

**ADDENDUM I**

**BLOOMINGTON CITY COUNCIL AGENDA**

**MARCH 24, 2014**

**ADDITION TO CONSENT AGENDA**

- Item 6B. Bills and Payroll. (Recommend that the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.) *City Council Memorandum.*
- Item 7B-b. SP-01-14 Review of the Petition Submitted by Luther Oaks, Inc. requesting Approval of a Special Use Permit for a Skilled Nursing Facility for the Property Located at 601 Lutz Rd. (Recommend that the Special Use Permit be approved and the Ordinance passed with the following conditions of approval:
1. A sewer screen being installed in the sanitary sewer; and
  2. Luther Oaks shall be required to provide secondary emergency access to the property as set forth in this condition to the Special Use Permit. The preferred secondary emergency access shall be off Greenwood Ave. and Luther Oaks agrees to maintain the temporary construction access off of Greenwood Ave. as the initial secondary emergency access. If Luther Oaks is unable in the future to keep the temporary construction access as the secondary emergency access due to the activities or decisions of the property owner, including the development of the property currently owned by Trinity Lutheran Church, then Luther Oaks shall work in good faith to secure another secondary emergency access off of Greenwood Ave. For purposes of attempting to secure another emergency access point off of Greenwood Ave., the City acknowledges that Luther Oaks does not currently own any property off of Greenwood Ave. and its efforts may be limited based on the actions of the owner of the property and its future development. If Luther Oaks is unable to secure a secondary emergency access off of Greenwood Ave., Luther Oaks shall provide a secondary emergency access off of Lutz Rd. For purposes of this condition, Luther Oaks shall be required to maintain the grading and gravel of any secondary emergency access point. The City shall be responsible for posting signs stating the access is for emergency vehicle use only and providing security for the access, (when no longer being utilized as a construction access), by temporary or other measures, (e.g., a chain or rope across the entry point, etc.), for emergency access only. Council may in the future, in its discretion, eliminate this condition to the Special Use Permit as it

determines is appropriate based on the future development of the surrounding property and/or improvements to adjacent roads.) *City Council Memorandum.*

Item 7C-c. Bloomington Chateau Partners, LLC (“BCP”), d/b/a The Chateau, Tax Repayment Agreement for Hotel/Motel Tax. (Recommend that the Repayment Agreement be approved and the Mayor and City Clerk be authorized to execute the necessary documents.) *City Council Memorandum.*



FOR COUNCIL: March 24, 2014

**SUBJECT:** Bills and Payroll

**RECOMMENDATION/MOTION:** That the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

**STRATEGIC PLAN LINK:** Goal 1. Financially sound City providing quality basic services.

**STRATEGIC PLAN SIGNIFICANCE:** Objective 1.d. City services delivered in the most cost-effective, efficient manner.

**FINANCIAL IMPACT:** Total disbursements to be approved \$4,996,620.57, (Payroll total \$2,181,376.38, PCard total \$187,728.72 and Accounts Payable total \$2,627,515.47).

Respectfully submitted for Council consideration.

Prepared by: Patti-Lynn Silva, Director of Finance

Recommended by:

David A. Hales  
City Manager

(ON FILE IN CLERK'S OFFICE)

**Attachment:** Attachment 1. Bills and Payroll on file in the Clerk's office. Also available at [www.cityblm.org](http://www.cityblm.org).  
Attachment 2. Summary Sheet Bills and Payroll Report

Motion: That the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

Motion: \_\_\_\_\_ Seconded by: \_\_\_\_\_

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Painter			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Renner			



FOR COUNCIL: March 24, 2014

**SUBJECT:** SP-01-14 Review of the Petition Submitted by Luther Oaks, Inc. requesting Approval of a Special Use Permit for a Skilled Nursing Facility for the Property Located at 601 Lutz Rd.

**RECOMMENDATION/MOTION:** That the Special Use Permit be approved and the Ordinance passed with the following conditions of approval:

1. A sewer screen being installed in the sanitary sewer; and
2. Luther Oaks shall be required to provide secondary emergency access to the property as set forth in this condition to the Special Use Permit. The preferred secondary emergency access shall be off Greenwood Ave. and Luther Oaks agrees to maintain the temporary construction access off of Greenwood Ave. as the initial secondary emergency access. If Luther Oaks is unable in the future to keep the temporary construction access as the secondary emergency access due to the activities or decisions of the property owner, including the development of the property currently owned by Trinity Lutheran Church, then Luther Oaks shall work in good faith to secure another secondary emergency access off of Greenwood Ave. For purposes of attempting to secure another emergency access point off of Greenwood Ave., the City acknowledges that Luther Oaks does not currently own any property off of Greenwood Ave. and its efforts may be limited based on the actions of the owner of the property and its future development. If Luther Oaks is unable to secure a secondary emergency access off of Greenwood Ave., Luther Oaks shall provide a secondary emergency access off of Lutz Rd. For purposes of this condition, Luther Oaks shall be required to maintain the grading and gravel of any secondary emergency access point. The City shall be responsible for posting signs stating the access is for emergency vehicle use only and providing security for the access, (when no longer being utilized as a construction access), by temporary or other measures, (e.g., a chain or rope across the entry point, etc.), for emergency access only. Council may in the future, in its discretion, eliminate this condition to the Special Use Permit as it determines is appropriate based on the future development of the surrounding property and/or improvements to adjacent roads.

**STRATEGIC PLAN LINK:** Goal 3. Grow the local economy.

**STRATEGIC PLAN SIGNIFICANCE:** Objective 3a. Retention and growth of current local businesses.

Upon approval of the Special Use Permit, the expansion of the skilled nursing facility may begin. This will enable the expansion of this business, as well as encourage the growth of other businesses by providing local jobs at the skilled nursing facility and related local health care occupations.

**BACKGROUND:** The petitioner is requesting the approval of a Special Use for a skilled nursing facility in order to expand the existing senior housing and assisted living facility with a new skilled nursing facility. The new building will be attached to their existing building. The site is located on the north side of Lutz Rd.

This case was before the Zoning Board of Appeals for a public hearing and review on March 20, 2014. The petitioner, their attorney and engineer spoke in favor of the petition. They explained how they have worked to satisfy staff's concerns, particularly about accommodating the need for a secondary access road for emergency vehicles. They also supported a condition of approval that a screen be installed in the sewer system to deal with material from their existing facility that has clogged the system. Mike Kimmerling, Fire Chief, testified as to the need for the second emergency access and how an agreement has been reached addressing maintenance and alternatives if the land used for the access road should become unavailable. The conditional requirements for secondary access were prepared by Jeff Jurgens, Interim Corporation Counsel and found acceptable by the petitioner's attorney. No one else from the public spoke in favor or opposition to the petition.

Staff has evaluated the project and finds it to be an appropriate use for the site. The adjacent land uses should be compatible with the proposed use. Senior or institution use and a school already exist with a large open space between it and the proposed use. The capacity of the street is adequate and there should be only a minimal change in traffic.

The Zoning Board of Appeals voted to recommend approval of the special use permit by a vote of 7 - 0 condition upon the petitioner meeting the two (2) conditions of approval as stated above.

**COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED:** Public notice was published in the Pantagraph in accordance with City Code. In accordance with the Zoning Code, courtesy copies of the Public Notice were mailed to twenty-five (25) property owners within 500'. In addition, a public notice/identification sign was posted on the property.

**FINANCIAL IMPACT:** The financial impact on City revenues should increase with an increase in sales tax through many health care purchases with the approval of the Special Use.

Respectfully submitted for Council consideration.

Prepared by: Mark Woolard, City Planner

Financial & budgetary review by: Patti-Lynn Silva, Director of Finance

Legal review by: Jeffrey R. Jurgens, Interim Corporation Counsel

Recommended by:



David A. Hales  
City Manager

- Attachments:**
- Attachment 1. Petition, Ordinance and Legal Description
  - Attachment 2. ZBA Minutes March 19, 2014
  - Attachment 3. ZBA Report March 19, 2014
  - Attachment 4. Neighborhood Mailing Labels
  - Attachment 5. Neighborhood Map
  - Attachment 6. Aerial Map

Motion: \_\_\_\_\_ Seconded by: \_\_\_\_\_

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Painter			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Renner			

**PETITION FOR A SPECIAL USE PERMIT FOR PROPERTY LOCATED AT:  
601 LUTZ ROAD, BLOOMINGTON, ILLINOIS, 61704**

State of Illinois                                      )  
  )ss.  
County of McLean                                 )

**TO: THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF  
BLOOMINGTON, MCLEAN COUNTY, ILLINOIS**

NOW COMES Luther Oaks, Inc., an Illinois not-for-profit corporation, hereinafter referred to as your petitioner, respectfully representing and requesting as follows:

1. That your petitioner is a lessee of the premises hereinafter legally described in Exhibit "A", which is attached hereto and made a part hereof by this reference;
2. That said premises presently has a zoning classification of S – 2, (Public Lands and Institutions District), under the provisions of Chapter 44 of the Bloomington City Code, 1960;
3. That under the provisions of Chapter 44, Section 44.6-30 of said City Code the construction of a skilled nursing facility, is allowed as a special use in an S - 2 zoning district;
4. That the establishment, maintenance, or operation of said special use on said premises will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;
5. That said special use on said premises will not be injurious to the use and enjoyment of other property in the immediate vicinity of said premises for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood;
6. That the establishment of said special use on said premises will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the S - 2 zoning district;
7. That the exterior architectural treatment and functional plan of any proposed structure on said premises will not be so at variance with either the exterior architectural treatment and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood adjacent to said premises;
8. That adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided to said premises for said special permitted use;

9. That adequate measures have been or will be taken to provide ingress and egress to and from said premises so designed as to minimize traffic congestion in the public streets; and
10. That said special permitted use on said premises shall, in all other respects, conform to the applicable regulations of the S - 2 zoning district in which it is located except as such regulations may, in each instance, be modified by the City Council of the City of Bloomington pursuant to the recommendations of the Bloomington Board of Zoning Appeals.
11. That the detail of the proposed use and improvements is reflected in the attached materials dated December 20, 2013 prepared by Shive Hattery Architecture and Engineering and by Hoffman Planning, Design and Construction, Inc.

WHEREFORE, your petitioner respectfully prays that said special use for said premises be approved.

Respectfully submitted,

LUTHER OAKS, INC.

By: William C. Wetzel  
Its Attorney



**ORDINANCE NO. 2014 - \_\_\_\_\_**

**AN ORDINANCE APPROVING A SPECIAL USE PERMIT FOR  
CONSTRUCTION OF A SKILLED NURSING FACILITY  
FOR PROPERTY LOCATED AT: 601 LUTZ ROAD, BLOOMINGTON, IL 61704**

WHEREAS, there was heretofore filed with the City Clerk of the City of Bloomington, McLean County, Illinois, a petition requesting a Special Use Permit for the construction of a skilled nursing facility for certain premises hereinafter described in Exhibit "A"; and

WHEREAS, the Bloomington Board of Zoning Appeals, after proper notice was given, conducted a public hearing on said petition; and

WHEREAS, the Bloomington Board of Zoning Appeals, after said public hearing made findings of fact that such Special Use Permit would comply with the standards and conditions for granting such special permitted use for said premises as required by Chapter 44, Section 44.6-30 of the Bloomington, City Code, 1960; and

WHEREAS the City Council of the City of Bloomington has the power to pass this Ordinance and grant this special use permit.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Bloomington, McLean County, Illinois:

1. That the Special Use Permit for the construction of a skilled nursing facility on the premises hereinafter described in Exhibit "A" shall be and the same is hereby approved with the following conditions:
  - a. A sewer screen being installed in the sanitary sewer; and
  - b. Luther Oaks shall be required to provide secondary emergency access to the property as set forth in this condition to the Special Use Permit. The preferred secondary emergency access shall be off Greenwood Ave. and Luther Oaks agrees to maintain the temporary construction access off of Greenwood Ave. as the initial secondary emergency access. If Luther Oaks is unable in the future to keep the temporary construction access as the secondary emergency access due to the activities or decisions of the property owner, including the development of the property currently owned by Trinity Lutheran Church, then Luther Oaks shall work in good faith to secure another secondary emergency access off of Greenwood Ave. For purposes of attempting to secure another emergency access point off of Greenwood Ave., the City acknowledges that Luther Oaks does not currently own any property off of Greenwood Ave. and its efforts may be limited based on the actions of the owner of the property and its future development. If Luther Oaks is unable to secure a secondary emergency access off of Greenwood Ave., Luther Oaks shall provide a secondary emergency access off of Lutz Rd. For purposes of

this condition, Luther Oaks shall be required to maintain the grading and gravel of any secondary emergency access point. The City shall be responsible for posting signs stating the access is for emergency vehicle use only and providing security for the access, (when no longer being utilized as a construction access), by temporary or other measures, (e.g., a chain or rope across the entry point, etc.), for emergency access only. Council may in the future, in its discretion, eliminate this condition to the Special Use Permit as it determines is appropriate based on the future development of the surrounding property and/or improvements to adjacent roads.

2. This Ordinance shall take effect immediately upon passage and approval.

PASSED this 24<sup>th</sup> day of March, 2014.

APPROVED this \_\_\_\_\_ day of March, 2014.

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Mayor

ATTEST:

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City Clerk

**EXHIBIT "A"**  
**BOUNDARY DESCRIPTION**

A part of the Southwest Quarter of Section 17, Township 23 North, Range 2 East of the Third Principal Meridian, McLean County, Illinois more particularly described as follows:

Commencing as a point of reference at a stone marking the Southeast corner of the Southwest Quarter of said Section 17;

Thence North 01 Degree 34 Minutes 05 Seconds West along the East line of the Southwest Quarter of said Section 17 a distance of 40.02 feet to the Point of Beginning;

Thence North 90 Degrees 00 Minutes 00 Seconds West and parallel with the South line of the East half of the Southwest Quarter of said Section 17 a distance of 381.51 feet;

Thence North 01 Degree 51 Minutes 29 Seconds West a distance of 241.98 feet;

Thence North 90 Degree 00 Minutes 00 Seconds West a distance of 470.00 feet to a point on the West line of Lot 3 in Townley's Highland Acres Subdivision;

Thence North 00 Degrees 48 Minutes 10 Seconds West along the West line of said Lot 3 a distance of 134.07 feet;

Thence North 20 Degrees 56 Minutes 51 Seconds West a distance of 192.92 feet;

Thence North 39 Degrees 14 Minutes 11 Seconds East a distance of 242.01 feet;

Thence North 88 Degrees 25 Minutes 55 Seconds East a distance of 756.50 feet to a point on the East line of the Southwest Quarter of said Section 17;

Thence South 01 Degree 34 Minutes 05 Seconds East along the East line of the Southwest Quarter of said Section 17 a distance of 764.50 feet to the Point of Beginning.

Said described parcel contains 530208.619 (12.171 ACRES) square feet more or less.

**UNAPPROVED MINUTES  
ZONING BOARD OF APPEALS  
REGULAR MEETING  
WEDNESDAY, MARCH 19, 2014, 3:00 P.M.  
COUNCIL CHAMBERS, CITY HALL  
109 EAST OLIVE ST., BLOOMINGTON, IL**

Members present: Ms. Barbara Meek, Mr. Robert Kearney, Ms. Amelia Buragas, Mr. Dick Briggs, Mr. Bill Zimmerman, Mr. Mike Ireland, Mr. Jim Simeone

Also present: Mr. Mark Woolard, City Planner  
Mr. Frank Koehler, Interim Director Planning and Code Enforcement  
Mr. Michael Kimmerling, Chief - Fire Department  
Mr. Jim Karch, Director of Public Works  
Mr. Kevin Kothe, City Engineer

Mr. Woolard called the meeting to order at 3:00 p.m. and called the roll. A quorum was present. The Board reviewed the minutes from February 19, 2014, and accepted the minutes as printed. Chairman Ireland explained the meeting procedures. Mr. Woolard stated the cases had been published.

**REGULAR AGENDA:**

**SP-01-14** Public Hearing and Review on the petition submitted by Luther Oaks, Inc. requesting approval of a special use permit for a nursing home for the property located at 601 Lutz Road. Zoned S-2, Public Lands and Institutions District. (Ward 2).

Chairman Ireland introduced the case and asked for anyone who would like to speak regarding the petition. Mr. Bill Wetzel, 115 W. Jefferson, Suite 400, representing Luther Oaks was sworn in and stated that Luther Oaks is well used by this community. He said there were two issues that needed to be worked out and we have reached an agreement which is reflected in the staff report. He said that we have met all of the requirements for the special use and this is a sound project.

Tom Hankins, Luther Oaks Interim Administrator, 601 Lutz Road, was sworn in. He stated at Luther Oaks we have a continuing care retirement community. In August, 2013, Luther Oaks applied for a certificate of need with the Illinois Health Facilities Planning Board for a 36 bed skilled nursing addition that would have provided short term rehabilitation services as well as long term nursing care services to Luther Oaks residence and the surrounding community. This project was unanimously approved by the Zoning Board of Appeals in July, 2013. Due to low occupancy numbers within our region, the certificate of need was denied by the state board in August. A smaller 18 bed skilled nursing unit was approved by the state in February, 2014. He stated due to the project reconfiguration, we are here today requesting approval of the same project, only on a smaller scale. We are very excited for the project and the amount of jobs that it would bring to the Bloomington area. Most importantly, we are excited for the current residents who have waited for this project to get off the ground.

Mr. Kearney asked what has changed since last reviewed. Mr. Hankins explained the state board denied their first request due to the duplication of services within this service region. The state

board likes to see a 90% occupancy rating within a skilled nursing environment. He said we have come with a much lower number under the state guidelines. The footprint is reduced from 36,000 square foot to about 20,000 square feet.

Mr. Simeone stated his like for the current project proposal as this seemed to have more service access than the first project, however the secondary access road is not shown in the current plan.

Michael Sewel, Civil Engineer, 2103 Eastland Drive was sworn in and stated the secondary road details have been submitted to the Fire Chief. He said there have been many conversations with staff resulting in language drafted with the city attorney. Those details will be submitted along with the building permits that will be reviewed by city engineering and the PACE department.

Mr. Simeone asked about the temporary construction access. Mr. Sewel explained the access is for construction only and is not meant for public access but for emergencies. A discussion ensued regarding the location of the secondary access. Mr. Simeone asked why the road is not placed permanently for the sake of public safety. Mr. Sewel stated that Luther Oaks doesn't own the property and there is a lease agreement in place with Trinity Lutheran Church, so there is no control over the long term use of that roadway or the development of their property. Mr. Wetzel explained Luther Oaks is a tenant and the Greenwood Avenue access is not considered permanent. Chairman Ireland asked if the agreement is in place. Mr. Wetzel stated the agreements are in place. The Luther Oaks and Trinity Lutheran Church relationship is solely that of landlord and tenant.

Chairman Ireland asked if anyone else was present to speak in favor of this special use petition and no one spoke. Chairman Ireland asked if anyone was present to speak in opposition of this special use petition and no one spoke.

Mr. Woolard explained the staff position is that the land use is compatible with nearby land uses. The only concern was the secondary access for emergency vehicles and an agreement has been reached. There are two conditions of approval. One is to install a screen in the sewer system to prevent clogging. The second condition addresses concerns over the maintenance of the secondary access. Staff recommends approval with the two conditions as stated in the staff report.

Mr. Briggs inquired about who is responsible to verify the secondary access is maintained. Fire Chief, Mike Kimmerling explained the residents are at a higher risk than average due to the population may not be able to self-evacuate. The main access is still off of Lutz Road. When the construction access was proposed the secondary access for emergency vehicles was discussed with all parties. The purpose is to have multiple ways to bring vehicles in if necessary. The Fire Department will inspect this area to be sure the surface can support a heavy duty apparatus. He stated that there was not any other apparent option for a second access at the time Luther Oaks first proposed the project. There are many factors figured into public safety. The future development, the movement of ambulances and fire apparatus, the current road conditions and temporary options were all factors considered when we discussed this with Trinity Lutheran Church and Luther Oaks. Mr. Simeone asked if there were other fire apparatus entrances into residential areas similar to this situation. Mr. Kimmerling stated the new apartments off of Hamilton and Hershey were in need of similar access points.

Mr. Wetzel reiterated there how there have been efforts of many to reach an agreement the city could support. He asked for the recommendation of approval from this board for this special use permit.

Mr. Briggs made a motion to include the two conditions as stated in the staff recommendations, points one and two, verbatim. Mr. Zimmerman supported the motion which was approved with a voice vote of seven (7) voting in favor and zero (0) against.

The vote on recommending approval of special use permit SP-01-14 with the two conditions was approved with seven (7) voting in favor and zero (0) against with the following votes being cast on roll call: Mr. Briggs—Yes; Ms. Meek—Yes; Mr. Simeone—Yes; Mr. Kearney—Yes; Mr. Zimmerman—Yes; Ms. Buragas—Yes; Mr. Ireland—Yes.

DRAFT

**REPORT**

To: Zoning Board of Appeals

From: Staff

Subject: **SP-01-14 Public Hearing and Review on the petition submitted by Luther Oaks, Inc. requesting approval of a special use permit for a nursing home for the property located at 601 Lutz Road. Zoned S-2, Public Lands and Institutions District**

**BACKGROUND INFORMATION:**

Adjacent Zoning

North: S-2, Public Lands and Institutions District  
South: County Zoning  
East: S-2, Public Lands and Institutions District  
West: S-2, Public Lands and Institutions District

Adjacent Land Uses

North: School  
South: SF Homes, Vacant  
East: Vacant  
West: Vacant

The Comprehensive Plan calls for the property to be low/medium density residential.

This petitioner is seeking a special use for a nursing home on vacant land adjacent to their existing senior and assisted living facilities. The adjacent land uses should be compatible with the proposed use in that there are other senior or institution uses and a school with a large open space between it and the proposed use. The single-family homes will also have ample yard space to buffer the uses.

Staff is recommending that a condition of approval be placed upon the special use to require the installation of a screen in the sanitary sewer to prevent clogging of the public sewer system.

Traffic and parking

The developer is complying with the required amount of parking. Since the last meeting staff has worked with the petitioner to insure that a secondary access for emergency vehicles will be provided to the site. You will find below language drafted by the City Attorney conditioning special use approval upon a second access for emergency vehicles be provided.

**Action by the Board of Zoning Appeals.**

For each special use application the Board of Zoning Appeals shall report to the Council its findings of fact and recommendations, including the stipulations of additional conditions and guarantees, when they are deemed necessary for the protection of the public interest or to meet the standards as specified herein. No special use application shall be recommended by the Board of Zoning Appeals for approval unless such Board shall find:

- 1. that the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, comfort or general welfare;** provided a secondary access for emergency vehicles is provided and a screen installed in the sewer, the special use will not be detrimental to the public health in that it will be compatible with adjacent land uses.
- 2. that the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood;** the use will not be injurious to others in that the proposed use is compatible with surrounding uses.
- 3. that the establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district;** the use will not be impede development and improvements and will in part complement the petitioner's existing facilities.
- 4. that adequate utilities, access roads, drainage and/or necessary facilities have been or will be provided** in compliance with city code with a secondary access road for emergency vehicles provided and a screen installed in the sewer.
- 5. that adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and traffic** concerns should not be realized since a secondary access for emergency vehicles will be provided.
- 6. that the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may be modified by the Council pursuant to the recommendations of the Board of Zoning Appeals. (Ordinance No. 2006-137)** and the adherence to the two conditions of approval.

**STAFF RECOMMENDATION:**

Staff recommends that the Zoning Board of Appeals pass a motion recommending City Council approval of this petition in Case SP-01-14 to allow a special use for a nursing home for the property located at 601 Lutz Road condition upon:

- 1) a sewer screen being installed in the sanitary sewer and
- 2) Luther Oaks shall be required to provide secondary emergency access to the property as set forth in this condition to the special use permit. The preferred secondary emergency access shall be off Greenwood Avenue and Luther Oaks agrees to maintain the temporary construction access off of Greenwood Avenue as the initial secondary emergency access. If Luther Oaks is unable in the future to keep the temporary construction access as the secondary emergency access due to the activities or decisions of the property owner, including the development of the property currently owned by Trinity Lutheran Church, then Luther Oaks shall work in good faith to secure another secondary emergency access off of Greenwood Avenue. For purposes of attempting to secure another emergency access point off of Greenwood Avenue, the City acknowledges that Luther Oaks does not currently own any property off of Greenwood Avenue and its efforts may be limited based on the actions of the owner of the property and its future development. If Luther Oaks is unable to secure a secondary emergency access off of Greenwood Avenue, Luther Oaks shall provide a secondary emergency access off of Lutz Road. For purposes of this condition,



Luther Oaks shall be required to maintain the grading and gravel of any secondary emergency access point. The City shall be responsible for posting signs stating the access is for emergency vehicle use only and providing security for the access (when no longer being utilized as a construction access), by temporary or other measures (e.g., a chain or rope across the entry point, etc.), for emergency access only. The City Council may in the future, in its discretion, eliminate this condition to the special use permit as it determines is appropriate based on the future development of the surrounding property and/or improvements to adjacent roads.

Respectfully submitted,

Mark Woolard  
City Planner

WITTENBERG II LLC  
% LARRY HUNDMAN 405 N HERSHEY RD  
BLOOMINGTON IL 617043577

LISA A KUSTER  
1002 WITTEN WOODS  
BLOOMINGTON IL 61704

VERNON L SCHROF  
2409 WIRSING WAY  
BLOOMINGTON IL 617049208

MICHAEL & BRANDI REECE  
2411 WIRSING WAY  
BLOOMINGTON IL 617049208

YAW & ANGELA OPOKU-AGYEMANG  
1004 Witten Woods Dr  
Bloomington IL 617048765

MICHAEL E & MICHELLE L FRYER  
1007 Witten Woods Dr  
Bloomington IL 617048601

STEPHEN & KIRA PLUHAR  
1003 WITTEN WOODS DR  
BLOOMINGTON IL 617048601

CRISTIN & DAVID WEBER  
1012 GERIKE WAY  
BLOOMINGTON IL 617048700

JIM OTT  
2505 WIRSING WAY  
BLOOMINGTON IL 617049209

STEPHEN R CROWLEY  
2503 WIRSING WAY  
BLOOMINGTON IL 617049209

VERNON L SCHROF  
2409 WIRSING WAY  
BLOOMINGTON IL 617049208

AUGUST & BETTE J BERNING  
1006 WHITTENWOODS  
BLOOMINGTON IL 61704

MICHAEL A PIETSCH  
1005 WITTEN WOODS DR  
BLOOMINGTON IL 617048601

KATHERINE RIGG  
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BLOOMINGTON IL 617049209

VERNON L SCHROF  
2409 WIRSING WAY  
BLOOMINGTON IL 617049208

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% LARRY HUNDMAN 405 N HERSHEY RD  
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BENJAMIN & ANDREA MARQUARDT  
2507 WIRSING WAY  
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DEVON MCCUMBER  
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BLOOMINGTON IL 617049209

VELTIN & JUDY BOUDREAUX  
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BLOOMINGTON IL 61704

WITTENBERG II LLC  
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BLOOMINGTON IL 617043577

LUTHER OAKS  
601 LUTZ RD  
BLOOMINGTON IL 61704

NANCY MILLER  
910 WITTEN WOODS DRIVE  
BLOOMINGTON IL 61704

TRINITY LUTHERAN CHURCH  
801 S MADISON  
BLOOMINGTON IL 61701

LUTHER OAKS  
601 LUTZ RD  
BLOOMINGTON IL 617048608

MILDRED L BEASLEY  
502 RADLIFF ROAD  
BLOOMINGTON IL 61701

GERALD LUTZ REVOCABLE TRUST  
600 COMMERCE DR  
REED CITY MI 49677

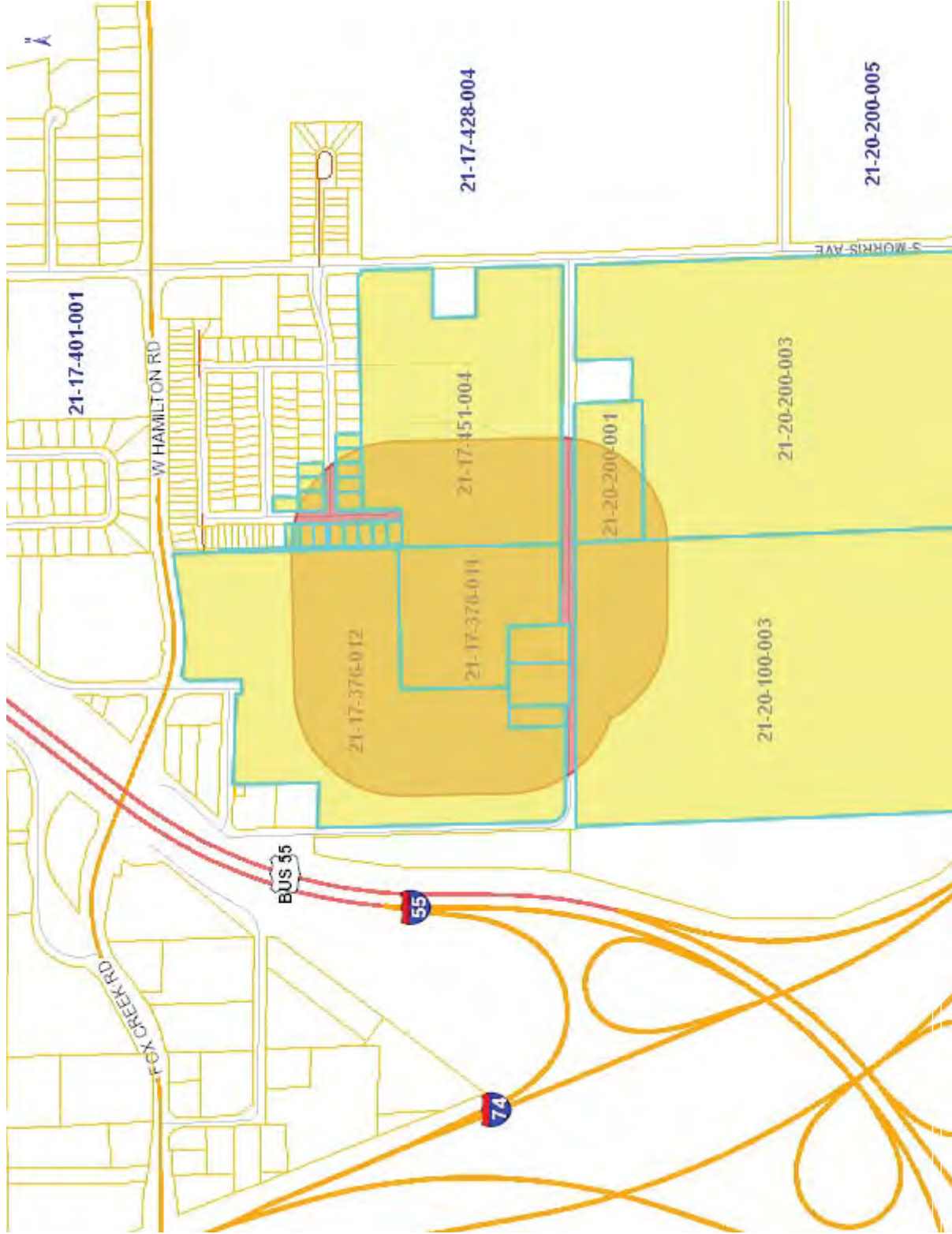
JOSEPH & RUTH M MAREK  
607 LUTZ RD  
BLOOMINGTON IL 617048635

KELLY J DUNLAP  
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BLOOMINGTON IL 61704

EVELYN FARM LUTZ  
% SOY CAPITAL AG SERVICES PO BOX 1607  
BLOOMINGTON IL 617021607



# ZBA Map 601 Lutz Road. Neighbor Mailing



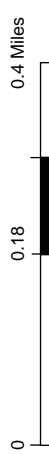
## Legend

- Parcels
- Condo\_Improve
- Interstates
- US\_Highways
- State\_Highways
- County\_Highways
- County\_Rd
- PAVED
- UNPAVED
- City\_Streets
- ALLEY
- CITY\_ARTERIAL
- CITY\_COLLECTOR
- CITY\_STREET
- PRIVATE\_STREET
- Railroad
- County

## Notes

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FOR COUNCIL: March 24, 2014

SUBJECT: Bloomington Chateau Partners, LLC (“BCP”), d/b/a The Chateau, Tax Repayment Agreement for Hotel/Motel Tax

**RECOMMENDATION/MOTION:** Recommend that the Repayment Agreement be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

**STRATEGIC PLAN LINK:** Goal 5. Great place – liveable, sustainable City.

**STRATEGIC PLAN SIGNIFICANCE:** Objective 5b. City decisions consistent with plans and policies.

**BACKGROUND:** The Finance and Legal Departments have been working with BCP since late 2012 to collect Food & Beverage and Hotel/Motel Taxes which were significantly in arrears. Efforts by each department included personal meetings, visits to the business, and telephone calls which aided in intermittent periods of receiving tax payments. In addition, resources to facilitate possible funding for a high end restaurant were provided which BCP worked with for over four (4) months. Tony Roma’s opened in February 2014.

BCP has been paying their taxes each month since November 2013 and has been paid in full all outstanding Food & Beverage Taxes. BCP stands ready to address the outstanding balance on Hotel/Motel Taxes culminating with the attached tax repayment agreement attached.

**COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED:** Not applicable.

**FINANCIAL IMPACT:** The payments will be deposited in the Non-Departmental - Hotel/Motel Tax account (10010010 - 50034).

Respectfully submitted for Council consideration.

Prepared by: Chris Tomerlin, Budget Analyst

Financial & budgetary review by: Chris Tomerlin, Budget Analyst  
Patti-Lynn Silva, Director of Finance

Legal review by: Jeffrey R. Jurgens, Interim Corporation Counsel

Recommended by:

David A. Hales  
City Manager

**Attachments:** Attachment 1. Tax Repayment Agreement

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Motion: \_\_\_\_\_ Seconded by: \_\_\_\_\_

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Painter			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Renner			

**CITY OF BLOOMINGTON  
TAX REPAYMENT AGREEMENT**

This TAX REPAYMENT AGREEMENT is entered into as of this \_\_\_\_\_ day of March, 2014 by and between the CITY OF BLOOMINGTON, an Illinois municipal corporation, and BLOOMINGTON CHATEAU PARTNERS, LLC, an Illinois limited liability company.

**RECITALS**

**WHEREAS**, Chapter 39, Section 26(a) of the City Code of the City of Bloomington (“City”), imposes a 6% tax of the rent charged for the privilege and use of renting a hotel room within the City for each 24 hour period (hereinafter “Hotel Tax”); and

**WHEREAS**, Chapter 39, Section 26(c) provides it shall be the duty of the owner of every hotel to secure said tax from the renter of the hotel and to pay over to the City Treasures said tax; and

**WHEREAS**, Bloomington Chateau Partners, LLC (“BCP”) owns the hotel located at 1601 Jumer Drive in the City of Bloomington and known as the Chateau Hotel & Conference Center; and

**WHEREAS**, since on or around June 2011, BCP has defaulted in paying Hotel Tax in the amount of \$205,775.43, with \$68,798.91 in interest and fees due and owing thereon, as well as defaulted on a previous settlement amount of \$13,689.44, for a total due to the City of \$288,263.78 to the City as set forth in Exhibit A (hereinafter “Default Amount”); and

**WHEREAS**, BCP desires to repay the Default Amount and the parties have agreed to enter into this Tax Repayment Agreement to set forth the conditions of repayment.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The recitals set forth above are a material part of this Agreement and are hereby incorporated in this Agreement by reference.

2. **Amount Due.** BCP agrees and acknowledges that the total outstanding principal of Hotel Tax due between June 2011 and December 2013, is \$205,775.43. BCP further acknowledges that the penalty agreed to by the parties for the late payment, in the amount of 5%, totals \$12,415.38, and that the interest charge by the City in the amount of 1.5% per month totals \$56,383.53. The parties finally acknowledge a past due balance on a previous settlement agreement in the amount of \$13,689.44. The parties are therefore in agreement the total outstanding due to the City for period between June 2011 and December 2013 is \$288,263.78.

3. **Repayment.** BCP agrees to pay to the City the total amount due, \$288,263.78, in full within 36 months by making equal monthly installment payments in the amount of \$7,763.16 per month and a final balloon payment in the amount of \$86,554.00 being due on April 15, 2017.

The monthly payment includes interest on the principal amount owed and the payment shall be due and owing on the 15<sup>th</sup> of each month. The first payment will be due on April 15, 2014, and the last monthly payment will be due on March 15, 2017, with the balloon payment thereafter due on April 15, 2017. Payments shall be deemed delinquent if not received in the City Treasurer's office by the close of business on the fifteenth day of each month. Payments are to be applied toward the interest and penalty fees first and the principal balance second. Nothing herein shall prohibit BCP from paying off the Default Amount owed early.

4. **Tax Good Standing Requirements.** In addition to the requirements to make the monthly repayments set forth in Section 3, it shall be a condition and requirement of this Tax Repayment Agreement that BCP timely make any and all other tax payments due and owing to the City, including specifically taxes under the Hotel Tax.

5. **Term.** This Agreement shall remain in effect until the Default Amount is paid in full.

6. **No Assignment.** BCP agrees not to assign, transfer, or convey any of its interest in and to this Agreement to any other person, partnership, corporation, or other entity, without the prior written consent of the City.

7. **Events of Default.** The following shall constitute Events of Default with respect to this Agreement:

- A. **Breach.** Default in the performance or breach of any covenant, warranty, or obligation of a Party to this Agreement and continuance of such default or breach for a period of ten (10) days after another Party hereto has given written notice thereof to such defaulting Party hereto unless the default is the failure of BCP to make a timely payment under Section 3 of this Agreement which shall not require any notice by the City; or
- B. **Involuntary Bankruptcy.** The entry of a decree or order for relief by a court having jurisdiction in the premises in respect to BCP in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of BCP for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days;
- C. **Voluntary Bankruptcy.** The commencement by BCP of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or the consent by any

such entity to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of BCP or of any substantial part of such entity's property, or the making of any such entity of any assignment for the benefit of creditors or the failure of BCP in furtherance of any of the foregoing; or

8. **Remedies on Default.** If either party commits a default of this Agreement as specified in Section 7 above, the non-defaulting party may terminate the Agreement without any further obligation or may file a lawsuit seeking specific performance, mandamus, or an action for declaration of a right and such shall be the sole remedies of default. Further, if BCP defaults under Section 3 or Section 4 of this Agreement, BCP agrees and acknowledges that the entire amount due and owing on the Default Amount shall immediately become due and owing to the City. At said time, the remaining unpaid portion of the Default Amount shall begin accruing interest at a rate of 3% per month and shall be subject to an additional late payment penalty of 5% per month. BCP shall further be subject to any and all other enforcement provisions allowed under Illinois law, the City Code of the City of Bloomington, or any other applicable regulation in relation to the collection and enforcement of the unpaid portion of the Default Amount and/or any other unpaid taxes due and owing from BCP.

9. **Entire Contract and Amendments.** This Agreement (together with the Exhibits attached hereto) is the entire contract between the City and BCP relating to the subject matter hereof, supersedes all prior and contemporaneous negotiations, understandings, and agreements, written or oral, between the City and BCP, and may not be modified or amended except by a written amendment executed by both of the Parties.

10. **Third Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and BCP and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the City or BCP, nor shall any provision give any third parties any right of subrogation or action over or against either the City or BCP. This Agreement is not intended to and does not create any third-party beneficiary rights whatsoever.

11. **Counterparts.** Any number of counterparts of this Agreement may be executed and delivered, and each shall be considered an original and together they shall constitute one agreement.

12. **Notices.** Any notice, demand, or request required or permitted to be given under the provisions of this Agreement shall be in writing and delivered personally or by registered or certified mail, postage prepaid, to the following persons and addresses, or to such other addresses or persons as either Party may designate by subsequent notice to the other Party:



If to the City, to:

City of Bloomington  
Attn: City Manager  
Attn: Corporation Counsel  
109 E. Olive Street  
Bloomington, IL 61701

If to BCP, to:

Jeremy Cruthis  
1601 Jumer Drive  
Bloomington, IL 61702

and

Mary Pat Kerper  
Platinum Hospitality Group, LLC  
Director of Finance  
800 White Street  
Suite 200  
Dubuque, IA 52001

13. **Governing Law.** This Agreement has been executed and made in Bloomington, Illinois, and shall be construed in accordance with and governed by the laws of the State of Illinois.

14. **Severability.** The Parties intend and believe that each provision of this Agreement complies with all applicable local, state, and federal laws and judicial decisions. However, if any provision or any portion of any provision of this Agreement is found by a court of law to be in violation of any applicable local, state, or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such provision or portion to be illegal, invalid, unlawful, void, or unenforceable as written, it is the intent of the Parties that such provision or portion shall be given force to the fullest possible extent that it is legal, valid, and enforceable, that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void, or unenforceable provision or portion were not contained in this Agreement, and that the rights, obligations, and interests of the Parties under the remainder of this Agreement shall continue in full force and effect.

15. **Waiver of Statute of Limitations.** BCP hereby waives the right to assert any statute of limitations or any other defense as a bar to the enforcement of any tax lien or claim for the Default Amount or to any action brought to enforce this Agreement or claim for the Default Amount.

16. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefits of, and be enforceable by, the Parties and their respective successors and assigns.

17. **Waiver.** The failure of either of the Parties to insist, in any one or more instances, on the performance of any term, covenant, or condition of this Agreement shall not be construed as a waiver or relinquishment of any rights hereunder or of the future performance of any such term, covenant, or condition, but the obligations of the Parties with respect thereto shall continue in full force and effect.

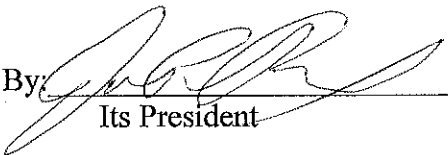
18. **Repealer.** To the extent that any ordinance, resolution, rule, order, or provision of the City's Code of Ordinances or any part thereof is in conflict with the provisions of this Agreement, the provisions of this Agreement shall be controlling.

IN WITNESS WHEREOF, the parties have executed this agreement as of the effective date above.

**CITY OF BLOOMINGTON**

**BLOOMINGTON CHATEAU  
PARTNERS, LLC**

By: \_\_\_\_\_  
Its Mayor

By:   
Its President

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Its City Clerk

By:   
Its Secretary

Loan Amount 289,263.73  
 Outstanding Debt 205,775.43  
 Interest rate 1.8%  
 Months 48  
 Payment amount 6,044.65  
 Late Fees \$ 1,719  
 Total Monthly Payment 7,763.16

Period	Total Outstanding	Monthly Payment	Principal Subject to Interest Calculation				Total Monthly Payment Due	Total Outstanding
			Beginning Principal	Principal	Interest	Monthly Payment Principal		
April 2014	289,264	1,719	205,775	2,958	3,697	6,045	289,264	
May 2014	283,587	1,719	202,617	3,002	3,642	6,045	278,868	
June 2014	278,868	1,719	199,815	3,047	3,587	6,045	274,100	
July 2014	274,100	1,719	196,768	3,092	3,532	6,045	269,289	
August 2014	269,289	1,719	193,674	3,137	3,477	6,045	264,431	
September 2014	264,431	1,719	190,535	3,182	3,422	6,045	259,526	
October 2014	259,526	1,719	187,348	3,228	3,367	6,045	254,573	
November 2014	254,573	1,719	184,114	3,274	3,312	6,045	249,571	
December 2014	249,571	1,719	180,931	3,320	3,257	6,045	244,521	
January 2015	244,521	1,719	177,799	3,366	3,202	6,045	239,420	
February 2015	239,420	1,719	174,717	3,412	3,147	6,045	234,268	
March 2015	234,268	1,719	171,684	3,458	3,092	6,045	229,066	
April 2015	229,066	1,719	168,698	3,504	3,037	6,045	223,810	
May 2015	223,810	1,719	165,768	3,550	2,982	6,045	218,502	
June 2015	218,502	1,719	162,892	3,596	2,927	6,045	213,140	
July 2015	213,140	1,719	160,070	3,642	2,872	6,045	207,729	
August 2015	207,729	1,719	157,303	3,688	2,817	6,045	202,251	
September 2015	202,251	1,719	154,591	3,734	2,762	6,045	196,723	
October 2015	196,723	1,719	151,935	3,780	2,707	6,045	191,137	
November 2015	191,137	1,719	149,334	3,826	2,652	6,045	185,493	
December 2015	185,493	1,719	146,787	3,872	2,597	6,045	179,791	
January 2016	179,791	1,719	144,294	3,918	2,542	6,045	174,028	
February 2016	174,028	1,719	141,855	3,964	2,487	6,045	168,206	
March 2016	168,206	1,719	139,470	4,010	2,432	6,045	162,321	
April 2016	162,321	1,719	137,139	4,056	2,377	6,045	156,374	
May 2016	156,374	1,719	134,862	4,102	2,322	6,045	150,364	
June 2016	150,364	1,719	132,639	4,148	2,267	6,045	144,289	
July 2016	144,289	1,719	130,470	4,194	2,212	6,045	138,149	
August 2016	138,149	1,719	128,355	4,240	2,157	6,045	131,942	
September 2016	131,942	1,719	126,294	4,286	2,102	6,045	125,668	
October 2016	125,668	1,719	124,286	4,332	2,047	6,045	119,326	
November 2016	119,326	1,719	122,331	4,378	1,992	6,045	112,915	
December 2016	112,915	1,719	120,429	4,424	1,937	6,045	106,438	
January 2017	106,438	1,719	118,580	4,470	1,882	6,045	99,879	
February 2017	99,879	1,719	116,783	4,516	1,827	6,045	93,254	
March 2017	93,254	1,719	115,038	4,562	1,772	6,045	86,564	
April 2017	86,564	1,719	113,345	4,608	1,717	6,045	80,000	

Balloon Payment

**Item 7C-c.**

**Chateau Tax Repayment Agreement**

*(5 minutes)*

**Will be available**

**Via addendum**