

204 Peach Way, Suite G  
Columbia, MO 65203  
573-875-5151 Office  
573-875-4931 Fax

**WilGate  
Development, L.L.C.**

# Fax

To: Dave Corliss From: Jay Burchfield  
Fax: 785-832-3405 Pages: Including cover 13  
Phone: 785-832-3403 Date: ~~2/11/04~~ 3/5/04  
Re: Brunfeldt / SBD CC:  
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Dave - Please find attached the Agreement with the Brunfeldts. As promised, I have also placed a call to Dr. Brunfeldt. Let me know how I can help.

*[Signature]*

\$167,000 Brunfeldt

### AGREEMENT

Agreement between David Brunfeldt and Joan Brunfeldt (Brunfeldts) and Jeffrey E. Smith Homes, L.C. (Smith) effective this 12th day of December, 2001.

WHEREAS, Smith seeks to develop property described in the draft Plat prepared by The Peridian Group for the Spring Hill Subdivision Phase II and attached hereto as Attachment C (hereinafter referred to as "Plat"); and

WHEREAS, Smith seeks the assistance of the Brunfeldts in the establishment of a special benefits district to improve Monterey Way Street to extend to the Spring Hill Subdivision Phase II; and

WHEREAS, under the conditions and limitations stated in this agreement, the Brunfeldts agree to assist in the establishment of a special benefits district to improve Monterey Way Street.

#### THE PARTIES AGREE AS FOLLOWS:

1. **ANNEXATION PETITION.** Brunfeldts shall submit to the City of Lawrence, Kansas an annexation petition Attachment A (A-1 and A-2) (incorporated by reference herein) requesting that the real property owned by them and described in Attachment A be annexed.
2. **SPECIAL BENEFITS DISTRICT.** Brunfeldts shall not protest the creation of a special benefits district to fund the street improvements of Monterey Way north from Sixth Street in Lawrence, Kansas and shall file a waiver of protest, Attachment B, incorporated by reference herein.
3. **FAILURE TO ESTABLISH SPECIAL BENEFITS DISTRICT.** If the City of Lawrence does not seek to establish a special benefits district to fund the street improvements of Monterey Way north from present unimproved point to Peterson Road in Lawrence, Kansas within seventy-five (75) days of approval of the annexation, Smith shall pay the increase in city property taxes incurred by Brunfeldts following annexation as compared to what Brunfeldts would have incurred had their property not been annexed to the date that the paved extension of Monterey Way along all of Brunfeldt's frontage, prorated to such latter date.
4. **PAYMENT OF SPECIAL ASSESSMENTS.** Smith shall pay all special assessments assessed to the real property owned by the Brunfeldts as well as all real property purchased by the Brunfeldts from Smith (as described in paragraph 6) arising from the establishment of a special benefits district to fund the street improvements of Monterey Way north from present unimproved point to Peterson Road in Lawrence, Kansas. Such special assessments shall be paid on or

before June 20 and December 20 of each year in which they become due. Such payment obligation by Smith shall be secured by an irrevocable letter of credit issued by a bank for the full amount of all assessment payments that will accrue over the life of the special assessment, plus an amount equal to the 25% share of the cost of the fence that shall be paid by Smith pursuant to the terms of this agreement. An irrevocable letter of credit shall be maintained as provided for herein until all special assessments and the cost of the fence shall have been paid in full; provided, however, that the face amount of such irrevocable letter of credit may be adjusted downward by the amount of payments made by Smith of special assessments under this agreement and for the cost of the fence. Such irrevocable letter of credit shall be renewed at least sixty days prior to the expiration of such irrevocable letter of credit and each such subsequent irrevocable letter of credit shall be renewed at least sixty days prior to its expiration. If Smith fails to renew the irrevocable letter of credit at least sixty days prior to its expiration, or fails to pay a special assessment or the costs of the fence as provided for herein or the attorneys' fees provided for herein or the taxes that are due under the terms of this agreement (in the event that the special benefits district is not immediately formed), Brunfeldts shall be entitled to payment of all special assessments (those accrued and those that will be due in future years pertaining to the improvement of Monterey Way), the cost of the fence, the attorneys fees and the taxes due under the terms of this agreement. Payment of the present and future special assessments, the cost of the fence, the attorney's fees and taxes due under the terms of this agreement shall be made by the bank issuing the irrevocable letter of credit upon presentation by Brunfeldts of an affidavit stating Smith has failed to pay funds owing under this agreement when due.

5. **STORM WATER RUNOFF.** Smith shall control storm water runoff from the Spring Hill Subdivision Phase II. Storm water runoff shall be controlled with underground piping in order to ensure that additional storm water runoff is not generated from the platted area to Brunfeldts' present real property. Civil engineering plans generated to address storm water runoff shall be presented to Brunfeldts for review and comment and shall provide for storm water runoff control consistent with this paragraph.
6. **PURCHASE OF THREE LOTS.** Smith hereby grants to Brunfeldts the option to purchase three lots from the Spring Hill Subdivision Phase II, such lots being designated on the attached plat as lots 11, 12, and 13 of Block 4 of Spring Hill Subdivision Phase II (Attachment C). The legal description of this agreement incorporates by reference the most recent plat that has been submitted by Smith for approval, and shall be supplemented by more accurate legal descriptions if changes occur; provided, however, that in absence of such correct legal description, such lots are generally described by metes and bounds as: Beginning at the Southeast Corner of the North Half of the Northeast Corner of Section 27-T12S-R19E of the 6th PM, thence N 89°48'55" W 389.88 feet, thence N 00°00'59" E

199.38 feet; thence S 89°46'18" E 135 feet, thence Southeasterly to the point of beginning, all in Douglas County Kansas. Lots 12 and 13 are contiguous to the property of Brunfeldts. The purchase price of the subject lots shall be forty thousand dollars (\$40,000.00) per lot for a total of one hundred-twenty thousand dollars (\$120,000.00). Upon completion of the road improvements to Monterey Way and the Spring Hill Subdivision and such other improvements as are necessary to bring the lots up to the standard necessary to have a building permit issued for construction upon them, Smith shall notify Brunfeldts in writing that the property is ready for purchase and occupancy. Brunfeldts shall have sixty days in which to exercise the option to purchase. Upon notification of the affirmative exercise of the option, Smith shall deliver to Brunfeldts draft title insurance commitments for each lot. Brunfeldts shall have thirty days to review the title commitments and object to any encumbrances. Smith shall survey and mark the corners of each and every lot being sold under this agreement. The purchase shall be contingent upon the following financial contingencies: Appraisal of each lot for \$45,000.00; obtaining an 80% loan to value loan at 8% with an amortization of twenty years. The contingency shall be met or the transaction rescinded by Brunfeldts within 60 days of the exercise of the option. The Closing shall take place at a time and place mutually agreeable to the parties but, in absence of an agreement, not later than six months from the date Smith notifies Brunfeldts that road improvements and storm water improvements to Monterey Way and Spring Hill Subdivision Phase II are completed and the property ready for purchase and occupancy; provided, however, that closing shall be extended to permit Smith to correct any title defects or deficiencies identified by Brunfeldts. At Closing on the lots, any monies owed by Smith to Brunfeldts, as well as those funds Smith is obligated to pay under this agreement, shall be offset from the purchase price and shall reduce those funds owing from Brunfeldts to Smith; provided, however, that if the funds owed by Smith exceed the purchase price, then the balance of funds owing shall be paid at Closing by Smith. If an irrevocable letter of credit is in place in compliance with the terms of this agreement and has more than sixty days before its expiration and all payment have been made when due, there shall not be an offset for the special assessments that have not yet become due.

7. COMMON FENCE. Four lots of the Spring Hill Subdivision Phase II shall abut Brunfeldt's property. A common fence using common materials and design for all four lots shall be installed by the Brunfeldts. Brunfeldts shall build the fence and shall pay the cost of the fencing along lots 12 and 13 and one other lot; the cost of the fence for the fourth lot shall be paid by Smith. When Brunfeldts have built the common fence on at least two of the lots, Brunfeldts shall forward to Smith a bill for the common fence of one lot and Smith shall pay such bill within 30 days of presentment.
8. OTHER PROVISIONS FOR RESTRICTIVE COVENANTS. The restrictive covenants for Spring Hill Subdivision Phase II shall also provide for the

*Agreement*

*David and Joan Brunfeldt and Jeffrey E. Smith Homes, L.C.*  
*December 12, 2001*

*Page 3*



following:

- 8.1. There shall not be any outside storage.
  - 8.2. There shall not be any dog pens, kennels, sheds, etc.
  - 8.3. There shall not be any substandard construction materials.
  - 8.4. There shall not be any offensive colors on the houses; more specifically, all colors shall be as authorized by the architectural control committee.
  - 8.5. There shall be a minimum masonry requirement.
  - 8.6. Each house must use a Heritage 25 architectural grade shingle.
  - 8.7. David Brunfeldt or, alternately, Joan Brunfeldt, shall serve on the architectural control committee.
    - 8.7.1. Such position may be a minority position (member of a board of three or more members).
    - 8.7.2. Written notice of meetings and the written submissions being considered at such meetings shall be delivered to the Brunfeldt's home at 1673 E Monterey Way, Lawrence, KS 66049 at least ten days prior to such meetings.
    - 8.7.3. All plans for any construction in the Spring Hill Subdivision Phase II must be submitted to the Architectural Control Committee for review and must be approved by the Architectural Control Committee by majority vote prior to construction.
9. PROVISIONS SURVIVE CLOSING. The provisions of this agreement shall survive closing and shall be enforceable by specific performance as well as by any other remedy available at law or at equity.
10. INCORPORATION BY REFERENCE. The Plat described above is incorporated by reference herein as if set forth more fully herein. The term "Spring Hill Subdivision Phase II" shall refer to the subdivision described in the Plat.
11. ADJUSTMENTS TO PLAT. Any changes to the Plat as it is finally approved by the City of Lawrence, Kansas shall not change the size or configuration of the lots in the Spring Hill Subdivision Phase II that are contiguous to the real property of the Brunfeldts or contiguous to the lots purchased by the Brunfeldts pursuant to this agreement.
12. ATTORNEY'S FEES. Smith shall pay the attorney's fees incurred by Brunfeldts in the preparation of this document. Such funds shall be paid before the submission of the "Petition and Consent to Annexation into the City of Lawrence, Kansas" and the special benefit district protest waiver "Agreement" by Brunfeldts. In the event that Smith shall fail to perform any material provision of this agreement including, without limitation, the payment of any money owing under this agreement, then and in that event, Brunfeldts shall be entitled to reasonable attorney's fees incurred by Brunfeldts in the effort to collect the moneys owing, whether because of court action or other efforts by the attorney(s).

*Agreement*

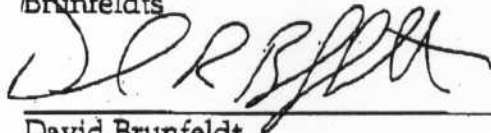
*David and Joan Brunfeldt and Jeffrey E. Smith Homes, L.C.  
December 12, 2001*

*Page 4*

13. **SPECIFIC PERFORMANCE.** In addition to any other remedy at law or at equity available to them, Brunfeldts shall be entitled to specific performance of the sale of the subject real estate. The legal descriptions of the lots that are subject to this specific performance provision shall be as they are finally established in the final plat, subject to the provisions in this agreement.
14. **CORPORATE AUTHORIZATION.** Craig VanMatre, legal counsel for Smith, represents that he has authority to bind Smith to this agreement.
15. **COUNTERPARTS.** This agreement may be executed in counterparts and the exchange of such counterparts shall make this document a binding agreement. Such counterparts may be sent by facsimile transmission to signify acceptance and the original later personally delivered, sent by express delivery service or posted. The combined counterparts shall constitute one document.
16. **IRREVOCABLE OFFER.** This document, when executed by Smith and returned by facsimile transmission to counsel for Brunfeldts, constitutes an irrevocable offer that cannot be withdrawn for forty-eight hours following such delivery. Each party shall, in good faith, execute two originals of the documents for the records of each party.

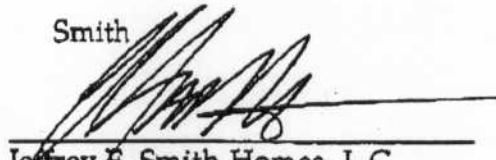
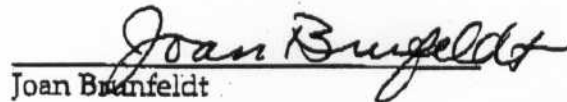
INTENDING TO BE LEGALLY BOUND, the parties have entered into this Addendum to Agreement effective the date first set forth above and acknowledge receipt of an executed copy of this document.

Brunfeldts



David Brunfeldt

Smith

Jeffrey E. Smith Homes, L.C.  
by: Craig VanMatre, Counsel

Joan Brunfeldt

State of Kansas     )  
County of Douglas )

BE IT REMEMBERED, That on this 14 day of DECEMBER, 2001, before me, the

Agreement  
David and Joan Brunfeldt and Jeffrey E. Smith Homes, L.C.  
December 12, 2001

Page 5

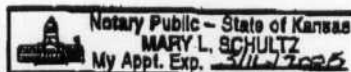
undersigned, a notary in and for the County and State aforesaid, came DAVID BRUNFELDT, who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.

Mary L. Schultz  
Notary Public

My commission expires: 3/11/2005

State of Kansas )  
County of Douglas )



BE IT REMEMBERED, That on this 14 day of DECEMBER, 2001, before me, the undersigned, a notary in and for the County and State aforesaid, came JOAN BRUNFELDT, who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.

Mary L. Schultz  
Notary Public

My commission expires: 3/11/2005

State of Missouri )  
County of Boone )



BE IT REMEMBERED, That on this 17<sup>th</sup> day of December, 2001, before me, the undersigned, a notary in and for the County and State aforesaid, came CRAIG VANMATRE, legal counsel for Jeffrey E. Smith Homes, L.C., who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.

Teresa E. Wells  
Notary Public

My commission expires: 10/21/04

TERESA E. WELLS  
Notary Public - Notary Seal  
Boone County, Missouri  
My Commission Expires October 21, 2004

**PETITION AND CONSENT TO  
ANNEXATION INTO THE  
CITY OF LAWRENCE, KANSAS**

To: The Governing Body of the City of Lawrence, Kansas

The undersigned owners of record of the following described tract of real property hereby petition the Governing Body of the City of Lawrence, Kansas (the "City") to annex such land to the City pursuant to the laws of the State of Kansas. The land to be annexed is legally described in Attachment A, which is attached to this petition and incorporated by reference as if fully set forth herein.

The undersigned further warrants and guarantees that they are the only owners of record of the tract of property described in Attachment A.

Property Owner of Record: David R. Brunfeldt and Joan K. Brunfeldt

Address of Owner: 1673 E. 1150 Road, Lawrence, KS 66049

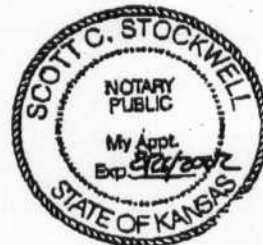
Property Owner signature: [Signature]  
(If property is owned by married couple, both must sign. If corporate or partnership entity holds title, please note authority to execute petition.)

STATE OF KANSAS )  
DOUGLAS COUNTY )

BE IT REMEMBERED, that on this 13<sup>th</sup> day of December 2001, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came David R. Brunfeldt, who ~~are~~ is personally known to me to be the same person(s) who executed the above Petition, and such person(s) duly acknowledged the execution of the same to be their free and voluntary act and deed.

[Signature]  
Notary Public

My Commission Expires: 8/26/2002



ATTACHMENT A-1



ATTACHMENT "A"

LEGAL DESCRIPTION

1673 E. 1150 Road, Lawrence, KS 66049  
David R. Brunfeldt and Joan K. Brunfeldt

Beginning at the Northeast corner of the Southeast Quarter of the Northwest Quarter of Section 27, Township 12 South, Range 19 East of the Sixth Principal Meridian, Douglas County, Kansas, thence West along the North line of said Southeast Quarter of said Northwest Quarter a distance of 660.0 feet; thence South parallel to the East line of said Northwest Quarter a distance of 330.0 feet; thence East parallel to the North line of said Southeast Quarter of said Northwest Quarter a distance of 660.0 feet to a point on the East line of said Northwest Quarter; thence North in and along said East line of said Northwest Quarter a distance of 330.0 feet to the point of beginning, containing 5.00 acres; subject to the existing easements, restrictions and reservations now of record.

BOOK 370  
PAGE 223

**PETITION AND CONSENT TO  
ANNEXATION INTO THE  
CITY OF LAWRENCE, KANSAS**

To: The Governing Body of the City of Lawrence, Kansas

The undersigned owners of record of the following described tract of real property hereby petition the Governing Body of the City of Lawrence, Kansas (the "City") to annex such land to the City pursuant to the laws of the State of Kansas. The land to be annexed is legally described in Attachment A, which is attached to this petition and incorporated by reference as if fully set forth herein.

The undersigned further warrants and guarantees that they are the only owners of record of the tract of property described in Attachment A.

Property Owner of Record: David R. Brunfeldt and Joan K. Brunfeldt

Address of Owner: 1673 E. 1150 Road, Lawrence, KS 66049

Property Owner signature: Joan Brunfeldt  
(If property is owned by married couple, both must sign. If corporate or partnership entity holds title, please note authority to execute petition.)

STATE OF KANSAS )  
DOUGLAS COUNTY )

BE IT REMEMBERED, that on this 13<sup>th</sup> day of December 2001, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Joan K. Brunfeldt, who are/is personally known to me to be the same person(s) who executed the above Petition, and such person(s) duly acknowledged the execution of the same to be their free and voluntary act and deed.

My commission expires: 8/26/2002

Joan K. Brunfeldt  
Notary Public



ATTACHMENT A-2

ATTACHMENT "A"

LEGAL DESCRIPTION

1673 E. 1150 Road, Lawrence, KS 66049  
David R. Brunfeldt and Joan K. Brunfeldt

Beginning at the Northeast corner of the Southeast Quarter of the Northwest Quarter of Section 27, Township 12 South, Range 19 East of the Sixth Principal Meridian, Douglas County, Kansas, thence West along the North line of said Southeast Quarter of said Northwest Quarter a distance of 660.0 feet; thence South parallel to the East line of said Northwest Quarter a distance of 330.0 feet; thence East parallel to the North line of said Southeast Quarter of said Northwest Quarter a distance of 660.0 feet to a point on the East line of said Northwest Quarter; thence North in and along said East line of said Northwest Quarter a distance of 330.0 feet to the point of beginning, containing 5.00 acres; subject to the existing easements, restrictions and reservations now of record.

BOOK 370  
PAGE 223





ATTACHMENT "A"

LEGAL DESCRIPTION

1673 E. 1150 Road, Lawrence, KS 66049  
David R. Brunfeldt and Joan K. Brunfeldt

Beginning at the Northeast corner of the Southeast Quarter of the Northwest Quarter of Section 27, Township 12 South, Range 19 East of the Sixth Principal Meridian, Douglas County, Kansas, thence West along the North line of said Southeast Quarter of said Northwest Quarter a distance of 660.0 feet; thence South parallel to the East line of said Northwest Quarter a distance of 330.0 feet; thence East parallel to the North line of said Southeast Quarter of said Northwest Quarter a distance of 660.0 feet to a point on the East line of said Northwest Quarter; thence North in and along said East line of said Northwest Quarter a distance of 330.0 feet to the point of beginning, containing 5.00 acres; subject to the existing easements, restrictions and reservations now of record.

BOOK 370  
PAGE 223

**Dave Corliss**

---

**From:** Jay Burchfield [jburchfield@centurytel.net]  
**Sent:** Friday, March 05, 2004 8:23 AM  
**To:** 'Dave Corliss'  
**Subject:** RE: Need another copy of Brundfeldt agreement

I will fax you a copy. By the way, I have called and left several messages for Dr. Brunfeldt and she has not called back. I heard from her a couple of weeks ago and she said that she was glad to hear the we were going to honor our agreement with them and she hoped that the cost of the road would not turn out as high as the resolution. Other than that, I have not had any communication with her.

I am on my mobile phone most of the time. Call me when it is convenient for you. 573-268-1527. Thanks, JB

-----Original Message-----

**From:** Dave Corliss [mailto:DCorliss@ci.lawrence.ks.us]  
**Sent:** Thursday, March 04, 2004 5:23 PM  
**To:** 'jburchfield@centurytel.net'  
**Subject:** FW: Need another copy of Brundfeldt agreement

-----Original Message-----

**From:** Dave Corliss  
**Sent:** Thursday, March 04, 2004 5:21 PM  
**To:** Jay Burchfield (jburchfield@centurytel.com)  
**Subject:** Need another copy of Brundfeldt agreement

I have misplaced my copy, I'd appreciate another copy; I'll need to talk to you sometime next week, any good times? Thanks for all your help, Dave.

David Corliss  
Assistant City Manager  
City Hall  
6 East 6th Street P.O. Box 708  
Lawrence, Kansas 66044  
(785) 832-3403  
FAX (785) 832-3405  
dcorliss@ci.lawrence.ks.us