

This Instrument Prepared By:

Waller Lansden Dortch & Davis, LLP  
Robert R. Campbell, Jr.  
511 Union Street, Suite 2700  
Nashville, TN 37219

**AGREEMENT FOR GRANT OF EASEMENT**

**for**

**CONSERVATION GREENWAY**

THIS AGREEMENT, made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between **The Metropolitan Government of Nashville and Davidson County**, acting by and through its Board of Parks and Recreation (herein referred to as "Metro"), and **PR II / SH Peabody Union Apartments Owner, LLC**, a Delaware limited liability company, property owner (herein referred to as Grantor).

**WHEREAS**, Metro recognizes the increasing benefit of protecting open spaces within the Metro area; and

**WHEREAS**, greenways provide the general public with recreational opportunities in natural areas, preserve, and protect native plant and animal species and their habitat, and provide low-impact transportation routes for pedestrian and bicycle traffic; and

**WHEREAS**, Metro, by Ordinance No. 091-13, created a Greenways Commission to assist Metro in the development of a system of open space greenways; and

**WHEREAS**, Grantor is the sole owner in fee simple of certain real property in Davidson County, Tennessee, more particularly described in Exhibit A attached hereto and incorporated by this reference (herein referred to as "the Property"); and

**WHEREAS**, a portion of the Property possesses natural, open space, and recreational values (collectively, "conservation values") of great importance to Grantor and the people of Nashville and Davidson County; and

**WHEREAS**, Grantor intends that the conservation values of the Property be preserved and made more accessible for public enjoyment by the anticipated incorporation and maintenance of the property as part of the Metro greenways system; and

**WHEREAS**, Grantor further intends, as owner of such portion of the Property, to convey to Metro the right to preserve and protect the conservation values of such portion of the Property in perpetuity; and

**WHEREAS**, Metro has the authority to accept this grant pursuant to Tennessee Code Annotated, Section 66-9-305(d), and Section 11.1002 of the Metropolitan Charter; and

**WHEREAS**, Metro agrees by accepting this grant to honor the intentions of Grantor stated herein, and to preserve and protect, in perpetuity, the conservation values of such portion of the Property for the benefit of the people of Tennessee and the public-at-large.

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby (i) voluntarily grants and conveys to Metro, its successors and assigns, an easement in perpetuity over a portion of the Property of the Grantor (herein referred to as "the Easement") and as more particularly shown as the "Greenway Easement" on Exhibit B attached hereto and incorporated by this reference, and (ii) voluntarily grants to Metro, its successors and assigns, a limited non-exclusive license for pedestrian and bicycle access over and across the "Alternative Pedestrian Pathway" as reflected on Exhibit B attached hereto and incorporated herein (the "License").

1. **Purposes.** It is the purpose of the Easement grant to allow Metro to utilize the Easement area as a pathway for pedestrian or bicycle travel and nature trail. Grantor shall initially design and construct greenway improvements generally consistent with the drawings attached hereto as Exhibit C (the "Improvements"). Grantor intends that the Easement will confine the use of the Easement area to such activities as are consistent with the purpose of the Easement.

It is the purpose of the limited non-exclusive License grant to allow Metro to use the License area as an alternative pathway for pedestrian and bicycle travel when the Easement area is closed. The Easement area may be closed only for the purpose of maintenance of the Improvements, during emergencies reasonably warranting closure, or other purposes as may be permitted in writing by Metro. Any maintenance of the Improvements shall be pursued diligently to completion so as to minimize the time the Easement area is closed.

2. **Rights of Metro.** To accomplish the purpose of the Easement, the following rights are conveyed to Metro by this grant:

- a. To preserve and protect the conservation values of the Easement area; and

b. To maintain the Improvements, and to replace same, consistent with the drawings attached as Exhibit C; and

c. To prevent any activity on or use of the Easement area that is inconsistent with the purpose of the Easement and to require the restoration of such areas or features of the Property or the Easement area that may be damaged by any inconsistent activity or use.

3. Metro Covenants. Metro, by accepting this grant, covenants and agrees, on behalf of itself, its successors and assigns, that the following shall constitute real covenants that shall attach to and run with the Easement hereby granted and shall be binding upon anyone who may hereafter come into ownership of such Easement, whether by purchase, devise, descent, or succession, or to be authorized to use said Easement area:

- a. It will make the Easement area available for use by all members of the general public without distinction or illegal discrimination on the grounds of race, color, national origin, handicap, or age.
- b. It will adopt rules and regulations governing the use of the Easement area so as not to permit or suffer any use of the Easement by Grantor or others in violation of such rules and regulations. At a minimum, the rules and regulations will provide as follows:
  - i. That the hours of public access of the Easement shall be from sunrise to 11:00 PM.
  - ii. That all persons utilizing the Easement area must remain on the pathway.
  - iii. That all pets of persons utilizing the pathway must be on a leash at all times and all pet owners shall be responsible for cleaning up after their pet(s).
  - iv. That the following activities shall be strictly prohibited:
    1. overnight camping or sleeping;
    2. political activities such as soliciting or receiving political contributions or attempting to influence elections or nominations.
    3. consumption or possession of alcoholic beverages (except for special events for which the appropriate state and local permits have been obtained) or any intoxicating substance;

4. gambling of any form;
5. horseback riding;
6. use of motor vehicles (other than maintenance vehicles used by Metro in the fulfillment of its obligations hereunder);
7. collecting or distributing plants, animals or other natural features;
8. littering or dumping;
9. playing of radios, musical instruments or other devices in a manner that might disturb others, including occupants or tenants of the Property;
10. vending or other concessions without proper permits;
11. advertising or posting of bills;
12. trespassing on adjacent property of Grantor; and
13. any unlawful activities.

4. Other Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of the Easement is prohibited. The aforementioned express prohibitions shall not limit the generality of this paragraph. Metro shall be responsible for insuring that the Easement area is properly secured.

5. Metro's Duties as to Greenway Area. Metro acknowledges that the Easement area is integral to Grantor's development, use and enjoyment of the Property. Grantor hereby agrees keep the Easement area, including all Improvements and adjacent landscaping, in first class condition and repair and shall be responsible for all damage to the Easement area or Improvements resulting from ordinary wear and tear. Metro shall be responsible for the costs of repairs made necessary by the willful acts or negligence of Metro or its employees, contractors or invitees, or the public in general.

6. No Services by Grantor. Grantor shall not be responsible for providing any services to or with respect to the Easement Area.

7. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of the Easement and that do not result in closure of the Easement area except as expressly permitted herein. It is expressly acknowledged that the License is limited and non-exclusive and Grantor may utilize the License area for outdoor seating, festivals or any other uses as it may desire in connection with Grantor's

use and operation of the Project, [which may necessitate brief and temporary closures of the License area from time to time] and that there may be awnings, overhangs or the like over and above the License area. The parties agree that, except for the closures contemplated in this paragraph, the License area shall remain open to the public for access between the Easement area and the sidewalk along the south margin of Korean Veterans Boulevard. Additionally, Grantor reserves the right to grant easements, licenses or other rights to utility providers who are providing utility services to the Property, for the purpose of installing, constructing and maintaining utility lines and other improvements as necessary or desirable for provision, maintenance and replacement of utilities to service the Property, and the rights of Metro hereunder shall be subject and subordinate to any such grants..

8. Reportings / Meetings. The Metro and Grantor shall consult from time to time concerning the accomplishments of the goals of Metro and Grantor with respect to its use of the Easement area. Grantor and Metro may schedule and attend an annual meeting for review of past activities and for joint planning for the coming year.

9. Insurance. Metro shall at all times keep in effect and fund with adequate reserves a self-insurance program in accordance with Tennessee law or shall maintain adequate comprehensive general liability insurance and all risk property insurance to cover its property, activities and the risk assumed hereunder, and such program shall name Grantor as an additional named insured thereunder and Metro shall provide Grantor with a certificate of insurance evidencing same in form reasonably satisfactory to Grantor or a written statement from Metro's Director of Law to the effect that Metro has in effect a self-insurance program compliant with state law. Following any assignment of Metro's rights hereunder as allowed pursuant to Section 14 hereof, any assignee holding Metro's rights hereunder shall at all times keep and maintain (i) comprehensive commercial general liability insurance against all claims for personal injury, death or property claims occurring upon, in or about the Easement and the Improvements or the License area, in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, which shall name Grantor as an additional named insured and (ii) casualty insurance against loss or damage by fire and such other hazards, casualties and risks as are normally and usually covered by all risk policies in Nashville, Tennessee, in an amount at least equal to the full replacement cost of the Improvements. All such insurance coverages shall be written by an insurer that is nationally recognized with a policyholder's rating of at least A, V, as listed from time to

time by A.M. Best Insurance Reports. Any such assignee shall provide Grantor with annual certificates of insurance reasonably acceptable to Grantor.

10. Allocation of Risks. All property of any kind that may at any time be used, left or placed on the Easement area shall be at the sole risk of Metro. Metro shall carry contents coverage insurance on its contents or shall maintain a self-insurance program covering the same consistent with Tennessee law. Accordingly, unless caused by the sole, gross negligence of Grantor (including its officers and employees), Grantor shall not be liable to Metro, nor to any member of the public for any damages to the property of Metro or other parties in the Easement area or the License area or for personal injury on or about the Easement area or the License area unless Grantor's sole, gross negligence causes such damages. In no event shall Grantor be liable for damages caused by the acts or negligence of third parties, acts of God, theft, criminal conduct, vandalism or any other cause beyond the Grantor's reasonable control. In no event shall Grantor bear any liability for any loss, expense, attorney fees or claims for injury or damages arising out of any act or omission in the performance of this Agreement on the part of Metro.

11. Acts Beyond Grantor's Control. Nothing contained in this Agreement shall be construed to entitle Metro or any other person to bring any action against Grantor for personal injury or for any injury to or change in the Easement area or Improvements resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

12. Amendment. If circumstances arise under which an amendment to or modification of this Agreement is appropriate, the Grantor, or the then current owner of the Property, and Metro are free to jointly amend this Agreement without prior notice to any other party; provided that any amendment shall be in writing; shall be consistent with the purpose of the Easement; and shall have the consent of the Metro Greenways Commission.

13. Extinguishment. If circumstances arise in the future that render the purpose of the Easement impossible to accomplish, the Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

14. Assignment. The Easement is transferable, but Metro may assign its rights and obligations under this Agreement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended, and the

applicable regulations promulgated thereunder and authorized to acquire and hold conservation easements. A condition of such assignment is that any such assignee must assume all of the obligations of Metro hereunder however, it is agreed that no such assignment shall in any way release Metro from its obligations hereunder. As a condition of such transfer, Metro shall require that the conservation purposes which this grant is intended to advance continue to be carried out.

15. Subsequent Transfers. Grantor agrees to incorporate the terms of this Agreement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of the Easement or limit its enforceability in any way.

16. General Provisions.

a. Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of Tennessee.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the grant to effect the purpose of the Easement and the policy and purpose of Tenn. Code Ann. §§ 66-9-301 to 309. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of the Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph ten (10).

e. Successors. The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

[SIGNATURE PAGES FOLLOW]



TO HAVE AND TO HOLD said Easement unto Metro, its successors, and assigns, forever.

IN WITNESS WHEREOF, we have caused this instrument to be executed as of this  
\_\_\_\_\_ day of \_\_\_\_\_, 2022.

GRANTOR:

PR II/SH PEABODY UNION APARTMENTS OWNER, LLC,  
a Delaware limited liability company

By: PR II/SH PEABODY HOLDINGS, LLC,  
its sole member

By: PEABODY UNION MF, LLC,  
its authorized member

By: 

Name: Jeff McDonough

Title: Authorized Signatory

STATE OF FLORIDA        )  
COUNTY OF BROWARD    )

Personally appeared before me, the undersigned, a Notary Public of said county and state, Jeff McDonough, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the Authorized Signatory of PEABODY UNION MF, LLC, the maker or a constituent of the maker, and is authorized by the maker or by its constituent, the constituent being authorized by the maker, to execute this instrument on behalf of the maker.

Witness my hand, at office, this 25<sup>th</sup> day of February, 2022.

My Commission Expires: June 20, 2025

Michelle Roca  
Notary Public



ACCEPTED:

THE METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY



DIRECTOR, PARKS AND RECREATION

STATE OF TENNESSEE )  
 )  
COUNTY OF DAVIDSON )

On this the 4<sup>th</sup> day of May, 2022, before me personally appeared Monique Odom, who acknowledged <sup>her</sup> ~~him~~self to be the Director of the Metropolitan Government Department of Parks and Recreation, and that ~~she~~ <sup>he</sup>, as such Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Sally E. Palmer  
NOTARY PUBLIC

My Commission Expires: Nov. 8, 2022



Exhibit A

**A tract or parcel of land in Davidson County, Tennessee, being more particularly described as follows:**

**Beginning at a P.K. spike in the northerly right-of-way of Peabody Street, South 63° 04' 49" West, 567.59 feet from a chiseled "X" on a stone column near the northeasterly terminus of Peabody Street, said P.K. spike being a southeasterly corner of Lot 1 on the Final Plat of Metro District Energy System Plant of record as Instrument No. 20020809-0096188, R.O.D.C.;**

**Thence with the boundary of said Lot 1 North 26° 56' 06" West, 407.02 feet to a chiseled "X" in a concrete wall in the southerly right-of-way of Gateway Boulevard;**

**Thence with said right-of-way northeasterly with a curve to the left 275.40 feet to an iron rod in the westerly right-of-way of Nashville and Eastern Railroad Corporation Railroad, said curve having a radius of 749.016 feet, a central angle of 21° 03' 59" and a chord of 273.85 feet at North 34° 06' 26 1/2" East;**

**Thence with said railroad right-of-way as follows;**

**South 57° 59' 48" East, 359.56 feet to an iron rod;  
South 58° 30' 48" East, 272.04 feet to a chiseled "X" on a stone column in the northerly right-of-way of Peabody Street;**

**Thence with said right-of-way of Peabody Street South 63° 04' 49" West, 567.59 feet to the beginning.**

**Being part of the same property conveyed to the CITY OF NASHVILLE by deed from BARNEY B. STEINER, PERRY STEINER, HARRY LIGHTMAN AND MITCHELL S. MAGID, dated December 19, 1955, of record in Book 2488, page 597, Register's Office for Davidson County, Tennessee. Also being the same property conveyed to the CITY OF NASHVILLE by deed from RAGLAND REALTY CORPORATION, A CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF TENNESSEE, dated December 29, 1955, of record in Book 2492, page 93, said Register's Office.**

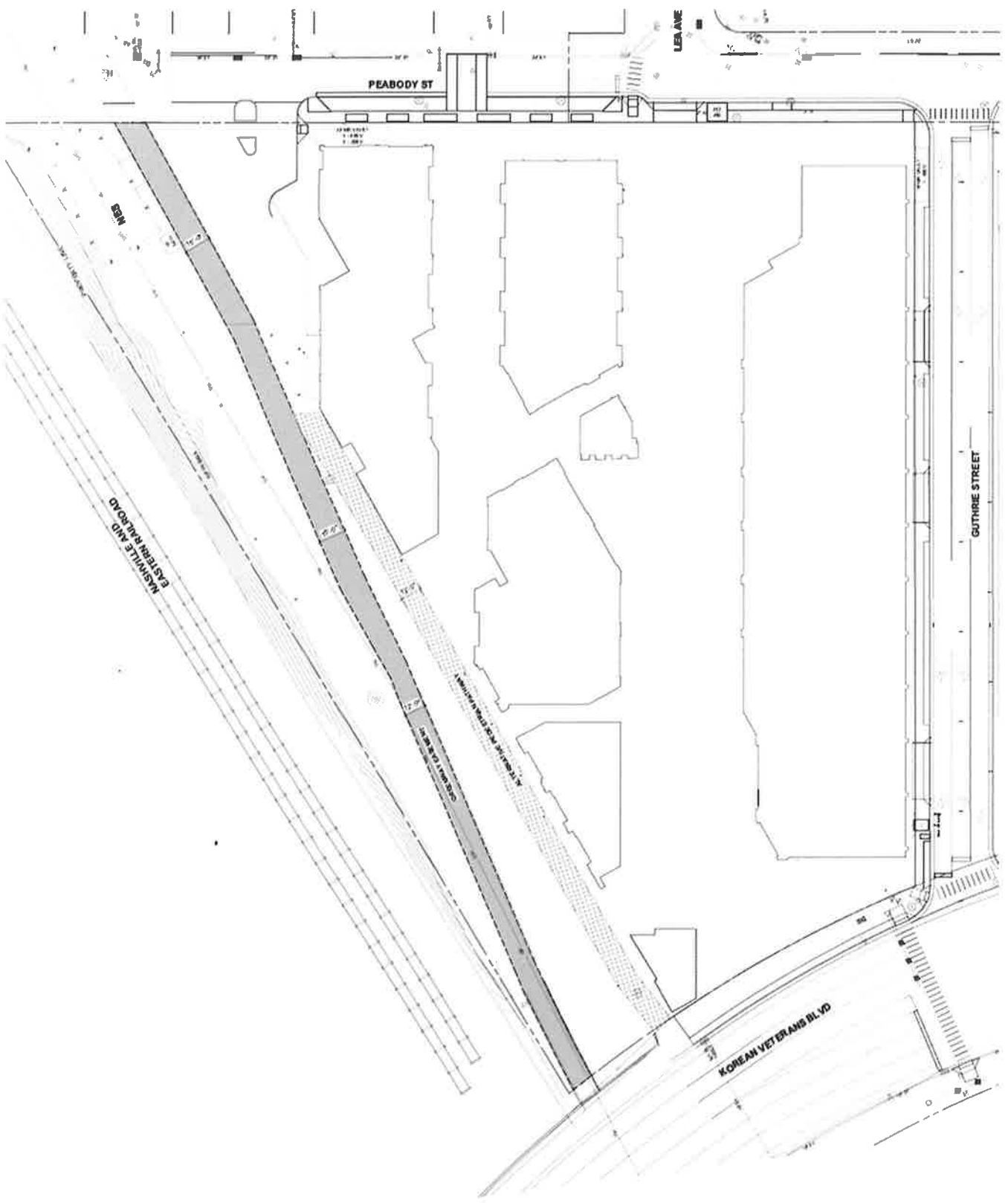
**Being the same property further conveyed by Quitclaim Deed from the METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE to the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY, dated August 31, 2007, of record as Instrument No. 20070906-0107293, said Register's Office.**

**Exhibit B**

Easement Area

See attached drawing

Note: the parties agree that upon completion of the Greenway and the Alternative Pedestrian Pathway, Grantor will cause a survey of such area to be prepared and Exhibit B will be updated or replaced to reflect the surveyed description of each such area



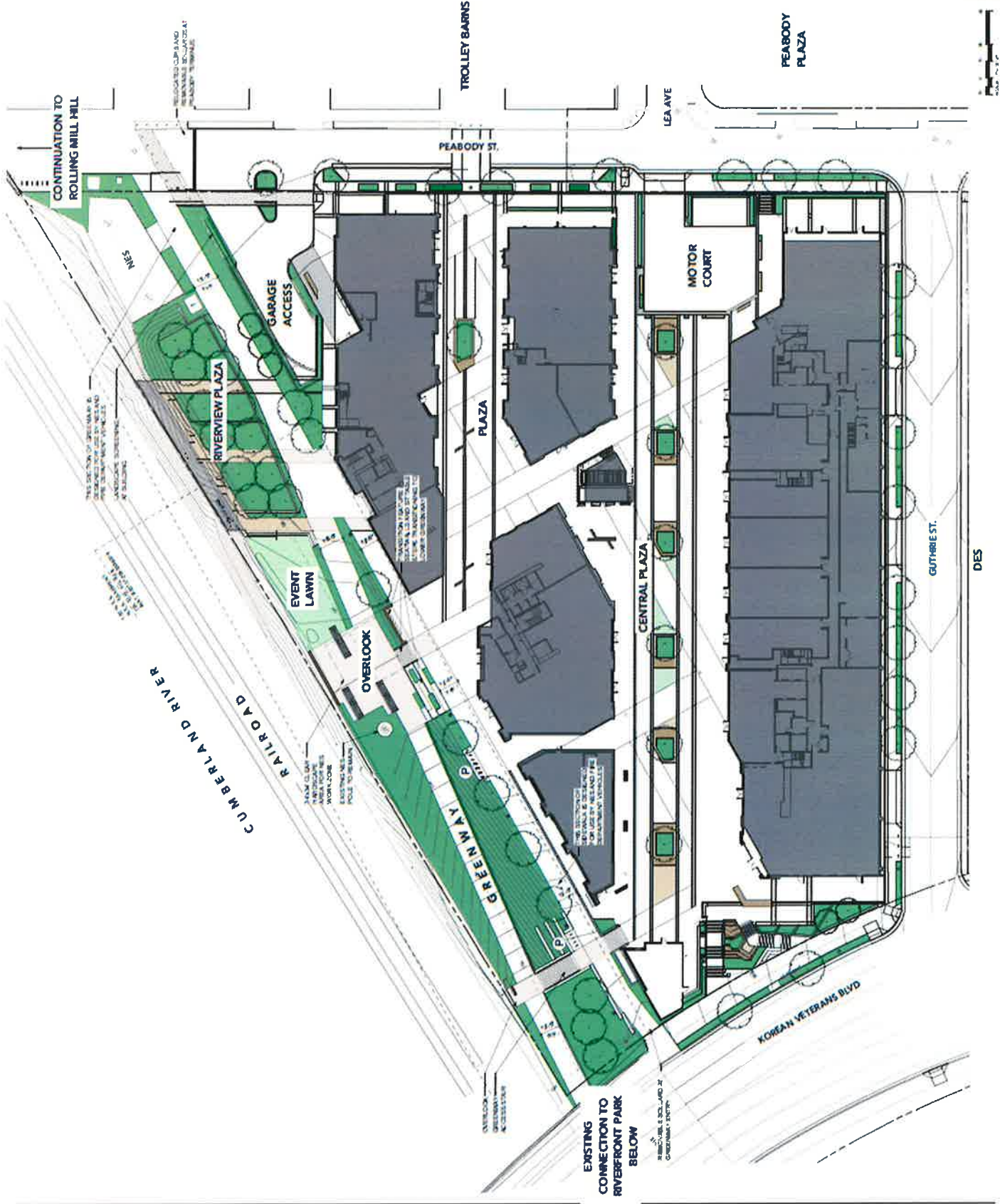
DES PROPERTY

**Exhibit C**

Improvements

See attached drawing





DES