John Roberts
Mayor

# *City of Red Bank*
## **Municipal Planning Commission**

Randall G. Smith
City Manager

AGENDA
March 19, 2015
6:00 pm
Red Bank City Hall

I. CALL TO ORDER

II. ROLL CALL – Secretary – Billy Cannon

- ☐ Commissioner Cannon
- ☐ Commissioner Hafley
- ☐ Commissioner Banas
- ☐ Commissioner Baker
- ☐ Commissioner Smith

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE – Tim Thornbury

V. CONSIDERATION OF THE MINUTES

VI. UNFINISHED BUSINESS – None.

VII. NEW BUSINESS

(a) Nomination and Election of a Vice-Chairman
(b) McCourt Subdivision – 101 Memorial Drive
(c) Zoning Ordinance Amendment Request – Building Separation in PUDs
(d) Zoning Ordinance Amendment - Alternative Lending Institutions
(e) Subdivision Regulations Amendment – Vested Development Rights
(f) New Zoning Ordinance and Map Updates and Amendments

VIII. OTHER BUSINESS

IX. ADJOURNMENT

John Roberts
Mayor

**MUNICIPAL PLANNING COMMISSION**

Randall G. Smith
City Manager

MINUTES
January 15, 2015
6:00 p.m.
Red Bank City Hall

I. CALL TO ORDER – Chairman Hafley called the meeting to order at 6:03 pm

II. ROLL CALL – Commissioner Cannon called the roll. Board members Hafley, Cannon, Smith and Pope were present. Commissioner Banas was absent. Also present were Tim Thornbury, Public Works Director, Randall Smith, City Manager and the commission's planning advisor Jordan Clark with the Southeast Tennessee Development District . Others in attendance are included on the attached sign-in sheet.

III. INVOCATION – Commissioner Pope gave the invocation.

IV. PLEDGE OF ALLEGIANCE – Tim Thornbury

V. CONSIDERATION OF MINUTES –
   a. December 18, 2014 minutes – Motion to approve by Mr. Pope and seconded by Mr. Smith. All voting in favor of the motion. Motion passes.

VI. UNFINISHED BUSINESS – NONE

VII. NEW BUSINESS –

1. <u>101 Memorial Drive – Subdivision Plat</u>

The applicant was not present to discuss the plat. A motion to table the plat was made by Mr. Canon and seconded by Mr. Pope. All voting in favor of the motion. Motion passes.

2. <u>Draft Zoning Ordinance, map and land use plan:</u>

The commission discussed updated versions of the proposed zoning ordinance, zoning map and land use plan. Comments were made regarding changes to the zoning ordinance based on comments from the homebuilder's and other requested changes. The requested changes were verified with the latest digital version of the ordinance prepared by Barry and Jenny.

Barry also explained the expansion of the C-1 zoning district. A question on the inclusion of the recent Pine Breeze Road rezoning was made.

Mr. Cannon also discussed the adoption of a complete streets policy for the city in the future and possibly having a group from the Safe Routes Partnership present to the city.

A motion to recommend the new zoning ordinance, map and land use plan to the City Commission was made by Commissioner Pope and seconded by Commissioner Smith. All voted in favor of the motion. Motion passes.

VIII. OTHER BUSINESS

IX. ADJOURNMENT – Upon motion duly made by Mr. Hafley, the meeting was adjourned at 7:21 pm.

____________________________________

Chairman

Municipal

## Red Bank Commission Meeting

**Exhibit "A"** **Date:** 1/15/15

| Name | Address |
|---|---|
| Eddie Pierce | 210 Baxter St |
| Edward LeCompte | 2528 Lyndon Ave |
| Rick Causer | 3802 Pickering Ave |

Item VII. (b) McCourt Subdivision

Southeast Tennessee Development District
Community Development
P.O. Box 4757 - 1000 Riverfront Parkway
Chattanooga, TN 37405
Phone: (423) 266-5781 Fax: (423) 267-7705
www.sedev.org

**MEMORANDUM**

To: Angel Johnson, Hopkins Surveying Group

Cc: Members of the Red Bank Planning Commission

From: Jordan Clark, Planning Program Director

Date: 2/23/2015

Subject: Final Plat – Greg McCourt Subdivision (Revised)

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**Summary:**

*Property Address:* 101 Memorial Avenue, Red Bank, TN 37415 (Tax Map 117M-D-002)

*Property Owner:* Listed as Consolidated Equipment Leasing on Tax Assessor's office

*Purpose of the Plat:* Subdivide existing lot into 3 lots and abandon three deed lines

*Staff Recommendation:* Approval with needed revisions/corrections

**Background:**

A final plat has been submitted by Hopkins Surveying Group for the Greg McCourt Subdivision on Memorial Drive. The lot primarily fronts Dayton Boulevard and Lyndon Avenue.

**Analysis:**

The plat proposes to subdivide the existing lot into lots 1-3 and to abandon three deed lines. The original lot is 3.17 acres and has access to public sewers by HCWWTA and water provided by Tennessee American. The current lot contains an elongated structure built in 1930 according to the tax assessor's office. Railroad ROW separates the property from Lyndon Avenue to the east. Likewise, Stringer's Branch serves as a divider between the property and Dayton Boulevard. Consequently, the entirety of the property is located within a FEMA designated floodway.

The L-1 zoning district has the following yard requirements:

Front Yard: 50 feet

Rear Yard: 25 feet when adjoining a residential zone, otherwise, none

Side Yard: 15 feet when adjoining a residential zone, otherwise none

Property located to the rear of the lot across Lyndon Avenue is zoned R-2 and R-3.

While the front and rear setbacks are not met through the subdivision. The existing lot and structure were in place prior to the adoption of the Subdivision Regulations. Additionally, the front and rear lot lines are not impacted by the proposed subdivision. The newly created side lot lines do not abut a residential zone and therefore no side yard is required.

*Lot 1 Analysis*: Lot 1 will be 1.20 acres. It has two existing buildings, and will be accessed by Memorial Drive and Lyndon Avenue. The lot also has 367' of frontage on Dayton Boulevard. The existing 911 address is 101 Memorial Drive.

*Lots 2 Analysis*: Lot 2 will be .63 acres, has several existing buildings, and fronts Dayton Boulevard.

*Lot 3 Analysis:* Lot 3 will be 1.34 acres in area, has several existing buildings, and fronts Dayton Boulevard.

The plat also expands an existing sewer easement from 10' to 20'.

An existing paved railroad crossing is in place from lot 3 leading to Lyndon Avenue. The applicant has secured a lease with the railroad company for purposes of parking, access and partial building encroachment. The lease covers the area the length of the lot(s) parallel to Lyndon Avenue.

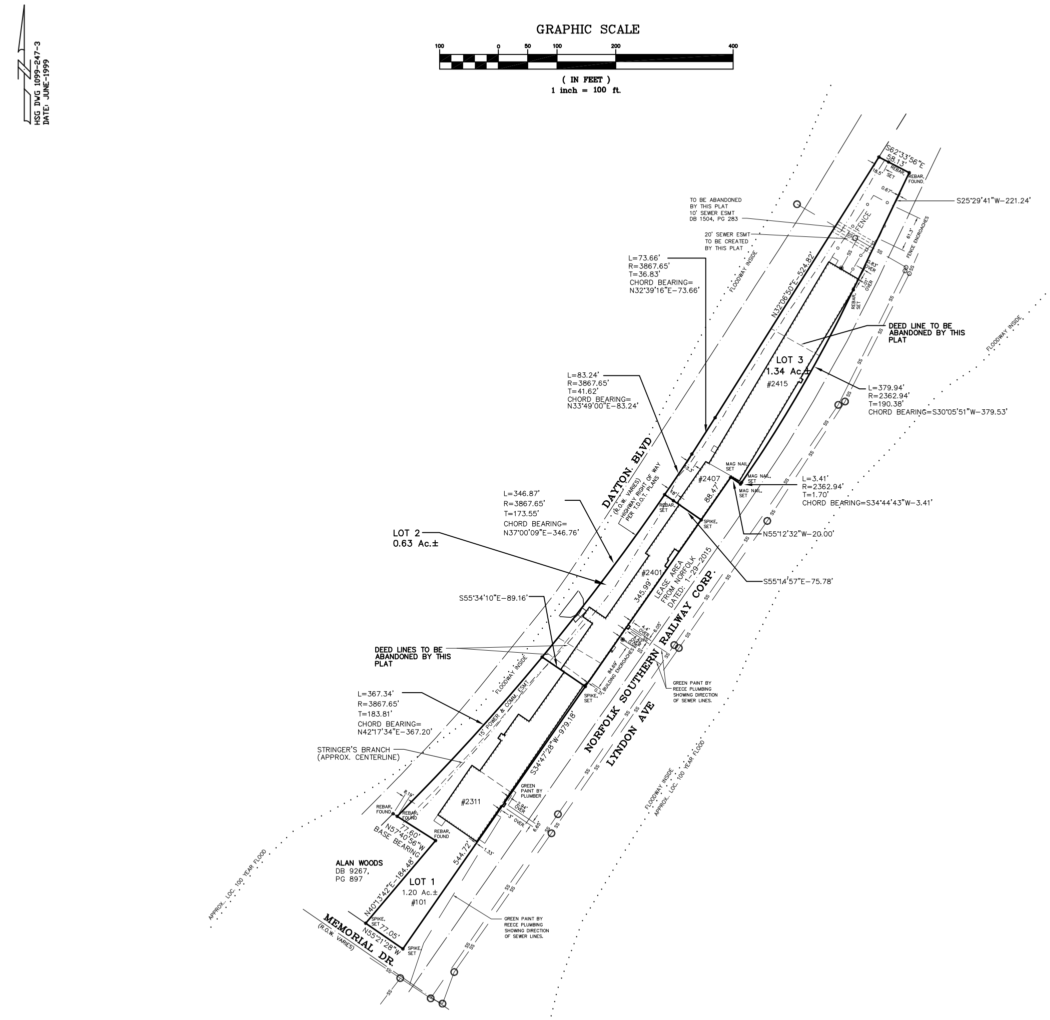
<u>Corrections/Additions</u>:

- Obtain necessary signatures if the Planning Commission approves the plat.

**Recommendation:**

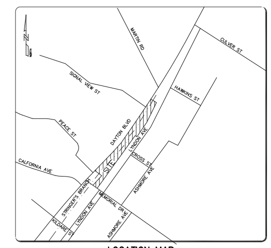
Due to the age of the property and the existence of the railroad to the along the rear, the subdivision is somewhat unique. Since the subdivision is only creating side property lines and not impacting the front or rear property lines, access to each lot and parking remain the same. Therefore staff recommends approval of the proposed subdivision.

Staff's recommendation is based upon the information available at the time of this review. Staff reserves the right to alter or change his recommendation should new information be presented.




## APPROVED FOR RECORDING

HAMILTON COUNTY GIS DEPT
DATE__________
BY__________
HAMILTON COUNTY WWTA
DATE__________
BY__________
JURISDICTIONAL AUTHORITY
DATE__________
BY__________
RED BANK
MUNICIPAL PLANNING
DATE__________
BY__________



LOCATION MAP
N.T.S.

## LEGEND OF SYMBOLS

| | | | |
|---|---|---|---|
| CLR | CENTERLINE ROAD | TB | TOP BANK |
| TC | TOP CURB | TS | TOE SLOPE |
| BC | BOTTOM CURB | BD | BOTTOM DITCH |
| A | ASPHALT | BLDG | BUILDING |
| G | GROUNDSHOT | FLOOR | FLOOR ELEVATION |
| EG | EDGE GRAVEL | EW | EDGE WATER |
| EP | EDGE PAVEMENT | NS | NAIL SET |
| CC | CORNER CONCRETE | — OHP — | OVERHEAD POWER LINES |
| FSW | FACE SIDEWALK | — W — | WATER LINE |
| CO | CLEANOUT | — STS — | STORM SEWER LINE |
| | SCB MANHOLE | — SS — | SANITARY SEWER LINE |
| | SANITARY/STORM MANHOLE | | BUILDING LINE |
| | WATER METER | — GAS — | GAS LINE |
| | POWER POLE | | STORM PIPE HEAD WALL |
| | LIGHT POLE | HDPE | HIGH DENSITY POLYETHYLENE |
| | CLEANOUT | | |
| | CATCH BASIN | | |
| | GAS VALVE | | |
| | GAS METER | | |
| | FIRE HYDRANT | | |
| | WATER VALVE | | |
| | TREES (SIZE VARIES-SEE PLAN) | | |

OWNER STATEMENT
I CERTIFY THAT I AM THE OWNER IN FEE SIMPLE OF THE PROPERTY SHOWN AND ADOPT THIS AS MY PLAN OF SUBDIVISION.

GREG McCOURT
101 MEMORIAL AVE
RED BANK, TN
603-867-4208

SURVEYOR STATEMENT
I CERTIFY THAT I HAVE SURVEYED THE PROPERTY HEREON, THAT THE SURVEY IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE SURVEY WAS DONE IN COMPLIANCE WITH CURRENT TENNESSEE MINIMUM STANDARDS OF PRACTICE AND THAT THE RATIO OF PRECISION OF UNADJUSTED SURVEY IS >1:10,000 (CATEGORY I)

NOTES:
1.) PRESENT ZONING CLASSIFICATION L-1.
2.) AREA SUBDIVIDED BY THIS PLAT IS 3.17 ACRES.
3.) TAX MAP NUMBER 117M-D-002.
4.) THIS PLAT SUBDIVIDES THE PROPERTY DESCRIBED IN DEED BOOK 10143, PAGE 219.
5.) THIS SUBDIVISION HAS BEEN DEVELOPED ACCORDING TO THE SUBDIVISION REGULATIONS OF THE CITY OF RED BANK.
6.) THE PURPOSE OF THIS PLAT IS TO CREATE NEW LOT LINES.
7.) LOCAL GOVERNMENT DOES NOT CERTIFY THAT UTILITIES OR UTILITY CONNECTIONS ARE AVAILABLE.
8.) PUBLIC SANITARY SEWERS ARE AVAILABLE BY HCWWTA.
9.) STREET ADDRESS 101.
10.) ALL CORNERS ARE 5/8" REBAR WITH CAP UNLESS NOTED OTHERWISE.
11.) THE PROPERTY IS LOCATED IN THE FLOODWAY & FLOOD HAZARD AREA, PER FEMA MAP No.: 470076-0331-F, DATE: 11-7-2002.
THE BFE IS BETWEEN 683-693'± FEET.
12.) WATER SUPPLIED BY TENNESSEE AMERICAN WATER.

FINAL PLAT – LOTS 1-3

# GREG McCOURT SUBDIVISION

OF THE PROPERTY DESCRIBED IN DEED BOOK 10143, PAGE 219, R.O.H.C., CITY OF RED BANK, HAMILTON COUNTY, TENNESSEE

HSG

**HOPKINS SURVEYING GROUP**
175 Hamm Road – P.O. Box 4366
Chattanooga, Tennessee 37405
(423) 267-3751 Office/ (423) 267-0611 Facsimile


| | | |
|---|---|---|
| DRAWN BY: | SHEET NO.: 1 OF 1 | DWG.No: 2014-51-2 |
| SCALE: 1"= 100' | DATE: APRIL 23, 2014 | REF. DWG.: |
| PROPERTY ADDRESS: 101 MEMORIAL DRIVE | | TAX MAP No.: 117M-D-002 |

DWG. NO.: 2014-51-2

Lease for the Parking Area for the McCourt Subdivision

**Norfolk Southern Corporation**
Real Estate and Contract Services
1200 Peachtree Street, NE, 12th Floor
Atlanta, Georgia 30309-3579

**Suzanne L. Congdon**
Property Agent
My Direct Line Is:
Phone: (404) 962-5808
Fax: (404) 653-3436
E-Mail: suzanne.congdon@nscorp.com

January 29, 2015
Activity 1198205

**UPS GROUND**

Mr. Greg McCourt
Mohawk Canoe Company
1251 Judys Lane
Chattanooga, Tennessee 37419

Re: Red Bank, Hamilton County, Tennessee – Lease dated December 11, 2014 between The Cincinnati, New Orleans and Texas Pacific Railway Company and Mohawk Canoe Company covering .66 of an acre.

Dear Mr. McCourt:

Enclosed is one fully executed original of the above referenced agreement for your file.

This is also to acknowledge receipt of your Check No. 1040 dated December 5, 2014, in the amount of $3,900.00 for the annual rental.

Thank you for your cooperation and if I may be of further assistance, please contact me at the telephone number shown above.

Sincerely,

Suzanne Congdon

Suzanne L. Congdon

1253756v1

## LEASE AGREEMENT

THIS LEASE is made as of the 11th day of December, 2014 by and between **THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY**, an **Ohio corporation** (the **"Landlord"**) and **MOHAWK CANOE COMPANY**, a **Tennessee limited liability company** (the **"Tenant"**).

**1.** Premises; Use. For and in consideration of the agreements set forth herein, to be paid, kept and performed by Tenant, Landlord hereby leases and rents to Tenant, insofar as its right, title and interest in the Premises enables it to do so, that certain real property located at Milepost **2.5-V** in **Red Bank, Hamilton County, Tennessee**, having an area of **.66 of an acre** square feet, more or less, the location and dimensions of which are substantially shown on **print of Drawing No. 1198205 dated December 3, 2014, hereunto annexed as Exhibit "A"** attached hereto (the **"Land"**), together with all improvements thereon (the **"Improvements"**). The Land and the Improvements are collectively referred to herein as the **"Premises"**. This Lease is subject to all encumbrances, easements, conditions, covenants and restrictions, whether or not of record.

The Premises shall be used for **private parking and partial building encroachment** and no other purpose. The Premises shall not be used for any illegal purposes, for the storage of unlicensed vehicles, nor in any manner to create any nuisance or trespass. No smoking is permitted in or about the Premises. Landlord reserves unto itself and its permittees, the permanent right to construct, maintain or replace upon, under, or over the Premises, any pipe, electrical, telecommunications, and signal lines, or any other facilities of like character now installed or hereinafter to be installed. Landlord further reserves unto itself and its permittees the right to enter upon the Premises at any and all times for the purposes of operating, maintaining, constructing or relocating any trackage or railroad facilities located on, or in the vicinity of, the Premises.

The terms and conditions of the Rider, if any, attached hereto as **Exhibit "B"** are incorporated herein by this reference. In the event of an inconsistency between the terms hereof and the terms of the Rider, the terms of the Rider shall prevail.

**2.** Term. To have and to hold for a term beginning on **February 1, 2015,** and continuing thereafter on a periodic basis. In addition to any termination rights that the parties may have hereunder, either party may terminate this Lease for any reason by giving the other party not less than thirty (30) days' notice of such termination. Any such termination pursuant to the preceding sentence shall not relieve Tenant from satisfying and performing all of its obligations hereunder (including, but not limited to, the payment of rental) through the date of such termination and shall not relieve either party from performing any obligation that, pursuant to the terms of the Lease, survives the termination of the Lease.

**3.** Base Rental. Commencing on **February 1, 2015** (the **"Rental Commencement Date"**) and thereafter on each anniversary thereof during the term of this Lease, Tenant shall pay to Landlord, without offset, abatement or demand, initial base rental of **THREE THOUSAND NINE HUNDRED AND NO/100 DOLLARS ($3,900.00)**. The amount of the base rental shall be increased (and not decreased) on an annual basis by the percentage of increase, if any, in the United States, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U)(1982-1984 = 100) U.S. City Average, All Items (the **"Index"**) as set forth below. If the Index has changed so that the base year differs from that used in this Paragraph, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, to the 1982-84 base. If the Index is discontinued or revised during the term of this Lease, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

The **"Adjustment Date"** shall mean the first anniversary of the Rental Commencement Date and each anniversary thereof during the term of this Lease. The Index published nearest to the Rental Commencement Date shall be the **"Base Index"**. The Index published nearest to the date three (3) months prior to the then current Adjustment Date shall be the **"Adjustment Index"**. On each Adjustment Date, the base rental shall be adjusted by multiplying the base rental payable under this Lease at the Rental Commencement Date by a fraction, the numerator of which fraction is the applicable Adjustment Index and the denominator of which fraction is the Base Index. The amount so determined shall be the base rental payable under the Lease beginning on the applicable Adjustment Date and until the next Adjustment Date (if any).

Base rental shall be due in advance. Except in the event of default, base rental for any partial rental periods shall be prorated. The acceptance by Landlord of base rental shall not constitute a waiver of any of Landlord's rights or remedies under this Lease. All payments of base rental, and any additional rental payable hereunder, shall be sent to the Treasurer of Landlord at P.O. Box 116944, Atlanta, Georgia 30368-6944, or such other address as Landlord may designate in any invoice delivered to Tenant. Prior to or simultaneously with Tenant's execution of this Lease, Tenant has paid to Landlord (a) a non-refundable, application fee in the amount of $500.00, and (b) the first installment of base rental due hereunder. In the event Tenant fails to pay base rental or any other payment called for under this Lease on or before the due date, Tenant shall pay a late charge equal to five percent (5%) of the unpaid amount. In addition, any sum not paid within thirty (30) days of its due date shall accrue interest thereafter until paid at the rate per annum equal to the lesser of (a) the highest interest rate permitted by applicable law; or (b) eighteen percent (18%).

**4.** Utilities. Landlord shall have no obligation to provide light, water, heat, air conditioning or any other utilities or services to the Premises. Tenant shall place any and all utility and service related bills in its name and shall timely pay the same, along with all assessments or other governmental fees or charges pertaining to the Premises. If Tenant does not pay same, Landlord may (but shall not be obligated to) pay the same, including any and all late fees and penalties, and such payment shall be added to and treated as additional rental of the Premises.

**5.** Maintenance and Repairs. Tenant, at its sole cost, shall keep and maintain all of the Premises (including, but not limited to, all structural and non-structural components thereof and all systems) in good order and repair (including replacements) and shall keep the Premises free of pests and rodents. Tenant hereby waives (a) any rights at law or in equity to require Landlord to perform any repair, replacement or maintenance to the Premises, and (b) any right to abate rental or terminate this Lease due to the failure by Landlord to perform any repairs, replacements or maintenance. Tenant shall not create any lien, charge or encumbrance upon the Premises, and Tenant shall promptly remove or bond over any such lien, charge or encumbrance.

**6.** Modifications and Alterations to the Premises. Tenant shall make no modifications, alterations or improvements to the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Any modifications or alterations consented to by Landlord shall be completed in a good, workmanlike and lien-free manner, in accordance with all applicable laws, codes, regulations and ordinances and by contractors approved by Landlord. Unless otherwise agreed by the parties hereto, any alterations or improvements to the Premises made by Tenant shall become the property of Landlord; provided, however, Landlord, at its option, may require Tenant to remove any improvements or repair any alterations in order to restore the Premises to the condition existing at the time Tenant took possession. Notwithstanding the foregoing, Tenant may remove any moveable equipment or trade fixtures owned by Tenant during the term of this Lease, provided that any damage caused by such removal shall be repaired by Tenant in a manner acceptable to Landlord.

7. Return of Premises. Tenant agrees to return the Premises to Landlord at the expiration or prior termination of this Lease in the same condition and repair as when first received, normal wear and tear excepted. Tenant will vacate the Premises immediately, remove all improvements owned by or placed thereon by Tenant, including its moveable equipment and trade fixtures. Tenant shall immediately repair any damage arising out of any such removal in a manner acceptable to Landlord, and leave the Premises, including the subsurface, in as good order and condition as said Premises may have been prior to the use and occupation thereof by Tenant and free from holes, obstructions, debris, wastes, or contamination of any kind. Failure to comply with this Paragraph 7 will constitute holding over by Tenant.

If Tenant fails to restore the Premises as provided herein prior to the date that Tenant is required to vacate such Premises, then Landlord may, at its option, but at the sole cost and expense of Tenant, remove or arrange to remove all such property, improvements, obstructions, debris, waste, and contamination, and restore or arrange to restore both the surface and the subsurface of the Premises to as good order and condition as said Premises may have been prior to the use and occupation thereof by Tenant. Promptly upon bill rendered by Landlord, Tenant shall pay to Landlord the total cost of such removal and restoration, including, but not limited to, the cost of cleaning up and removing any contaminated soil or water.

8. Destruction of or Damage to Premises. If all or substantially all of the Premises are destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date. In the event of such termination, rental shall be prorated and paid up to the date of such casualty. In no event shall Tenant have any right to terminate this Lease if the casualty in question was caused or contributed to by Tenant, its agents, employees, contractors or invitees.

9. Indemnity. Except for damage caused solely by Landlord's negligence, Tenant agrees to indemnify, defend and save harmless Landlord, Landlord's parent companies, subsidiaries, affiliates, lessors, licensors, and subsidiaries of parent companies (collectively the **"Landlord Related Entities"**) and Landlord's and Landlord's Related Entities' officers, directors, members, shareholders, lenders, agents and employees (collectively the **"Landlord Entities"**) against all claims (including but not limited to claims for bodily injury, death or property damage), economic losses, liabilities, costs, injuries, damages, actions, mechanic's liens, losses and expenses (including but not limited to reasonable attorney's fees and costs) to whomsoever, including, but not limited to, Tenant's agents, workmen, servants or employees, or whatsoever occurring (collectively, **"Claims"**) arising out of or relating to Tenant's use or occupancy of the Premises. To the fullest extent permitted by applicable laws, Tenant hereby waives and releases the Landlord Entities from any Claims (including but not limited to Claims relating to interruptions in services) arising out of or relating in any way to the Tenant's use or occupancy of the Premises.

10. Governmental Orders. Tenant agrees, at its own expense, to comply with all laws, orders, regulations, ordinances or restrictions applicable by reason of Tenant's use or occupancy of the Premises or operation of its business.

11. Condemnation. If the Premises or such portion thereof as will make the Premises unusable for the purpose herein leased shall be condemned by any legally constituted authority for any public use or purpose, or sold under threat of condemnation, then this Lease shall terminate as of the date

of such condemnation or sale, and rental shall be accounted for between Landlord and Tenant as of such date. All condemnation awards shall belong to Landlord; provided, however, and to the extent permitted under applicable law, Tenant shall be entitled to file a separate claim against the condemning authority for loss of its personal property and moving expenses so long as the filing of such claim does not affect or reduce Landlord's claim as to such awards or proceeds.

**12.** Assignment. Tenant may not assign this Lease or any interest thereunder or sublet the Premises in whole or in part or allow all or a portion of the Premises to be used by a third party without the prior written consent of Landlord. If Tenant is a corporation, partnership, limited liability company or other entity, the transfer of more than fifty percent (50%) of the ownership interests of Tenant or the transfer of a lesser percentage which results in a transfer of control of Tenant (WHICH INCLUDES, WITHOUT LIMITATION, TRANSACTIONS IN WHICH TENANT SELLS ITS BUSINESS, SELLS ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF ITS BUSINESS OR MERGES OR CONSOLIDATES WITH ANOTHER ENTITY), whether in one transaction or a series of related transactions, shall constitute an assignment for purposes of this Lease. All requests for an assignment or sublease shall be accompanied by a copy of the proposed assignment or sublease agreement and an administrative fee in the amount of $750.00. Any assignee shall become liable directly to Landlord for all obligations of Tenant hereunder. No such assignment or sublease nor any subsequent amendment of the Lease shall release Tenant or any guarantor of Tenant's obligations hereunder. If any such subtenant or assignee pays rental in excess of the rental due hereunder or if Tenant receives any other consideration on account of any such assignment or sublease, Tenant shall pay to Landlord, as additional rent, one-half of such excess rental or other consideration upon the receipt thereof. Any assignment or sublease made in violation of this Paragraph 12 shall be void and shall constitute a default hereunder.

**13.** Environmental. Tenant covenants that neither Tenant, nor any of its agents, employees, contractors or invitees shall cause or permit any aboveground or underground storage tanks or associated piping (collectively **"Tanks"**) to be located on or under the Premises or any Hazardous Materials (as hereinafter defined) to be stored, handled, treated, released or brought upon or disposed of on the Premises. Tenant shall comply, at its own expense, with any and all applicable laws, ordinances, rules, regulations and requirements respecting solid waste, hazardous waste, air, water, pollution or otherwise relating to the environment or health and safety (collectively **"Environmental Laws"**). Tenant shall not under any circumstance dispose of trash, debris or wastes on the Premises and will not conduct any activities on the Premises which require a hazardous waste treatment, storage or disposal permit. As used herein, the term **"Hazardous Materials"** means asbestos, polychlorinated biphenyls, oil, gasoline or other petroleum based liquids, and any and all other materials or substances deemed hazardous or toxic or regulated by applicable laws, including but not limited to substances defined as hazardous under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq., Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. (or any state counterpart to the foregoing statutes) or determined to present the unreasonable risk of injury to health or the environment under the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq. Tenant shall indemnify, defend and hold the Landlord Entities harmless from and against any and all claims, judgments, damages, penalties, fines, costs (including without limitation, consultant's fees, experts' fees, attorney's fees, investigation and cleanup costs and courts costs), liabilities or losses resulting from (1) the storage, handling, treatment, release, disposal, presence or use of Hazardous Materials in, on or about the Premises from and after the date of this Lease or (2) the violation by Tenant of any provision of any Environmental Laws. Without limiting the generality of the foregoing indemnity, in the event Landlord has reason to believe that the covenants set forth in this Paragraph 13 have been violated by Tenant, Landlord shall be entitled, at Tenant's sole expense, to take such actions as Landlord deems necessary in order to assess, contain, delineate and/or remediate any condition created by such violation. Any sums expended by Landlord shall be reimbursed by Tenant, as additional rental, within thirty (30) days after demand therefor by Landlord. Landlord has the right to enter the Premises at all reasonable times for purposes of inspecting the Premises in order to evaluate Tenant's compliance with the covenants of this Paragraph 13. In the event Tenant delivers or receives any notices or materials from any governmental or quasi-governmental entity and such notices or materials relate to Tanks or Hazardous Materials in, on or about the Premises, Tenant shall immediately send to Landlord a copy of such notices or materials. Tenant shall also provide Landlord with a detailed report relating to any release of a Hazardous Material in, on or about the Premises whenever such release is required to be reported to governmental authorities pursuant to the Environmental Laws. Upon the expiration or earlier termination of this Lease, Landlord shall have the right to cause to be performed such environmental studies of the Premises by an environmental consultant as are necessary to determine whether any Hazardous Materials have been stored, handled, treated, released, brought upon or disposed of on the Premises during the term of this Lease in violation of the terms hereof. If any such study reveals any violation of this Lease, Tenant shall promptly reimburse Landlord for the costs of such studies and Tenant shall immediately undertake a further investigation, if necessary, and remediation of such contamination. Landlord may undertake such investigation and remediation if Tenant fails to do so within a reasonable time frame, in which case Tenant shall promptly reimburse Landlord for the cost of same within thirty (30) days after demand therefore by Landlord. The obligations of this Paragraph 13 shall survive the expiration or earlier termination of this Lease.

**14.** Default; Remedies. In the event (i) any payment of rental or other sum due hereunder is not paid within ten (10) days after the due date thereof; (ii) the Premises shall be deserted or vacated; (iii) Tenant shall fail to comply with any term, provision, condition or covenant of this Lease, other than an obligation requiring the payment of rental or other sums hereunder, and shall not cure such failure within twenty (20) days after notice to the Tenant of such failure to comply; (iv) Tenant shall attempt to violate or violate Paragraph 12 above; or (v) Tenant or any guarantor shall file a petition under any applicable federal or state bankruptcy or insolvency law or have any involuntary petition filed thereunder against it, then Landlord, in addition to any remedy available at law or in equity, shall have the option to do any one or more of the following:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. Tenant agrees to indemnify the Landlord Entities for all loss, damage and expense which Landlord may suffer by reason of such termination.

(b) Without terminating this Lease, terminate Tenant's right of possession, whereupon rental shall continue to accrue and be owed by Tenant hereunder. Thereafter, at Landlord's option, Landlord may enter upon and relet all or a portion of the Premises (or relet the Premises together with any additional space) for a term longer or shorter than the remaining term hereunder and otherwise on terms satisfactory to Landlord. Tenant shall be liable to Landlord for the deficiency, if any, between Tenant's rental hereunder and all net sums received by Landlord on account of such reletting (after deducting all costs incurred by Landlord in connection with any such reletting, including without limitation, tenant improvement costs, brokerage commissions and attorney's fees).

(c) Pursue a dispossessory, eviction or other similar action against Tenant, in which event Tenant shall remain liable for all amounts owed hereunder, including amounts accruing hereunder from and after the date that a writ of possession is issued.

(d) Perform any unperformed obligation of Tenant, including, but not limited to, cleaning up any trash, debris or property remaining in or about the Premises upon the expiration or earlier termination of this Lease. Any sums expended by Landlord shall be repaid by Tenant, as additional rent, within ten (10) days after demand therefor by Landlord.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies available at law or in equity. Tenant agrees to pay all costs and expenses, including, but not limited to, reasonable attorney's fees and consultant's fees, incurred by Landlord in connection with enforcing the performance of any of the provisions of this Lease, whether suit is actually filed or not. Acceptance of rental or any other sums paid by Tenant shall not constitute the waiver by Landlord of any of the terms of this Lease or any default by Tenant hereunder. Landlord shall not be required to mitigate damages, and the parties intend to waive any burden that applicable law may impose on Landlord to mitigate damages; provided, however, if applicable law nevertheless requires Landlord to mitigate damages then (i) Landlord shall have no obligation to treat preferentially the Premises compared to other premises Landlord has available for leasing; (ii) Landlord shall not be obligated to expend any efforts or any monies beyond those Landlord would expend in the ordinary course of leasing space; and (iii) in evaluating a prospective reletting of the Premises, the term, rental, use and the reputation, experience and financial standing of prospective tenants are factors which Landlord may properly consider.

**15.** Signs; Entry by Landlord. Landlord may place "For Lease" signs upon the Premises one hundred twenty (120) days before the termination of this Lease and may place "For Sale" signs upon the Premises at any time. Landlord may enter the Premises with prior notice to Tenant at reasonable hours during the term of this Lease (a) to show the same to prospective purchasers or tenants, (b) to make repairs to Landlord's adjoining property, if any, (c) to inspect the Premises in order to evaluate Tenant's compliance with the covenants set forth in this Lease, or (d) to perform activities otherwise permitted or contemplated hereby.

**16.** No Estate in Land. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant; Tenant's interest is not assignable by Tenant except as provided in Paragraph 12, above.

**17.** Holding Over. If Tenant remains in possession of the Premises after expiration of the term hereof with Landlord's written consent, Tenant shall be a month-to-month tenant upon all the same terms and conditions as contained in this Lease, except that the base rental shall become two times the then current base rental, and there shall be no renewal of this Lease by operation of law. Such month-to-month tenancy shall be terminable upon thirty (30) days written notice by either party to the other. Tenant waives any right that it may have to additional notice pursuant to applicable law. If Tenant remains in possession of the Premises after the expiration of the term hereof without Landlord's written consent, Tenant shall be a tenant at sufferance subject to immediate eviction. In such event, in addition to paying Landlord any damages resulting from such holdover, Tenant shall pay base rental at the rate of three times the then current base rental. In such circumstance, acceptance of base rental by Landlord shall not constitute consent or agreement by Landlord to Tenant's holding over and shall not waive Landlord's right to evict Tenant immediately.

**18.** Notices. Any notice given pursuant to this Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE – 12th Floor, Atlanta, Georgia 30309-3579, or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: Mohawk Canoe Company, 1251 Judys Lane , Chattanooga, Tennessee 37419, or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

**19.** Track Clearance. Notwithstanding anything contained in this Lease, and irrespective of the sole, joint, or concurring negligence of Landlord, Tenant shall assume sole responsibility for and shall indemnify, save harmless and defend the Landlord Entities from and against all claims, actions or legal proceedings arising, in whole or in part, from the conduct of Tenant's operations, or the placement of Tenant's fixtures, equipment or other property, within twenty-five feet (25') of Landlord's tracks, if any, located on or adjacent to the Premises. In this connection it is specifically understood that knowledge on the part of Landlord of a violation of the foregoing clearance requirement, whether such knowledge is actual or implied, shall not constitute a waiver and shall not relieve Tenant of its obligations to indemnify the Landlord Entities for losses and claims resulting from any such violation.

**20.** Brokerage. Landlord and Tenant hereby covenant and agree to indemnify and hold the other harmless from and against any and all loss, liability, damage, claim, judgment, cost and expense (including without limitation attorney's fees and litigation costs) that may be incurred or suffered by the other because of any claim for any fee, commission or similar compensation with respect to this Lease, made by any broker, agent or finder claiming by, through or under the indemnifying party, whether or not such claim is valid.

**21.** Tenant's Insurance. Tenant shall procure and maintain, at all times and at its expense, in a form and with an insurance company acceptable to Landlord, Commercial General Liability Insurance for the Premises. Such coverage shall (a) have a single limit of not less than $2,000,000.00 for each occurrence (or such greater amount over time so as to be commercially reasonable) and shall provide for a deductible of not more than $5,000.00, (b) cover Tenant's contractual liability hereunder, (c) cover Tenant and Landlord for liability arising out of work performed by any third parties for Tenant in or about the Premises, (d) name the Landlord Entities as additional insureds, and (e) be considered primary and noncontributory, regardless of any insurance carried by Landlord. Any property insurance maintained by Tenant on its furniture, fixtures, equipment and personal property shall include a waiver of subrogation in favor of Landlord. Tenant shall deliver certificates of insurance evidencing the insurance required hereinabove to Landlord simultaneously with the execution of this Lease by Tenant, which certificates shall reflect that the policies shall not be canceled without at least thirty (30) days prior notice to Landlord. If Tenant fails to obtain the necessary coverages, Landlord may do so at Tenant's expense and the same shall constitute additional rental. All insurance certificates should be delivered to Landlord's Risk Management Department, Three Commercial Place, Norfolk, Virginia 23510, simultaneously with the execution of this Lease by Tenant. The minimum limits of insurance provided for hereunder are not intended to be a limitation on the liability of Tenant hereunder and shall not waive Landlord's right to seek a full recovery from Tenant.

**22.** Taxes. Tenant agrees to reimburse Landlord, as additional rental, for all real estate taxes and assessments (regular or special) pertaining to the Premises (**"Taxes"**) paid by Landlord with respect to the Premises. Landlord may, but shall not be obligated to, invoice Tenant for the estimated Taxes for each calendar year (but no more frequently than monthly), which amount shall be adjusted each year based upon anticipated Taxes. If the Premises are part of a larger tract, the Taxes for which Tenant is responsible for reimbursing Landlord pursuant to the terms hereof shall be the share of such total Taxes that Landlord reasonably determines are applicable to the Premises, giving due consideration to the relative value of the Premises and the value of the land and improvements reflected in the applicable tax valuation. Upon request from Tenant, Landlord shall provide Tenant with copies of tax bills for the

Taxes. If Landlord has been invoicing Tenant for Taxes and the tax bills indicate that the total of the payments made by Tenant exceeds the amount of Taxes applicable to the Premises, Landlord shall credit any such amount against the Tax reimbursement payment next coming due. In the event the accounting shows that the total of the Tax payments made by Tenant is less than the amount of Tax payment due from Tenant under this Paragraph, the accounting shall be accompanied by an invoice for the additional payment. During the year in which the Lease terminates, Landlord shall have the option to invoice Tenant for Taxes based upon the previous year's Taxes. If this Lease commences on a day other than the first day of a tax year or ends on a day other than the last day of a tax year, the amount of any Taxes payable by Tenant applicable to the year in which the term commences or ends shall be prorated. Tenant agrees to pay any sum due under this Paragraph within ten (10) days following receipt of the invoice showing the amount due.

**23**. Rent Increase Notice. In addition to the rights set forth in Article 14 above, but no sooner than one (1) year after the date of this Lease, Landlord shall have the right, from time to time, to send Tenant a rent increase notice in a form substantially similar to that attached hereto as Exhibit "C" and made a part hereof. If Tenant either agrees to such rent increase or elects to remain on the Premises beyond the stated termination date in the rent increase notice, then such increase shall take effect in the manner prescribed in Tenant's rent increase notice without the need for any further documentation.

**24**. Joint and Several. If Tenant comprises more than one person, corporation, partnership or other entity, the liability hereunder of all such persons, corporations, partnerships or other entities shall be joint and several.

**25**. No Warranties; Entire Agreement. TENANT ACCEPTS THE PREMISES "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF QUIET ENJOYMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTIES. LANDLORD SHALL NOT BE LIABLE FOR, AND TENANT HEREBY RELEASES LANDLORD FROM ALL CLAIMS FOR ECONOMIC LOSSES AND ALL OTHER DAMAGE OF ANY NATURE WHATSOEVER ACCRUING TO TENANT, INCLUDING, BUT NOT LIMITED TO THE VALUE OF ANY BUILDINGS, STRUCTURES OR IMPROVEMENTS OF TENANT UPON THE PREMISES, RESULTING FROM OR ARISING BY REASON OF ANY DEFICIENCY, INSUFFICIENCY OR FAILURE OF TITLE OF LANDLORD. THIS LEASE CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES HERETO AS TO THE PREMISES, AND NO REPRESENTATIONS, INDUCEMENTS, PROMISES OR AGREEMENTS, ORAL OR OTHERWISE, BETWEEN THE PARTIES, NOT EMBODIED HEREIN, SHALL BE OF ANY FORCE OR EFFECT.

**26**. Survival. The provisions of Paragraphs 6, 7, 9, 13, 17, 20 and 22 shall survive the expiration or earlier termination of this Lease.

**27**. Miscellaneous. Knowledge on the part of Landlord or any employee, agent or representative of Landlord of any violation of any of the terms of this Lease by Tenant shall constitute neither negligence nor consent on the part of Landlord, and shall in no event relieve Tenant of any of the responsibilities and obligations assumed by Tenant in this Lease. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative but not restrictive to those given by law. No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. Subject to the terms of Paragraph 12 above, this Lease shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of Landlord and Tenant. If any term, covenant or condition of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons, entities or circumstances other than those which or to which used may be held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law. Time is of the essence in this Lease. Neither party shall be bound hereunder until such time as both parties have signed this Lease. This Lease shall be governed by the laws of the State or Commonwealth in which the Premises are located.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals, effective the day and year first above written.

Witness: As to Landlord

SLCongdon

Signature

Name: S L Congdon

Witness: As to Landlord

Signature

Name:

**LANDLORD**:

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY**
an **Ohio corporation**

By: Malcolm G. Roof

Name: Malcolm G. Roof

Title: Real Estate Manager

Date of Landlord Signature: 12/11/14

[SEAL]

Witness: As to Tenant

RM Cain

Signature

Name: Richard M. Cain

Witness: As to Tenant

Signature

Name:

**TENANT**:

**MOHAWK CANOE COMPANY**
a **Tennessee limited liability company**

By: Greg McCourt

Name: Greg McCourt

Title: President

Date of Tenant Signature: 12/5/2014

[SEAL]

HLW:slc/ December 03, 2014/ 1198205/ 1250945v1


| Norfolk Southern Railway Company<br>Real Estate Department | | |
|---|---|---|
| Tenant | Mohawk Canoe Company | |
| LOCATION | Red Bank, Hamilton County, Tennessee | |
| Railroad | CNO&TP RR CO | |
| AREA | 0.66 ± Acres | |
| VS/Map No. | Val Sec 3, Map No.8,9, Parcel 1,2 | |
| DRAWING NO. | 1198205 | Sheet 1<br>**Exhibit "A"** |
| DATE | December 3, 2014 | Drawn By: HLW |

# Mohawk Canoe Co.

*Hamilton CO, TN*

**EXHIBIT B**

**RIDER TO LEASE AGREEMENT BY AND BETWEEN THE THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY, AS LANDLORD, AND MOHAWK CANOE COMPANY, AS TENANT**

This rider is attached to and made a part of the referenced Lease Agreement. In the event of an inconsistency between the terms of this Rider and the terms of the Lease agreement, the terms of this Rider shall control.

**1.** Tenant-Owned Improvements. Tenant shall have the right to use and maintain the existing Tenant-Owned building (the "Tenant-Owned Improvements") located upon the Premises. Said Tenant-Owned Improvements shall not become fixtures upon the realty, but shall remain the property of Tenant and shall be removed from the Premises upon termination or expiration of the Lease.

**2.** Private Parking Only. The Premises shall be a private parking area for the use and convenience of Tenant, its agents, employees, patrons and invitees only, and is not intended as a parking area for the use of the public in general, and to the end of preventing the use of the Premises for a public parking area. Tenant agrees that it will, at its own cost and expense, construct and maintain during the life of this Lease upon the Premises, at a location to be approved by Landlord, a signboard clearly indicating that the parking area is for the private purposes of Tenant. Tenant further agrees that no gasoline or other flammable liquid shall be stored or handled upon the Premises (except fuel in fuel tanks of vehicles parked thereon).

**3.** Waiver of Application Fee. The $500.00 application fee described in paragraph 3 of this Lease is hereby waived by Landlord.

Item VII (c) Zoning Ordinance Amendment - Building Separation

CK # 4432
RECEIPT # 10710

**Zoning Board**
Application for Zoning Amendments or Changes of Zone Use
Red Bank, Tennessee

General

The proposed change or amendment must first be referred to the Red Bank Planning Commission for a recommendation. The Board shall give at least fifteen (15) days notice of the time and place for a public hearing, which shall be held in regard to the proposed changes or amendments. The notice shall be mailed to all property owners within 175 feet of the property under consideration for a change or amendment. The cost of the application and advertising is $100.00.

1. Name of applicant: Frank Goodwin
2. Street Address : 3119 Mt. Pisgah Rd
3. City: Ringgold State Ga Zip 30736
4. Telephone No.: 423-313-4886
5. Are you the owner of the property? [x] Yes [ ] No
6. Please attach a drawing of the property boundaries and all property within 175 feet of the property under consideration. Show all easements, utility locations and buildings. Use a 1/8 minimum scale. Describe any unusual physical characteristics of the property such as wetlands, steep grades, ravines, etc.
7. What is the present classification of the subject property? R-2 P.U.D
8. What is the requested zone desired or proposed use of the property? R-2 P.U.D
9. Are you requesting a special conditional use of the property? YES
10. Is the proposed use compatible with that of surrounding properties? YES

I certify that the above information is true and accurate to the best of my knowledge and belief

Frank Goodwin Date 2/2/15

Amount paid 100.00 Date paid 2/2/15 by signing this application I understand that the application fee is non refundable.

Recommendation of the Planning Commission ______

Date Reviewed by Planning Commission ______

Action of the Zoning Board ______

Date Reviewed by the Zoning Board ______

List of any special conditions that may apply to the zoning ______

Approved by Ordinance number ______ Date ______

Southeast Tennessee Development District
Community Development
P.O. Box 4757 - 1000 Riverfront Parkway
Chattanooga, TN 37405
Phone: (423) 266-5781 Fax: (423) 267-7705
www.sedev.org

**MEMORANDUM**

To: Members of the Red Bank Municipal Planning Commission

Cc: Tim Thornbury, Public Works Director

From: Jordan Clark, Planning Program Director

Date: 3/8/2015

Subject: PUD Building Separation

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**Background and Analysis:** The developer of the Hill Pointe Planned Unit Development currently has four undeveloped lots (56-59). The present zoning of the property is R-2 PUD. Under the original plan and adopted approval for the PUD, a fifteen (15) building separation is required (Ordinance No 04-886). The fifteen foot requirement is also specified in the zoning ordinance regulations for any PUD (Section 307.04(C)).

The developer wishes to build 4 single family detached homes on the lots however, the fifteen feet building separation is not adequate to do so. Consequently, the developer has submitted a request to have the building separation reduced to 10 feet. Since the fifteen feet requirement is required by the Zoning Ordinance PUD regulations, an amendment to the Zoning Ordinance would be required to accommodate this request. If the Planning Commission agrees on a 10 feet building separation, an amendment to the original PUD ordinance could also be sent to the City Commission at the same time of the zoning amendment.

Staff should also note that an appeal for a variance to the Board of Zoning Appeals is not advisable. There are no inherent conditions associated with the property that would warrant a variance. Likewise, an alternative zoning designation would not resolve the developer's situation. The RZ-1 Zero Lot Line Residential Zone would be the closest alternative, but it requires a 35' lot width which not all of the aforementioned lots in the Hill Pointe Development have. Likewise, the side setback requirements for single family detached homes in the RZ-1 could not be met.

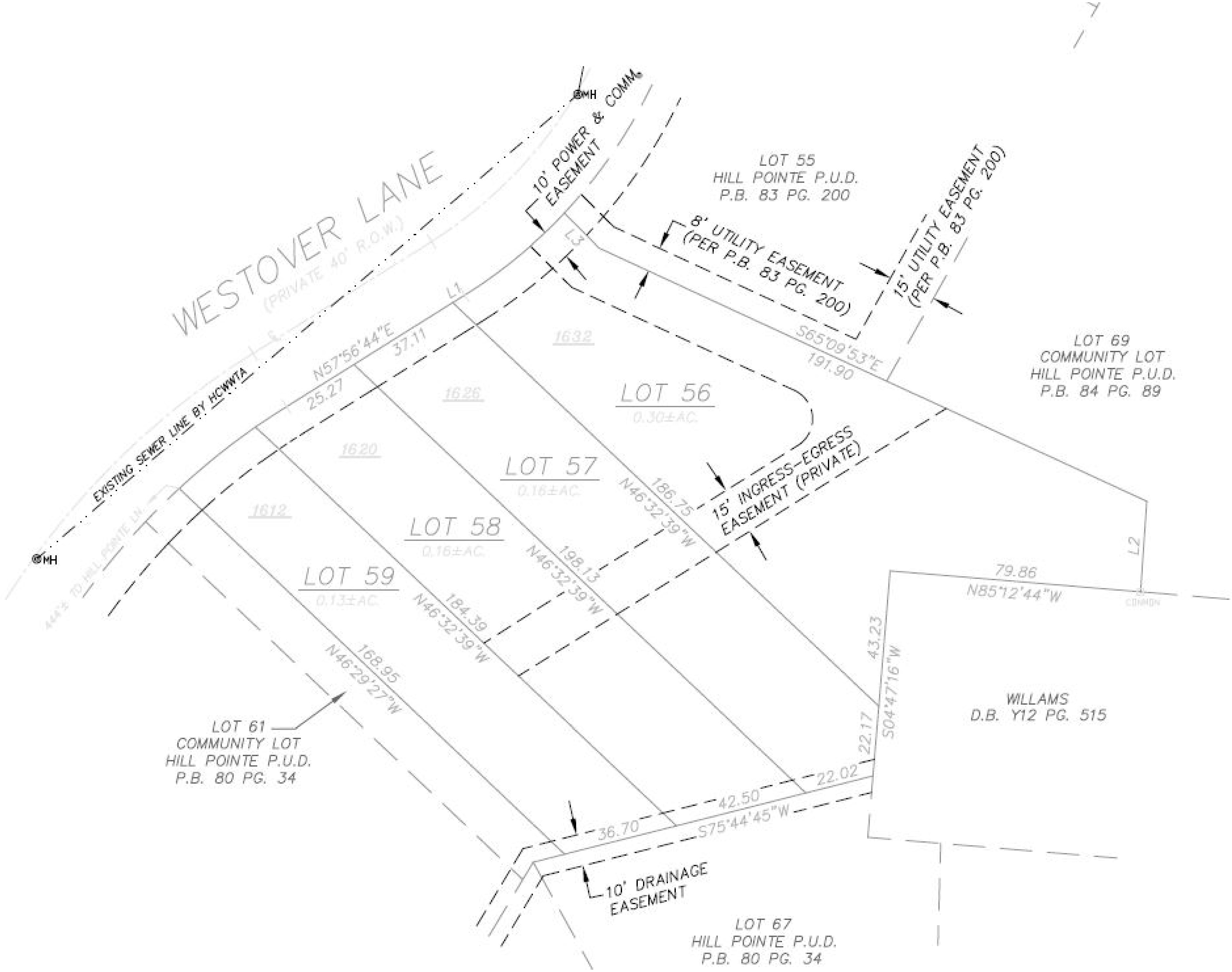
**Recommendation:**

As stated in the purpose section of the PUD regulations: “The purpose of the Planned Unit Development (sometimes hereinafter referred to as PUD) is to provide the opportunities to create more desirable environments through the application of flexible and diversified land development standards under a comprehensive plan and program professionally prepared.”

The advantage of pursing a PUD is often associated with different setbacks, lot arrangements, etc. that amount to a cohesive development that otherwise, may not be allowed under the strict interpretation of other requirements of the zoning ordinance.

Staff supports an amendment which would allow a 10’ building separation in Planned Unit Developments when the overall site design is adequate and the Planning Commission approves the development. The PUD process would allow the Planning Commission to look at the overall layout of lots and building sites and approve a building separation that is appropriate for the individual scenario.

The current lots in the Hill Pointe Development currently have rear access via a driveway that could serve as fire access if needed. Allowing a 10’ building separation is in keeping with the general concept of a PUD. A 10’ building separation has also been used in other areas. Both Chattanooga and Knoxville have a 10’ building separation in their PUD regulations. Signal Mountain allows for the base setbacks for the zoning district to be reduced to a specified building separation upon approval of the Town Council. A recent 199 lot PUD was approved in Signal Mountain with some phases having a 10’ building separation.


WESTOVER LANE
(PRIVATE 40' R.O.W.)
EXISTING SEWER LINE BY HCWWTA
444± TO HILL POINTE LN.
MH
MH
10' POWER & COMM. EASEMENT
LOT 55
HILL POINTE P.U.D.
P.B. 83 PG. 200
8' UTILITY EASEMENT (PER P.B. 83 PG. 200)
15' UTILITY EASEMENT (PER P.B. 83 PG. 200)
S65°09'53"E
191.90
LOT 69
COMMUNITY LOT
HILL POINTE P.U.D.
P.B. 84 PG. 89
L1
L2
L3
N57°56'44"E
37.11
25.27
1632
1626
1620
1612
LOT 56
0.30±AC.
LOT 57
0.16±AC.
LOT 58
0.16±AC.
LOT 59
0.13±AC.
15' INGRESS-EGRESS EASEMENT (PRIVATE)
186.75
N46°32'39"W
198.13
N46°32'39"W
184.39
N46°32'39"W
168.95
N46°29'27"W
79.86
N85°12'44"W
COMMON
43.23
S04°47'16"W
22.17
WILLAMS
D.B. Y12 PG. 515
22.02
42.50
36.70
S75°44'45"W
10' DRAINAGE EASEMENT
LOT 61
COMMUNITY LOT
HILL POINTE P.U.D.
P.B. 80 PG. 34
LOT 67
HILL POINTE P.U.D.
P.B. 80 PG. 34

ORDINANCE NO. 04-886

AN ORDINANCE OF THE CITY OF RED BANK, TENNESSEE, AMENDING THE ZONING ORDINANCE AND MAPS OF THIS CITY TO REZONE PROPERTY LOCATED AT 1600 HAMILTON AVENUE

WHEREAS, petitions have been filed with the Chattanooga-Hamilton County Regional Planning Agency and the Red Bank Planning Commission, seeking the rezoning of certain property in this City; and

WHEREAS, the planning staff has considered the request and has recommended that the request be approved; and

WHEREAS, a public hearing has been held with respect to the requested rezoning at which time all matters and opinions pertaining thereto were expressed, heard and considered; and

WHEREAS, the Board of Commissioners determines that the rezoning should be approved.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF RED BANK, TENNESSEE, AS FOLLOWS:

SECTION 1. The Zoning Ordinances and Zoning Maps of this City are hereby amended by rezoning from R-1 Residential to R-2 Planned Unit Development (PUD) only, three unplatted tracts of land located at 1600 Hamilton Avenue (also known as 1549 Pine Breeze Road), more particularly described as per attached Exhibit A.

SECTION 2. Upon the adoption of this Ordinance, the Zoning maps of the City shall be amended and changed so as to reflect this rezoning.

SECTION 3. Provided that the rezoning set forth hereinabove shall be limited only to R-2 Planned Unit Development (PUD), no other R-2 uses (such as duplexes or stand alone duplexes or other multi-family housing units) shall be approved, lawful or utilized, and only such R-2 Planned Unit Development uses as shall otherwise be approved pursuant to a planned unit development plat approved by the Red Bank Planning Commission and by the Red Bank City Commission shall be hereafter constructed, utilized or allowed.

SECTION 4. Provided that the applicant/developer shall be required to meet the following requirements:

(A) Compliance with Red Bank Zoning Ordinance Section 11-361.07(b) and the construction of sidewalks of a minimum width of four (4) feet on both sides of the new streets;

(B) Only detached single family houses and accessory uses are to be permitted 2 through 25, 27 through 57, and 59 through 65 with only one dwelling per lot, and each such dwelling unit shall have at least two offstreet parking places;

(C) There shall be a minimum of twenty-five (25) foot building set back from Pine Breeze Road and other outer boundaries of the PUD and a minimum ten (10) foot building set back from road rights-of-way. Freestanding buildings must be at least fifteen (15) feet apart.

(D) The roads to be constructed are private roads and the City of Red Bank is not responsible to construct or maintain the private roads subsequent to development.

(E) All requirements of the Red Bank Fire Department shall be met including the installation of a pump station sufficient to provide a flow from the hydrants of 1,000 gallons per minute at 20 P.S.I., a "knox box" will be installed at the gate to the PUD to insure access for the Fire Department; fire hydrants shall be installed in locations approved and designated by the Fire Department.

SECTION 5. BE IT FURTHER ORDAINED, that this Ordinance shall take effect two weeks from and after its execution and acceptance by the property owner, and failing which within ninety (90) days of passage on second reading by the City Commission, this Ordinance shall become null and void.

SECTION 6. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION 7. The zoning maps shall hereafter reflect "R-2 Planned Unit Development (PUD) only".

SECTION 8. Every section, sentence, clause, and phrase of this Ordinance is separable and severable. Should any section, sentence, clause, or phrase be declared unconstitutional or invalid by a court of competent jurisdiction, said unconstitutionality or invalidity shall not effect or impair any other section, sentence, clause, or phrase.

Howard Cotter
MAYOR

Carolyn Lewis
CITY RECORDER

March 2, 2004
PASSED ON FIRST READING

March 16, 2004
PASSED ON SECOND READING AND FINAL READING

APPROVED AS TO FORM:

Arnold Stulce
CITY ATTORNEY

ACCEPTED, ACKNOWLEDGED AND
AGREED AS TO THE LIMITING FACTORS
EXPRESSED HEREIN:

HARMET SOUTH, L.P., a Tennessee
Limited Partnership

BY: C. Wade McAbee agent for the
General Partner

# EXHIBIT A

Properties located at the 1600 block of Hamilton Avenue (a/k/a 1549 Pine Breeze Road):

> Three unplatted tracts of land located in the 1600 block of Hamilton Avenue to be added to the original PUD (Case #2003-167) located at 1549 Pine Breeze Road, which are part of the properties described in Deed Book Y, Volume 12, Page 515, in the Register's Office of Hamilton County, Tennessee, Deed Book 2956, Page 639, in the Register's Office of Hamilton County, Tennessee; and Deed Book 2128, Page 607, in the Register's Office of Hamilton County, Tennessee.

Item VII(d) Alternative Lending Institutions Zoning Amendment

Southeast Tennessee Development District
Community Development
P.O. Box 4757 - 1000 Riverfront Parkway
Chattanooga, TN 37405
Phone: (423) 266-5781 Fax: (423) 267-7705
www.sedev.org

**MEMORANDUM**

To: Members of the Red Bank Municipal Planning Commission

Cc: Tim Thornbury, Public Works Director

From: Jordan Clark, Planning Program Director

Date: 3/8/2015

Subject: Alternative Financial Services

---

**Background and Analysis:** The City of Chattanooga recently amended its Zoning Ordinance to regulate "Alternative Financial Services." The definition encompasses what is commonly referred to as payday lenders, pawnbrokers, title pledge lenders, deferred presentment services, check cashers or any combination. The Chattanooga amendment specified the use as special exceptions for approval by the City Council. It also places distance requirements between Alternative Financial Services and a minimum distance from residential zoned property.

Due to several of these institutions being located in Red Bank and similar conditions existing which resulted in the Chattanooga amendment, the city may want to investigate amending its Zoning Ordinance in a similar fashion as Chattanooga in placing distance requirements.

Red Bank's Zoning Ordinance contains three commercial zoning districts. Each of the districts addresses "Title Pawn, Check Cashing and similar uses." The C-1 Commercial Zone currently allows Title Pawn, Check Cashing and similar uses. Both the C-2 Commercial Zone (Central Business District) and the C-3 Commercial Zone (Neighborhood Commercial Zone) prohibit Title Pawn, Check Cashing and Similar Uses.

**Recommendation:**

Staff sees no need in changing where Alternative Financial Services are currently allowed in the Zoning Ordinance as "Title Pawn, Check Cashing and similar uses." However, the city may want to consider an amendment similar to Chattanooga's to regulate their spacing in the C-1 district. The C-1 zoning district where these uses are currently allowed constitutes the majority of commercial zoned property on Dayton Boulevard and Signal Mountain Road.  Residential uses are subsequently zoned behind the commercial property on Dayton Boulevard.

Given the location of the C-1 zoning district and that most of the properties are located adjacent to residentially zoned property already, requiring a distance between residentially zoned properties would likely be too restrictive and have the effect of completely prohibiting Alternative Financial Services. However, a 0.25 mile interval between locations of Alternative Financial Services would ensure a concentration in one area would not occur.

Likewise, further defining these types of land uses would require an amendment to the definitions of the Zoning Ordinance.  Likewise, changing the term “Title Pawn, Check Cashing and similar uses” where it is found in the Zoning Ordinance to “Alternative Financial Services.”

**A RESOLUTION TO AMEND THE SUBDIVISION REGULATIONS FOR THE CITY OF RED BANK, TENNESSEE TO COMPLY WITH THE VESTED PROPERTY RIGHTS ACT OF 2014**

**WHEREAS,** the Tennessee General Assembly has enacted the Vested Property Rights Act of 2014 (the "Act"), which establishes statewide standards under which "vesting periods" is commenced upon the approval of new development plans; and

**WHEREAS**, the Act takes effect January 1, 2015, provided that local governments may pass an ordinance or resolution prior to such effective date to identify the types of development plans that will cause property rights to become vested and specify the actions that constitute approval of such development plans; and

**WHEREAS,** Tennessee Code Annotated § 13-4-303 enables municipal planning commissions to establish and amend subdivision regulations, and;

**WHEREAS,** the Red Bank Municipal Planning Commission seeks to amend the Subdivision Regulations for the City of Red Bank, Tennessee, and;

**WHEREAS,** a public notice was issued and a public hearing was conducted in order to receive public comments, in accordance with TCA § 13-4-303,

**NOW, THEREFORE, BE IT RESOLVED**, that the Red Bank Municipal Planning Commission does hereby amend the Red Bank Subdivision Regulations as follows:

**Section 1:** **ARTICLE 2, SECTION 202.4** **<u>Effect of Approval of the Preliminary Plat</u>** is amended to add the following at the conclusion of the first paragraph:

Approval of Preliminary Plat as provided herein vests property rights as provided for a preliminary development plan as set forth in Tennessee Code Annotated Sections 13-3-413 and 13-4-310. Approval of Preliminary Plat shall become effective upon the date the Planning Commission votes to approve the Preliminary Plat.

**Section 2:** **ARTICLE 2 is amended to add SECTION 204.3** **<u>Vesting of Property Rights</u>** is amended with the addition of the following

**204.3** Approval of an administratively approved subdivision as provided herein vests property rights as provided for a final development plan as set forth in Tennessee Code Annotated Section 13-3-413 and 13-4-310. Approval date of administratively approved subdivision plats is the date of the last signature of approval required on the plat for recording.

**Section 3:** **ARTICLE 2, is amended by adding a new section 205.5 <u>Vesting of Property Rights</u>**

205.5 <u>Vesting of Property Rights</u>

Approval of an administratively approved subdivision with variances as provided herein vests property rights as provided for a final development plan as set forth in Tennessee Code Annotated Section 13-3-413 and 13-4-310. No rights vest until a variance request is granted. Approval date of administratively approved subdivision plats with a variance is the later of (1) the date upon which the variance requested has been approved and (2) the date of last signature of approval on the plat for recording, provided as of such later date the other approval has already been obtained.

**Section 4:** **ARTICLE 2, SECTION 210** is amended to add the following text at the conclusion of the existing language:

Approval of a final subdivision plat as provided herein vests property rights as provided for a final development plan as set forth in Tennessee Code Annotated Section 13-3-413 and 13-4-310. Approval of final plat shall become effective upon the date the Planning Commission votes to approve the final plat.

**Section 5:** **ARTICLE 2** is amended to include a new section 211 <u>Vesting Periods and Expiration of Plat Approvals</u> to read as follows:

211 VESTING PERIODS AND EXPIRATION OF PLAT APPROVALS

Preliminary Plat

A Preliminary Plat for a subdivision shall be vested for a period of three (3) years from the date of Planning Commission approval.

If all necessary permits are secured, site preparation commences, and Final Plat approval is obtained within the three (3) year vesting period following approval of the Preliminary Plat, then the vesting period shall be extended an additional two (2) years beyond the expiration of the initial three (3) year vesting period. During the two (2) year period the applicant shall commence construction and maintain any necessary permits to remain vested.

If Final Plat approval is obtained, construction commences within the original 5-year vesting period following preliminary plat approval and all permits are maintained, then the vesting period shall be extended until construction is completed, provided, however, that the vesting period shall not exceed ten (10) years in the aggregate from the date of preliminary plat approval. If all necessary permits are not secured, site preparation does not commence, and Final Plat approval is not obtained within the three (3) year vesting period from the approval date of the Planning Commission then the vesting period shall expire and Preliminary Plat approval expires three (3) years from approval by the Planning Commission.

Multi-Phase Developments

In the case of developments which proceed in two (2) or more sections or phases as described on the Preliminary Plat there shall be a separate vesting period applicable to each section or phase. The development standards which are in effect on the date of approval of the Preliminary Plat for the first section or phase of the development shall remain the development standards applicable to all subsequent sections or phases of the development, provided the total vesting period for all phases shall not exceed fifteen (15) years from the date of the approval of the Preliminary Plat for the first section or phase, unless the Town of Walden grants an extension, provided further that the applicant maintains any necessary permits during the fifteen (15) year period.

Final Plat

Approval of Final Plats shall expire after two (2) years from the date of approval by the Planning Commission

**NOW THEREFORE, BE IT RESOLVED** that on this day, _____________, the Red Bank Municipal Planning Commission hereby adopts this resolution amending the Red Bank Subdivision Regulations. This resolution shall become effective immediately following the public hearing and approval of the Red Bank Municipal Planning Commission.

**Date Advertised in the Times Free Press: ____________________**

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| ____________________ | ______________________________ |
| **Public Hearing Date** | **David Hafley, Chairman** |
| ____________________ | ______________________________ |
| **Date of Adoption** | **Bill Cannon, Secretary** |