



PLAN REVIEW SHEET

Date: October 21, 2019

Petition #: 2019-123

Staff Contact: John Howard

Adopted Plan – CATS 2030 Transit Vision Plan

The parcel is located adjacent to the proposed CATS Silver Line light rail corridor. CATS staff requests a ‘Reservation Provision’ to protect the future light rail corridor as identified in the 2030 Transit Vision Plan. The Provision is outlined in this document.

CATS Right of Way Reservation Provision

d. This subsection (d), including all subparts, shall be referred to as the “Reservation Provision.” The Petitioner shall reserve, for the sole benefit of the City of Charlotte (“City”) and solely for installation of one or more light-rail lines and associated facilities, a seventy foot (70’) wide corridor (the “Transit Reserved Corridor”) along the southern property boundary of the Site adjacent to Irwin Creek, as depicted on the Rezoning Plan. This Reservation shall not make the Petitioner responsible for constructing, or for bearing any of the costs of constructing, any light-rail lines or associated facilities that are constructed within the Transit Reserved Corridor, nor shall this Reservation relieve the City of any responsibilities for constructing any light-rail lines or associated facilities, including responsibility for obtaining all necessary permits or approvals for that construction and for removing all improvements within the Transit Reserved Corridor that must be removed for that construction (except for any improvements that constitute a violation of this Reservation Provision, which the Petitioner must remove pursuant to subsection (i) of this Reservation Provision). The reservation provided for by this Reservation Provision (the “Reservation”) shall be governed by the terms and conditions set forth below:

i. Unless and until the Reservation expires per the terms of this Reservation Provision, the Petitioner may perform, or may permit to be performed, only the following construction, installation, and development activities within the Transit Reserved Corridor, and no others: (y) grading and (z) installation and maintenance of pavement, driveways, sidewalks, surface parking areas, landscaping, and comparable non-vertical improvements. Without limiting the foregoing, and for clarification only, unless and until the Reservation expires per the terms of this Reservation Provision, the Petitioner may not place, develop, construct, install, or maintain (or allow others to place, develop, construct, install, or maintain) any part of any of the following within the Transit Reserved Corridor: (x) buildings or other vertical structures, (y) utility lines or facilities, or (z) detention facilities or other stormwater collection or control facilities. And notwithstanding any other term of this Reservation Provision, under no circumstances shall the Petitioner place, develop, construct, install, or maintain (or allow others to place, develop, construct, install, or maintain) anything (including pavement, driveways, sidewalks, surface parking areas, landscaping, and

other non-vertical improvements) within the Transit Reserved Corridor that, if the same were ever removed, would cause the Site or any part of it to violate any applicable law, ordinance, or regulation, including by example only any zoning or land use regulation. If anything is ever placed, developed, constructed, installed, or maintained within the Transit Reserved Corridor in violation of this Reservation Provision, the Petitioner shall promptly cause the same to be removed, all without the City bearing any costs or expenses for that removal and all without the City being liable to the Petitioner or to anyone else for any damages, expenses, losses, liabilities, compensation, or other costs or consequences that may result in any way from that removal, and this removal obligation of the Petitioner's shall survive the City acquiring some or all of the Transit Reserved Corridor. If anything is ever placed, developed, constructed, installed, or maintained within the Transit Reserved Corridor in violation of this Reservation Provision, in no event shall the City be deemed to have waived, consented to, or acquiesced in that violation, or to have waived any of its rights under this Reservation Provision, unless, and only to the extent that, a written waiver of that violation, signed by the City Manager, is delivered to the Petitioner.

ii. The Reservation shall last for ten (10) years, beginning on the date of the City Council's final approval of the Rezoning (the "10-Year Period"). If, before the 10-Year Period expires, the City does not provide the Petitioner with a notification (the "Notification") that the City intends to acquire some or all of the Transit Reserved Corridor, the Reservation shall automatically expire. The Notification may be provided by any reasonable means, and examples of such reasonable means include (but are not limited to): (x) mailing the Notification to the last address for the Petitioner known to the City (in which case the Notification shall be deemed provided on the date it is mailed), (y) recording the Notification against the Transit Reserved Corridor with the Mecklenburg County Register of Deeds Office, which the Petitioner irrevocably authorizes the City to do (in which case the Notification shall be deemed provided on the date it is recorded), or (z) posting the Notification on the Site, which the Petitioner irrevocably authorizes the City to do (in which case the Notification shall be deemed provided on the date it is posted). If, before the 10-Year Period expires, the City provides the Notification, the Reservation shall not expire at the end of the 10-Year Period, but instead the Reservation shall continue in effect and shall expire only upon the occurrence of: (x) the City closing on, and thereby acquiring title to, the Transit Reserved Corridor, (y) the City initiating an action to acquire by condemnation the Transit Reserved Corridor, or (z) the later of the expiration of the 10-Year Period or one hundred and eighty (180) days after the City provides the Notification to Petitioner. Notwithstanding any other provision of this Reservation Provision, the City may initiate a proceeding to acquire by condemnation some or all of the Transit Reserved Corridor without first providing the Notification, and the initiation of any such condemnation proceeding shall not cause the Reservation to expire. If the Reservation does expire pursuant to this Subsection (ii), after its expiration the Petitioner may use the Transit Reserved Corridor for any purpose and use allowed by applicable laws, ordinances, and regulations.

iii. Beyond the City's ability to enforce the limitations and restrictions imposed by the Reservation, the Reservation shall not entitle the City to interfere in any material respect with operations and activities on the Site, including without limitation parking, access, and facility operations on the Site.

iv. The City warrants that development of one or more light-rail lines and associated facilities by the City within the Transit Reserved Corridor will not cause the Site, or any developments or uses on the Site, to become non-compliant or non-conforming with any applicable City laws or City regulations in effect when the Rezoning is approved by the City Council, including the Rezoning itself and the City's Unified Development Ordinance. If development of one or more light-rail lines and associated facilities by the City within the Transit Reserved Corridor does cause the Site, or any developments or uses on the Site, to become so non-compliant or so non-conforming, the City shall be responsible for remedying that non-compliance or non-conformity at its expense. The warranty provided by this subsection (iv) of this Reservation Provision is conditioned on all aspects of the Site at all times being developed and used in strict accordance with the Site's Rezoning and Rezoning Plan and in strict accordance with all applicable laws, ordinances, and regulations, including without limitation all applicable zoning and land use regulations, and any violation of the Site's Rezoning or Rezoning Plan or of any applicable laws, ordinances, or regulations shall permanently void this warranty. Notwithstanding any other term of this Reservation Provision: (y) The Petitioner's sole and exclusive remedy for any violation of this warranty by the City is limited to seeking an injunction requiring the City to remedy any non-compliance or non-conformity covered by this warranty, and in no event and under no circumstances shall the Petitioner have any right to seek any type or amount of damages or any other type of remedy against the City or its officials, employees, or agents for a violation of this warranty, the Petitioner hereby absolutely and irrevocably waiving any such right on behalf of the Petitioner and its successors and assigns and any future owners of all or any part of the Site, and (z) the warranty provided by this subsection (iv) of the Reservation Provision shall automatically and permanently expire twenty (20) years after the date of the Rezoning.

v. Nothing in this Reservation Provision shall be deemed to waive, restrict, or limit any powers or authority that the City has under the law, either now or in the future. By example only, and not for purposes of limitation, nothing in this Reservation Provision shall be deemed to prevent or limit the City from adopting or enforcing any law, ordinance, or regulation that the City is otherwise empowered to adopt or enforce, nor shall anything in this Reservation Provision be deemed to prevent or limit the City from exercising any powers of eminent domain that the City may have, including any power that the City may have to acquire by eminent domain any land outside of the Transit Reserved Corridor.

vi. This Reservation Provision and the Reservation are part of the Site's Rezoning, shall be deemed to run with the land, and shall be binding on all future owners of the Site or any part of it.