

RESOLUTION NO. RS-2016-22

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FRANCHISE AND LICENSE AGREEMENT WITH SEAARK PROPERTIES, LLC FOR USE OF PUBLIC RIGHT-OF-WAYS ON WEST PATTON AVENUE, BARKADA ROAD, AND LEMONS STREET.

WHEREAS, SeaArk Properties, LLC operates a manufacturing facilities located on 728 West Patton Avenue, or the block bordered by West Patton Avenue, Edgewood Street, Barkada Road, and Lemons Street; and

WHEREAS, SeaArk Properties, LLC has certain improvements to the property which lie within the right-of-ways on West Patton Avenue, Barkada Road, and Lemon Street, respectively; and

WHEREAS, said improvements include a parking lot within right-of-way of West Patton Avenue, fencing within right-of-way of Barkada Road & Lemons Street, and a concrete wall within right-of-way of Lemons Street; and

WHEREAS, recently SeaArk Properties, LLC has requested the City to franchise and license the right-of-ways to said streets authorizing the company to continue to operate said improvements within the respectively right-of-ways.

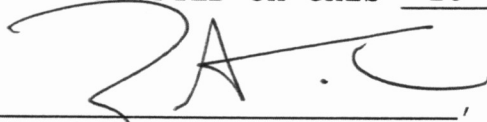
NOW THEREFORE, be it resolved by the City Council of the Monticello, Arkansas that the mayor is hereby authorized to enter into a franchise and license agreement between the City of

*Stricken language to be deleted from and underlined language to be added to the resolution.*

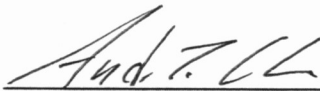
Monticello and SeaArk Properties, LLC for the use of the right-of-ways of West Patton Avenue, Barkada Road, and Lemons Street.

(End of Resolution)

ADOPTED on this 28 day of June, 2016.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

THE BARTON LAW FIRM

A PROFESSIONAL ASSOCIATION

(FORMERLY KNOWN AS WILLIAMSON, BALL & BIRD)

WALTER W. BARTON  
wbarton@bartonlawfirmar.com

BENJAMIN P. BARTON  
bbarton@bartonlawfirmar.com

MAILING ADDRESS:  
P. O. BOX 507  
MONTICELLO, AR 71657

STREET ADDRESS:  
106 WEST OAKLAND AVE.  
MONTICELLO, AR 71655

TELEPHONE: (870) 367-6288  
FACSIMILE: (870) 367-7851

May 23, 2016

The Honorable Zackery Tucker  
Mayor of Monticello  
City Hall  
Monticello, AR

Dear Mayor Tucker:

Following is a proposed Franchise and License Agreement between the City of Monticello and SeaArk Properties, LLC. This addresses the encroachments into the City right-of-way for the parking lot and also for the fence and concrete wall that we have discussed previously.

I find this agreement to be in reasonable form. You will note that the agreement prohibits further construction in the areas other than the repair and maintenance of the existing obstructions. It also absolves the City from any responsibility for repair, upkeep or liability.

If the same meets with your approval, please sign and return. If you have any questions or concerns, please let me know.

Very truly yours,



Whit Barton

WB/kn

Enclosure

This instrument prepared by:

Price C. Gardner  
Friday, Eldredge & Clark, LLP  
400 West Capitol Avenue, Suite 2000  
Little Rock, Arkansas 72201

### **FRANCHISE AND LICENSE AGREEMENT**

This Franchise and License Agreement (this "Agreement") is executed this 28 day of JUNE, 2016, by the CITY OF MONTICELLO, ARKANSAS ("City"), in favor of SEAARK PROPERTIES, LLC, and any successors and assigns ("Licensee").

### **WITNESSETH**

WHEREAS, Licensee is the owner of certain property located at 728 Patton Drive, Monticello, Arkansas, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property");

WHEREAS, certain improvements to the Property lie within certain right-of-ways or property owned by the City lying between the boundaries of the Property and Lemon Street and Barkada Road, respectively, which are more specifically depicted in Sections 1 and 2 of Exhibit "B" attached hereto and made a part hereof (the "ROW Areas"); and

WHEREAS, certain parking areas used by Licensee and its permittees, employees, and invitees lie within the right-of-way or property owned by the City between the boundary of the Property and West Patton Avenue which are more specifically depicted in Section 3 of Exhibit "B" (the "Parking Area"); and

WHEREAS, the City has agreed to grant an irrevocable franchise and license for the continued existence of certain improvements owned by Licensee which are located within the ROW Areas and the use of the Parking Area by Licensee and its permittees, employees, and invitees on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual covenants and agreements of the parties, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Exclusive Franchise and License. City hereby grants Licensee the exclusive, irrevocable, royalty-free, fully paid up, and assignable right and franchise for the following:

(a) Parking. Licensee and its permittees, employees, and invitees may use that portion of the Parking Area along West Patton Avenue currently containing parking spaces (or portions thereof) in such Parking Area as depicted in Exhibit "B", and Licensee and its

permittees, employees, and invitees may continue to use, maintain, repair and replace such parking spaces.

(b) Fencing. Licensee may use the ROW Areas along Lemon Street and Barkada Road for the continued location, maintenance, repair, and replacement of the existing chain link fences along the north and eastern boundaries of the Property as depicted in Exhibit "B".

(c) Concrete Wall. Licensee may use that portion of the ROW Area along Lemon Street for the continued location, maintenance, repair, and replacement of the existing concrete wall which encroaches in the ROW Area along Lemon Street as depicted in Exhibit "B".

Notwithstanding the foregoing franchises and licenses, Licensee shall not construct any new, permanent structures within the ROW Areas or Parking Area (except for the replacement of existing improvements in the same location where they are presently located) and the franchises and licenses granted herein shall be solely for the purposes of permitting the continued existence and use, maintenance, repair, and replacement of the existing parking areas, fencing, and concrete walls which encroach within those ROW Areas and Parking Area, as applicable, as of the date of this Agreement.

2. Maintenance Responsibility. Licensee shall have sole maintenance responsibility for the improvements listed in Section 2 above located within the ROW Areas and Parking Area. The City assumes no maintenance responsibilities for the same and expressly disclaims anything. The City shall not be responsible for unintentional damage to the permitted items caused by the City, or any damage caused by any utility (public or franchise private) or their respective crews while performing normal maintenance work in the public right-of-way.

3. No Liability and Indemnification. The City assumes no liability for personal injury or property damage as a result of the existence of the permitted items within the ROW Areas or Parking Area. As additional consideration for the franchises and licenses, Licensee agrees to indemnify and hold the City harmless from any and all actions, claims, costs, damages, and expenses to which the City may be subjected arising out of the existence of the permitted items in the ROW Area or Parking Area.

4. Effect of Franchise and License. The franchises and licenses granted hereunder shall be irrevocable and continue in effect so long as the Property is used by the Licensee or its successors in the operation of a manufacturing facility on the Property.

5. Miscellaneous.

(a) Governing Law. This Agreement shall be subject to and governed by the laws of the State of Arkansas.

(b) Partial Invalidation. In the event that one or more of the provisions of this Agreement shall be held invalid, illegal or unenforceable in any respect, the validity, legality or

enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(c) Modification. No provision contained herein may be modified, amended or waived except by written agreement or consent signed by the party to be bound thereby.

(d) Binding Effect and Benefit. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto, their respective successors and assigns.

(e) Headings and Captions. Subject headings and captions are included for convenience purposes only and shall not affect the interpretation of this Agreement.

(f) Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes any and all other prior agreements, oral or written, with respect to the subject matter contained herein.

(g) Authorization. Each party represents and warrants that the execution and delivery of this Agreement has been approved by all necessary action of the parties, including but not limited to the City's Board of Directors.

IN WITNESS WHEREOF, the parties have executed this Franchise and License Agreement effective as of the day and year first written above.

CITY OF MONTICELLO, ARKANSAS

By: \_\_\_\_\_  
Hon. Zackery Tucker, Mayor

SEAARK PROPERTIES, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ARKANSAS    )  
  ) ss.  
COUNTY OF                    )

On this the \_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Honorable Zackery Tucker, to me personally well known, who stated that he was the Mayor of the City of Monticello, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF FLORIDA    )  
  ) ss.  
COUNTY OF                    )

On this the \_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named \_\_\_\_\_, to me personally well known, who stated that he was an authorized \_\_\_\_\_ of SEAARK PROPERTIES, LLC, a Florida limited liability company, and was duly authorized in his capacity to execute the foregoing instrument for and in the name and behalf of said company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

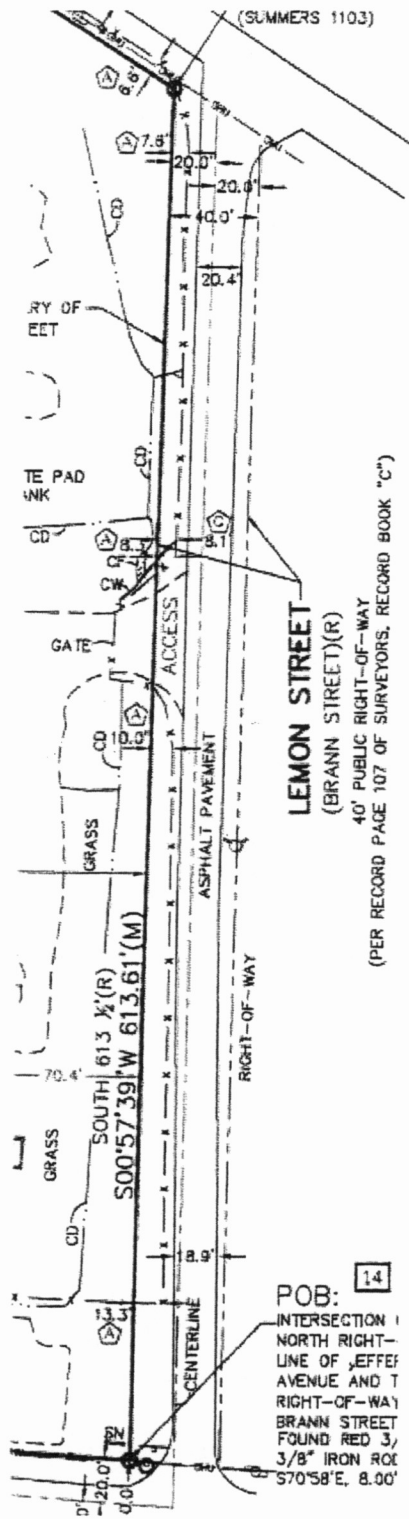
## EXHIBIT "A"

A parcel of land situated in the West Half of the Northwest Quarter (W1/2 of NW1/4) of Section 26, Township 12 South, Range 7 West, in the City of Monticello, Drew County, Arkansas, bounded by a line the point of beginning of which is found by starting on the East boundary of the Southwest Quarter of Northwest Quarter (SW1/4 of NW1/4) of said Section 26 at a point which is 175 feet South of the Northeast corner of said SW1/4 of NW1/4, thence running West parallel with the North boundary of said SW1/4 of NW1/4 a distance of 39 feet to an intersection of the West boundary of Hyatt Street of the City of Monticello with the North boundary of Jefferson Avenue, now Patton Avenue, of said City, thence running West parallel with the North boundary of the SW1/4 of NW1/4 of said Section 26 and along the North boundary of said Jefferson Avenue, now Patton Avenue, a distance of 405 feet to the Southwest corner of the property described in and conveyed by the deed of B.P. Howlett and H.P. Crute, partners constituting Howlett Builders Supply Company, to the County of Drew, State of Arkansas, dated May 5, 1947, recorded at page 162 of Book 98 of the Deed Records of Drew County, Arkansas, thence continuing West parallel with the North boundary of said SW1/4 of NW1/4 of said Section 26 and along the North boundary of Jefferson Avenue, now Patton Avenue, a distance of 56 feet to the point of intersection of the North boundary of Jefferson Avenue, now Patton Avenue, with the West boundary of Brann Street, now Lemon Street, therefound, which is the point of beginning of the parcel of land hereby described; THENCE, FROM SAID BEGINNING POINT, continuing West parallel with the North boundary of the SW1/4 of NW1/4 of said Section 26 and along the North boundary of Jefferson Avenue, now Patton Avenue, a distance of 751 feet to the intersection of the North boundary of Jefferson Avenue, now Patton Avenue, with the East boundary of Anderson Street, now Edgewood Street, therefound, thence running North along the East boundary of Anderson Street, now Edgewood Street, a distance of 1,041 feet to an intersection with South boundary of the right-of-way of the Monticello-Barkada public road therefound, thence running southeasterly along the South boundary of said Monticello-Barkada road a distance of 916 feet, more or less, to the West boundary of the right-of-way of Brann Street, now Lemon Street, therefound, thence running South along the West boundary of Brann Street, now Lemon Street, a distance of 613 1/2 feet to the point of beginning; being all that part of Blocks 164 and 165 of the City of Monticello lying North of Jefferson Avenue, now Patton Avenue, (and any part of Block 166 of the City of Monticello which may lie North of Jefferson Avenue, now Patton Avenue), and lying West of Brann Street, now Lemon Street, and East of Anderson Street, now Edgewood Street, as those street are now actually situated, and are shown in the plat and subdivisions of Block 164 and 165 of the City of Monticello according to the Survey and Plat by Y.R. Royal, Surveyor, recorded at page 107 of Surveyor's Record Book "C" of Drew County, Arkansas, and at page 436 of Book 28 of the Drew County Records; intending hereby also to describe the parcel of land described in and conveyed by the deed from B.P. Howlett and H.P. Crute, partners doing business under the partnership name of Howlett Builders Supply Company, and Martha J. Howlett, wife of said B.P. Howlett, and Luna Belle Crute, wife of said H.P. Crute, to Root Manufacturing Company of Arkansas, Inc., dated September 25, 1953, and recorded at page 428 of Book 113 of the Deed Records of Drew County, Arkansas.

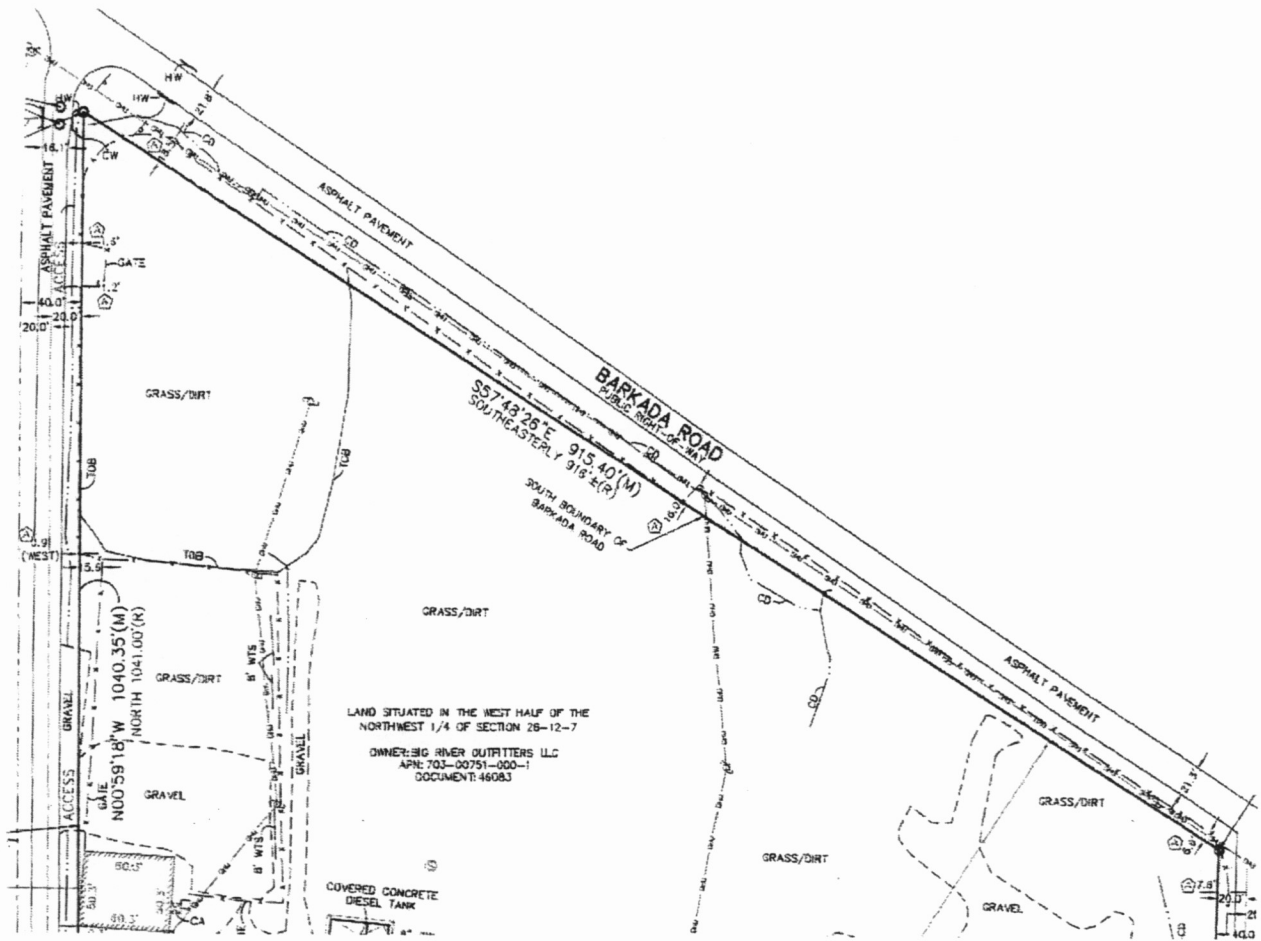
Address: 728 Patton Drive, Monticello, Arkansas 71655

**EXHIBIT "B"**

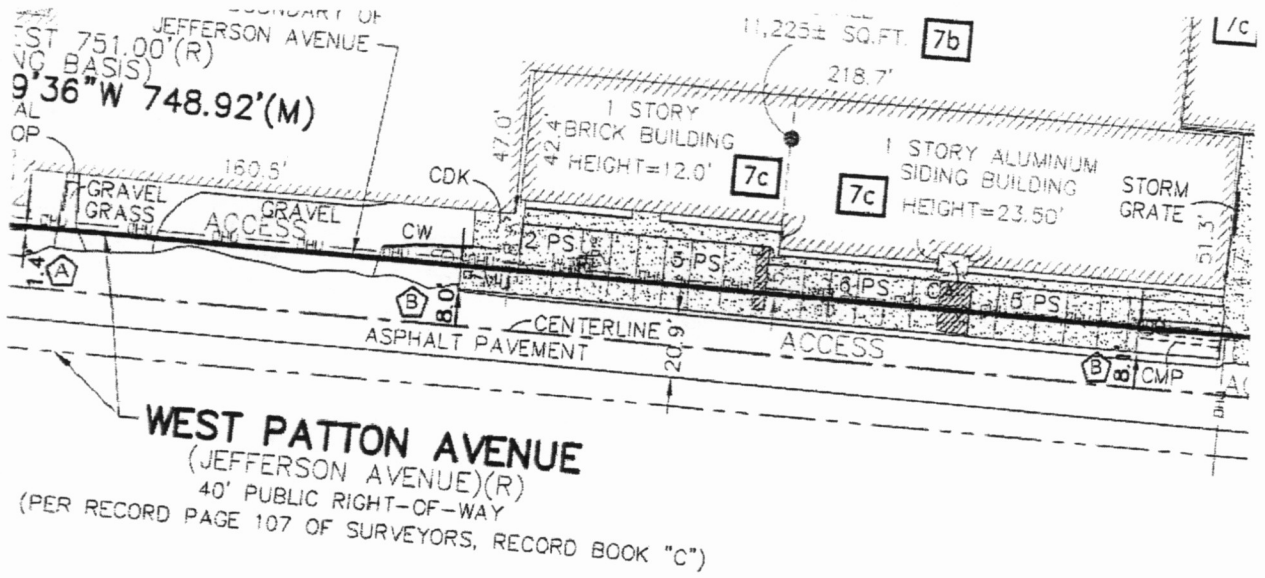
**1. Lemon Street:**



2. Barkada Road:

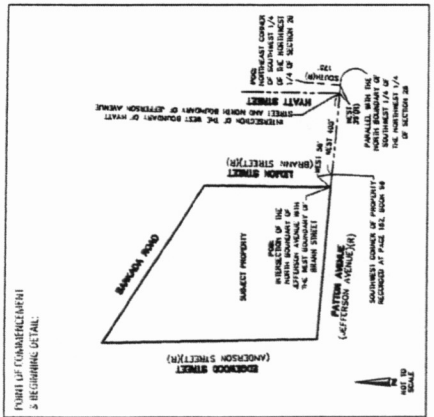
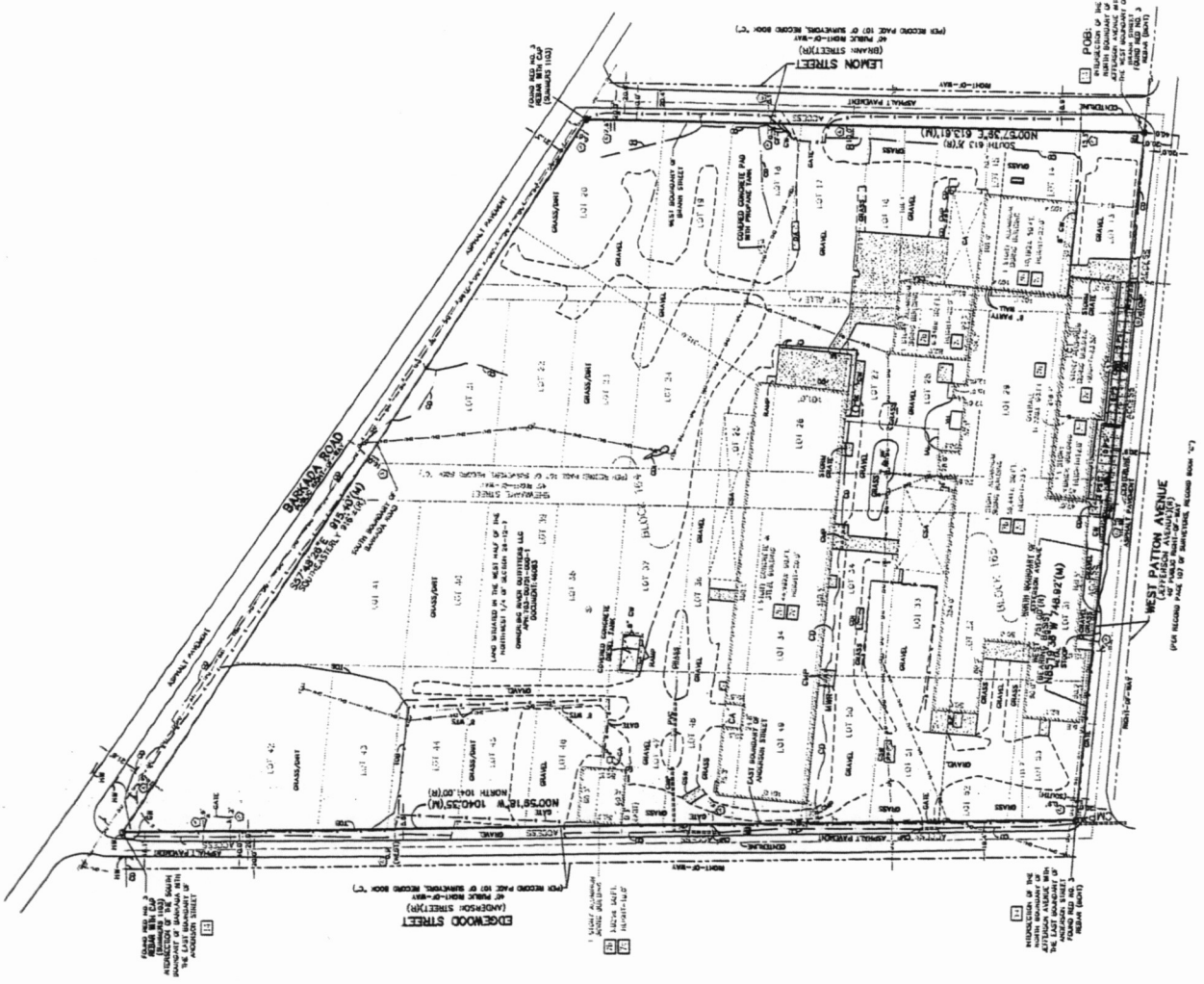


3. West Patton Avenue



Legend for Depictions:

6Diiid LEGEND AND ABBREVIATIONS			
	CONCRETE SURFACE		CLEANOUT
	NO PARKING AREA		SIGN
	HANDICAP PARKING		FLAGPOLE
	UTILITY POLE		TELEPHONE PEDESTAL
	CUY ANCHOR		CATCH BASIN
	FIRE HYDRANT		PARKING SPACE
	FIRE DEPARTMENT CONNECTION		RECOVERED MONUMENT AS NOTED
	GAS METER		FIBER OPTIC UTILITY MARKER
	WATER VALVE		(C) CALCULATED DATA
	MANHOLE (UNKNOWN)		(M) FIELD MEASURED DATA
	BOLLARD		(R) TITLE DESCRIPTION
	ELECTRIC METER		CA COVERED AREA
	MAIL BOX		CDK CONCRETE LOADING DOCK
	SANITARY MANHOLE		CD CENTERLINE OF DITCH
	WATER METER		CDI CONCRETE DITCH
			CMP CORRUGATED METAL PIPE
			CSA COVERED STORAGE AREA
			CSW CONCRETE SWALE
			CW CONCRETE WALL
			DA DUMPSTER AREA
			IEP INACTIVE EQUIPMENT PAD
			ML METAL LID
			MWR METAL WALK RAIL
			OD OVERHEAD DECK
			POB POINT OF BEGINNING
			POC POINT OF COMMENCEMENT
			PVC POLYVINYL CHLORIDE PIPE
			SN SIGN
			SQ.FT. SQUARE FEET
			TOB TOP OF BANK
			TK TANK
			VH VENT HEATER
			IAL OVERHEAD INACTIVE AIR LINE
			WF WATER FACET
			WTS WOOD TIRE STOP
			6' CHAIN LINK FENCE
			OVERHEAD UTILITY LINE



NOTE: BOUNDARY IS SUBJECT TO CHANGE UPON FURTHER REVIEW

**LEGEND AND ABBREVIATIONS**

1	NO FARMING AREA	11	CONCRETE PAD WITH PROPOSED TANK
2	FARMING AREA	12	CONCRETE PAD WITH PROPOSED TANK
3	PLANTABLE	13	CONCRETE PAD WITH PROPOSED TANK
4	NO FARMING AREA	14	CONCRETE PAD WITH PROPOSED TANK
5	NO FARMING AREA	15	CONCRETE PAD WITH PROPOSED TANK
6	NO FARMING AREA	16	CONCRETE PAD WITH PROPOSED TANK
7	NO FARMING AREA	17	CONCRETE PAD WITH PROPOSED TANK
8	NO FARMING AREA	18	CONCRETE PAD WITH PROPOSED TANK
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99	NO FARMING AREA	100	CONCRETE PAD WITH PROPOSED TANK

