

**FIRST AMENDMENT TO  
EAGLE POINT DEVELOPMENT AGREEMENT**

WHEREAS, EP Development, Inc., a Wisconsin corporation (the “Developer”), and the City of Appleton, a Wisconsin municipal corporation (the “City”) and the Redevelopment Authority of the City of Appleton (the “Authority”) have previously entered into a Development Agreement dated March 7, 2017 (the “Development Agreement”); and,

WHEREAS, following the execution of the Development Agreement, Developer conveyed a portion of the property subject to the Development Agreement (the “Property”) to an affiliate, ASHRE, LLC, a Wisconsin limited liability company (“ASHRE”). The portion of the Property conveyed to ASHRE is legally described as Lot 1 of Certified Survey Map No. 7281 (the “ASHRE Property”), and the portion of the Property retained by Developer is Lot 2 and Lot 3 of Certified Survey Map No. 7281 (the “Developer Property”); and,

WHEREAS, the Developer, ASHRE, and the City have been working cooperatively to accomplish the projects identified in the Development Agreement; and,

WHEREAS, as the projects progress, the Developer, ASHRE, and the City find it appropriate to amend certain terms within the Development Agreement.

NOW THEREFORE, the Developer, ASHRE, and the City agree that the Development Agreement dated March 7, 2017 shall be amended as follows:

1. Paragraph 3.3 is amended to read as follows:

3.3 ASHRE has constructed Phase I of the Project on Lot 1 of Certified Survey Map 72821 (Outagamie County Document #2089713) and also identified as Parcel Number 31-1-0772-00, comprised of a senior living facility of approximately

ninety-eight (98) dwelling units and one (1) guest unit with a projected assessed value of \$15,700,000 upon stabilization. Developer shall construct, or cause to be constructed, Phase II of the Project in the area identified as Lot 2 of Certified Survey Map 7281 (Outagamie County Document #2089713) and also identified as Parcel Number 31-1-0772-01, comprised of a 28-unit memory care facility with a projected assessed value of \$5,100,000. The projected assessed value of Phases 1 & 2 combined is expected to be \$20,800,000. Developer shall use best efforts to construct the final phase of the Project on Lot 3 of Certified Survey Map 7281 (Outagamie County Document #2089713) as market conditions permit, which may include, but not be limited to, market rate, senior, single-family housing, student housing, mixed-use, or commercial components, by December 31, 2020.

2. Paragraph 5.4.1 is amended to read as follows:

5.4.1 Reimbursement of Developer Costs. The City will provide payments to the Developer solely from future Tax Increment Revenue from the Property as a reimbursement for Developer Costs. The City and the Developer agree that there will be no reimbursement for any activities prior to the creation of the District. The City's total payment of Tax Increment Revenue to the Developer for Phase 1 shall not exceed the lesser of: i) \$3,742,500; or ii) twenty-five percent (25%) of the Tax Increment Value of Phase 1, plus interest thereon. The City's total payment of Tax Increment Revenue to the Developer for Phase 2 shall not exceed the lesser of: i) \$1,275,000; or ii) twenty-five percent (25%) of the Tax Increment Value for Phase 2, plus interest thereon. The Contribution may be prepaid at any time, but until paid in full, the Tax Increment Revenue payments will be provided to the Developer as follows: On or about August 15<sup>th</sup>

of each year over the life of the District, the City will pay the Developer ninety percent (90%) of the Tax Increment Revenue received by the City with respect to the Project in that year. No payments will be distributed until the property taxes have been paid on the Property.

3. Paragraphs 3.5.1 through 3.5.3 are created to read as follows:

3.5.1 As of the date of this Amendment, ASHRE has constructed a public walkway on Phase 1 of the Project and has conveyed an easement granting the City public access to said walkway. Said easement includes a maintenance and operation plan for the public walkway. ASHRE shall continue to maintain signage for six (6) parking spaces near the end of East John Street indicating that said spaces are available for public access to the trail. ASHRE reserves the right to impose limits on the use of the spaces (e.g. time limits, time of day, etc.) to avoid abuse by the public.

3.5.2 The public walkway located on Lot 2 of CSM 7281, and generally depicted in Amendment Exhibit A (hereafter "Northeast Trail Segment"), shall be constructed by Developer within one (1) year after building construction on Lot 2 is substantially complete. Upon completion or as soon as practicable thereafter, Developer shall convey to the City a public access easement for the Northeast Trail Segment and a maintenance and operation plan. The terms and conditions of said easement and operations and maintenance plan shall be substantially the same as the easement granted to the City over the completed portion of the public walkway referenced in Section 3.5.1. A copy of the recorded easement referenced above is attached as Amendment Exhibit B. Developer or ASHRE will permit the City to install a trail sign substantially like that shown in Amendment Exhibit D near the trail and the

end of East John Street. Developer or ASHRE and the City shall work cooperatively to find an appropriate location for said sign.

3.5.3 The City, Developer and ASHRE acknowledge that a public walkway will also be constructed connecting the existing walkway's southern end to a walkway located at the Property's Southwestern boundary (hereafter "Southwestern Trail Segment"). The City agrees, at its sole expense, to construct the Southwestern Trail Segment in the location generally depicted by Amendment Exhibit A. ASHRE shall grant the City a temporary limited easement allowing the City adequate access for trail construction purposes. In addition, as part of the construction of the Southwest Trail Segment, the City shall be permitted to stripe a portion of the existing fire lane in a manner to identify and distinguish the trail from the adjoining paved area as well as identifying the area as intended only for use by emergency or other authorized motor vehicles. The City shall stripe a path 10' in width within the fire lane to indicate the location of the path. Additionally, the City shall be permitted to stripe the first 10' of the entrance to the fire lane to prevent vehicular traffic from entering the path. A striping location plan is attached hereto as Amendment Exhibit C. City shall provide ASHRE with a detailed striping plan for ASHRE's approval prior to commencing work on striping. ASHRE shall be solely responsible for future maintenance of said striping. Upon completion of the Southwestern Trail Segment, ASHRE shall convey to the City a public access easement and maintenance and operation plan for that segment consistent with the terms and conditions in the recorded easement referenced in Section 3.5.1 above and attached as Amendment Exhibit B provided however that the requirements for snow removal in the maintenance and operations plan shall be amended for this portion of the trail. The City shall perform snow removal operations on the Southwestern trail

segment from the Property's boundary to the point where the trail first meets the shared trail and fire lane. The City's snow removal vehicle shall be permitted to use the fire lane/trail area on the Property to turn around.

4. Paragraph 3.7 is created to read as follows:

3.7 Parties mutually agree that the City shall pave the public portion of East John Street between South Court and the terminus of East John Street on the west side of the Fox River, with concrete when East John Street is reconstructed (hereafter "reconstruction") at the City's sole cost and expense. Scheduling of the reconstruction is anticipated to occur in the year following Developer's completion of Phase 2.

5. Section 3.8 is created to read as follows:

3.8 Developer and City are pursuing the vacation of the end of East John Street to benefit Developer and ASHRE. Vacation of the end of John Street would create a non-conforming zoning issue for ASHRE. In order to relieve such an issue, ASHRE hereby authorizes the City to transfer the entire vacated portion of East John Street to Developer. Developer, concurrent with the transfer of the vacated property from the City, shall enter into and record a perpetual easement to provide Lot 1 with unrestricted access to East John Street. In the event that a future legal determination determines that the City cannot transfer the entire vacated parcel as described above but must transfer a portion of the vacated property to ASHRE, ASHRE hereby agrees to immediately transfer the portion of the property received from the vacation to Developer and Developer shall concurrently provide an easement as described above. In the event Developer or ASHRE transfer ownership of either of their respective

parcels, any subsequent owner must agree to abide by this section prior to the City vacating said portion of East John Street.

6. For avoidance of doubt, the parties agree that certain references to “Developer” herein and in the Development Agreement shall refer to ASHRE with respect to obligations of the owner of the ASHRE Property, and shall refer to Developer with respect to obligations of the owner of the Developer Property. ASHRE is joining in this amendment to acknowledge such obligations. Notwithstanding anything herein to the contrary, however, Developer, not ASHRE, shall receive any and all payments, grants, incentives, and tax increment financing proceeds under the Development Agreement, as amended hereby. Nothing herein is intended to modify any payments, grants, incentives, or tax increment financing previously payable to Developer pursuant to the March 7, 2017 Development Agreement regarding Phase 1 of the Project. Modification to payments, grants, incentives, or tax increment financing for Phase 2 are being made to account for a higher projected value of Phase 2 are consistent with the intent of the original development plan and Development Agreement.
  
7. All other terms of the March 7, 2017 Development Agreement shall remain in full force and effect. All references to the “Development Agreement” shall hereafter refer to the Development Agreement, as amended by this Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019.

[SIGNATURES BEGIN ON THE FOLLOWING PAGES]

EP Development, Inc.

By: \_\_\_\_\_  
Printed Name: Joseph Alexander  
Title: President

STATE OF WISCONSIN        )  
  : ss.  
DANE COUNTY                 )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2019, Joseph Alexander, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is/expires: \_\_\_\_\_

ASHRE, LLC  
By: Eagle Point Partners, LLC  
Its: Manager  
By: National Venture, LLC  
Its: Manager

By: \_\_\_\_\_  
Printed Name: Joseph Alexander  
Title: Manager

STATE OF WISCONSIN        )  
  : ss.  
DANE COUNTY                )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2019, Joseph Alexander, to me known to be the person who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is/expires: \_\_\_\_\_



City of Appleton:

By: \_\_\_\_\_  
Timothy M. Hanna, Mayor

ATTEST:

By: \_\_\_\_\_  
Kami Lynch, City Clerk

STATE OF WISCONSIN            )  
  : ss.  
OUTAGAMIE COUNTY            )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2019, Timothy M. Hanna, Mayor and Kami Lynch, City Clerk, of the City of Appleton respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is/expires: \_\_\_\_\_

APPROVED AS TO FORM:

PROVISION HAS BEEN MADE TO PAY THE LIABILITY THAT WILL ACCRUE UNDER THIS AGREEMENT.

\_\_\_\_\_  
James P. Walsh, City Attorney  
City Law A17-0038

\_\_\_\_\_  
Anthony D. Saucerman, Finance Director

Redevelopment Authority of the City of Appleton:

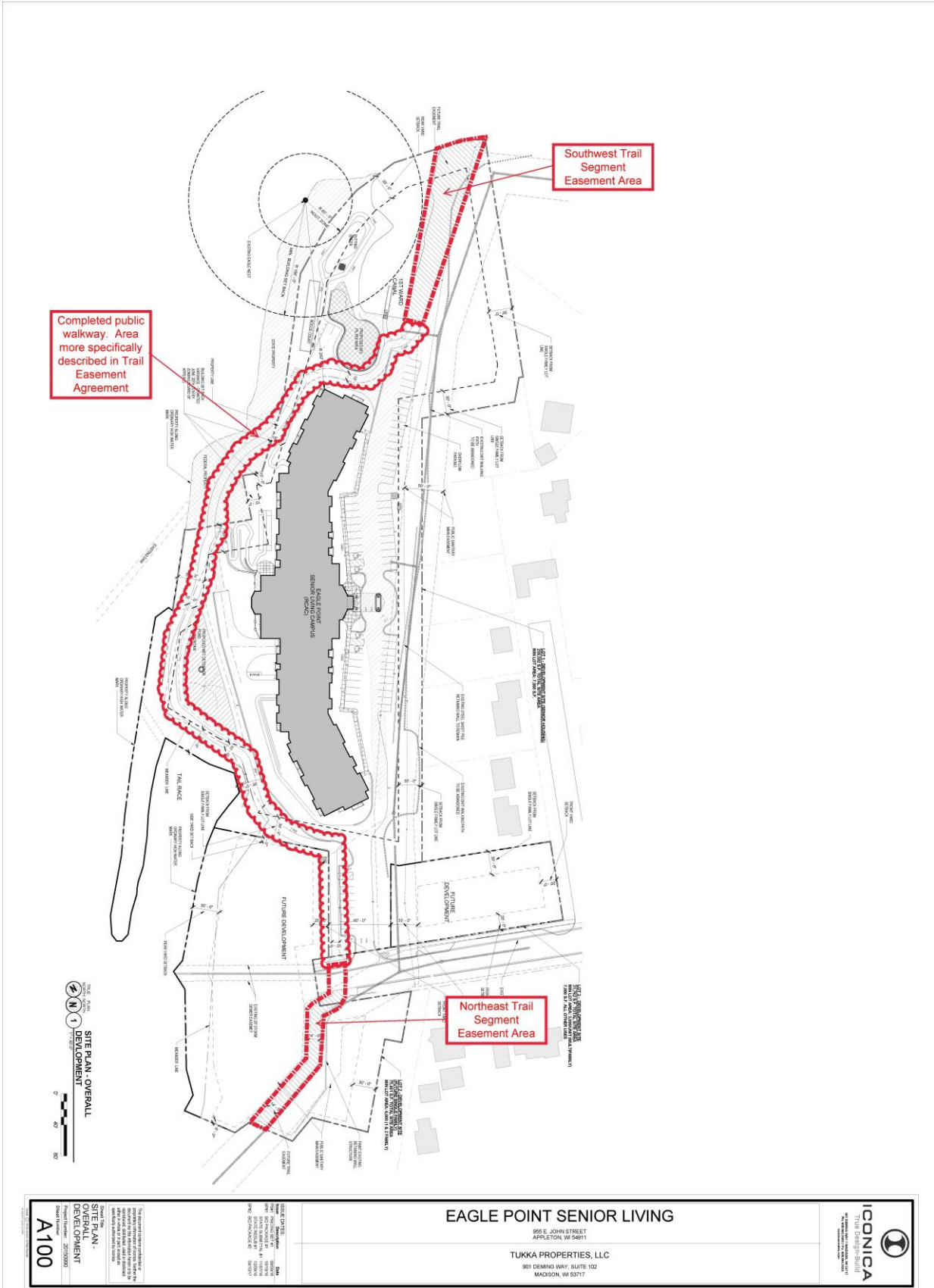
By: \_\_\_\_\_  
Karen E. Harkness, Executive Director

STATE OF WISCONSIN            )  
  : ss.  
OUTAGAMIE COUNTY            )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2019, Karen E. Harkness, Executive Director, of the Redevelopment Authority of the City of Appleton respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is/expires: \_\_\_\_\_

**Amendment Exhibit A  
Trail Plan**



**Amendment Exhibit B  
Recorded Easement**

## TRAIL EASEMENT AND AGREEMENT

This Trail Easement and Agreement (this "Agreement") made this 15 day of AUGUST, 2019, by and between Ashre LLC, a Wisconsin Limited Liability Company, hereinafter referred to as "Grantor", and the City of Appleton, a Wisconsin municipal corporation, hereinafter referred to as "Grantee" or "City". Whereas, Grantor is the fee owner of the real property in Outagamie County and being further described below:

*See Exhibit "A" for real property and easement description, Exhibit "B" for map and Exhibit "C" for Trail Maintenance and Operating Plan which are all attached hereto and incorporated herein by reference.*

### EASEMENT

**Grant.** The undersigned Owner or Owners grant and convey to City the right to make available to the public a non-exclusive perpetual easement (the "Easement"), over the area described in Exhibits A and B (the "Easement Area"), and right-of-way over the "Trail", actually constructed within the Easement Area and defined in Exhibit C, and the right to use the Trail as follows:

- (a) Permitted Trail Uses. Use of the Trail as a right-of-way for (1) walking, hiking, jogging, bicycling, bird watching, nature study or other like recreational activities; (2) power-driven mobility devices for use by persons who have mobility impairments; (3) emergency vehicles in the case of emergency on or near the Trail; and (4) special events consistent with use limitations and restrictions set forth in the City's Trail Reservation and Fee Policy (hereafter "Policy"), as amended from time to time. In considering approval for special events, Grantee shall make the safety and quiet enjoyment of persons living near the trail a priority, including consulting with Grantor when reasonably necessary regarding the implementation of reasonable restrictions or limitations Grantee may impose on special events in order to preserve such safety and quiet enjoyment. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Easement Area to the general public or the Grantee and neither the general public nor the Grantee shall acquire any property rights in the Easement Area other than the non-exclusive easement rights expressly set forth in this Agreement.
- (b) This Trail is intended to be directly connected to adjoining properties by a City wide trail system and the City may from time to time have or permit to have special events that charge a fee as permitted by the Policy. The fee for these special events shall be a permitted use of this easement grant. No Owner shall be permitted to charge a fee for the use of this Trail.
- (c) This grant of easement shall be binding upon and inure to the benefit of the heirs, successors and assigns of all parties hereto and shall run with the land. This Agreement and the Easement rights set forth herein shall not be transferred or assigned by Grantee without the prior written approval of Grantor, which may be withheld in Grantor's sole discretion.
- (d) Grantor shall have the right to use any portions of the Grantor's property upon which the Easement Area is situated, subject to the rights granted in this Agreement, in any way that is not inconsistent with the Easement grant herein, provided such use does not materially and adversely interfere with or

Document #: **2168774**  
Date: **08-22-2019** Time: **11:19 AM**  
Pages: **13** Fee: **\$30.00**  
County: **OUTAGAMIE COUNTY** State: **WI**



SARAH R VAN CAMP, REGISTER OF DEEDS  
Returned to: APPLETON, CITY OF

Record and return to:  
City of Appleton – City Attorney's Office  
100 North Appleton Street  
Appleton, WI 54911-4799

Tax Key No. 31-1-0772-00

ENVELOPE

13

with a required copy to:  
City Attorney  
100 North Appleton Street  
Appleton, WI 54911-4799

For the Grantee:  
ASHRE LLC:  
c/o The Alexander Company, Inc.  
2450 Rimrock Road, Suite 100  
Madison, WI 53713  
Attn: Colin Cassady

with a required copy to:  
Michael Best & Friedrich  
One South Pinckney Street, Suite 700  
Madison, WI 53703  
Attention: Kevin A. Martin

- (ii) Waiver: No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.
- (iii) Invalidity: If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
- (iv) Construction: This Agreement may be amended, modified or terminated only in writing signed by Grantor and City, or their respective successors and permitted assigns, as applicable.
- (v) Governing Law: This Agreement will be governed and construed in accordance with the internal laws of the state of Wisconsin.

## AGREEMENT

An affiliate of Grantor, EP Development, Inc., and Grantee (hereafter collectively the "Parties") entered a Development Agreement that includes, among other things, a Trail Maintenance and Operating Plan (hereafter "Plan") setting forth duties and responsibilities of the Parties and their respective successors and/or assigns with respect to the Trail so long as the Easement remains in effect. A copy of the Plan is attached hereto as Exhibit C and incorporated herein by reference.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

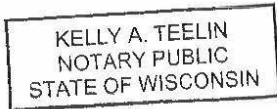
This indenture made this 26 day of July, 2019, by and between Ashre LLC, a Wisconsin Limited Liability Company, herein referred to as "Grantor/Owner" and the City of Appleton, a Wisconsin municipal corporation, herein referred to as "Grantee/City".

Ashre, LLC  
By: Eagle Point Partners, LLC, Managing Member

By: [Signature]  
Joseph Alexander, Manager

STATE OF WISCONSIN )  
: ss.  
DANE COUNTY )

Personally came before me this 26<sup>th</sup> day of July, 2019, the above-named Joseph Alexander to me known to be the person who executed the foregoing instrument and acknowledged the same.



[Signature]  
Printed Name: Kelly Teelin  
Notary Public, State of Wisconsin  
My commission is/expires 10-28-2021

City of Appleton, a Wisconsin municipal corporation

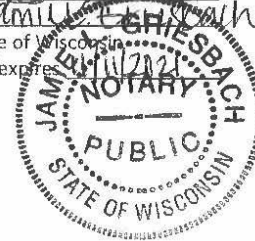
By: [Signature]  
Timothy M. Hanna, Mayor

By: [Signature]  
Kami Lynch, City Clerk

STATE OF WISCONSIN )  
: ss.  
OUTAGAMIE COUNTY )

Personally came before me this 15 day of August, 2019 the above-named, Timothy M. Hanna, Mayor and Kami Lynch, City Clerk to me known to be the persons who executed the foregoing instrument and acknowledged the same.

[Signature]  
Printed Name: Jamie Hiesbach  
Notary Public, State of Wisconsin  
My commission is/expires 10/1/2021



Approved as to form:  
James P. Walsh, City Attorney  
This instrument was drafted by:  
Christopher R. Behrens, Deputy City Attorney  
City Law A18-0785



LENDER CONSENT AND SUBORDINATION TO EASEMENT

WHEREAS, Ashre LLC is the owner of certain real property more particularly described in Document No. 2099383 filed in the Office of the Register of Deeds for Outagamie County, Wisconsin on March 17, 2017 ("Property").

AND WHEREAS, JOHNSON BANK, a Wisconsin banking corporation, and its successors and assigns ("Lender") hold certain secured interests in the Property as recorded in the Office of the Register of Deeds for Outagamie County, Wisconsin.

AND WHEREAS, by virtue of the foregoing instrument, Ashre LLC is conveying to the City of Appleton ("City") a permanent easement for purposes of a public trail and subject to the terms and conditions also previously set forth and referenced herein ("Easement").

NOW THEREFORE, for and in consideration of the benefits to accrue to the Property by acceptance of the Easement, the undersigned authorized representative of Lender expressly subordinates all right, title, and interest in and to that portion of said Property to the interest of the City in said Easement with the intent that said Easement shall be prior and superior to Lenders secured interests in the Property filed prior to the date of this consent.

JOHNSON BANK

By: [Signature]  
Printed Name: Todd M. Cegelski  
Title: SVP

STATE OF WISCONSIN )  
  : ss.  
DANE COUNTY            )

Personally came before me this 5<sup>th</sup> day of August, 2019, the above-named Todd M. Cegelski to me known to be the person who executed the foregoing instrument and acknowledged the same.

[Signature]  
Printed Name: Elizabeth Stutz  
Notary Public, State of Wisconsin  
My commission is/expires 10.26.21



## EXHIBIT A – Trail Easement Legal Description

*An Easement being a part of Lot 1, Outagamie County Certified Survey Map No. 7281, located in part of the Southwest Quarter of Section 25 and being a part of and located in part of the Northwest Quarter of Section 36, T21N, R17E, City of Appleton, Outagamie County, Wisconsin.*

*Commencing at the Southwest Corner of Section 25, T21N, R17E;*

*Thence N63°41'35"E for a distance of 1095.09 feet to the beginning of a trail easement centerline;*

*Thence S07°40'05"W for a distance of 132.87 feet to the beginning of a non-tangential curve;*

*Thence through said curve turning to the left a distance of 13.51 feet, having a radius of 9.55 feet, and whose long chord bears S31°23'56"E a distance of 12.41 feet;*

*Thence S71°56'01"E for a distance of 21.15 feet to "point a" which is also the beginning of a non-tangential curve to Point A;*

*Thence through said curve turning to the right a distance of 74.60 feet, having a radius of 105.84 feet, and whose long chord bears S47°24'35"E a distance of 73.07 feet to Point B which is also the beginning of a compounded curve;*

*Thence through said curve turning to the right a distance of 17.21 feet, having a radius of 55.01 feet, and whose long chord bears S15°54'52"E a distance of 17.14 feet;*

*Thence S06°56'47"E for a distance of 49.62 feet to the beginning of a non-tangential curve;*

*Thence through said curve turning to the left a distance of 16.60 feet, having a radius of 22.24 feet, and whose long chord bears S28°39'00"E a distance of 16.22 feet;*

*Thence S50°03'53"E for a distance of 38.27 feet to the beginning of a non-tangential curve;*

*Thence through said curve turning to the right a distance of 10.52 feet, having a radius of 1965.72 feet, and whose long chord bears S45°26'52"E a distance of 10.52 feet;*

*Thence S42°30'03"E for a distance of 41.77 feet to the beginning of a non-tangential curve;*

*Thence through said curve turning to the right a distance of 18.46 feet, having a radius of 25.00 feet, and whose long chord bears S20°52'19"E a distance of 18.04 feet to the beginning of a compounded curve;*

*Thence through said curve turning to the right a distance of 62.05 feet, having a radius of 195.32 feet, and whose long chord bears S09°30'47"W a distance of 61.79 feet;*

*Thence S18°23'51"W for a distance of 5.80 feet to the beginning of a curve;*

*Thence through said curve turning to the right a distance of 12.35 feet, having a radius of 55.00 feet, and whose long chord bears S24°49'42"W a distance of 12.32 feet;*

*Thence S31°15'33"W for a distance of 52.81 feet to the beginning of a non-tangential curve;*

*Thence through said curve turning to the left a distance of 11.89 feet, having a radius of 210.30 feet, and*

*whose long chord bears S31°21'05"W a distance of 11.89 feet;*

*Thence S24°58'28"W for a distance of 10.10 feet to the beginning of a curve;*

*Thence through said curve turning to the left a distance of 13.44 feet, having a radius of 106.53 feet, and whose long chord bears S21°21'34"W a distance of 13.43 feet;*

*Thence S17°44'41"W for a distance of 25.42 feet to the beginning of a non-tangential curve;*

*Thence through said curve turning to the right a distance of 19.19 feet, having a radius of 59.57 feet, and whose long chord bears S26°37'56"W a distance of 19.10 feet to the beginning of a compounded curve;*

*Thence through said curve turning to the left a distance of 18.03 feet, having a radius of 68.27 feet, and whose long chord bears S19°07'28"W for a distance of 17.98 feet to Point C;*

*Thence S42°19'06"W for a distance of 151.48 feet to the beginning of a non-tangential curve also being Point D;*

*Thence through said curve turning to the left a distance of 31.54 feet, having a radius of 105.16 feet, and whose long chord bears S44°17'33"W a distance of 31.43 feet;*

*Thence S35°42'05"W for a distance of 23.33 feet to the beginning of a non-tangential curve;*

*Thence through said curve turning to the right a distance of 54.29 feet, having a radius of 42.27 feet, and whose long chord bears S71°53'53"W a distance of 50.63 feet;*

*Thence N66°48'30"W for a distance of 25.53 feet to the beginning of a non-tangential curve;*

*Thence through said curve turning to the left a distance of 52.61 feet, having a radius of 33.00 feet, and whose long chord bears S69°25'21"W a distance of 47.22 feet to Point E;*

*Thence S23°44'41"W for a distance of 19.74 feet to the beginning of a non-tangential curve;*

*Thence through said curve turning to the left a distance of 41.18 feet, having a radius of 40.76 feet, and whose long chord bears S70°27'33" W for a distance of 39.45 feet to the end of the trail easement centerline.*

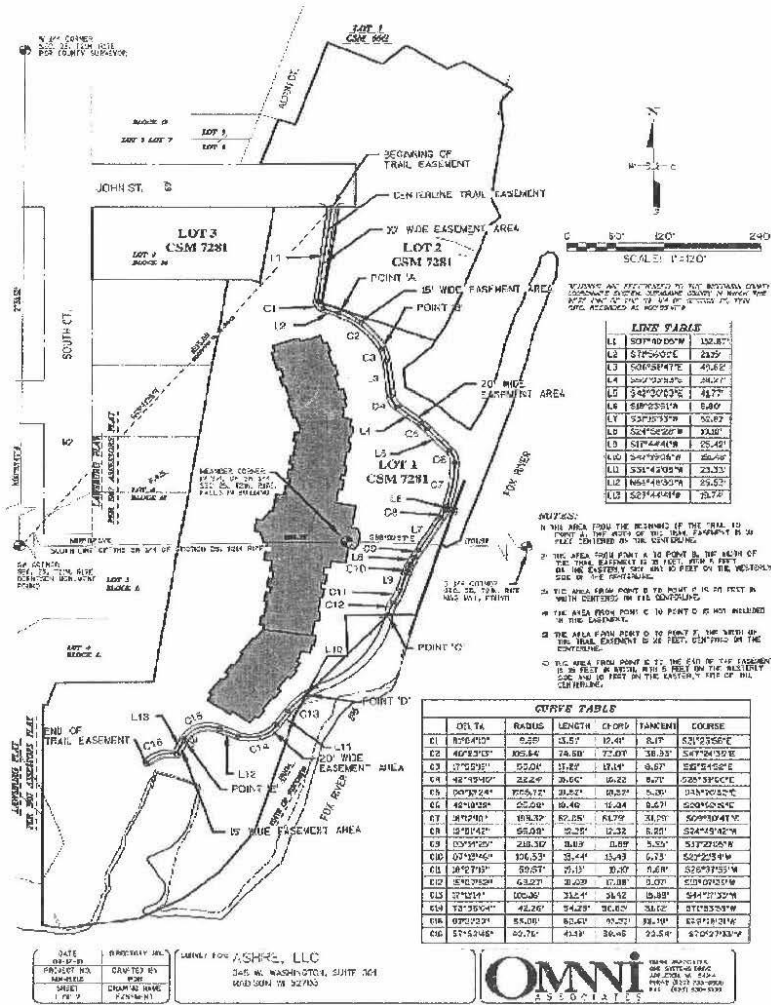
*Less and excepting the portion lying between Point C and Point D in this description and as shown on the corresponding map, with the trail easement from the beginning point to Point A, being 10 feet in width and centered on the centerline.*

*The segment of said easement from point B to point C, being 15 feet in width, with 5 feet lying on the easterly side of the centerline and 10 feet on the westerly side of the centerline.*

*The segment of said easement from Point D to Point E, being 20 feet in width centered on the centerline. The segment of said easement from Point E to the end point, being 15 feet in width, with 5 feet lying on the on the westerly side of the centerline and 10 feet on the easterly side of the centerline.*

EXHIBIT B – Trail Easement Map

TRAIL EASEMENT MAP



**EXHIBIT C – Trail Maintenance and Operating Plan**  
**CITY OF APPLETON TRAIL MAINTENANCE AND OPERATING PLAN**  
**Permanent Easement/Private Property**

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The purpose of this Trail Maintenance Plan (“*Plan*”) is to clarify the duties and responsibilities of Owner and the City regarding the trail located on the Owner’s property.

**DEFINITIONS**

For the purposes of this Plan, the following terms shall have the following meanings except where the context clearly indicates a different meaning:

- City:** The City of Appleton, a Wisconsin municipal corporation with a business address of 100 North Appleton Street, Appleton, WI 54911. A responsibility that must be completed by the City in accordance with this Plan may be done by an employee or authorized agent of the City.
- City Code:** The Municipal Code of the City of Appleton.
- Defect:** A problem with the trail or a portion thereof that may cause a safety concern or hazard to a person using the trail.
- Fixture:** Real property permanently located on the trail that is owned and maintained by the City, and may include benches, light fixtures and waste receptacles. City ownership of any Owner-installed fixtures shall be evidenced by a bill of sale from the Owner to the City.
- Owner:** The person(s) or entity that owns the property containing the trail. A responsibility that must be completed by the Owner in accordance with this Plan may instead be done by an employee or authorized agent of the Owner.
- Trail:** A paved path with a permanent easement to the City that is located on the Owner’s property and designated a trail pursuant to City Code, Chapter 13, and subject to the rules and regulations thereof.

**TRAIL MAINTENANCE**

**1.0 Owner’s Responsibility**

**1.1 Trail Maintenance.** The Owner is responsible for the following trail maintenance:

- 1.1.1 Snow and Ice Removal.** The Owner must ensure snow and ice is removed from the trail, including plowing the trail within thirty-six (36) hours of the cessation of a snowfall and immediately treating the trail with sand, salt or other substance to prevent it from being slippery after the accumulation of ice.

1.1.2 Vegetation.

1.1.2.1 Encroaching Vegetation. The Owner must ensure a minimum of four (4) foot clearance from the paved edge of the trail at all times from encroaching vegetation, including grass, weeds, brush and tree limbs.

1.1.2.2 Grass. The Owner must mow the grass located within the easement area of the trail and must comply with the grass height limits per Sec. 12-58(c) of the City Code.

1.2 Inspection. The Owner must routinely inspect the trail for garbage, debris, obstructions, necessary repairs and defects.

1.2.1 Garbage and Debris. The Owner must ensure the immediate and proper disposal of any garbage and debris found on the trail except when this responsibility falls upon a special event permit holder following the special event.

1.2.2 Obstructions. The Owner must remove obstructions to or on the trail if the obstruction falls within Sec. 1.1.2.1 above, or if it is within the Owner's reasonable ability to remove the obstruction, otherwise the Owner must notify the City within twenty-four (24) hours of becoming aware of the obstruction whereupon the City shall be responsible for the removal of the obstruction.

1.2.3 Defects. The Owner must immediately notify the City upon becoming aware of a defect.

1.2.4 Repairs. The Owner must notify the City within three (3) business days of learning of the need to repair or replace a fixture or the need to repair the trail where the repair does not rise to the level of being a defect.

1.3 Claims. In the event the Owner becomes aware of an incident involving personal injury and/or property damage occurring on the trail, the Owner must notify the City within five (5) business days of becoming aware of the incident.

2.0 City's Responsibility

2.1 Trail Maintenance. The City is responsible for repairs to the trail, for the repair and/or replacement of fixtures, and for the removal of obstructions to or on the trail that the Owner is unable to remove.

2.1.1 Defects. Upon learning of a defect, the City must inspect the trail as soon as possible and make any necessary repairs, in the City's discretion, as soon as reasonably possible.

2.1.2 Repairs/Replacements. Upon learning of the need to repair or replace a fixture, or the need to repair the trail where the repair does not rise to the level of being a defect, the City shall inspect the fixture and/or trail as soon as reasonably possible to determine whether, in the City's discretion, repair or replacement is needed. The

City shall make necessary repairs and/or replacements as soon as reasonably possible. City shall not make any replacement of a fixture substantially different from the original fixtures without the authorization of the Owner. Furthermore, City shall not install additional fixtures along Trail without Owner's consent, which shall not be unreasonably withheld.

2.1.3 Obstruction. Upon learning of an obstruction to or on the trail, the City shall be responsible for the removal of the obstruction as soon as reasonably possible and for the proper disposal of said obstruction.

2.2 Trail Operating Costs. The City shall be responsible for payment of the ongoing electric bills relating to lighting of the trail. Such costs shall be individually metered.

2.3 Trail Closure. The City shall be responsible for closing the trail for both planned and unplanned reasons, and must notify the Owner as soon as reasonably possible about a closure.

### 3.0 Other Terms And Conditions

3.1 Governing Law. This Plan is governed by the law of the State of Wisconsin, Outagamie County.

3.2 Disputes. Should a dispute arise out of this Plan, the Owner and the City agree to work together for thirty (30) days to try and resolve the dispute. If the dispute is not resolved, the parties agree to mediate the dispute prior to taking any further legal action.

3.3 Indemnification. (See Section (e) in Easement.)

3.4 Taxes and Assessments. The Owner and the City shall each be independently responsible for tax liabilities and IRS reporting requirements as they relate to this Plan.

3.5 Notice. Notices required pursuant to this Plan shall, whenever practicable, be served in person or, alternatively, mailed by Certified Mail with Return Receipt in which case the date of mailing shall be considered the date notice is given.

3.6 Amendments. This Plan may be modified at any time upon written agreement between the Owner and the City.

3.7 Insurance. The Owner must maintain insurance in accordance with the attached "1.R. 2.1 SMALL EXPOSURE JOBS CITY OF APPLETON INSURANCE REQUIREMENTS."

**IR 2.1 SMALL EXPOSURE JOBS  
City of Appleton  
Insurance Requirements**

**Project: Trail Maintenance Plan (Eagle Point)**

It is hereby agreed and understood that the insurance required by the City of Appleton is primary coverage and that any insurance or self-insurance maintained by the City of Appleton, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force and remain in force throughout the term of the Trail Maintenance and Operating plan.

**1. INSURANCE REQUIREMENTS FOR OWNER**

Commercial General Liability coverage at least as broad as Insurance Services Office Commercial General Liability Form with the following minimum limits and coverage:

- Each Occurrence limit ..... \$1,000,000
- Personal and Advertising Injury limit ..... \$1,000,000
- General aggregate limit per project ..... \$2,000,000
- Medical Expense limit — any one person ..... \$5,000

**Automobile Liability** coverage at least as broad as Insurance Services Office Business Automobile Form, with minimum limits of \$1,000,000 combined single limit per accident for bodily injury and property damage, provided on a Symbol #1 – “Any Auto” basis.

**Workers’ Compensation** as required by the State of Wisconsin, and employers liability insurance with sufficient limits to meet underlying umbrella liability insurance requirements. If applicable for the work coverage must include Maritime (Jones Act) or Longshoremen’s and Harbor Workers Act coverage.

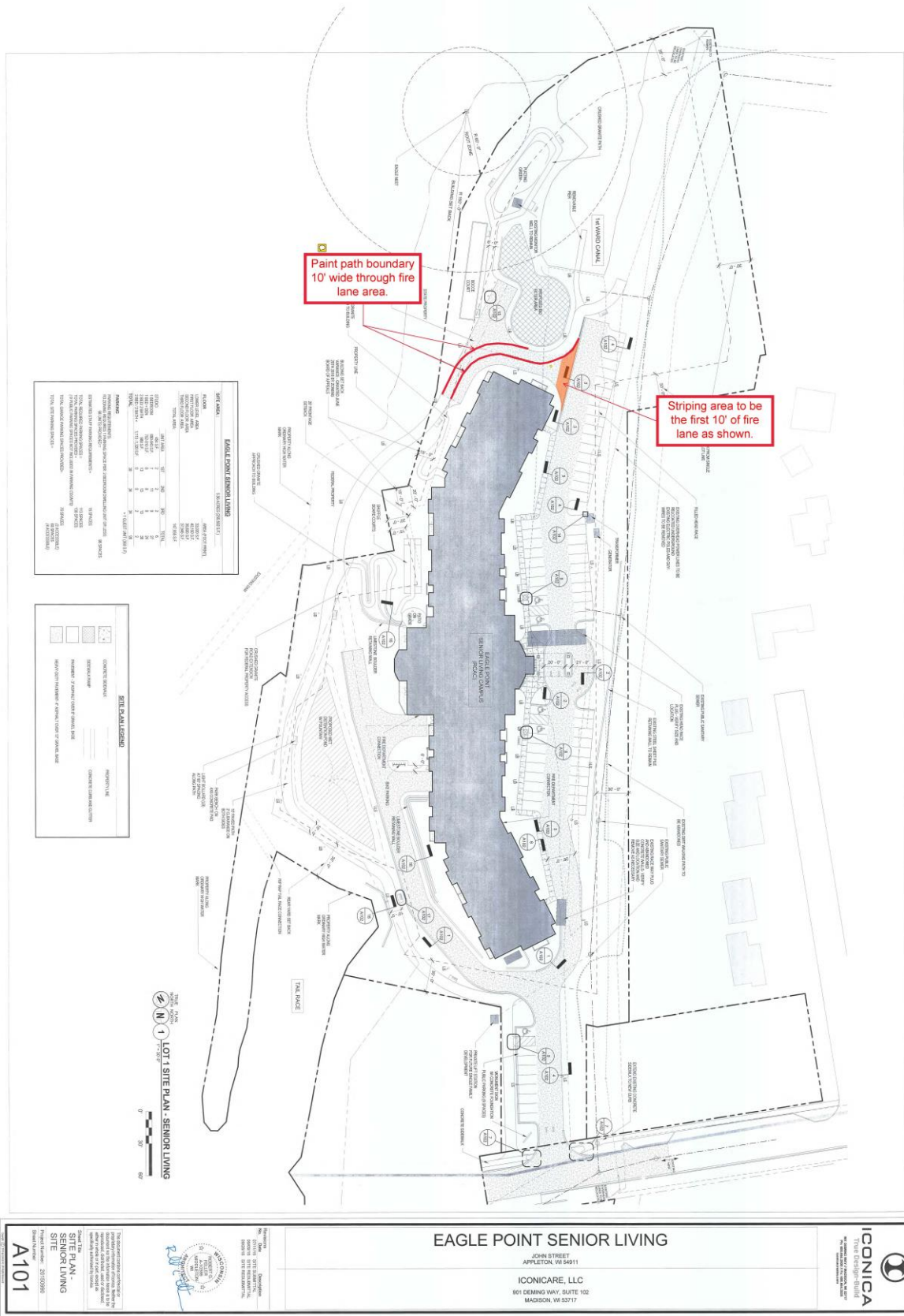
**Contractor’s Equipment or Property (If applicable):** The Owner is responsible for loss and coverage for these exposures. City of Appleton will not assume responsibility for loss, including loss of use, for damage to property, materials, tools, equipment, and items of a similar nature which are being either used in the trail maintenance work being performed by the Owner.

- **Primary and Non-Contributory requirement:** All insurance must be primary and non-contributory to any insurance or self-insurance carried by City of Appleton.
- **Acceptability of Insurers:** Insurance is to be placed with insurers who have an *A.M. Best* rating of no less than A- and a Financial Size Category of no less than Class VI, and who are authorized as an admitted insurance company in the State of Wisconsin.
- **Additional Insured Requirements:** The following must be named as **additional insureds** on all liability policies: **City of Appleton, and its officers, council members, agents, employees and authorized volunteers.** On the Commercial General Liability Policy, the additional insured coverage must be ISO form CG 20 10 07 04. This does not apply to Workers Compensation policies.



- Certificates of Insurance acceptable to the City of Appleton shall be submitted prior to commencement of this project. These certificates shall contain a provision that coverage afforded under the policies will not be canceled or non-renewed until at least 30 days' prior written notice has been given to the City of Appleton.

**Amendment Exhibit C  
Striping Location Plan**



**Amendment Exhibit D  
Trail Sign Design Example**

**NOTES**

- 1) RECOMMENDED SIGN FONT MUST BE COMPLIANT WITH THE SERIES D
- 2) CONSULT OWNER FOR RECOMMENDED SIGN FAMILY COLOR PALETTE AND LOCAL BRANDING SYMBOLS
- 3) REFER TO THE EAST CENTRAL WISCONSIN TRAIL WAYFINDING GUIDEBOOK AND THE MUTED FOR ADDITIONAL GUIDANCE

**EXAMPLE DIRECTIONAL/DESTINATION SIGN**

**EXAMPLE MAP KIOSK**

**EXAMPLE WILDLIFE INFORMATIONAL SIGN**

**CITY OF APPLETON**  
**LAWE STREET TRESTLE TRAIL**  
 OUTAGAMIE COUNTY

**CORE ENGINEERING**  
 CONSULTING ENGINEERS

**REVISIONS**

NO.	DESCRIPTION	DATE

**SHEET CONTENTS**  
 EXAMPLE WAYFINDING SIGN DETAILS  
 25 of 47

**PROJECT INFO:** CDAS-P-20  
**DATE:** 09/29/19  
**DESIGNED BY:** JDL  
**CHECKED BY:** JDL  
**SCALE:** 1/8" = 1'-0"

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