement acknowledges that while the parties have the interconnecting asphalt access and parking areas, the parties will only park on their own respective properties and not on each other's property.
5. This Agreement shall expire upon the earlier of ten (10) years from the date of the Agreement or the development of either party's property resulting in the separation of the access and parking asphalt crossing the boundary lines of the parties.

PETE & PETE, LC

Date 6/10/14

By: Pete T. Karageorge
PETE T. KARAGEORGE, Member

By: Vlasis Boulobasis
VLASIS BOULOUBASIS, attorney-in-
fact

3210 MAIN, LLC

Date 6/18/14

By: [Signature]
Its: Member

ENCLOSURE MISC PETE & PETE 3210 MAIN SHARED PARKING AGR



EXHIBIT D

ROAD CONSTRUCTION AGREEMENT

This Road Construction Agreement ("Agreement") is made this ____ day of _____, 20____, by and between SYLVIA KARAGEORGE and PETE T. KARAGEORGE ("Seller") and the CITY OF HARRISONBURG, VIRGINIA, a municipal corporation ("Purchaser").

In consideration of Seller proceeding to closing and selling to Purchaser certain real estate lying east of South Main Street and abutting East Kaylor Park Drive in the City of Harrisonburg, Virginia, pursuant to Real Estate Purchase Agreement dated December 19, 2019, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Purchaser agrees that at no cost to Seller to cause, by December 31, 2020, East Kaylor Park Drive to be constructed and improved, including paving, to public street standards from its intersection with S. Main Street to a point beyond the rear boundary line of Seller's residue parcel (which residue parcel is described in the December 19, 2019 Real Estate Purchase Agreement) to provide public road access to Seller's residue parcel from East Kaylor Park Drive over said constructed and improved road.

2. To the extent any third party has the obligation to Purchaser to undertake and complete that road construction and improvement, but fails to do so timely and completely, Purchaser shall undertake the construction and improvement and oversee it to timely completion.

3. In the event that East Kaylor Park Drive becomes inaccessible during all or part of that construction and improvement so as to impede vehicular traffic from crossing it to access the Seller's residue parcel from S. Main Street, Purchaser hereby grants and conveys to Seller a limited

license for Seller and its patrons, guests, delivery vehicles, or others requiring access to Seller's residue parcel from S. Main Street, to cross over the northeastern part of parking lot area of the parcel conveyed by Seller to Purchaser pursuant to the December 19, 2019 Real Estate Purchase Agreement for purposes of ingress and egress from S. Main Street to the residue parcel. This limited license shall commence at such time as East Kaylor Park Drive may become inaccessible to vehicular traffic during construction and improvement until such time it is re-opened and access to the residue parcel over East Kaylor Park Drive becomes unimpeded. The license shall be irrevocable from the time it commences to the time it terminates.

4. To the extent that Seller needs to place any gravel beyond the paved area of Purchaser's parking lot to its residue parcel to facilitate the vehicular access contemplated by the limited license, it will do so at its cost and expense.

5. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument. Scanned, emailed countersignatures shall be as valid and binding as the originals.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

SELLER:

Sylvia Karageorge

Pete T. Karageorge

PURCHASER:

CITY OF HARRISONBURG, VIRGINIA

By: _____
Its: _____

December 5, 2019

Mr. Jim Blair
U-haul Company of Richmond, VA

**RE: U-Haul – 3110 East Kaylor Park Drive
Letter of Permission for temporary grading on TMP 103 A 12**

Dear Jim,

You have my permission to enter on to my property to perform temporary grading to extend E Kaylor Park Drive as shown on the attached Grading Exhibit for TMP 103 A 12.

I understand that you will need to grade along my property frontage in order to adequately tie back the edge of the new roadway section to meet existing grade on my property. This is shown on the attached grading exhibit and you will ensure all disturbed areas are stabilized with seed and straw mulch following construction.

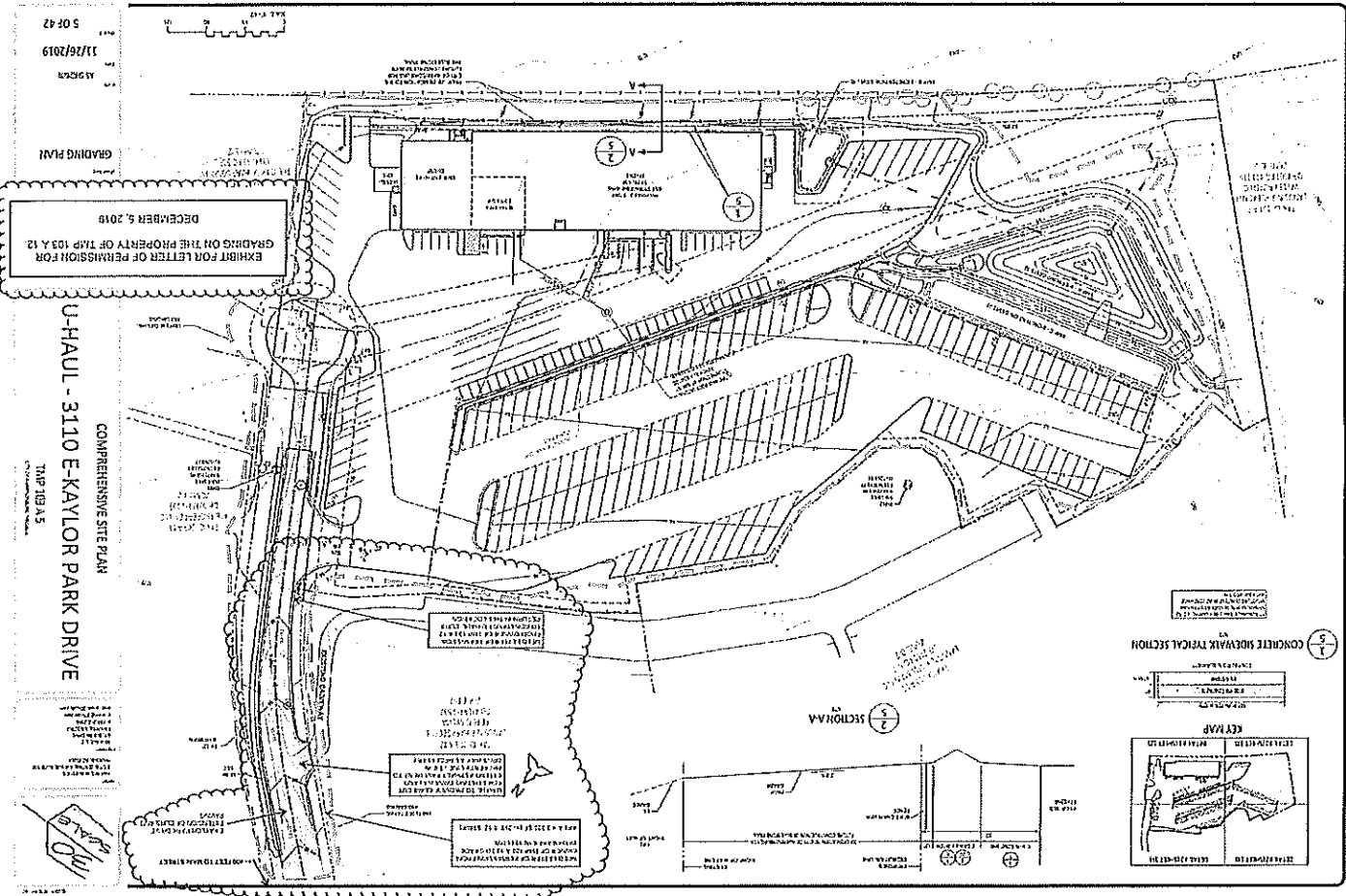
Also, as shown on the exhibit, you will also provide a curb cut for my existing driveway at the rear of the property via a new curb and gutter entrance per City of Harrisonburg construction standards. You will also make a smooth transition from the E Kaylor Park road surface so that my existing driveway will connect smoothly to the new entrance.

Sincerely,

Owner, TMP 103 A 12

Signed: _____ Date _____
Jim Blair, U-Haul





5 07 42
11/26/2019
ASGREN
GRADING PLAN

DECEMBER 5, 2019
EXHIBIT FOR LETTER OF PERMISSION FOR
GRADING ON THE PROPERTY OF TWP 103 A 12

COMPREHENSIVE SITE PLAN
U-HAUL - 3110 E-KAYLOR PARK DRIVE
TWP 103 A 12

ASGREN
11/26/2019

