

BILL NO. 2019-034

ORDINANCE NO. 8281

**A SPECIAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI, APPROVING ACQUISITION OF PROPERTY ADJACENT TO MARMADUKE PARK.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEVADA, MISSOURI THAT:**

**Section 1.** The contract attached hereto as exhibit A is approved as an obligation of the City of Nevada, MO.

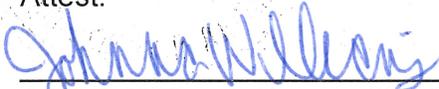
**Section 2.** The City Manager and City Clerk are authorized and directed to execute the same.

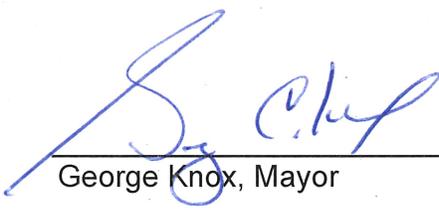
**Section 3.** This ordinance will be in full force and effect from and after its passage and approval.

**PASSED, APPROVED and ADOPTED** by the City Council of the City of Nevada, Missouri, this 3rd day of September, 2019.

(SEAL)

Attest:

  
\_\_\_\_\_  
Johnna Williams, Deputy City Clerk

  
\_\_\_\_\_  
George Knox, Mayor

**AGENDA ITEM**  
August 20, 2019

Subject: Marmaduke Property

Department: Administration

It was recently discovered a portion of Marmaduke Park is not legally titled in the City's Name. The attached agreement will adjust the boundary lines of Marmaduke Park.

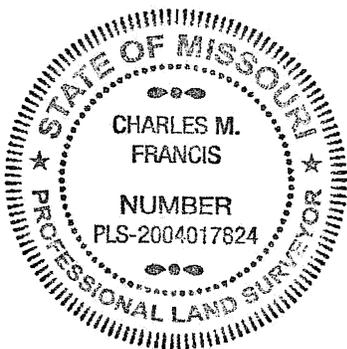
Francis Land Surveying, LLC  
113 South Street, Stockton, MO 65785

DESCRIPTION OF NEW TRACT "B"

A tract of land situated in Section 32, Township 36 North, Range 31 West of the Fifth Principal Meridian, Vernon County, Missouri, more particularly described as follows:

Commencing at an existing iron pin at the northeast corner of Lot 14 of Marmaduke Estates, Phase I, as per plat recorded in Plat Cabinet 1 at page 149, being a replat of a portion of Block One of Lakewood Village First Addition; thence N29°08'01"W, 99.13 feet to an existing iron pin on the north line of the tract recorded in Book 2017, page 197 of the Deed Records of Vernon County; thence along the boundary of said Book 2017, page 197 tract the following courses; N40°22'59"E, 122.58 feet to an existing iron pin; thence S80°41'25"E, 503.41 feet to an existing iron pin; thence S12°28'32"E, 316.48 feet to an existing iron pin at the point of beginning of the tract herein described; thence S40°25'17"W, 397.56 feet to an existing iron pin; thence S62°11'09"W, 60.33 feet to an iron pin set on the easterly right-of-way line of Anticipation Avenue; thence northwesterly along said right-of-way line along a non-tangent curve to the left having a radius of 320.00 feet and a chord bearing of N22°06'13"W, an arc distance of 263.84 feet to an iron pin set; thence N77°07'03"E, 418.16 feet to the point of beginning, containing 1.2 acres, more or less.

Subject to all rights of way and easements of record.



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Charles M. Francis

Date

**REAL ESTATE SALES AGREEMENT**

**THIS AGREEMENT** is made and entered into this 3rd day of September 2019, by between the City of Nevada, Missouri, hereafter called "BUYER" and Daniel E. Barnes, as Trustee of the Daniel E. Barnes, Revocable Trust dated February 3, 2017, of Vernon County, Missouri, whose mailing address is, hereafter called "SELLER",

**WITNESSETH:**

1. Subject to confirmation and approval of the City Council of Nevada, Missouri, SELLER agrees to sell and BUYER agrees to buy a portion of Seller's unimproved property which was acquired by SELLER'S Trust by Deed dated February 3, 2017, recorded at Book 2017, Page 197 as instrument #2017R00198, in the Office of the Recorder of Deeds of Vernon County, Missouri which is attached as Exhibit A and incorporated herein by reference. The legal description of the tract purchased is to be perfected by Surveyor prepared legal description (at a cost of the City) and will be the tract depicted on the drawing attached as Exhibit B, in which the land lying south of the orange line is the tract buyer is to acquire.

2. The purchase price is \$4,995.00 to be paid with good funds on closing.

3. SELLER will provide a title search reflecting the tract as marketable in fact from Bowman's Vernon County Title. Title insurance, at buyer's cost, based on the search will be provided at closing insuring title as marketable in fact.

4. Taxes for the year of sale will be prorated to closing. Taxes for prior years have been or will be paid by the SELLER.

5. Conveyance will be by General Warranty Deed delivered at closing. The deed will be in the form attached hereto and incorporated herein by reference, which will be deposited with the closing agent (Bowman's Vernon County Title Company) to await closing.

6. Closing will be scheduled at the earliest convenience of the parties and is tentati scheduled for (as soon as approvals are in place and Bowman Title can Schedule) depending u availability of the title company,

7. Costs for the Title insurance, closing cost and recording fees will be paid BUYER. Any costs for curative documents or acquiring the same will be paid by SELLER.

8. This agreement is subject to approval of the City of Nevada Council. Approval require two readings of an ordinance. If the approval is not in place within 40 days of the dat the agreement the agreement will be of no force and effect.

**IN WITNESS WHEREOF**, the parties have executed this agreement effective the and year first above written.

**SELLER:**

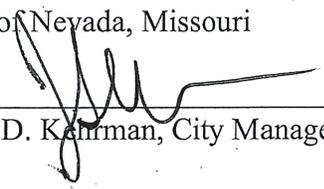
Daniel E. Barnes, Revocable Living Trust

*Daniel E Barnes* dotloop verified  
08/15/19 12:46 PM CDT  
CWAI-XY1C-UKZV-OEBW

Daniel E. Barnes, Trustee

**BUYER:**

City of Nevada, Missouri

By:   
J. D. Keffman, City Manager

(SEAL)

ATTEST:

  
Johanna Williams, Deputy City Clerk

Recorded in Vernon County, Missouri



Recording Date/Time: 10/08/2019 at 01:20:52 PM

Book: 2019 Page: 2248

Instr #: 2019R02281

Pages: 2

Fee: \$27.00 S 20190002230

BOWMANS TITLE CO



Shelly Baldwin  
Recorder of Deeds

## TRUSTEE'S WARRANTY DEED

This DEED, made and entered into this 8<sup>th</sup> day of October, A.D., 2019 by and between,

**DANIEL E BARNES, AS TRUSTEE OF THE DANIEL E. BARNES TRUST DATED FEBRUARY 3, 2017 (GRANTOR), and**

**CITY OF NEVADA, MISSOURI, (GRANTEE)**

Grantee's mailing address is: 110 SOUTH ASH NEVADA MO 64772

WITNESSETH, that the said Grantor, for and in consideration of the sum of ten dollars and other valuable consideration paid by the said Grantee, the receipt of which is hereby acknowledged, does or do by these presents Grant, Bargain and Sell, Convey and Confirm, unto Grantees, the following described real estate situated in the County of Vernon, in the State of Missouri to-wit:

A TRACT OF LAND SITUATED IN SECTION 32, TOWNSHIP 36 NORTH, RANGE 31 WEST OF THE FIFTH PRINCIPAL MERIDIAN, VERNON COUNTY, MISSOURI, **MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

COMMENCING AT AN EXISTING IRON PIN SET AT THE NORTHEAST CORNER OF LOT 14 OF MARMADUKE ESTATES, PHASE I, AS PER PLAT RECORDED IN PLAT CABINET 1 AT PAGE 149, BEING A REPLAT OF A PORTION OF BLOCK ONE OF LAKEWOOD VILLAGE FIRST ADDITION; THENCE N29°08'01" W, 99.13 FEET TO AN EXISTING IRON PIN SET ON THE NORTH LINE OF THE TRACT RECORDED IN BOOK 2017, PAGE 197 OF THE DEED RECORDS OF VERNON COUNTY; THENCE ALONG THE BOUNDARY OF SAID BOOK 2017, PAGE 197 TRACT THE FOLLOWING COURSES, N40°22'59"E 122.58 FEET TO AN EXISTING IRON PIN; THENCE S80°41'25"E, 503.41 FEET TO AN EXISTING IRON PIN; THENCE S12°28'32"E, 316.48 FEET TO AN EXISTING IRON PIN, **AT THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED**; THENCE S40°25'17"W, 397.56 FEET TO AN EXISTING IRON PIN; THENCE S62°11'09"W, 60.33 FEET TO AN IRON PIN SET ON THE EASTERLY RIGHT-OF-WAY LINE OF ANTICIPATION AVENUE; THENCE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING COURSES; THENCE NORTHWESTERLY ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 320 FEET AND A CHORD BEARING OF N22°06'13"W,

AN ARC DISTANCE OF 263.84 FEET TO AN IRON PIN SET; THENCE N45°43'26"W, 100.00 FEET TO AN IRON PIN SET; THENCE EASTERLY TO THE POINT OF BEGINNING.

SUBJECT TO RESERVATIONS, RESTRICTIONS OR EASEMENTS AFFECTING SUBJECT LAND. ALSO SUBJECT TO ANY PART LYING IN THE PUBLIC ROADWAY.

TO HAVE AND TO HOLD the same together with all the rights, immunities, privileges and appurtenances to the same belonging unto Grantees and to their heirs and assigns, forever; the said Grantor hereby covenanting that said premises are free and clear of any encumbrances and that said party or parties and the heirs, executors, and administrators of such party or parties shall and will warrant and defend the title to the premises, unto the said Grantee, and to the heirs and assigns of such party or parties forever, against the lawful claims of all persons whomsoever.

The Grantor warrants that the above-described real estate is currently vested in the trustee of the **DANIEL E BARNES, AS TRUSTEE OF THE DANIEL E. BARNES TRUST DATED FEBRUARY 3, 2017**; and that DANIEL E. BARNES is the Trustee of said Trust; said Trust has not on this date been revoked or amended since its establishment on February 3, 2017 in any manner that would prohibit this conveyance; and that pursuant to the powers granted to him as Trustee, said Trustee has and does hereby exercise the authority under the terms of said Trust instrument to make this conveyance.

IN WITNESS WHEREOF, the said Grantor(s) has or have hereunto set their hand or hands the day and year first above written.

*Daniel E. Barnes, Trustee*  
**DANIEL E. BARNES, Trustee**

STATE OF MISSOURI                    }  
COUNTY OF VERNON                }ss

On this 10<sup>th</sup> day of October, 2019, before me personally appeared **DANIEL E BARNES, AS TRUSTEE OF THE DANIEL E. BARNES TRUST DATED FEBRUARY 3, 2017** to me known to be the person or persons described in and who executed the foregoing instrument, and acknowledge that he executed the same as the free act and deed of and with the full authority of the **DANIEL E BARNES, AS TRUSTEE OF THE DANIEL E. BARNES TRUST DATED FEBRUARY 3, 2017** in his capacity as Trustee of the trust.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the County and State the day and year first above written.

My term expires 11-5-2021

TINA M. JONES  
Notary Public – Notary Seal  
STATE OF MISSOURI  
Vernon County  
My Commission Expires Nov. 5, 2021  
Commission #13402193

*Tina M. Jones*  
TINA M. JONES Notary Public



**First American Title™**

## Owner's Policy of Title Insurance

ISSUED BY

**First American Title Insurance Company**

POLICY NUMBER

**5011429-0187503e**

# Owner's Policy

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 18 of the Conditions.

### COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.

(Covered Risks Continued on Page 2)

In Witness Whereof, First American Title Insurance Company has caused its corporate name to be hereunto affixed by its authorized officers as of Date of Policy shown in Schedule A.

### **First American Title Insurance Company**

Dennis J. Gilmore  
President

Jeffrey S. Robinson  
Secretary

For Reference:

**File #:** 1910005

Issued By:

**Bowman's Vernon County Title Company**

208 N. Cedar Street  
Nevada, MO 64772

(This Policy is valid only when Schedules A and B are attached)

This jacket was created electronically and constitutes an original document

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**SCHEDULE A*****First American Title Insurance Company***  
**1 First American Way, Santa Ana, CA 92707**

File No.:	<b>1910005</b>	Policy No.:	<b>5011429-0187503e</b>
Address Reference:	E. MISSION RD. & ANTICIPATION AVE	SI/M:	
Amount of Insurance:	<b>\$4,995.00</b>	Risk Rate:	<b>\$10.00</b>
Date of Policy:	<b>October 8, 2019 at 1:20:52 P.M.</b>		

1. Name of Insured:

**CITY OF NEVADA, MISSOURI**

2. The estate or interest in the Land that is insured by this policy is:

**Fee Simple**

3. Title is vested in:

**CITY OF NEVADA, MISSOURI**

4. The Land referred to in this policy is described as follows:

A TRACT OF LAND SITUATED IN SECTION 32, TOWNSHIP 36 NORTH, RANGE 31 WEST OF THE FIFTH PRINCIPAL MERIDIAN, VERNON COUNTY, MISSOURI, **MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

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**SCHEDULE B**File No. **1910005**Policy No. **5011429-0187503e**

SI/M:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Right or claims of parties in possession not shown by the Public Records.
2. Easements, or claims of easements, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation or adverse circumstances affecting Title that would be disclosed by an accurate and complete survey of the Land or that could be ascertained by an inspection of the Land.
4. Any lien, or right to lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by Public Records.
5. Taxes, or special assessments, if any, not shown as existing liens by the Public Records.
6. Parcel No. 13-9.0-32-000-000-002.020: Taxes for 2019 and subsequent years.
  
7. ZONING ORDINANCE TO THE CITY OF NEVADA, MISSOURI DATED JUNE 15, 1965 AND RECORDED FEBRUARY 2, 1968 IN BOOK 298 AT PAGE 119 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI.
8. RIGHT-OF-WAY OR OTHER EASEMENTS AS SET FORTH IN THAT CERTAIN HOUSE BILL NO. 1286, 85TH GENERAL ASSEMBLY, STATE OF MISSOURI.
9. WATER LINE EASEMENT IN FAVOR OF CONSOLIDATED PUBLIC WATER SUPPLY DISTRICT NO. 1 OF VERNON COUNTY, MISSOURI, DATED JANUARY 24, 1996 AND RECORDED JANUARY 26, 1996 IN BOOK 413 AT PAGE 499 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI.
10. PERPETUAL EASEMENT FOR SEWER LINE PURPOSES IN FAVOR OF THE STATE OF MISSOURI DATED JUNE 16, 1976 AND RECORDED JUNE 18, 1976 IN BOOK 326 AT PAGE 1 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI.
11. WATER LINE EASEMENT IN FAVOR OF CONSOLIDATED PUBLIC WATER SUPPLY DISTRICT NO. 1 OF VERNON COUNTY, MISSOURI DATED JULY 20, 1993 AND RECORDED JULY 26, 1993 IN BOOK 399 AT PAGE 815 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI.
12. THE TERMS, CONDITIONS, RESERVATIONS, AND RESTRICTIONS AS SET FORTH IN THAT CERTAIN AGREEMENT DATED JANUARY 24, 1996 BY AND BETWEEN ACORN TELEVILLAGES, LTD., A UNITED KINGDOM REGISTERED LIMITED COMPANY AND THE CITY OF NEVADA, MISSOURI, AS SET OUT AS AN EXHIBIT TO ORDINANCE NO. 4093-A FILED IN THE CITY RECORDS OF THE CITY OF NEVADA, MISSOURI.

13. SPECIAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI, ORDINANCE NO. 4093-A, AUTHORIZING DISPOSITION OF MUNICIPAL PROPERTY AND APPROVING A CONTRACT FOR THE DISPOSITION THEREOF. SAID ORDINANCE IS DATED JANUARY 24, 1996.
14. THE TERMS, CONDITIONS, RESERVATIONS, AND RESTRICTIONS AS SET FORTH IN THAT CERTAIN AMENDMENT TO AGREEMENT DATED JANUARY 24, 1996 BY AND BETWEEN THE CITY OF NEVADA, MISSOURI AND ACORN TELEVILLAGES, LTD., A UNITED KINGDOM REGISTERED LIMITED COMPANY. SAID AMENDMENT IS DATED APRIL 1, 1997 AND SET OUT AS AN EXHIBIT TO ORDINANCE NO. 4196-S FILED IN THE CITY RECORDS OF THE CITY OF NEVADA, MISSOURI.
15. SPECIAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI, ORDINANCE NO. 4196-S, AUTHORIZING THE EXECUTION OF A REVISED AGREEMENT BETWEEN THE CITY OF NEVADA, AND ACORN TELEVILLAGES, LTD. SAID ORDINANCE IS DATED APRIL 1, 1997.
16. SPECIAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI, ORDINANCE NO. 4209, DATED JULY 1, 1997 AMENDING THE ZONING DISTRICT MAP BY CHANGING THE ZONING FROM R-1 SINGLE FAMILY DWELLING DISTRICT TO RP-1 SINGLE FAMILY PLANNED DISTRICT IN LAKEWOOD VILLAGE, A SUBDIVISION TO THE CITY OF NEVADA, MISSOURI AND TO THAT CERTAIN DEVELOPMENT PLAN FOR LAKEWOOD VILLAGE DATED JUNE 17, 1997 ATTACHED TO SAID ORDINANCE.
17. SPECIAL ORDINANCE TO THE CITY OF NEVADA, MISSOURI, ORDINANCE NO. 4283, APPROVING DONATION AND ACCEPTANCE OF SEWER AND GRANT OF EASEMENT FROM ACORN TELEVILLAGES. SAID ORDINANCE IS DATED JUNE 2, 1998.
18. ORDINANCE NO. 3882, WHEREIN THE CITY OF NEVADA, MISSOURI AND CONSOLIDATED PUBLIC WATER SUPPLY DISTRICT NO. 1 OF VERNON COUNTY, MISSOURI, BY INTER-GOVERNMENTAL COOPERATIVE CONTRACT ESTABLISHED AN EASEMENT AND RIGHT-OF-WAY ACROSS STATE PROPERTY. SAID EASEMENT IS DATED JULY 20, 1993 AND RECORDED JULY 17, 2001 IN BOOK 443 AT PAGE 645 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI.
19. THE TERMS AND CONDITIONS OF THE CITY OF NEVADA DEVELOPMENT AGREEMENT #5 – LAKEWOOD VILLAGE DATED APRIL 16, 2002 BY AND BETWEEN THE CITY OF NEVADA, NEVADA, MISSOURI AND JCC ENTERPRISES, LLC (JAMES C. CORRAL, DEVELOPER). SAID AGREEMENT IS RECORDED APRIL 18, 2002 IN BOOK 447 AT PAGE 960 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI.
20. THE TERMS AND CONDITIONS OF THAT CERTAIN ORDINANCE NO. 6255 DATED OCTOBER 5, 2004 WHEREIN THE CITY OF NEVADA, MISSOURI APPROVED MARMADUKE ESTATES PHASE 1 DEVELOPMENT AGREEMENT BY AND BETWEEN TERRY HOEPER, DEVELOPER AND THE CITY OF NEVADA, MISSOURI, A MUNICIPAL CORPORATION. SAID ORDINANCE IS RECORDED NOVEMBER 24, 2004 IN BOOK 468 AT PAGE 435 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI.
21. THE TERMS AND CONDITIONS OF THAT CERTAIN ORDINANCE NO. 6256 DATED OCTOBER 5, 2004 WHEREIN THE CITY OF NEVADA, MISSOURI APPROVED A FINAL PLAT OF MARMADUKE ESTATES PHASE I. SAID ORDINANCE IS RECORDED NOVEMBER 24, 2004 IN BOOK 468 AT PAGE 442 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI.
22. THE TERMS AND CONDITIONS OF THOSE CERTAIN COVENANTS, CONDITIONS AND RESTRICTIONS, EXECUTED BY TERRY R. HOEPER AND DIXIE J. HOEPER, HUSBAND AND WIFE, AND J. ROGER IRVIN AND CAROL E. IRVIN, HUSBAND AND WIFE, DATED NOVEMBER 24, 2004 AND RECORDED DECEMBER 2, 2004 IN BOOK 468 AT PAGE 539 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI, DELETING ANY COVENANT, CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL RIGIN TO THE EXTENT SUCH COVENANTS, CONDITIONS OR RESTRICTIONS VIOLATE 42 USC (c) OR ANY SIMILAR STATE STATUTE OR LOCAL ORDINANCE.
23. AFFIDAVIT BY AND BETWEEN J. ROGER IRVIN, CAROL E. IRVIN, TERRY HOEPER, DIXIE HOEPER AND HARLAN MOORE, CITY MANAGER, CITY OF NEVADA, MISSOURI, DATED JULY 27, 2006 AND RECORDED JULY 28, 2006 IN BOOK 480 AT PAGE 474 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI.

SAID AFFIDAVIT IS IN REGARD TO REQUIREMENTS OF THE DEVELOPMENT AGREEMENT AND ADDENDUM REFERENCED ABOVE WHICH REMAIN TO BE COMPLETED AND/OR RESOLVED BETWEEN SAID PARTIES OF THIS AFFIDAVIT. **(NOTE: SAID AFFIDAVIT REFERS TO DEVELOPMENT AGREEMENT DATED APRIL 16, 2002 BETWEEN JCC ENTERPRISES, LLC DEVELOPER AND THE CITY OF NEVADA RECORDED IN BOOK 447 AT PAGE 963 WHEN IN FACT THE CORRECT PAGE NUMBER SHOULD BE PAGE 960) (AFFIDAVIT REFERS TO EXCEPTIONS NO. 19 AND NO. 20 SET FORTH ABOVE)**

24. THE TERMS AND CONDITIONS OF THAT CERTAIN ORDINANCE NO. 6483 EXECUTED BY THE CITY OF NEVADA, MISSOURI, WHICH APPROVES FACILITY CONVEYANCE FOR THE SANITARY SEWER IN MARMADUKE ESTATES, PHASE 1 SAID ORDINANCE IS DATED DECEMBER 20, 2005 AND RECORDED ON MARCH 7, 2008 IN BOOK 491 AT PAGE 838 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI.
25. FUTURE ADVANCE DEED OF TRUST EXECUTED BY DANIEL E. BARNES, TRUSTEE OF THE DANIEL E. BARNES REVOCABLE TRUST AGREEMENT DATED FEBRUARY 3, 2017, TO JOHN R. BANDY, TRUSTEE FOR FCS FINANCIAL, PCA, SECURING FUTURE ADVANCES TO \$67,500.00. SAID DEED OF TRUST IS DATED APRIL 27, 2017 AND RECORDED MAY 1, 2017 IN BOOK 2017 AT PAGE 909 IN THE RECORDER'S OFFICE, VERNON COUNTY, MISSOURI. (NOTE: THE ABOVE-DESCRIBED DEED OF TRUST CONTAINS ADDITIONAL LAND. THEREFORE, ONLY A PARTIAL DEED OF RELEASE MAY BE NEEDED.)

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protection
 if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
  - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - (i) to be timely, or
    - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

## CONDITIONS

## 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
  - (i) The term "Insured" also includes
    - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
    - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
    - (C) successors to an Insured by its conversion to another kind of Entity;
    - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
      - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
      - (2) if the grantee wholly owns the named Insured,
      - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
      - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
  - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive

notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

## 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

## 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

## 5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

#### 6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim

#### 7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance.  
To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
- (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
- (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.
- (iii) Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

#### 8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
- the Amount of Insurance; or
  - the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
- the Amount of Insurance shall be increased by 10%, and
  - the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

**9. LIMITATION OF LIABILITY**

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

**10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

**11. LIABILITY NONCUMULATIVE**

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

**12. PAYMENT OF LOSS**

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

**13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
- (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

**14. ARBITRATION (DOES NOT APPLY IN THE STATE OF MISSOURI)**

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title

Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

**16. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

**17. CHOICE OF LAW; FORUM**

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

**18. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at **First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, California 92707. Phone: 888-632-1642.**

**BOWMAN'S VERNON COUNTY TITLE CO**

208 N. Cedar, Nevada, MO 64772

Phone: 417-667-7565

October, 23, 2019

City of Nevada  
110 S. Ash  
Nevada, MO 64772

SUBJECT: Title Insurance Policy  
Recorded Deed in Book 2019 at Page 2248

Dear City of Nevada

Enclosed is your Final Title Insurance Policy and/or Deed, as ordered on your recent real estate transaction. These papers complete the documents regarding your purchase or loan closing. You will need to keep them in a safe place for your records.

We appreciate you allowing us to serve you in this transaction. We hope you will allow us to help you every time you have any title work done in Vernon County, Missouri.

Thank You!



Gloria Latta  
Vernon County Title Co

Enclosures