

MEMORANDUM OF UNDERSTANDING AND AGREEMENT
BETWEEN AND AMONG SMITH-LINDSEY DEVELOPMENT, LLC; THE HISTORIC
GIBBS DRIVE NEIGHBORHOOD ASSOCIATION; AND FOUNTAIN CITY TOWN HALL.

Whereas the Knoxville-Knox County Metropolitan Planning Commission ("MPC") has granted approval of the application of Smith-Lindsey Development, LLC to re-subdivide and combine Lots 2 and 4 of the Gibbs and Maloney Addition to Fountain City into one plat (the "Property");

Whereas Smith-Lindsey Development, LLC has filed an application to rezone the Property from low density residential use to general commercial use (the "Application");

Whereas MPC has recommended the rezoning of said Property from low density residential use to office use, subject to certain conditions;

Whereas the City Council voted to allow Smith-Lindsey Development, LLC to revise its original application subject to further review by MPC;

Whereas Smith-Lindsey Development, LLC has filed a Revised Application with MPC, which references a survey that shows the Property divided into two separate lots, designated 4R1 and 4R2, such survey being attached hereto as Exhibit "A";

Whereas the Revised Application seeks approval from the City Council (1) to rezone Lot 4R1 for office use, under the terms and conditions set out in the City of Knoxville's zoning ordinance for "O-1" zones, and (2) to rezone Lot 4R2 for commercial use, under the terms and conditions set out in the City of Knoxville's zoning ordinance for "C-1" zones.

Whereas Smith-Lindsey Development, LLC has reached a compromise agreement between itself and the interested parties of the Historic Gibbs Drive Neighborhood Association, and the Fountain City Town Hall;

NOW THEREFORE, said parties hereby state their compromise agreement and hereby request the Knoxville-Knox County Metropolitan Planning Commission, and the Council of the City of Knoxville to rezone the Property as requested, subject to the following conditions:

- a. Smith-Lindsey Development, LLC shall, upon the City Council's approval of the rezoning request, execute and record in the public records a Declaration of Restrictive Covenants that shall run with the land of the Gibbs and Maloney's Addition to Fountain City (attached hereto as Exhibit "B").
2. The rezoning shall be subject to a concept plan that outlines the following:
 - a. The architectural character of structures built on the Property, and the building materials used in the construction of such structures, shall be compatible with the architectural character and building materials of the buildings in the Historical

Gibbs Drive Neighborhood that have contributed to the Neighborhood's designation as a "Historical" area in the official register for such areas maintained by the United States government. All building plans, and all plans for significant changes to any established buildings on the Property must be approved in advance, pursuant to the "use-on-review" procedures of the City of Knoxville's zoning ordinance, as being consistent with this condition. Notwithstanding the foregoing, the parties acknowledge that the concept plan shall accommodate the construction of commercial buildings that are suitable for commercial and office uses.

- b. Any building located on Lot 4R1 shall not exceed the height of thirty five (35) feet from the ground.
- c. The Property will be developed in such a way that the vertical light emitted from the Property at 5' above grade level shall not exceed 0.10 fc at the property line with the Truan Lot and at the property line with the Gibbs Drive right-of-way.
- d. The public use of Lot 4R1, other than, for example, exterior drive through services provided by a banking institution, shall be restricted to the daytime hours between 7:00 a.m. and 9:30 p.m.
- e. The public use of Lot 4R2 shall be restricted to the daytime hours between 5:30 a.m. and 10:30 p.m., Sunday through Thursday, and the daytime hours between 5:30 a.m. and 11:00 p.m. on Friday and Saturdays.

Restaurant use: The parties agree that the use of Lot 4R2 by eating and drinking establishments may be important to the success of any future development of the Property under C-1 zoning. However, high impact eating and drinking establishments may also be harmful to the character of adjacent residences. Accordingly, the parties agree that the use-on-review process shall pay special attention to the implementation of high impact eating and drinking establishments, such as McDonald's, Wendy's, or Krystal and/or drive-through window service for high impact commercial uses. However, the parties hereby acknowledge their support of drive through uses for a banking institution, office uses, or low impact eating and drinking establishments such as a Starbucks, Panera Bread, or other similar "Fast Casual" or low impact concepts. Additionally, the parties agree to support the use of Lot 4R2 for a business that sells cellular telephone service plans to the extent applicable, if at all, under C-1 zoning.

- f. There shall be no vehicular connection by curb cut or otherwise to (i) the alley at the south end of the Property, or (ii) to the adjacent parcel of land south of the Property, such land having the street address of 5100 North Broadway, Knoxville, TN 37918; provided that if the City of Knoxville ever closes the alley at the south end of the Property, the limitation of clause (i) of this paragraph shall automatically cease.
3. Upon the approval of these terms and conditions by the Knoxville-Knox County Metropolitan Planning Commission and the Council of the City of Knoxville, the parties below agree not to petition for further zoning changes to the Property for a period of ten years, at which time the parties below may confer in good faith about proposed new zoning changes to said lots as a condition precedent to any applications for such changes.

4. The parties hereby express their understanding that the exclusive authority for construing, applying, and enforcing this Memorandum of Understanding, but excluding Exhibit B hereto, is under the statutory planning and review authority granted to official bodies by the City of Knoxville's zoning ordinance, and the statutes of the State of Tennessee authorizing the enactment of said ordinance. It is understood and agreed that any official of the City of Knoxville has the right at any time during normal business hours to enter and investigate the use of the Property, to determine whether the conditions of this Agreement and the requirements of the City's building, zoning and land development regulations are being complied with. Notwithstanding the foregoing, the lot owners within the Gibbs and Maloney Addition to Fountain City, and their successors, may seek to enforce any restrictive covenants recorded for and to their benefit.

AGREED:

By: JD-LSK
Smith-Lindsey Development, LLC

By: Tom D. Khan, a H
Historic Gibbs Drive Neighborhood Association

By: _____
Fountain City Town Hall

**DECLARATION OF RESTRICTIVE COVENANTS
BY SMITH-LINDSEY DEVELOPMENT, LLC**

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration"), made this 6th day of October, 2015, by Smith-Lindsey Development, LLC ("Owner"), in favor all any person that owns fee simple title to real property within the Gibbs and Maloney Addition to Fountain City.

WITNESSETH:

WHEREAS, the Owner holds fee-simple title to certain property in the City of Knoxville, Tennessee, currently located at 2800 and 2806 Gibbs Drive, Knoxville, Tennessee, legally described as lots 4R1 and 4R2 on the survey attached hereto as Exhibit "A," and made a part hereof (collectively, the "Property");

WHEREAS, the Owner has obtained approval from the City Council of Knoxville, Tennessee to rezone Lot 4R1 to O-1, Office and Lot 4R2 to C-1, Neighborhood Commercial from the City Council of the City of Knoxville (or other applicable board); and

WHEREAS, the Owner is desirous of making a binding commitment to assure that the Property shall be developed in accordance with representations and commitments made to the persons having fee simple title to real property within the Gibbs and Maloney Addition to Fountain City; and

WHEREAS, the Owner has presented the restrictions stated herein to the members of the Historic Gibbs Drive Neighborhood Association as consideration for their agreement to support the Owner's request for rezoning Lots 4R1 and 4R2 pursuant to a Memorandum of Understanding executed this date between said parties, and the members of the Historic Gibbs Drive Neighborhood Association have accepted such terms;

NOW, THEREFORE, the Owner voluntarily covenant and agree that the Property shall be subject to the following restrictions that are intended and shall be deemed to be covenants running with the land of the Gibbs and Maloney's Addition to Fountain City, and binding upon the Owner of the Property, its successors in interest and assigns, as follows:

- a. No curb cut will be constructed to allow vehicular access from the Property directly onto Gibbs Drive. Vehicular traffic from the Property to Gibbs Drive or from Gibbs Drive to the Property is expressly forbidden.
- b. A privacy fence will be erected and maintained along and adjacent to the property line between the Property and the adjoining lot to the east, located at 2810 Gibbs Drive (the "Truan Lot"), which fence will be no less than eight feet in height, other than an

arc-shaped taper on each end that will be no less than six feet in height. Said fence will be constructed of cedar wood and will have a gate at approximately the same location as the gate in the existing fence as of September 10, 2015.

c. A reasonable buffer of hardwood and evergreen trees shall be established and maintained along the property line between the Property and the Truan Lot. All elements of the buffer and the fence shall be provided and maintained entirely at the expense of the owner or owners of the Property.

d. The Property will be developed in such away that the vertical light at 5' above grade level shall not exceed 0.10 fc at the property line with the Truan Lot.

e. The sidewalk along the edge of Gibbs Drive and the Property shall be repaired, and maintained in good repair, at the expense of the owner or owners of the Property.

f. All dumpster, trash, and recycling receptacles shall be gated, fully enclosed and screened by a masonry enclosure with landscape elements on all sides other than the gated side. Such receptacles shall be located in reasonable proximity to the southernmost boundary of the Property. Notwithstanding the foregoing, ordinary commercial grade garbage cans/bins are allowed within any area enclosed by a given building.

g. A twenty foot buffer of shrubs and trees shall be reasonably established and maintained between Gibbs Drive and the Property. The buffer will not block the west entrance into Gibbs Drive and the monument thereon, from the view of traffic approaching such entrance within 150 feet south on Broadway. All elements of the buffer and other barriers along said line shall be provided and maintained entirely at the expense of the owner or owners of the Property. The buffer will be designed and appropriately documented by a certified landscape architect.

h. The public use of Lot 4R1, other than, for example, exterior drive through services provided by a banking institution, shall be restricted to the hours between 7:00 a.m. and 9:30 p.m.

i. The public use of Lot 4R2 shall be restricted to the hours between 5:30 a.m. and 10:30 p.m., Sunday through Thursday, and the daytime hours between 5:30 a.m. and 11:00 p.m. on Friday and Saturdays.

j. The Property shall not be used in connection with or to support the following kinds of businesses or offices:

- i. hospitals, however medical offices, dental offices, and medical clinics, other than methadone clinics, will be allowed;
- ii. motels, half-way houses, bail bond offices, check cashing businesses, title loan businesses, and marinas;
- iii. businesses for which tobacco sales account for more than 25 percent of their

- annual revenue;
- iv. motor vehicle sales or servicing businesses, including fueling stations;
 - v. dry cleaning establishments, but cleaning and pressing collection stations where the dry cleaning is conducted off-premise will be allowed.
 - vi. Businesses with outdoor sales lots or outdoor stalls offering vehicles, outdoor equipment, outdoor furnishings, plants and fencing, or previously used consumer items, for sale to the general public.
 - vii. Pawn shops.
- k. There shall be no vehicular connection by curb cut or otherwise to (i) the alley at the south end of the Property, or (ii) to the adjacent parcel of land to the south of the Property, such land having the street address of 5100 North Broadway, Knoxville, TN 37918. Notwithstanding the foregoing, if any portion of the alley is closed by the City of Knoxville and incorporated into the Property then Section (k)(i) shall automatically terminate.
- l. The Property will be developed in such a way that the vertical light at 5' above grade level (as emitted from the Property) shall not exceed 0.10 fc at the property line with the Gibbs Drive right-of-way. Site development plans submitted to the authority having jurisdiction issuing permits prior to site development shall include a site photometric study sealed by a registered engineer that demonstrates maximum 0.10 footcandle illuminance values as measured at the property line of the Property along Gibbs Drive. The site photo-metric study shall apply to all site lighting, building lighting and signage on the Property. All pole mounted and wall mounted lighting shall be directed toward the ground. No portion of the bulb or the globe/glass/plastic surrounding the bulb shall protrude from the light box/housing. Lights located under canopies shall be recessed into the structure ceiling and shall use light shields so as to prevent glare. No portion of the bulb or the glass/plastic surrounding the bulb shall protrude from the structure ceiling.
- m. Invalidation of any provision of this Declaration by judgment of Court shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.
- n. This declaration shall take effect only upon Knoxville City Council approval of the zoning requests made in the Memorandum of Understanding between Owner and the Historic Gibbs Drive Neighborhood Association of even date.
- o. This Declaration shall be recorded, when effective, in the Public Records of Knoxville, Tennessee, at the cost of the Owner.

IN WITNESS WHEREOF, the undersigned has set its hand and seal this 6th day of October, 2015.

Smith Lindsey Development, LLC

By: J.D. Smith
J. Daniel Smith
Its President

ACKNOWLEDGMENT

STATE OF TENNESSEE

Before me a Notary Public in and for the State of Tennessee, appeared J. Daniel Smith, who is known to me, or who proved himself to be the same, and who after being by me placed under oath, did acknowledge that he executed the foregoing instrument as the President of Smith Lindsey Development, LLC, with authority to do the same, for the purposes stated in the foregoing document.

By: Dan D. Rhea
Notary Public
My Commission Expires: Sept. 30, 2017

