

ORDINANCE NO. 4111

AN ORDINANCE APPROVING AN AGREEMENT OF SALE BETWEEN THE CITY OF CLINTON (CITY) AND H2 PROPERTY, LLC (H2).

WHEREAS, the City is the owner of Lot 18 in Gerhart Industrial Park; and

WHEREAS, H2 is willing to accept Lot 18 from City to support its business operations, subject to the restrictions and conditions contained in the Agreement;

NOW, THEREFORE BE IT HEREBY ORDAINED by the City Council of Clinton, Missouri as follows:

1. The attached Agreement of Sale (Exhibit A) is hereby approved.
2. The Mayor and City Administrator are authorized to execute all documents related to the transaction on behalf of the City of Clinton.
3. This ordinance shall become effective immediately upon its passage and approval as provided by law.

Read both times and passed this 7th day of March, 2023.



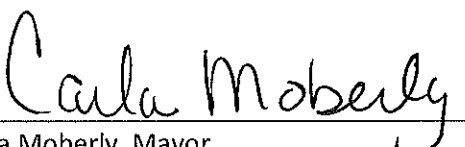
Carla Moberly, Presiding Officer

ATTEST:

6 Ayes - Gene Henry, Roger House, Cameron Jackson, Martha
Nichols, Rick Pereles and Becky Raysik
0 Nays
2 Absent - Debbie Smith and Daniel Wilson



Wendee Seaton, City Clerk



Carla Moberly, Mayor



AGREEMENT OF SALE

Effective Date of Agreement: March 10, 2023.

Parties:

- a) City of Clinton, Missouri, a municipal corporation ("City")
- b) H2 Property, LLC, a Missouri Limited Liability Company ("H2")

WHEREAS, H2 desires to relocate its facility to the Gerhart Industrial Park, and,

WHEREAS, the City is the current legal owner of Lot 18 lying within the Gerhart Industrial Park as shown on Exhibit A; and,

WHEREAS, H2 is willing to accept the Property from City, and utilize the site to support its operations in the City subject to the restrictions, and conditions contained in this Agreement; and,

WHEREAS, the parties wish to formalize and commit to be bound to the terms of their previous verbal agreements by this Agreement; and,

WHEREAS, the parties agree that the following exhibits are a part of this Agreement: Exhibit A Map of Property

- Exhibit B Restrictive Covenants
- Exhibit C Corporation Warranty Deed
- Exhibit D Release of Deed Restrictions
- Exhibit E Henry County Tax Abatement Summary
- Exhibit F Engineered Plans for relocation of drainage way

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. **Agreement to Sell and Purchase.** City agrees to sell and convey to H2, and H2 agrees to purchase, all of City's right, title and interest in the Property, described as follows and to be conveyed by Exhibit C attached hereto:

Lot 18, Gerhart Industrial Park

and subject to the restrictive covenants set out in Exhibit B and the other covenants in this contract and deed, including all improvements and easements benefitting or burdening and other rights and privileges pertaining to the Property, upon the terms and conditions contained in this Agreement.

2. **Environmental Assessment and Access to Land.** H2, and its respective agents, employees and representatives shall have the right to enter on to the Property at all reasonable times to conduct any inspections, engineering, surveying, soil sampling, soil test borings or environmental studies which it desires at its sole expense. In the event as a result of H2's inspections or review of title, H2 determines in its sole discretion that the Property is not satisfactory, H2 may terminate this Agreement by delivery of written notice to the City, in which event the parties shall have no further obligations to each other. Any testing or sampling done shall be done so as not to leave any hazardous conditions on the property as a result of the testing. H2 shall cause the property to be restored after testing to its pre-testing condition.
3. **Consideration.** The consideration received by City for this real estate transfer is H2's satisfactory completion of the commitments it makes at the signing of this Agreement as set forth below.
4. **Development of Property.** The City is conveying the Property to H2 solely for the purpose of its continued use by H2 in association with its operations within the City of Clinton, with the attendant public benefits to the City of Clinton and its residents.

5. **Title Insurance.** The City shall deliver to H2 a title insurance commitment from Clinton Abstract and Title, insuring fee simple marketable title to the Property. H2 and City will equally share the cost of an owner's policy of title insurance covering the Property. In the event as a result of H2's review of title, H2 determines in its sole discretion that the Property is not satisfactory, H2 may terminate this Agreement by delivery of written notice to the City, in which event the parties shall have no further obligations to each other.
6. **Conveyance and Title.** On the closing date, City will convey the Property to H2 by special corporate warranty deed. The title conveyed shall be marketable fee simple title, free and clear of all liens and encumbrances except encumbrances reflected on the title insurance commitment.
7. **Expenses.** The costs and expenses of the sale by City to H2 shall be borne by the parties as follows:
 - a) City shall obtain and pay for a staked boundary survey by a registered land surveyor.
 - b) Each party shall bear its own attorney fees with respect to this transaction.
 - c) All other closing costs and expenses of this transaction shall be shared equally by the parties.
8. **Closing.** Closing under this Agreement of the conveyance by the City shall occur at a mutually agreed upon time, as soon as can be accommodated by the Title Company and satisfaction of the parties for compliance with the terms of this Agreement. The closing shall occur at Clinton Title and Abstract, 122 W. Jefferson, Clinton, MO, at a time agreed upon by the parties.
9. **Deed and Possession of Property.** City shall deliver to H2 the deed and possession of the Property, free of all tenancies, liens and encumbrances on the closing date, together with all other documents as may be reasonably necessary to accomplish the conveyance.
10. **Representations and Warranties.** City hereby represents and warrants to H2 that as of the closing date:
 - a) To the best of City's knowledge, the Property complies with all federal, state, and local laws, conditions and regulations applicable to the ownership and operating thereof, including, without limitation, all applicable zoning laws, environmental laws and all amendments and regulations thereto;
 - b) There is no litigation at law, in equity or in proceedings before any commission or other administrative authority, or any governmental investigations, pending or, to the knowledge of City, threatened against or affecting the Property or City's interest in the Property.
 - c) There currently are not, and at closing there will not be, any leases, agreements or understandings in effect relating to the Property which do or will materially affect the use, ownership, operation or management of the Property.
11. **H2's Contingencies.** H2's obligations hereunder are expressly conditioned and contingent upon the satisfaction of each of the following conditions precedent; it being acknowledged and agreed that such conditions precedent are included for the exclusive benefit of H2, and may be waived, in whole or in part, by H2 at any time:
 - a) **Title Matters.** H2 shall have waived or failed to object to the condition of title to the Property, as described in paragraph 5; and any endorsements to the title policy required by H2 shall be available, as of the closing date.
 - b) **Evidence of Authority.** At the time of execution of this Agreement, City will deliver to H2 a copy of a signed ordinance establishing the authority of the City's representative to execute this Agreement and convey the Property.
 - c) H2 will have secured a commitment for financing of their improvements to the property on terms satisfactory to H2.
 - d) H2 shall have obtained approval by the Henry County Enhanced Enterprise Zone board and County Commission for real property tax abatements as set forth in Exhibit E.

- e) H2 shall have received confirmation of utility service capacity to the property suitable to its needs.
- f) H2 shall have received approval of a land disturbance permit.

12. Commitments of H2.

- a) Use of Property. If the City complies with all of its commitments as set forth in this Agreement (or H2 waives any unsatisfied commitments), and if H2 is able to successfully acquire the Property from City, then H2 agrees to occupy and use the property to support H2's operations within the City. H2's obligations will be waived for any time H2 is not able to occupy and use the Property as a result of a "force majeure." "Force Majeure" shall be defined to include (but not be limited to) acts of God, war, civil disorders, lockouts, strikes, and all other similar causes without the fault or beyond the control of H2. H2 agrees within 24 months of closing to complete a structure of at least 17,000 square feet in which to house its operations. The structure shall be completed according to the City's Code of Ordinances and shall be subject to City permitting and inspection process. H2, as a part of the development of the Property shall cause the drainage way to be relocated in compliance with the engineered plans attached as Exhibit F within the 24-month development period, except that the new four foot channel bed and adjacent channel slopes may be covered with sod, LANDLOK 450 turf reinforcement mat (TRM) or other comparable product designed to accelerate growth of grass. Seed and mulch are acceptable for the remainder of the disturbed area.
- b) Reacquisition Right. The City shall have the right to reacquire the property as set forth below if any of the following occur before the expiration of ten years from delivery of deed by the City.
 - 1) H2, or its successor or assign, fails to continue to occupy and use the subject land as described in paragraph 12(a) above. Placing the property for sale for any purpose other than continuing H2's operations on the property or attempting to sell the property to any entity or individual for any purpose other than continuing H2's operations on the property shall be deemed a violation of this provision, OR
 - 2) H2, or its successor or assign, attempts to transfer, voluntarily or involuntarily, the subject property to any other person or entity without prior written approval of the City if such other person or entity is not a successor to all or part of H2's operations in the City, such approval to not be unreasonably delayed or withheld, OR
 - 3) H2 or its successor's or assign's operations in the City cease for a period exceeding 120 days and such cessation is not due to a force majeure.

The parties expressly agree that all of these conditions of reacquisition touch and concern the land and shall run with the land. The City shall give H2 a written notice of its intention to exercise its rights of reacquisition and H2 will have 30 calendar days to cure provided, however, that no notice to cure shall be required should H2 be under the jurisdiction of any federal bankruptcy court. If, before construction of improvements and after notice H2 fails to cure within 30 calendar days, City may elect to exercise its reacquisition rights over the property against H2, by paying \$1.00 to H2 to reacquire the Property and upon such payment H2 agrees to immediately execute and deliver a special warranty deed to the City. If no notice is required hereunder, the City may immediately proceed to reacquire the property. The City will pay all closing costs associated with its reacquisition of the Property. The City's reacquisition rights are cumulative to any other legal or equitable remedies available to City. H2's obligation to use the property and the City's reacquisition rights will be evidenced by restrictive language in the deed from City to H2. If, within ten years from the date of delivery of deed by the City, the City has not notified H2 or its successor or assign of an intention to reacquire the property hereunder, then any encumbrances created in the deed from the City to H2 concerning the City's reacquisition rights and H2's use of the property shall expire, be released by the City and be unenforceable without any further action by the parties. In any event, the City agrees, if requested by H2 or its successor, to execute and deliver to H2 for recording a "Release of Deed Restrictions" (Exhibit D), if the restrictions have expired by their

own terms, or have been expressly waived in writing by the City. The parties agree that none of these conditions or restrictions constitute an unreasonable restriction on any party's ability to transfer the property.

If, after construction of improvements as called for herein, H2 decides to sell the property or business within 10 years of the original land sale date, or there is a default of H2's obligations under this Agreement, the provisions of this paragraph shall apply. The land shall be valued at \$39,100.00, less additional costs related to the relocation of the drainage way, as identified in section 12(a) of this agreement. If, during the first year of this Agreement H2 sells the business or defaults in its obligations hereunder, H2 shall pay the City \$14,100 for the value of the property conveyed. If H2 sells the business or defaults in its obligations between years one and ten of the original land sale date, the land sale cost will be prorated at 10%/year. After ten years, the land is released to H2 for \$1.00 and other considerations.

- c) **Development of Property.** H2 agrees that its use of the Property will be for the purpose of Air-conditioning/heating contractor or other allowable uses as set forth by current zoning regulations for the appropriate zoning classification. The NAICS code for H2 is 238220. Retail appliance sales are allowed so long as not the primary use of the property.
 - d) **First Right of Refusal on Subject Property.** In consideration of the City providing business inducements to it, H2 or its successor or assign shall offer any undeveloped parcel of the Property for sale to the City for the same price and same terms prior to offering to sell to any other person or entity that is either not related to H2 or is not a successor to all or part of H2's operations in the City. This right shall remain in force for ten years.
 - e) **Installation of Utilities.** The installation of any electrical, natural gas, or water service to the Property are the sole expense of H2.
 - f) **Subordination.** City agrees that its rights of reacquisition, but not the restrictive covenants, will be subordinate to H2's lender and will execute any documents convenient to H2's lender to accomplish this subordination.
 - g) H2 agrees to maintain the land along and including wetland and utility easements in a generally well maintained manner as not to devalue Gerhart Industrial Park or adjacent properties.
13. **Default and Remedies.** If any party fails to close this transaction for any reason, the non-defaulting party shall be entitled to any remedies available at law or in equity, including specific performance.
14. **Notices.** All notices or documents to be given pursuant to this Agreement shall be in writing, and shall be given by actual delivery or by mailing the same to the party entitled thereto at the addresses set forth below or at such other address as any party may designate in writing to any other party pursuant to the provisions of this paragraph. Notices or documents given by mail shall be sent by certified United States mail, return receipt requested. Notices or documents shall be served or mailed to the following addresses, subject to change as provided above:

If to the City: City of Clinton
 105 E. Ohio
 Clinton, MO 64735

If to H2: H2 Property, LLC
 694 NW 1271 P Road
 Urich, MO 64788

15. **Time of Essence.** It is agreed by the parties that time shall be of the essence of all provisions of this Agreement, unless extended by mutual consent in writing.
16. **Entire Agreement.** This Agreement constitutes the entire contract between the parties hereto, and there are no other understandings, representations or warranties, oral or written, relating to the

subject matter hereof which are not set forth herein. No representations or warranties have been made by the City or anyone on its behalf to H2 as to the condition of the land herein described or the suitability of the land for the intended use except as herein provided, and it is understood and agreed that the property is sold "as is."

17. **Assignment of Agreement.** The parties shall not have the right to assign this Agreement, in whole or in part, without the prior written consent of all other parties.
18. **Brokerage Commission.** H2 and City represent and warrant that they have not entered into any agreement giving rise to a brokerage commission or similar compensation by reason of the sale and purchase of the Property. Each party agrees to indemnify and hold harmless from and against any and all claims, costs, damages, expenses, judgments or liability resulting from any claim for brokerage commissions or similar compensation made by any party in connection with the sale and purchase of the Property.
19. **Amendment.** This Agreement may not be changed, modified or amended, in whole or in part, except in writing signed by all parties.
20. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.
21. **Governing Law and Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Missouri. The parties expressly consent to venue for any litigation arising out of this contract being exclusively in the Circuit Court of Henry County, Missouri.
22. **Merger.** Any provisions of this contract which are not fully executed at the time of closing shall not be merged into the deed but shall survive the closing and be enforceable. It is specifically agreed that City's rights of reacquisition and H2's obligations to be performed after closing shall survive closing and not merge into the deed.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be duly executed the day and year first above written.

City of Clinton, Missouri

H2 Property, LLC

Carla Moberly

H2 Property LLC

Carla Moberly, Mayor

By: SE Hoelling

Its: Owner / member



Wendee Seaton

Attest: John Hest

Wendee Seaton, City Clerk

By: _____

EXHIBIT A

LOT 18, REPLAT OF GERHART INDUSTRIAL PARK, AN ADDITION TO THE CITY OF CLINTON, HENRY COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

Exhibit B

**GERHART INDUSTRIAL PARK
DECLARATION OF RESTRICTIVE COVENANTS**

WHEREAS, City of Clinton is the owner of all of the real property described on the attached Exhibit A (hereinafter sometimes referred to as the "Real Property"); and

WHEREAS, City of Clinton is desirous of subjecting the Real Property and all of its interests therein to the indentures, protective conditions, covenants, restrictions, reservations, easements and servitude hereinafter set forth, each and all of which is and are for the benefit of said Real Property and owner(s) thereof and shall run with the Real Property and be binding upon the parties hereto and their successors in title;

NOW, THEREFORE, City of Clinton hereby declares that the Real Property, lots and tracts herein described shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

The City of Clinton, fee owner of the following described real property located in the City of Clinton, County of Henry, State of Missouri, same being the real property now duly platted as Gerhart Industrial Park, a subdivision of the City of Clinton, as such plat is now recorded in Plat Book G at Pages 193 & 194 of the records in the Office of the Recorder of Deeds of the County of Henry, State of Missouri, hereby makes the following declarations as to limitations, restrictions and uses to which the lots or tracts constituting such subdivision may be put, and hereby specifies that all such declarations shall constitute covenants to run with all the land, as provided by law, and shall be binding on all parties and all persons claiming under them, and for the benefit of and limitations on all future owners in such subdivisions, this Declaration of Restrictions being designed for the purpose of keeping the subdivision desirable, uniform and suitable in design and use as specified herein:

Section 1. General Provisions

The Real Property described herein is subjected to this Declaration to ensure the proper use and most appropriate development and improvement of each Building Site thereon, and to further ensure that the Park will always be maintained as an attractive, park-like commercial/industrial development for commercial/industrial enterprises with ample landscaped open areas; attractive high-quality structures; proper and desirable uses and appropriate development and improvements; to protect City, its successors, assigns and mortgagees against improper and undesirable uses of the Real Property; to protect against depreciation in value; to encourage the erection of attractive improvements with appropriate locations; to prevent the haphazard and inharmonious improvement of the Real Property; and to provide generally for the planned, aesthetical development of the Real Property. This paragraph shall be used by City as a standard in judging performance and interpreting the provisions of this Declaration. These covenants are not to replace but are to add to any zoning regulations that may be imposed by the City of Clinton.

Section 2. Definitions

- A. Park. "Park" shall mean the Real Property comprising the Gerhart Industrial Park which is subject to this Declaration pursuant to Section 1.2 above.
- B. Building Site, Building Tract or Tract. "Building Site" or "Building Tract" or "Tract" shall mean any lot, developed lot, Developed Land, Developable Land, tract, tracts, parcel or portions thereof of Real Property as set forth in the deed conveying title or in case of a lease, set forth in the lease and upon which a building or buildings and appurtenant structures is or may be erected, including therein any Real Property subject to recorded easements or right-of-ways or Declarations thereof for any purpose including Common Area purposes, affecting said Real Property within the Park.
- C. Improvements. "Improvements" shall mean any movement of earth or buildings, structures or items installed or constructed upon any portion of the Park.
- D. Developable Land. "Developable Land" shall mean any and all land within the Park which is available for development as a Building Site and shall include any land subject to Common Area usage, recorded easements or right-of-ways or declarations thereof for any purpose affecting said land. Unless expressly excluded herein, "Developable Land" shall always be deemed to include "Developed Land" wherever used herein.

- E. Developed Land. "Developed Land" shall mean any and all Developable Land which is available as a Building Site and upon which construction of Improvements has commenced or has been completed.
- F. Common Areas. "Common Area(s)" shall mean the Roadway, Storm Sewer Facilities, and Utility Easement as those easements or facilities are set forth in the recorded plat hereof. Additionally, the term "Common Area(s)" shall mean all other areas now or hereafter designated by City or its successor for the use of streets, fencing, roads or other common purposes for the common benefit of Owners, their guests, invitees, licensees, tenants, mortgagees and other authorized users thereof. The term "Common Area(s)" shall not include any portion of rights-of-way, roads or other facilities in the Park which extend onto and/or are part of any Developable Land in the Park, except to the extent that the same are actually used for common benefit purposes of more than one Owner in the Park. The term "Common Area(s)" shall collectively include Limited Common areas, as well as General Common Area(s).
- G. Owner. "Owner" or "Owners" shall mean any fee simple owner of any or all parcels, lots, blocks, Tracts or otherwise Real Property or an interest therein with the Park. As of the date of this Declaration, City is the sole Owner within the Center.
- H. City. "City" shall mean the City of Clinton.

Section 3. General Restrictions & Requirements

- A. No building, loading docks or outside storage shall be constructed upon any site within seventy-five (75) feet of any street right-of-way line in existence or proposed by the City or its successor at the time of such construction. No loading docks shall be constructed so as to be at the front of a building or fronting any street.
- B. No building, loading docks or outside storage shall be constructed upon any site within thirty (30) feet of the rear property line and thirty (30) feet of the side property line. All buildings shall front on the street servicing that building. Not more than 50% of the area of any site shall be covered by buildings.
- C. Within the required set-back area from streets there shall be maintained on each site only paved walks, paved driveways, lawns and landscaping.

Walkways shall be 48 inches wide along the entire frontage of each and every street on which the lot abuts. Sidewalks shall be placed in the area of the street right-of-way situated 2 feet behind the back of the street curb, unless it is necessary to curve the sidewalk away from the curb so as to avoid a fire hydrant, street sign, tree or other obstruction; and if it shall be so necessary, the sidewalk shall be uniform and consistent with the grade of the top of the curb along which the sidewalk is constructed. The concrete surface of the sidewalk shall be scored for crack control at 4 foot intervals and broom finished.

Each site shall have a cement concrete driveway entrance leading from the street to its driveway. Driveway curb returns shall be formed with a 50-foot radius and shall be formed to appear integral to the curb to which said returns connect. All walks shall be constructed of Portland cement concrete.

All driveways and permanent parking areas shall be improved with a permanent dust-free surface consisting of a minimum of a 6 inch rolled stone base overlaid with a 4-inch asphalt base surface and a 2 inch wearing course surface, or Portland cement concrete of a minimum of 6 inches thick. At least two-thirds of the surface of the required set-back area from street shall be maintained in lawns or other landscaping. All land parcels shall be properly maintained. Growth of grass and weeds will not exceed five (5) inches in height.

- D. It shall be the obligation of the owner of each tract to maintain the exteriors of all structures and all walks, driveways, lawns and landscaping on such tract in good order, repair and condition. All exterior painted surfaces shall be maintained in first class condition.

- E. It shall be the obligation of the owner to provide no less than one (1) off-street parking space for each two (2) persons employed on the site, and in no event shall there be less than one (1) parking space for each five hundred (500) square feet of floor space in manufacturing areas and not less than one (1) parking space for each two thousand (2,000) square feet of floor space in storage areas contained in any building on the site, and one (1) parking space for each three hundred (300) square feet of gross office area contained in any building on the site. There shall be maintained on each site areas for parking, maneuvering, and unloading trucks which shall be provided in addition to the space provided for employee parking. In addition to the above, adequate visitor or transient employee parking space shall be provided in keeping with the nature of the anticipated use of the site and in no case shall there be parking or storage of vehicles in excess of those directly in the day- to- day operations of the owner at this site.
- F. Outside Storage. Materials, supplies, equipment, finished or semi-finished products or articles of any nature shall only be stored or permitted to remain on any Tract outside of the building(s) thereon provided proper screening is provided, as approved by City. The minimum proper screening shall be a minimum of 8 feet in height. Waste and rubbish storage facilities shall be properly screened from view of adjoining sites and public rights-of-way and shall not be installed, constructed or utilized without prior written consent of City. Such areas shall not be between a primary building and/or public right-of-way. All storage and secondary buildings shall be constructed of the same materials as the primary building.
- G. Landscaping.
1. All Building Sites shall be landscaped in accordance with a plan submitted to and approved in writing by City prior to any development of the Building Site. Such landscaping plan shall include information regarding the type of sodding, the type of seeding, types of trees, hedges and shrubs and other information regarding other customary landscape treatment for the entire site, including fences, walls, beams and screening. Further, it shall be the responsibility of the Owner of a Building Site to landscape and maintain the area between the lot lines of said Owner's Building Site and the curbs of any roadways adjacent to such Building Site. All landscaping shall be undertaken and completed, and thereafter maintained, in accordance with such approved plan, and said plan may not be altered, amended or revised without submitting the revised landscaping plan for prior written approval by City.
 2. All landscaping required hereunto or otherwise to be provided on any Building Site shall be completed (completion for such purposes shall include payment therefore) within (60) days after the substantial completion of construction of any buildings to be constructed on the Building Site; provided, however, if weather conditions do not at such time permit, then such landscaping shall be completed as soon thereafter as weather conditions permit, not to exceed 3 months. If any Owner fails to undertake and complete its landscaping within the time limit previously set forth herein, the City may, at its option, after giving the Owner ten (10) days written notice forwarded to Owner (unless within said ten (10) day period the Owner of the Building Site shall proceed and thereafter in good faith pursue with all due diligence the completion of such landscaping), undertake and complete the landscaping of the Building Site in accordance with the landscaping plan. If the City undertakes and completes such landscaping because of the failure of Owner to complete the same, the costs of such landscaping shall be assessed against the Owner, and if said Assessment is not paid within thirty (30) days after written notice of such assessment, said assessment will constitute a lien on the Building Site and may be enforced as set forth herein.
 3. If any Owner, tenant or occupant of any Tract fails to maintain the landscaping of its separate Tract, the City may, in its sole discretion, enter upon the Tract and undertake such landscaping maintenance and/or replacements. All costs of such landscaping maintenance and/or replacements undertaken by City shall also be assessed against the Tract upon which said landscaping maintenance and/or replacements is done, and failure to pay such Assessment shall constitute a lien against the Property.

- H. Maintenance. Each Owner of any Building Site shall keep the buildings, improvements and appurtenances thereto in a safe, clean, well maintained, neat wholesome condition and shall comply in all respects with all governmental statutes, ordinances, regulations, health and police and fire requirements. Each such Owner, tenant or occupant shall remove at its own expense any rubbish, refuse, waste or trash of any character which may accumulate on or about its Building Site. Rubbish, refuse, trash, garbage or other waste shall be kept only in sanitary containers. All equipment for the storage or disposal of such materials shall be kept only in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Rubbish and trash shall not be disposed of by burning in open fires, burial or the like.
- I. Signs. No signs shall be permitted anywhere within the Park without prior written approval of City, and all applicable laws and governmental regulations. The property owners shall be permitted placement of a reasonable number of signs, which shall be conservative and in good taste, for the purpose of identifying the Property or business and advertising the availability of Building Sites and buildings therein, all subject to prior written approval of City.
- J. During Construction. During construction, all Building Sites (and Streets used by construction equipment and crews) shall be kept clean and neat, and all trash, rubbish and debris (and, with respect to Street, mud and dirt) shall be kept removed therefrom during any construction work, with final removal to be accomplished promptly after completion of such work.
- K. Air Conditioning Equipment. No air conditioning or similar equipment which is visible on the exterior of any improvement on a Building Site shall be permitted without the prior written approval of City, which approval shall be based upon, among other things, the adequacy of screening and landscaping of such equipment.
- L. Antennas. No antenna for transmission or reception of radio, television or any other form of electro-magnetic signals or radiation shall be erected, used or maintained on any Building site outside any building whether attached to an improvement or otherwise, without the prior written approval of City.
- M. Architectural Control and Material Usage. To preserve the harmony of exterior design and location of Improvements the Tracts as well as all other portions of construction upon Tracts herein restricted, no building, residence, privacy fence or other structure, building improvement or item shall be constructed, commenced, erected or maintained upon any Tract, nor shall any additions, changes or alterations be made thereunto until the plans and specifications showing the nature, square footage, kind, size, shape, front yard setback, height, materials, exterior color scheme, ground frontage and location of the same on the Tract shall have been submitted to and approved in writing by the City. In the event any such plans and specifications are not approved or disapproved within 30 days after their submission, approval shall be deemed to have been given and this Section fully satisfied.
- N. Each site shall be used only for manufacturing, processing, assembling, warehousing, wholesale, office, laboratory, professional, research and development activities. There shall not be permitted any junk or salvage yard or any other use which shall be offensive to the neighborhood by reason of odor, fumes, dust, smoke, noise, vibration or pollution or which will be hazardous by reason of danger of fire or explosion.
- O. Approval. Approval of Plans by City shall be based, among other things, on adequacy of Building Site dimensions, conformity and harmony of external design with neighboring structures, effect of location and use of Improvements on neighboring Building Sites, operations and uses; relation to topography, grade and finished operations and uses; relation of topography, grade and finished ground elevation of the Building Site being improved to that of neighboring Building Sites; adequacy of parking; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of these restrictions.

Section 4. Enforcement & Duration

- A. **Binding Effect.** The conditions, covenants, restrictions and reservations, easements and servitude herein contained shall run with the land, and shall be transferred non-exclusively to owners and their heirs, successors and assigns as they acquire an ownership interest in the Real property and be binding upon and inure to the benefit of the Owners, mortgagees, and their respective heirs, legatees, devisees, executors, administrators, personal and legal representatives, successors and assigns, and upon future Owners, mortgagees, optionees and successors in title, and further shall be binding upon lessees, sublessees, tenants, occupants and users of every part and Tract of the center and shall create mutual, equitable servitude upon each Tract in favor of every other such Tract; and shall create reciprocal rights and obligations between and among City and the respective Owners, mortgagees, optionees and successors in title to all Tracts and to the Common Areas and privity of contract and estate between City and all Owners and/or Mortgagees of said Tracts, their respective heirs, legatees, devisees, and executors, administrators, personal and legal representatives, successors and assigns.
- B. **Right of Repurchase.** If any Owner fails to commence construction of a building upon a Building Site purchased by such Owner within a two (2) year period commencing with the date of a conveyance from City to an Owner, other than City, City shall have the right to repurchase the Building Site at any time within one hundred eighty (180) days after the expiration of said two (2) year period upon giving fifteen (15) days prior written notice of its intention to repurchase to said Owner. The repurchase price shall be the price paid by Owner for the Building Site when purchased from City plus reimbursement for any real property taxes paid by Owner relating to the Building Site, less the unpaid balance of any mortgage or deed of trust or other amounts, non-payment of which may be assessed as liens against the Building Site. The provisions of this Section shall be specifically enforceable as set forth herein. If City fails to give written notice exercising its right of repurchase within the one hundred eighty (180) day period aforesaid, said right of repurchase shall be deemed waived. "Commencement of construction of a building" as defined herein means that the Owner of the Building Site has (1) obtained approval of City; (2) obtained building permits from the appropriate governmental authorities authorizing construction of the building and improvements as approved by City; (3) entered into a construction contract with a contractor licensed to do business in Missouri for construction of a building; and (4) expended at least the sum of Ten Thousand Dollars (\$10,000.00) pursuant to such construction contract for on-site construction work. The right of Repurchase hereby reserved by City may be assigned by City.
- C. **Assignments of City's Rights and Duties.** Any and all of the rights, powers and reservations of City herein contained may, upon the prior written approval of City's mortgage lender on the Park, be assigned by City to any person, corporation or association which will assume any or all of the duties of City hereunder, and upon any such person, corporation or association which will assume any or all of the duties of City hereunder, and upon any such person, corporation or association's evidencing its consent in writing to accept such assignment, said assignee shall, to the extent of such assignment, assume City's duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by City herein. Upon such assignment, and to the extent thereof, City shall be relieved from all liabilities, obligations and duties hereunder. The term "City" as used herein includes all such assignees and their heirs, successors and assigns.
- D. **Enforcement.** This declaration may be enforced, as provided hereinafter, by the Owners as well as by the City. Each Owner, by acquiring an interest in a Tract in the park shall be deemed to have irrevocably appointed the City (but not exclusively) for such purposes. The violation of any condition, covenant, restriction, reservation or other provision of this Declaration shall give to the City and the Owners the right to bring proceedings in law or equity against the party or parties violating or attempting to violate this Declaration for injunctive relief, to enjoin any such violation(s) or to cause any such violation to be remedied, or to recover damages resulting from such violation, or both. In addition, violations of any of this Declaration shall give to the City the right to enter upon the premises and remove at the expense of the Owner thereof any structure, thing or condition that may be or exists thereon contrary to the provisions hereof. All provision of this Declaration shall be specifically enforceable by the City hereunder and Owners. If, in the

opinion of the City, or any Owner, it shall be necessary to secure the services of any attorney to enforce the provisions of this Declaration, then the fee of such attorney and all other costs and expenses in connection with any contemplated or actual legal proceedings in such connection shall be payable by the Owner of the Tract which is the subject of said proceedings. Every act, omission to act, or condition which violates this Declaration herein contained shall constitute a nuisance and every remedy available in law or equity for the abatement of public or private nuisances shall be available to the Owners and the City. All remedies shall be cumulative and not exclusive.

- E. Duration. The covenants, reservations and restrictions herein created and provided for shall be for a term of twenty-five (25) years commencing with the date hereof and for such additional term or terms as hereinafter provided and the terms and provisions of this Declaration shall be deemed to be and construed as covenants running with the land. Said covenants, reservations and restrictions shall be automatically extended for successive terms of ten (10) years unless the Owners in and to Tracts within the Center whose Tracts in the aggregate contain more than seventy percent (70%) of the total number of square feet of Developable Land of the Tracts of the Center and the Mortgagees of such Tracts of said Owners shall duly consent (such consent not to be unreasonably withheld) and file in the office of the Recorder of Deeds of Henry County, Missouri, a declaration wherein said Owners and Mortgagees shall agree that said covenants, reservations and restrictions shall either be amended, modified or terminated in part or in full. Notwithstanding anything contained herein to the contrary, the provisions of this Declaration may be amended, terminated, modified or supplemented by one hundred percent (100%) of all Owners in the Park. Additionally, notwithstanding anything contained herein to the contrary, the provisions of this Declaration may be amended, terminated, modified or supplemented by City at any time and from time to time as may be required by any local, state or federal agency, authority, commission or other governmental entity or subdivision thereof having jurisdiction or review authority with respect to any of the provisions of this Declaration, or as may be allowed by any public or private utility provider. Particularly, City reserves the right to supplement this Declaration to designate General Common Areas or Limited Common Areas during a subsequent platting or re-platting of the Real Property.

Should any existing owner desire a variance from the General Restrictions & Requirements as outlined in Section 3 of the Restrictive Covenants, application may be made to the City Council who by a majority vote of the Council during a regularly scheduled meeting of said Council, may grant a variance in accordance with the request. Prior to granting any variance, a public hearing shall be held by the Council, and notice shall be sent to all owners of real property in Gerhart Industrial Park. Said notice shall state the request of variance, and inform the property owners of the date, time and location of the public hearing. Any owner of property in Gerhart Industrial Park shall be afforded the opportunity to state their opinion on any variance request. The decision of the City Council shall be considered final.

- F. No Waiver. All of the conditions, covenants, restrictions and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, restrictions and reservations, or any part thereof, is invalid, such invalidity shall not affect the other Sections of this Declaration.
- G. Benefits and Burdens. The terms and provisions contained in this Declaration shall bind and inure to the benefit of City, the Owners of all Building Sites located within the property, the Owners of additional Property made subject to this Declaration and their respective heirs, successors, personal representatives, and assigns.
- H. Notice. Any notices required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested, and shall be directed as follows: If intended for a Building Site Owner (a) to the address of the Building Site if improved; (b) if the Building Site is not improved to the address set forth in the purchase contract or purchase contract application; or (c) if none of the foregoing to the last known address of the Owner.
- I. First Refusal. If any Owner or Owners of a Building Tract with the exception of City shall desire at any time to sell or lease the Building Tract, they shall first give City at least (7) days prior written

notice of receipt of an extended offer to purchase or lease, and the terms of the proposed sale or lease. City shall have the right of first option to purchase or lease such Building Tract upon the same terms as the proposed sale or lease described in such notice. City may accept such offer within such seven (7) days subject to all conditions of such offer as well as a thirty (30) day financing contingency. Any change in terms or new proposal of any sort must be re- submitted to City, in accordance with the above provision. The provisions of this right of first option may be expressly waived in writing by City as to any Tract, and the same, shall not apply to any mortgagee owning a recorded mortgage on any Building Tract. Further, the provisions of this section shall not be applicable to purchasers at foreclosure or other judicial sales under mortgages or to transfer in lieu of foreclosure of any such mortgage; provided that said mortgagee gives written notice of the default with respect to said mortgage to City and gives City right to cure the default in said mortgage within ten (10) days of such notice and provided further that City be given the right prior to the institution of foreclosure proceedings to purchase the mortgage indebtedness and that notice of such intention to institute mortgage foreclosure proceedings be given at least twenty (20) days prior to the institution of such proceedings.

The provisions hereof with respect to City's right of first refusal shall not apply to sales or leases made by City.

- J. Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.
- K. Headings. All headings utilized in this Declaration are for convenience only and shall not be controlling in the interpretation of this Declaration.

Signed and accepted by the City of Clinton on May 28, 1997.

Recorded by the Henry County Recorder of Deeds on May 29, 1997, at 2:30 p.m. in Book 613, Page 303-316.

Addendum accepted by property owners on December 22, 2006. Addendum recorded by the Henry County Recorder of Deeds on January 31, 2007, at 10:30 a.m. in Book 676, Page 4844-4848.

Recorded in Henry County, Missouri



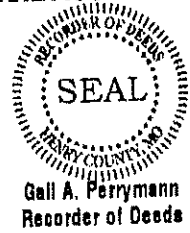
Recording Date/Time: 04/12/2023 at 03:27:39 PM

Book: 2023 Page: 1064

Instr #: 202301064

Pages: 4

Fee: \$33.00 S 20230001180



(Space above reserved for Recorder of Deeds Certification)

TITLE OF DOCUMENT: Corporation Special Warranty Deed

DATE OF DOCUMENT: April 12, 2023

GRANTOR(S): CITY OF CLINTON, MISSOURI, a Municipal corporation

MAILING ADDRESS: 105 E Ohio, Clinton, MO 64735

GRANTEE(S): H2 PROPERTY LLC, a Missouri Limited Liability Company

MAILING ADDRESS: 694 NW 1271 P Road, Urich, MO 64788

LEGAL DESCRIPTION: LOT 18, REPLAT OF GERHART INDUSTRIAL PARK, AN ADDITION TO THE CITY OF CLINTON, HENRY COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

Street address of said property is: Lot 18 Gerhart Industrial Park, Clinton, MO 64735

CORPORATION SPECIAL WARRANTY DEED

This deed is made on April 12, 2023, by and between the City of Clinton, Missouri, a municipal corporation (the "Grantor"), and H2 Property, LLC, a Missouri Limited Liability Company (the "Grantee") whose mailing address is 694 NW 1271 P Road, Urich MO 64788.

The Grantor, in consideration of the sum of One Dollar and other valuable consideration paid to the Grantor by the Grantee, the receipt and sufficiency of which is acknowledged, does by these presents, sell and convey unto the Grantee, its successors and assigns, the following described real estate located in Henry County, Missouri:

Lot 18, Gerhart Industrial Park

Subject to Restrictive Covenants recorded at Book 613 Page 303 in the office of the Recorder of Deeds of Henry County, Missouri, with addendum recorded at Book 676, Page 4844.

Grantee takes title subject to the following additional restrictions, which the parties agree and declare to be covenants running with the land to be binding and fully enforceable against Grantee or any person or entity claiming through Grantee. Grantee agrees:

- a) Use of Property. Grantee agrees to occupy and use the property to support Grantee's operations within the City of Clinton. Grantee's obligations will be waived for any time H2 is not able to occupy and use the Property as a result of a "force majeure." "Force Majeure" shall be defined to include (but not be limited to) acts of God, war, civil disorders, lockouts, strikes, and all other similar causes without the fault or beyond the control of Grantee.
- b) Reacquisition Right. Grantor shall have the right to reacquire the property as set forth below if any of the following occur before the expiration of twenty-four months from delivery of deed by the Grantor.
- c) Grantee, or its successor or assign, fails to construct a facility of at least 17,000 square feet.
- d) The property is subject to certain other conditions and restrictions contained within an agreement between Grantor and Grantee, and notice of those additional conditions and restrictions is given.

The parties expressly agree that all of these conditions of reacquisition touch and concern the land and shall run with the land. Grantor shall give Grantee a written notice of its intention to exercise its rights of reacquisition and Grantee will have 30 calendar days to cure provided, however, that no notice to cure shall be required should H2 be under the jurisdiction of any federal bankruptcy court. If, before construction of improvements and after notice Grantee fails to cure within 30 calendar days, City may elect to exercise its reacquisition rights over the property against Grantee, by paying \$1.00 to Grantee to reacquire the Property and upon such payment Grantee agrees to immediately execute and deliver a special warranty deed to Grantor. If no notice is required hereunder, Grantor may immediately proceed to reacquire the property. Grantor will pay all closing costs associated with its reacquisition of the Property. Grantor's reacquisition rights are cumulative to any other legal or equitable remedies available to Grantor. If, within ten years from the date of delivery of deed by Grantor, Grantor has not notified Grantee or its successor or assign of an intention to reacquire the property hereunder, then any encumbrances created herein concerning Grantor's reacquisition rights and Grantee's use of the property shall expire, be released by Grantor and be unenforceable without any further action by the parties. In any event, Grantor agrees, if requested by Grantee or its successor, to execute and deliver to Grantee for recording a "Release of Deed Restrictions", if the restrictions have expired by their own terms, or have been expressly waived in writing by Grantor. The parties agree that none of these conditions or restrictions constitute an unreasonable restriction on any party's ability to transfer the property.

If, after construction of improvements as called for herein, Grantee decides to sell the property or business within 10 years of the original land sale date, or there is a default of Grantee's obligations under the Agreement between the parties, notice of which is given hereby, the provisions of this

paragraph shall apply. The land shall be valued as set forth in a certain agreement executed between Grantor and Grantee. If, during the first year after delivery of deed, Grantee sells the business or defaults in its obligations under the Agreement, Grantee shall pay Grantor \$14,100 for the value of the property conveyed. If Grantee sells the business or defaults in its obligations between years 1 and 10 of the original land sale date, the land sale cost will be prorated and reduced by 10%/year. After ten years, the land is released to Grantee for \$1.00 and other considerations.

To have and to hold the property described above with all the rights, privileges, appurtenances and immunities thereto belonging unto the Grantee and its successors and assigns forever. The Grantor further covenants that such real estate is free and clear from any encumbrance done or suffered by it, except as herein stated, and that it will warrant and defend the title to the real estate unto the Grantee and its successors and assigns forever, against the lawful claims and demands of all persons claiming through Grantor.

In witness whereof, the Grantor has caused this deed to be signed by its Mayor and City Clerk the day and year above written.

City of Clinton, Missouri

Carla Moberly
Carla Moberly, Mayor

ATTEST

Wendee Seaton
Wendee Seaton, City Clerk



STATE OF MISSOURI)
) SS.
COUNTY OF HENRY)

On 12th of Apr, 2023, before me, appeared **Carla Moberly**, to me personally known, who being by me duly sworn, did say that he is the Mayor of the City of Clinton, Missouri, a municipal corporation, and the seal affixed to the foregoing deed is the official seal of the municipality and the deed was signed and sealed in behalf of the Grantor by authority of its City Council, and **Carla Moberly** acknowledged the deed to be the free act and deed of the corporation.

In witness whereof, I have placed my hand and notarial seal the day and year last above written.

Notary Public

Stephan Strawser

STEPHANIE STRAWSER
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
COMMISSIONED FOR HENRY COUNTY
MY COMMISSION EXPIRES FEB. 02, 2024
ID # 12569061

Exhibit D

RELEASE OF DEED RESTRICTIONS

This instrument, made and entered into this _____ day of _____, 20____ by the City of Clinton, a municipal corporation of the State of Missouri,

Witnesseth:

WHEREAS, pursuant to that certain Warranty Deed from the City of Clinton, a municipal corporation to H2Property, LLC, a Missouri Limited Liability Company dated _____, 2023, and recorded in the Recorder of Deeds office for Henry County, Missouri at book _____, Pages _____, the City of Clinton imposed certain deed restrictions on the property located in Henry County, Missouri, more particularly described as:

Lot 18, Gerhart Industrial Park

And WHEREAS, the conditions of the restrictions have been satisfied,

THEREFORE, The City of Clinton, a municipal corporation does hereby release the above described real property from the force and effect of the above named deed restrictions and covenants and relinquishes its rights to reacquire the above described real estate.

The City of Clinton, by

Mayor

Date:

Attest:

City Clerk

Date:

STATE OF MISSOURI)

) SS.

COUNTY OF HENRY)

On _____, 20____, before me, appeared _____ and _____, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Clinton, Missouri, a municipal corporation, and the seal affixed to the foregoing instrument is the official seal of the municipality and the instrument was signed and sealed in behalf of the Grantor by authority of its City Council, and _____ and _____ acknowledged this instrument to be the free act and deed of the City.

In witness whereof, I have placed my hand and notarial seal the day and year last above written.

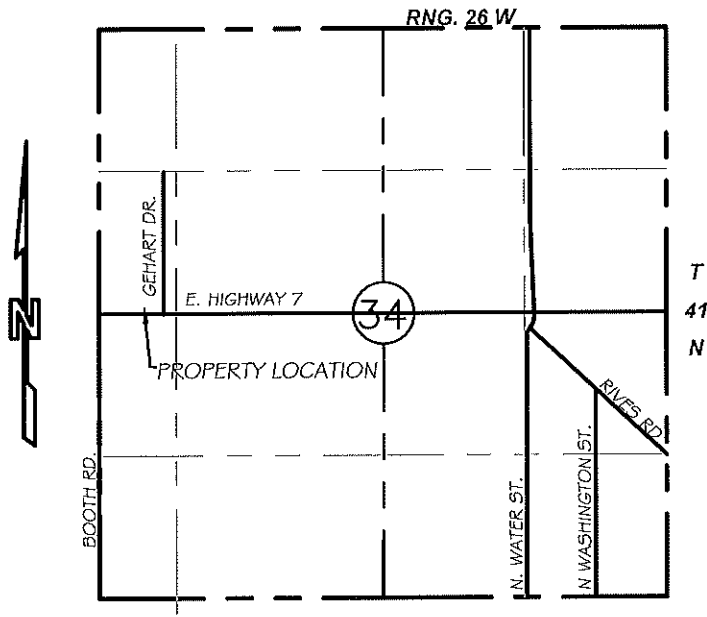
Notary Public

Exhibit E

HENRY COUNTY TAX ABATEMENT SUMMARY

To be attached upon

approval by the Henry County Enhanced Enterprise Zone Board



VICINITY MAP

NOT TO SCALE

EXHIBIT F

UTILITY CONTACTS

EVERGY
(816)471-5275

HENRY COUNTY WATER COMPANY
(660)885-2157

CTCLCL-CENTURY LINK
(573)634-1615

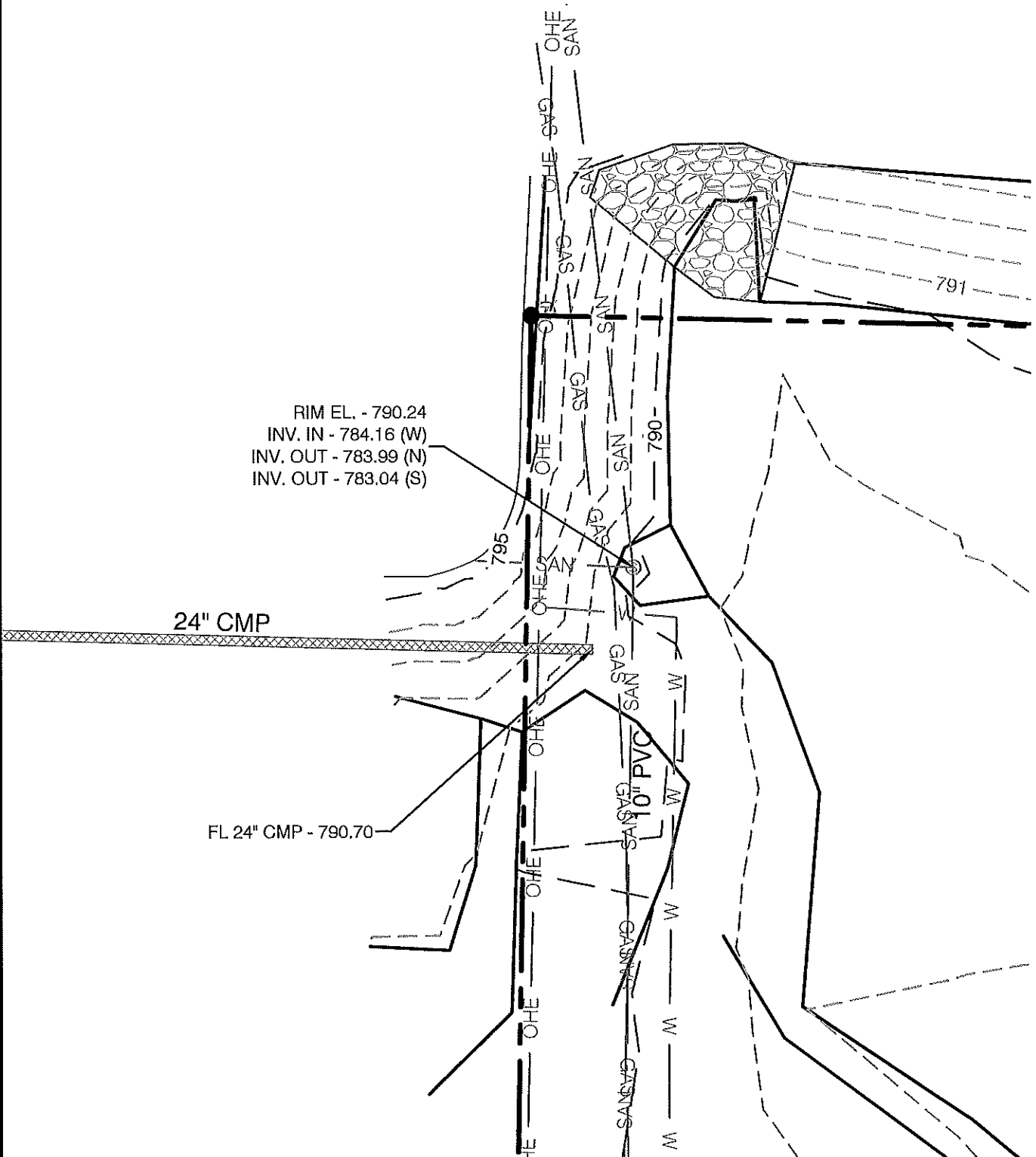
CHARTER COMMUNICATIONS
(636)387-6648

CITY OF CLINTON (SEWER)
(660)885-6611

LIBERTY UTILITIES
(618)267-1675

DISCLAIMER:

THE CONTRACTOR SHALL NOTIFY THE ENGINEER IMMEDIATELY IF HE OBSERVES CONDITIONS IN THE FIELD THAT APPEAR TO BE UNFORESEEN OR ARE MATERIALLY DIFFERENT THAN SHOWN ON THE



RIM EL. - 790.24
 INV. IN - 784.16 (W)
 INV. OUT - 783.99 (N)
 INV. OUT - 783.04 (S)

24" CMP

FL 24" CMP - 790.70

