

**TOWN BRANCH PARK
DEVELOPMENT AGREEMENT**

This AGREEMENT ("Agreement") is entered into this 4 day of December 2018 by and between, TOWN BRANCH FUND, a component of BLUE GRASS COMMUNITY FOUNDATION, INC., a Kentucky nonprofit corporation ("BGCF"), LEXINGTON CENTER CORPORATION, a Kentucky nonprofit corporation ("LCC") and LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, a Kentucky urban county government ("LFUCG") (each a "Party," and collectively "Parties").

WHEREAS, Lexington has embarked upon an ambitious public-private partnership called the Town Branch Commons project ("Project"), which will be a ribbon of Bluegrass, weaving together the rural and city neighborhoods of Lexington by providing safe and accessible pedestrian and bike transit, cleaning and treating storm water, and creating new and revitalized public spaces;

WHEREAS, Town Branch Trail, and specifically the downtown section of the Town Branch Trail (the "Trail"), and Town Branch Park (the "Park") are the two largest components of the Project, as diagrammatically illustrated on Exhibit "A" attached hereto and incorporated herein;

WHEREAS, the Trail is a fully funded 3.2 mile pedestrian and biking corridor through the heart of downtown, connecting to Town Branch Park at one end and providing the missing link that connects 22 miles of continuous trails through Lexington's iconic countryside;

WHEREAS, the Park is the anchor of the Project and critical to achieving its overall vision;

WHEREAS, there is insufficient public funding currently identified by and available to LFUCG to perform the necessary work to develop, operate and/or maintain the Park as a world-class amenity with a high level of design excellence, and as a result, LFUCG sought support from a private nonprofit entity to assist with these functions;

WHEREAS, cities throughout the country have entered into public-private partnerships with nonprofit organizations to create and revitalize urban parks and maximize the development, operation and maintenance of such parks;

WHEREAS, LCC has begun construction on significant alterations and improvements to the Lexington Convention Center (the "Convention Center"), which is located adjacent to the proposed Park;

WHEREAS, LCC and LFUCG currently own or have rights to real property needed for the creation of and access to the Park located within the "Manchester Street Parking Lot"

("Park Area") consisting of approximately nine (9) acres as more generally designated in Exhibit B attached hereto and incorporated herein;

WHEREAS, the parties acknowledge that the Convention Center, Rupp Arena and other facilities owned or operated by LCC ("LCC Facilities") are and, when the alterations and improvements to the Convention Center are completed, will continue to be, the centerpiece of Lexington's convention and tourism industry;

WHEREAS, pursuant to a Memorandum of Understanding signed by the Parties on or about August 30, 2016 (the "MOU"), the Parties agreed to enter into a long-term agreement related to usage and acreage of the Park within a reasonable time after the final schematic design for the renovation of the Convention Center (the "Schematic Design");

WHEREAS, contemporaneous with the achievement of certain milestones related to the Park, the "Park Operating Entity" (as defined below) and LCC shall enter into a ground lease with regard to the Park Area and access to Park Area;

WHEREAS, the Parties will cooperate to get the approval necessary to develop the Park Area and execute said ground lease and any documents or instruments reasonably required to carry out the intent of this Agreement; and

NOW, THEREFORE, in order to advance their mutual objectives with respect to the Project and to commence a collaborative process with each other, the Parties mutually acknowledge and agree as follows:

SECTION 1: PURPOSE OF AGREEMENT

The purpose of this Agreement is to (a) establish the role of each Party in a cooperative working relationship to develop, construct and maintain the Project; (b) to formalize basic terms for a lease agreement specifically related to the Park that will ultimately be entered into by and between LCC and the "Fund" (as defined below) or Park Operating Entity; and (c) ensure coordination of the design, construction and operation of the Park so as to avoid operational disruption of LCC Facilities.

SECTION 2: PARK AREA

1. This Agreement applies to the Park Area. An approximation of the Park Area is outlined in Exhibit B, consisting of approximately nine (9) acres. It is understood and agreed by the Parties that the exact boundary and legal description of the Park Area will be determined by survey conducted by the U.S. Corp of Engineers, Louisville District, as part of a technical assistance grant applied for and awarded to the Fund to help advance the Project. Said survey shall be consistent with the boundaries generally outlined in Exhibit B. Upon satisfactory completion of the survey and legal description, subject to the approval of LCC in its reasonable discretion, the Parties agree to promptly enter into a supplement to this Agreement to incorporate the survey and legal description

herein. Parties acknowledge that minor adjustments may be necessary to the precise boundary and acreage of the Park Area to accommodate for utilities and an access road from Oliver Lewis Way or Manchester Street to the LCC Facilities. Any such adjustments shall be memorialized in a writing agreed upon by the Parties.

2. The Parties agree to work together to ensure that access, approaches and entrances are adequate for the construction and operation of the Park and shall not unreasonably interfere with the efficient and safe operations of LCC Facilities. The Parties agree to make reasonable efforts, subject to all legal and regulatory limitations, to provide for pedestrian access to the Park to and from the following roadways: Main Street, Oliver Lewis Way, Manchester Street and High Street and provide for vehicular access from Main Street and Manchester Street and/or Oliver Lewis Way to the Park.
3. The Parties acknowledge that it is critical to the operation of the LCC Facilities to have adequate means of ingress and egress to and from LCC Facilities. LCC has utilized the existing private access road from Oliver Lewis Way/Manchester Street to LCC Facilities and said existing access road has been adequate for providing ingress and egress to LCC Facilities for the many large trucks, semi-trailers and other large vehicles which transport equipment, materials and personnel to and from LCC Facilities. As the Park is currently designed, the existing access road may interfere with some of the proposed features which will ultimately be installed at the Park. In the event and at such time it becomes necessary to construct an alternative access road to and from LCC Facilities, the Parties agree that a conceptual drawing of the location of the alternative access road is attached hereto as Exhibit E and said road shall be constructed in the approximate location as shown.
4. Subject to availability, LCC shall provide the space within its real property as may be reasonably required for the Fund's or Park Operating Entity's installation, maintenance, operation and service of sewers, water, gas, drainage, electricity and other utilities, which shall be at the Fund's or Park Operating Entity's sole cost and expense. The Fund or Park Operating Entity shall be responsible for securing easements for utilities within the Park Area and within property not owned or operated by LCC.

SECTION 3: TOWN BRANCH FUND

1. Purpose of Town Branch Fund.

LCC in accordance with this Agreement and the Town Branch Commons Design Master Plan and Design Standards (the "Project Master Plan"), including but not limited to:

1. Direct the Park design process, including negotiation and execution of all contracts related to same;

2. Create a comprehensive plan for programming at the Park and ensure that the Park's design is compatible with such programming plan; and
 3. Develop a revenue model for the Park, consistent with the design and such programming plan;
- (c) Incubate the Park Operating Entity, which is the entity that will operate and maintain the Park, and develop its governance structure, including all policies and procedures consistent with current laws and nonprofit best practices;
- (d) Assist the LFUCG and/or LCC with discussions with various stakeholders, including but not limited to, government entities and private landowners, with respect to easements, acquisitions, development issues and other matters related to the Project and specifically related to the Park; and
- (e) Oversee outreach efforts related to the Park and assist LFUCG with public outreach with respect to the Project.

It is currently anticipated that the Fund and/or its successor will assume responsibility for the development, construction and ongoing maintenance of only the Park Area and that LFUCG will maintain responsibility for all other public portions of the Project, including streets, public right-of-way and the Trail. In no event shall the development, construction or ongoing operations of the Park be the responsibility of LCC.

2. Board of Advisors.

- (a) The Fund is overseen by a "Board of Advisors" which is leading the effort to bring the Park to downtown Lexington. The Board of Advisors includes: Ann Bakhaus (Chair), Dr. Mary Lynne Capilouto, Kip Cornett, Bill Farish, Orrin Ingram, Greg Goodman and Steve Grossman.
- (b) The Fund also established "Town Branch Park Partners" - a diverse group of subject matter experts and community leaders identified by the Fund as critical to the Park's success - to ensure that the Park is welcoming, safe and accessible to all and work to plan and promote equity fairness, compliance and inclusion in the Park design, programming and operations. A list of the Town Branch Park Partners is attached as Exhibit C.

SECTION 4: LFUCG AND LCC

1. LCC shall maintain ownership of all real property currently owned by LCC related the Park Area.
2. To ensure consistency in all parts of the Project, LFUCG shall maintain authority over the Town Branch Commons Project Master Plan, to be exercised in good faith,

consistent with the terms of this Agreement and in cooperation with the Fund and LCC.

3. LFUCG shall assist with the procurement of any permits and other approval procedures required by LFUCG for Park Area construction and Park operations.
4. The Parties agree and understand that the public right of ways identified on Exhibit C are intended and shall be used as main entrances to the future Park ("Park Entrances"). Upon completion of the final design of the Park and prior to Park construction, LFUCG agrees to enter into any necessary agreement(s) with the Fund or the Park Operating Entity to allow the Park Entrances to be appropriately utilized and accessed for and by the Park, and further providing for how the entrances will be reconfigured, reconstructed, operated and managed for public use.
5. LCC agrees to share with Fund, at such time and when they are known to LCC, any changes to the facade, footprint or design of the Convention Center on its west side, adjacent to Park Area, and to any known or anticipated entrance to the Park that occur during design and/or construction of the Convention Center.

SECTION 5: LEASE AGREEMENT

1. Within thirty (30) days of the conclusion of the design process and presentation to LCC of written evidence by Fund that it has sufficient funds committed to pay seventy-five (75%) percent of the total budgeted cost of construction of the Park, but in any event, no later than five (5) years from the date of this Agreement, the Fund (or Park Operating Entity) and LCC agree to initiate negotiations for a definitive ground lease (the "Ground Lease"), which negotiations shall be conducted in a commercially reasonable and diligent manner. The Parties shall submit the negotiated Ground Lease to their respective boards for approval, which approval shall be obtained, if at all, within sixty (60) days following submission thereof. No obligation under the Ground Lease will exist until its execution by all parties thereto. For purposes of this Section 5, BGCF, Fund and Park Operating Entity may be used interchangeably, depending on the context. It is understood by the Parties that if funds equal to at least seventy-five (75%) percent of the total budgeted cost of construction of the Park have not been received or committed by written pledge or commitment within five (5) years of the date of this Agreement, then this Agreement shall be null and void and no Party shall have any further obligations hereunder, except those obligations that survive the termination of this Agreement.
2. Until such time as the Ground Lease has been executed, the Fund will not proceed with construction of the Park; provided however, the Fund may, at its sole cost and expense, proceed with pre-construction activities, surveys, title examination, inspections, investigations and testing (including environmental) in the Park Area, upon advance notice to and in coordination with LCC. Any damage to LCC Facilities that results from said activities that would not otherwise be cured as part of the LCC construction and expansion project shall be the responsibility of the Fund. Within ten

(10) days of the full execution of this Agreement, LCC, without making any representation as to the quality or accuracy of same, shall provide copies to BGCF of all of the following materials related to the Park Area in its possession or otherwise readily available to LCC, its consultants, contractors, design or construction team, and project managers: (a) surveys; (b) title examinations, title opinions or reports, title commitments or policies; (c) environmental reports; and (d) all other reports that may materially relate to or impact the development, design, construction or operation of the Park.

3. The Ground Lease will include the following basic terms and conditions (which list shall not be deemed to be an exhaustive list and shall be subject to a definitive lease agreement, containing terms typically found in an arms-length commercial lease):

(a) General Terms:

- (1) LCC shall own and hold title to the real property in the Park Area.
- (2) LCC shall enter into a 59-year initial leasehold term, which shall automatically renew for up to two (2) additional twenty (20) year terms unless the the Park Operating Entity provides LCC written notice 180-days prior to the expiration of the current lease term, for all real property included in the Park Area.
- (3) The Ground Lease may be terminated by LCC for cause, to include gross neglect or activities that are harmful to the Park or LCC Facilities, with Fund or Park Operating Entity having a 60-day period to cure following written notice of default.
- (4) The Ground Lease may be terminated by Park Operating Entity if LCC breaches the lease or conditions exist under which the Park cannot be operated safely or cannot generate revenue anticipated, or the Park Operating Entity and/or Park would incur costs that would cause it to become insolvent.
- (5) The Ground Lease may be terminated by LCC in the event the Fund or Park Operating Entity fails to initiate construction activities in the Park Area two (2) years following the later of either (a) the execution of the Ground Lease or (b) substantial completion of the LCC expansion to include removal of all construction related materials and equipment staged in the Park Area as part of said expansion.
- (7) As payment for the occupancy and use of the Park, LCC acknowledges that Park Operating Entity will make substantial investment in the design and completion of capital improvements and related facilities to construct the Park, and as a result the Park Operating Entity shall be obligated to pay LCC the sum of One Dollar (\$1.00) annually as rent.

(8) The Ground Lease shall contain customary provision requiring the Park Operating Entity to indemnify LCC against any damage or loss as a result of the Park's operations and requiring the Park Operating Entity to carry appropriate amount of casualty and liability insurance, naming LCC as an additional insured.

(b) Park Capital Improvements:

- (1) LCC shall have the right to review all plans for capital improvements to the Park for the sole purpose of ensuring that such work is performed in accordance with the Project Master Plan and all applicable laws and ordinances and to plan for the efficient and safe operations of LCC.
- (2) The Park Operating Entity may execute contracts with various third parties for the development, construction, maintenance and operation of improvement to the Park Area.
- (3) All improvements shall be overseen and paid for by Operating Entity based on available and anticipated resources and in accordance with the Project Master Plan.
- (4) LFUCG and the Park Operating Entity will work in good faith to ensure that appropriate access to the Park Area is provided from adjoining public property and enter into any necessary agreement(s) required to accomplish this.

(c) Governance and Operations:

- (1) Upon execution of the Ground Lease, two additional seats shall be added to the governing board of the Fund (or Park Operating Entity) with full voting rights and subject to the policies and procedures of the Fund (or Operating Entity): (1) a LFUCG representative recommended by the Mayor and (2) a representative of the LCC board of directors.
- (2) The Park Operating Entity shall develop, in its sole discretion, policies and procedures related to the use of the Park Area.
- (3) Park Operating Entity shall be responsible for short and long-term funding obligations with respect to the Park Area and the operation and maintenance of the Park.
- (4) All revenues accruing to the Park Operating Entity from events, including concessions, user fees, event fees, sponsorships and other revenue sources related to the Park Area and/or Park programming shall be retained by the Park Operating Entity for the use and benefit of the Park or obligations of the Park Operating Entity related to the Park, unless otherwise agreed upon.
- (5) The Park Operating Entity shall have oversight and control of the Park budget

and operating plan and may enter into third party contracts, including but not limited to contracts with concessionaires or vendors, at its sole discretion, subject to the terms of the Ground Lease relating to Capital Improvements.

- (6) The Park Operating Entity shall have absolute discretion and the sole responsibility for the hiring and firing of all staff related to the Park Operating Entity and/or Park.
- (7) The Park Operating Entity shall have a central contact at LCC (designated by LCC) and communication with said contact shall fulfill any notice required by Ground Lease.
- (8) Park Operating Entity shall keep LCC informed of all special events and programming activities held in the Park to prevent operational disruptions where such activities could impact the operations of LCC.
- (9) All park events and programming, including any such activities sponsored, supported, proposed or initiated by LCC must be initially referred to the Park Operating Entity for processing and approval.

SECTION 6: General Provisions

1. The Parties agree to work together at all times in good faith, meet regularly, keep each other informed as to activities of the other that affect the Project or any portion of the Project or any Party hereto.
2. The Parties agree to maintain at all times a formal representative who shall serve as the point of contact for communications and shall be deemed to have the authority to convey any approval by the represented Party as may be required by this Agreement.
3. The point of contact or formal representative for each Party shall be as follows:

FUND: Allison Peck Lankford
Executive Director
Town Branch Fund
Blue Grass Community Foundation
499 E. High Street, #112
Lexington, KY 40507
859.225.3343
alankford@bgcf.org

LCC: William B. Owen
President
Lexington Center Corporation
430 West Vine
Street Lexington,
KY 40507
859.233.4567 - Ext. 210
BOwen@rupparena.com

LFUCG: Brandi Peacher
Director of Project
Manager LFUCG Office
of the Mayor 200 E. Main
Street Lexington, KY
40507
859.258.3150
bpeacher@lexingtonky.gov

Any change in point of contact shall be communicated in writing to all other Parties.

4. Each Party shall be responsible for its own costs and expenses associated with the preparation and adoption of this Agreement, the preparation and adoption of the Ground Lease, and future actions related thereto.
5. This Agreement may be amended, modified or superseded only by a written instrument signed by all Parties. The Parties shall not be deemed to have waived compliance by another Party or any provision of the Agreement unless such waiver is contained in a written instrument signed by the waiving party and no waiver that may be given by one of the Parties will be applicable except in the specific instance for which it is given.
6. All of the provisions in this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the Parties, and each of the Parties successors and assigns. And specifically, all provisions in this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the Fund's successors and assigns, including but not limited to any organization or entity established to develop, construct, operate or maintain the Park.
7. If any clause or provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or

unenforceable clause or provision as may be possible and be legal, valid and enforceable.

8. The Parties specifically acknowledge that the Fund may transition into an independent nonprofit or similar entity and any assignment of this Agreement or any subsequent agreement pertaining to the new entity and the Park shall be a permitted assignment. Any other assignments to this Agreement shall be prohibited unless agreed upon by all Parties.
9. This Agreement shall be performed and enforced in Fayette County, Kentucky and shall be construed in accordance with the laws of the Commonwealth of Kentucky.
10. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgment pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

BLUE GRASS COMMUNITY FOUNDATION, INC.

BY: *Jim Hulle*

Title: President/CEO

Date: 11.28.18

TOWN BRANCH FUND

BY: *William Campbell*

Title: Executive Director

Date: 11/28/18

LEXINGTON CENTER CORPORATION

By: _____

Title: _____

Date: _____

[Handwritten signature]
Chair, Lexington Center Corporation
11-15-18

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

By: _____

JIM GRAY

MAYOR

DATE: _____

ATTEST: _____

CLERK OF THE URBAN COUNTY COUNCIL

Jim Gray
December 4, 2018
[Signature] Deputy



EXHIBIT B



Estimated Acreage
Parcel A: 8.294 acres
Parcel B: 0.527 acres

**acreage estimates calculated utilizing Lexington PVA website area tool. Final acreage to be confirmed by survey.*

EXHIBIT C



TOWN BRANCH PARK

TOWN BRANCH PARK PARTNERS

Purpose

To further support the mission of Town Branch Park, the Town Branch Fund Board of Advisors has agreed to form Town Branch Park Partners. Town Branch Park Partners is a dedicated group of Park ambassadors who are leaders in their respective professions and serve as advisors to the Town Branch Fund on issues related to their professional endeavors. Town Branch Park Partners are vital to ensuring that the Park is welcoming, safe and accessible to all and work to plan and promote equity, fairness, compliance and inclusion in the Park design and programming.

Partners

Sgt. R.G. Berry, LPD, rberry@lexingtonpolice.ky.gov

James Brown, LFUCG City Council [jbrown2@lexingtonky.gov]

Carrie Butler, LexTran [CButler@lextran.com]

Mary Lynne Capilouto, UK/Town Branch Fund Board of Advisors [mlcapilouto@uky.edu]

Juan Castro, JCC Consulting Group, [jcastro@thejccgroup.com]

Monica Conrad, LFUCG Parks and Recreation [mconrad@lexingtonky.gov]

Anne Donworth, Lexington Public Library [adonworth@lexpublib.org]

Walt Gaffield, Neighborhood Council [w.gaffield@gmail.com]

Sgt. Donnell Gordon, LPD, dgordon@lexingtonpolice.ky.gov

Linda Gorton, former Vice Mayor [lgorton2@gmail.com]

Laura Hatfield, One Lexington [lhathfield@lexingtonky.gov]

Lisa Higgins-Hord, UK Office of Community Engagement [lisa.hh1@uky.edu]

Jason Jones, UK Human Development Institute [jjjones@twc.com]

Tresine Logsdon, FCPS, Energy and Sustainability [tresine.logsdon@fayette.kyschools.us]

Rick McQuady, Affordable Housing [rmmcquady@lexingtonky.gov]

Gary Means, Lexington Parking Authority, [gmeans@lexpark.org]

Derek Paulsen, Commission of Planning/Public Safety Professor [dpaulsen@lexingtonky.gov]

EXHIBIT C

PG Peeples, Urban League [pg@ullexfay.org]

Lance Poston, Director of UK LGBTQ Resources, [lance.poston@uky.edu]

Mary Quinn Ramer, VisitLex [mramer@visitlex.com]

Malcolm Ratchford, Community Action Council [malcolm.Ratchford@commaction.org]

Polly Ruddick, Office of Homelessness Prevention & Intervention [pruddick@lexingtonky.gov]

Miranda Scully, FCPS, Community and Families, [miranda.scully@fayette.kyschools.us]

Kristina Stambaugh, Lexington Senior Center [kstambau@lexingtonky.gov]

Terry Sweeney, Downtown Lexington Partnership [terry@downtownlex.com]

Isabel Taylor, Global Lex [itaylor@lexingtonky.gov]

Darryl Thompson, FCPS Equity Officer [darryl.thompson@fayette.kyschools.us]

Aldona Valicenti, LFUCG CIO [avalicenti@lexingtonky.gov]

Nathan Zamarron, LexArts [nzamarron@lexarts.org]

Bluegrass Youth Sustainability Council, Representative - Anna Baskin

Staff:

Allison Lankford, Executive Director of Town Branch Fund [alankford@bgcf.org]

Hannah O'Leary, Deputy Director of Town Branch Fund [hannahOleary@bgcf.org]

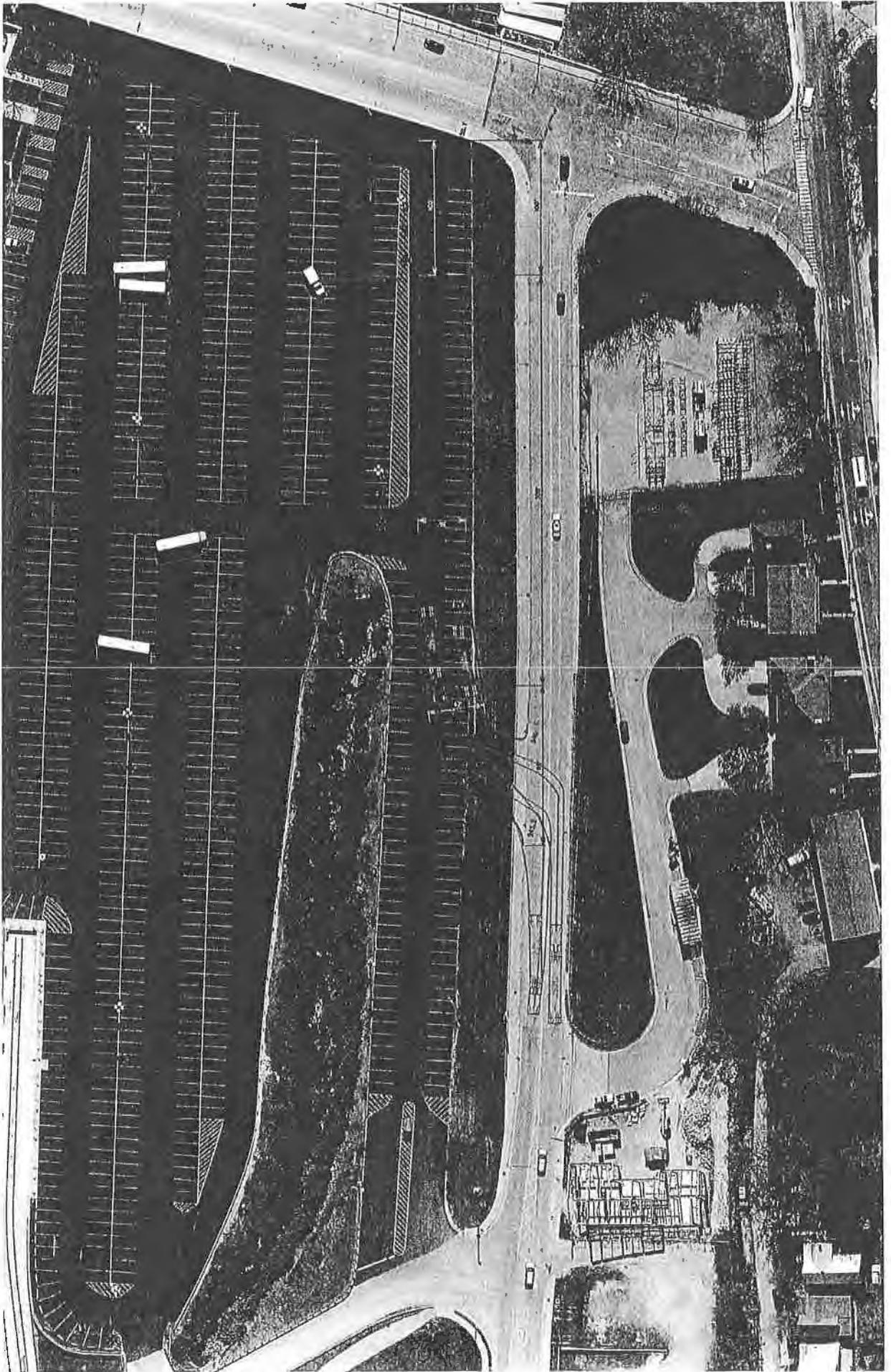


EXHIBIT B