

[Above Space Reserved for County Officials]

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

(Clinton Parkway Casitas)

THIS DECLARATION (the "**Declaration**") is made effective the ____ day of _____, 2010 (the "**Effective Date**"), by Fairway, L.C., a Kansas limited liability company (referred to in this Declaration as "**Declarant**").

RECITALS

1. Declarant is the legal and/or equitable owner of certain real property located in Douglas County, Kansas (the "**Real Estate**"), which Real Estate is described in Exhibit "A" attached to and, by reference, made a part hereof.
2. Declarant desires to place certain covenants, conditions, restrictions, and reservations upon the Real Estate for the benefit of Declarant, its successors, assigns, future grantees, and the City of Lawrence, Kansas (the "**City**"), and to protect the value and desirability of the Real Estate.
3. Declarant hereby agrees that the Real Estate shall be subject to the protective covenants, conditions, restrictions, and reservations set forth in this Declaration.

DECLARATION

NOW, THEREFORE, Declarant declares that the Real Estate is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, charges and liens described in this Declaration. These easements, covenants, restrictions and conditions shall run with the Real Estate and shall be binding upon all parties having or acquiring any right, title or interest in the Real Estate, or any part thereof, and shall inure to the benefit of each Owner thereof.

**ARTICLE I
DEFINITIONS**

1. "**Clinton Parkway Casitas**" shall mean and refer to the Real Estate described above.
2. "**Declarant**" shall mean and refer to the Declarant described above.

3. **"Lot"** shall mean and refer to any subdivision of the Real Estate pursuant to the Plat.
4. **"Landscape and No-Build Area"** shall mean and refer to that portion of the Real Estate generally located immediately adjacent to the Northeast corner of the intersection of 24th Place and Inverness Drive, as more particularly depicted on the Site Plan.
5. **"Owner"** shall mean and refer to the record owner or owners, whether one or more persons or entities, of the fee simple title to a Lot, including a contract purchaser of a Lot who has complied with the provisions of this Declaration. The term "Owner" shall not mean any mortgagee unless and until such mortgagee has acquired fee simple title to a Lot pursuant to foreclosure or any proceeding in lieu of foreclosure.
6. **"Person(s)"** shall mean a natural individual(s), corporation, partnership, limited liability company, trustee, or other legal entity capable of holding title to real property.
7. **"Plat"** shall mean and refer to the subdivision plat of all or any part of the Real Estate.
8. **"Real Estate"** shall mean and refer to the submitted land described herein.
9. **"Site Plan"** shall mean and refer to the Site Plan of the Clinton Parkway Casitas attached to and, by reference, incorporated in this Declaration as Exhibit B, as such Site Plan may be amended from time to time with the approval of the City in accordance with the then-existing development codes and ordinances of the City of Lawrence, Kansas.
10. **"Unit"** shall mean and refer to each individual residential living unit located on the Real Estate.
11. Other terms may be defined in specific provisions contained in this Declaration and shall have the meaning assigned in such definition.

ARTICLE II

PROPERTY SUBJECT TO DECLARATION

The Real Estate described herein, also referred to as the "Submitted Land," shall be held, transferred, sold, conveyed, and occupied subject to this Declaration.

ARTICLE III

USE AND OCCUPANCY RESTRICTIONS

1. **Land Use.** None of the above-described Real Estate may be improved, used, occupied and/or leased for other than single-family and/or multi-family residential purposes, and related recreational facilities, open space, administrative and maintenance purposes.

2. **Minimum Building Size and Restrictions:**

(a) Each Unit to be located on the Real Estate shall be limited to no more than one (1) story above grade;

(b) Each Unit to be located on the Real Estate shall have no more than one (1) bedroom, maximum; and

(c) There shall be no more than 161 Units located on the Real Estate (excluding any administrative building and offices).

3. **Unrelated Adult Occupants.** To the extent allowed by law, the occupancy of each Unit by unrelated persons shall be restricted to no more than two (2) unrelated adult occupants residing in a Unit at any given time. Further limitations, if any, on the total number of occupants of any Unit may be established, from time to time, by the Owner in a manner consistent with guidelines promulgated by the Department of Housing and Urban Development (HUD) and the Fair Housing Act (FHA), as amended. Nothing herein shall be deemed to limit the number of related adults, or persons under the age of 18, who may occupy a Unit.

4. **Use of the Landscape No-Build Area.** No advertising banners (either temporary or permanent) shall be permitted, located or displayed to the public view on the Landscape No-Build Area. No permanent buildings or structures shall be built, constructed, placed or maintained on the Landscape No-Build Area. The Landscape No-Build Area shall be used solely as a small park, landscaping area, green space, placement of a permanent monument marker, or similar uses consistent with the Site Plan.

5. **Livestock and Poultry.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes.

6. **Limitation of Restrictions.** Notwithstanding anything herein to the contrary, Declarant, and Declarant's grantees and assigns, may, while constructing and selling or leasing Units, on any Lot or Lots, maintain such facilities upon the Lot or Lots as, in Declarant's sole discretion, may be necessary or convenient, including but without limitation, offices, storage areas, model units, and signs.

ARTICLE IV ENFORCEMENT OF DECLARATION

All present and future Owners of Lots and Units, and tenants and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease or occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, are accepted and ratified by such Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Lot situated thereon, as though such provisions were recited and stipulated at length in each and every deed, conveyance, or lease thereof. The Declarant, any Owner, and the City shall each have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, any Owner, or the City to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE V AMENDMENT

1. **Amendments to Declaration; Notice.** Amendments to this Declaration, including, without limitation, any amendments, changes, alterations, modifications, supplements, deletions of existing provisions, and additions of new covenants and provisions (collectively, "**Amendment or Amendments**") shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire Amendment. Except as otherwise specifically provided for in this Declaration, any proposed Amendment must be ratified and approved by (i) all Owners of the Real Estate, and (ii) the City. Prior to the approval of any Amendment, the City shall provide adjacent property owners with written notice of the proposed Amendment and an opportunity for a public hearing before the City Commission, similar to the notice and hearing procedures for a change in zoning, all in accordance with the City zoning and subdivision regulations, as amended from time to time.

2. **Effect of Amendment.** It is specifically covenanted and agreed that any Amendment to this Declaration properly adopted will be completely effective to amend any and all of the easements, covenants,

conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the Amendment itself.

3. **City Approval Required.** Notwithstanding anything in this Declaration to the contrary, no Amendment to this Declaration shall be effective unless such Amendment has been ratified and approved by the City.

ARTICLE VI **GENERAL PROVISIONS**

1. **Duration.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the Real Estate subject to this Declaration, and shall inure to the benefit of and be enforceable as provided herein, for a term of twenty-five (25) years from the date that this Declaration is recorded, after which time such covenants shall be automatically extended for successive periods of five (5) years, unless an instrument signed by all of the then Owners of the Lots and the City has been recorded, agreeing to abolish these covenants, conditions, and restrictions, or to change them in whole or in part.

2. **Severability.** The invalidity in whole or in part of covenants or restrictions, or any paragraph, subparagraph, sentence, clause, phrase or word, or other provision of this Declaration shall not affect the validity of the remaining portions thereof.

3. **Captions.** The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, modify, or supplement this Declaration or the intent of any provision thereof.

4. **Construction.** Whenever the context so permits, the use of plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

IN WITNESS WHEREOF, this Declaration of Covenants, Conditions and Restrictions has been duly authorized and executed as of the Effective Date.

DECLARANT: FAIRWAY, L.C.,
a Kansas limited liability company

By: _____
Michael D. Stultz, Manager

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of _____, 2010, before me, the undersigned a notary public in and for the county and state aforesaid, came Michael D. Stultz, Manager of Fairway, L.C., a Kansas limited liability company, who is personally known to me to be the same person who executed the within and foregoing Declaration of Covenants, Conditions and Restrictions and such person duly acknowledged the execution of the same on behalf of said limited liability company.

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

Notary Public

My appointment expires: _____
G:\MAA\C\ClintonParkwayCasitas.dec3.wpd

EXHIBIT "A"

LEGAL DESCRIPTION

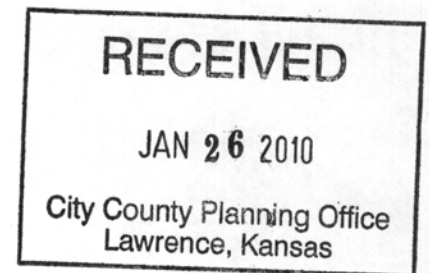
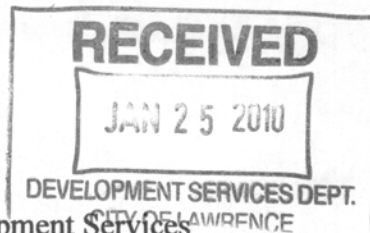
Lot 2, of Remington Square Addition No. 1, a Replat of Lots 2 & 3, Block 1,
Inverness Park Plaza Addition No. 1, an addition in the City of Lawrence,
Douglas County, Kansas.

EXHIBIT "B"

SITE PLAN

[Attach Copy of Site Plan]

City of Lawrence
Douglas County
Planning & Development Services
PO Box 708
Lawrence, KS 66044



Re: Z-7-11-09
Request to rezone SE corner of Inverness and Clinton Parkway

To Whom It May Concern:

Please be advised as property owners we strenuously object to the rezoning of above referenced property from RSO to RM15 for the following reasons:

First, we feel this is too close to an elementary and junior high school (we are not happy that the recent apartments built on the corner of 24th and Inverness were allowed to be built so close to a school). It will increase the traffic where young children are walking to school and also possibly risk the safety of the children as there are so many unknown variables to apartment tenants.

Second, it will decrease the property values of the neighborhood.

Third, there are already more apartments than should have been allowed in such a neighborhood and so close to a school and we do NOT need anymore. This is a residential/family neighborhood.

A decision was already made not to allow such a rezoning request and we feel this should not have come up for consideration again and the original decision should stand as is.

Please keep this property zoned for Single Family Residential Dwellings.

Sincerely,

Ace and Janet Phillips
4182 Blackjack Oak Dr
Lawrence, KS

From: Keith Ely [mailto:keith@keithelyassociates.com]

Sent: Monday, January 25, 2010 9:55 AM

To: lharris@ku.edu; rhird@pihhlawyers.com; greg@moorevaluation.com; therenewgroup@sbcglobal.net; cblaser@sunflower.com; jeff@chaney-inc.com; bradfink@stevensbrand.com; MontanaStan62@gmail.com; hughcarter@dgcounty.com; ksingleton@sloanlawfirm.com

Cc: mikeamx515@hotmail.com; robchestnut@sunflower.com; aroncromwell@gmail.com; ljohnson@peridiangroup.com; mdever@sunflower.com; larry@larrynorthrop.com; 'Karen Ely'

Subject: Sunflower Park 2 apartment complexes on agenda tomorrow night

Members of the planning and city commission:

On your agenda tonight (1/25 is the resubmission of the Sunflower Park 2 apartment complex rezoning request (**ITEM 3**) for the SE corner of Inverness Drive and Clinton Parkway as well as a request for high density zoning on the east side of the Legends and north of the Wyndam Place retirement complex (**ITEM 4.**). I live in the Sunflower Park neighborhood adjacent to the **ITEM 3** and **4** requests and am requesting that **ITEM 3** (being requested by Inverness Park, LP) be **unanimously denied** as per the 10/6 city commission unanimous denial and that the **ITEM 4** (deferred, being requested by Inverness Park, LP) request to high density zoning be **unanimously denied**.

We have The Legends apartment complex, Remington Square complex, The Grove complex and Wyndam Place retirement home (all high density housing) in our proximity and **do not want or need** any more high density housing in our area.

Thank you for your consideration and cooperation in this matter.

Keith Ely
Managing Partner



P O Box 1229
Lawrence, KS 66044

4194 Blackjack Oak Drive
Lawrence, KS 66047

Office: (785) 842-6498
Cell: (785)760-0651
Fax: (785) 842-6785

From: Jamie Hulse [<mailto:jamiehulse@att.net>]
Sent: Sunday, January 24, 2010 5:37 PM
To: therenewgroup@sbcglobal.net
Subject: Questions Re rezoning request 4300 W. 24th Pl.

Dear Charlie –

Below are questions/concerns that we have regarding the rezoning request for 4300 W. 24th Place. We appreciate your time and attention to this matter.

Sincerely,
Rob and Jamie Hulse
4403 Gretchen Ct.
393-2942

- **BG Consultants, Inc. is requesting rezoning to multi-family for both corners – Inverness/Clinton Pkwy and Crossgate/Clinton Pkwy.** What is the reason that this information has not been communicated to neighborhoods? There was discussion about this corner at the 12/10/09 meeting and no mention was made when multiple people in the room were clearly aware.
- Who will be the owner, and what type of complex is planned for Crossgate/W. 24th Place if rezoning is approved?
- “...transient is known to stay overnight in apartment building laundry rooms.”
<http://www2.ljworld.com/news/2010/jan/08/police-identify-suspect-orchards-drug-robbery-seek/> . This transient was arrested for Orchard Drug robbery, attempted home invasion and carjacking.
- Significant concern for laundry room that might be used as overnight quarters for transients where K-9 children walk to and from school.
- We were told Stultz completed research to learn there is a demand for this type of 1 BR complex by young grad students and young professionals, and on 12/10/09 asked for details of his research but no research data has ever been provided. Specific concerns included:
 - No laundry in individual units. Do target tenants really want to haul laundry in bad weather to a laundry facility?
 - A number of neighbors are concerned about the projected rent rate attracting low income tenants, and how that will impact the neighborhood and property condition now and future.
 - This complex is adjacent to 3 complexes that target college students looking for a fun, party living environment...what data supports young professionals and grad students want to live adjacent to partying students?
 - What are interior finishes – ie countertops, quality/type of flooring, lighting? (we’ve been told by Mr. Kingsley they’d be higher end finishes)
- Building Elevation shows mechanical unit centered under window – is that a heating/cooling unit similar to a hotel?
 - If yes, wouldn’t this be higher than normal utility costs? And higher usage ie energy efficiency for the environment?
 - Is this type of heating/cooling used in other RMD complexes? Will that affect type of tenant?
- Why does city code require water to individual attached units if more than 6 attached? And why if this is city code is it appropriate to grant an exception for this project?
- Confirm – street trees on landscaping plan are one every 40 feet, which is the minimum city requires, and not *more* than city requires?
- Does interior/parking lot landscaping *meet* or *exceed* city requirements?
- Landscaping in front of entries are required to screen mechanical units under windows?
- Landscape Plan calls for 2” caliper trees and 1 gal shrubs – [Lawrence Development Code](#) Pg 10-15 states min caliper for shade trees is 2 ½ “ and Pg 10-16 states min shrub size at 2 gal.
- Are arborvitaes considered shrubs or upright evergreens for purpose of satisfying requirements? (difference between 1 gal and 6 ft)

- We have read that Lacebark Elms can be invasive (concern for neighbors and medians), need to be pruned annually, small leaves and blossoms falling in fall can kill grass if not removed.
- Watering spigots marked on plan?
- What is the process and fine amount when trees/screenings die and need to be replaced?
- Where is the water retention area? When this piece of ground was originally being annexed there was significant concern about flooding to neighborhoods to the east, which was a problem with no development.
- Should a new traffic study be completed for both corners at Clinton Pkwy to 27th on Crossgate and Inverness? Last study completed was in 1999, when the entire tract was still farmland, and prior to construction of Aberdeen South, One of a Kind Daycare and most of the properties south of W. 27th.

From: Terri McLaughlin [mailto:ctmkmclaughlin@yahoo.com]

Sent: Sunday, January 24, 2010 9:59 PM

To: Scott McCullough

Cc: robchestnut@sunflower.com; mikeamyx515@hotmail.com; aroncromwell@gmail.com;

ljohnson@peridiangroup.com; mdever@sunflower.com

Subject: MPC Z-7-11-09

Gentlemen,

We are residents of the neighborhood directly across from the area of land at Inverness and Clinton Parkway being considered for a zoning change. This proposal was denied once and we urge you to continue to protect the integrity of our neighborhood by denying the request for rezoning again.

Sincerely,

Craig and Terri McLaughlin

4431 Gretchen Ct.

Lawrence KS 66047

FAXED
1-25-10

Luke and Lori Sinclair
4400 W. 24th Pl.
Lawrence, KS 66047

January 25, 2010

VIA FACSIMILE (785) 832-3160

Lawrence-Douglas County
Metropolitan Planning Commission
6 E. 6th St.
P.O. Box 708
Lawrence, KS 66044

**Re: January 25, 2010 Regular Agenda Item No. 3
Z-7-11-09 – Casitas Rezoning**

Dear Commissioners:

We own and live in the house on the northwest corner of the roundabout at Inverness Drive and 24th Place. Our house is right across the street from the property subject to the above-referenced rezoning request. We are unable to attend the Planning Commission meeting this evening, so we submit this letter in place of our public comment at the meeting.

On September 21, 2009, we attended the Planning Commission meeting regarding the rezoning request, and Lori presented our concerns in opposition to the proposed rezoning request. We were disappointed by the Planning Commission's apparent disregard for our concerns, as it decided with an 8 to 1 vote to recommend the City Commission approve the rezoning request.

On October 6, 2009, we and a number of our neighbors attended the City Commission meeting and elaborated on the same concerns which Lori spoke about at the earlier Planning Commission meeting. We were heartened when the City Commission voted unanimously to deny the rezoning request, despite the Planning Commission's recommendation.

The concerns of the neighborhood with respect to this rezoning request are clear and well documented in the Planning and City Commission minutes, as well as the written communications from the various meetings touching on this rezoning request. They include increased traffic and noise, likely shoddy appearance, saturation of the rental market, future abandonment of the proposed development, and decreased property values, among others.

On December 10, 2009, a number of people from our neighborhood met with City Commissioner Lance Johnson and several folks with BG Consultants, Inc., including Cecil Kingsley. The meeting was used as a time for the neighborhood to discuss with the BG Consultants representatives how the site plan could be changed to address the neighborhood's concerns. BG Consultants agreed to take the discussed modifications to the applicant and revise the plan, including the landscaping, if agreeable to the applicant.

On December 15, 2009, and at the request of the applicant, the City Commission held a public hearing to reconsider its denial of the rezoning request. At that meeting, Cecil Kingsley discussed the applicant's willingness to make certain changes to the site plan, and the applicant's lawyer presented what he considered to be an adequate means of ensuring that approval of the rezoning request would be tied to acceptance and approval of the site plan. The latter issue is an attempt to assuage concerns of the neighbors, particularly Rob and Jamie Hulse, arising from a process similar to this one in which the end result was The Grove apartment complex.

On January 7, 2010, another meeting was held at BG Consultants wherein a revised site plan and modified landscape plan were revealed. The changes included the addition of trees around the perimeter of the property, the relocation of a clubhouse that had initially been planned for the northeast corner of Inverness and 24th Place, and the insertion of a green space in its place. There was also discussion with the applicant's lawyer of the legal means of tying the rezoning request to the development of the property exactly as presented in the site plan. As a result of the meeting, additional minor modifications were made to the landscape plan and kindly emailed to the neighbors by Cecil Kingsley shortly after the meeting.

We are grateful that the applicant has made efforts to seek the opinions of the neighbors and modify the plan so as to attempt to address our concerns. We are also grateful for the work done by BG Consultants and the applicant's lawyer throughout the process thus far. Nonetheless, Lori and I remain unequivocally opposed to the construction of another apartment complex across the street from us. There are already three very large complexes between Crossgate and Inverness south of Clinton Parkway, and the greater rental market in Lawrence is surely flooded as it is.

We are, however, aware that there is only so much that can be done to obstruct a property owner from building as it sees fit on property it owns. We have made our concerns known to the applicant throughout this process through Cecil Kingsley and BG Consultants, and most of them have been addressed. If a multi-family development must be constructed, this process has allowed us some say, an opportunity to pick our poison, so to speak.

It is our understanding, though, that there remain concerns with the plan, particularly the landscape plan, including the amount and type of trees and shrubbery along Inverness and 24th to screen the view of the new development – which could include the mixture of evergreen and deciduous trees. There are also other concerns which we believe will be addressed at the meeting tonight by other neighbors. We believe that those concerns should be fully and adequately dealt with before the Planning Commission is satisfied with the site plan or rezoning request. In the larger scope of things, it is a small price to pay for the applicant to make sure that these concerns are addressed before it is allowed to break ground.

On another note, we understand that the applicant has offered to donate trees to the City to plant in the median on Inverness, between Clinton Parkway and 24th Place. These trees are only valuable insofar as the City maintains them and the grass around them on the median. We ask, therefore, that the City take diligent care of those trees.

In short, we respectfully request that the Planning Commission take all of the neighbors concerns into consideration before deciding whether to look favorably upon the rezoning request and associated site plan and do what is truly best for the neighborhood and the City, and not just the applicant.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Luke Sinclair", written in a cursive style.

Luke and Lori Sinclair

cc: Lisa Harris (via email)
Greg Moore (via email)
Charles Blaser (via email)
Brad Finkeldei (via email)
Hugh Carter (via email)
Richard Hird (via email)
Charlie Dominguez (via email)
Jeff Chaney (via email)
Stanley Rasmussen (via email)
Kenzie Singleton (via email)

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TERENCE E. LEIBOLD*
TERRENCE J. CAMPBELL*

*ADMITTED IN KANSAS AND MISSOURI

MATTHEW D. RICHARDS*
LINDA K. GUTIERREZ
MATTHEW S. GOUGH*
CATHERINE C. THEISEN
KRISTOPHER S. AMOS*
MATTHEW B. TODD

RICHARD A. BARBER
(1911-1998)

GLEE S. SMITH, JR.
OF COUNSEL

December 15, 2009

VIA HAND DELIVERY

Mayor Robert Chestnut
City Hall
6 East Sixth Street
Lawrence, Kansas 66044

Re: *Reconsideration of Rezoning Request (Z-7-11-09);
City Commission Regular Agenda Item #1, December 15, 2009*

Dear Mayor Chestnut:

Cecil Kingsley, with BG Consultants, held a meeting this past week with several neighbors of the proposed Clinton Parkway Casas development project, in an effort to identify the neighborhood's legitimate planning and land use issues. It is my understanding that as a result of that meeting, the neighbors reached some consensus on certain conditions intended to address their concerns with the rezoning request Z-7-11-09.

I am writing this letter to summarize the conditions recommended by the neighbors, and to assure the City Commission that the applicant is in agreement with each of these conditions. In addition, the applicant is proposing other, additional conditions, which the City Commission may consider imposing on this project. The conditions proposed by the neighbors include the following:

1. The applicant shall provide a landscape plan for the entire development, to be prepared by a licensed landscape architect;
2. The Office/Laundry Building shown at the corner of 24th Place and Inverness Drive shall be relocated across the street to the east;
3. The applicant's engineers shall provide a rendering or concept drawing illustrating the corner of 24th Place and Inverness Drive, including the removal of the "Office/Laundry Building", which shall be replaced by a landscaped area;
4. The applicant shall refrain from placing advertising banners at the corner of 24th Place and Inverness Drive;
5. The building elevations shall label the exterior building materials; and
6. The applicant will agree to limit the number of adult occupants in the development to two (2) per unit.

In addition to the conditions recommended by the neighbors, the applicant is proposing other, additional conditions, which the City Commission may impose on this project, as follows:

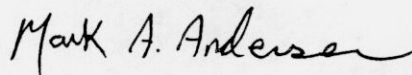
1. Each building shall be limited to one (1) story above grade.
2. Each building unit shall have one (1) bedroom, maximum.
3. The development shall be limited to 161 units, maximum.
4. Prior to the zoning becoming final, the applicant will agree to record a *Declaration of Covenants and Restrictions* which, among other things, will (i) prohibit the construction of any permanent structure on the corner of 24th Place and Inverness Drive, (ii) restrict the use of the property to a maximum of 161 one-story, single-bedroom, residential units, and (iii) name the City of Lawrence as a third-party beneficiary whereby the Declaration may not be amended or terminated without the prior consent of the City.

By voting to rescind the City Commission's previous denial of the rezoning request, and returning the application to the Planning Commission, the applicant will continue to meet with the neighbors, and work with the planning staff and the Planning Commission, so that the zoning application will come back to the City Commission at the same time as the site plan, with the above-described conditions in place. As a practical matter, the proposed *Declaration of Covenants and Restrictions* should provide the neighbors with a reasonable level of assurance that the project will be developed in accordance with the applicant's site plan, otherwise the zoning would not become final.

For these reasons, we respectfully request that the City Commission rescind its prior motion to deny the rezoning request. However, the applicant is mindful that there is no point in returning this matter to the Planning Commission, and spending additional time and effort, if there is no genuine support for this project by the City Commission. Thank you.

Very truly yours,

BARBER EMERSON, L.C.



Mark A. Andersen

MAA:dbk

cc: Vice-Mayor Mike Amyx
Commissioner Aaron Cromwell
Commissioner Lance Johnson
Commissioner Michael Dever
David Corliss, City Manager
Michael D. Stultz
Cecil M. Kingsley

TO: Lawrence City Commission

FROM: Rob and Jamie Hulse
4403 Gretchen Ct.
Lawrence KS 66047
785-841-7653
rob.hulse@att.net

DATE: September 29, 2009

RE: Rezoning of land in SE corner of Clinton Pkwy and Inverness Dr.

We're writing this letter to express our concerns and opposition for the request to rezone the property at the SE corner of Clinton Pkwy and Inverness, currently under consideration by the City Commission. We feel that another high density multi-family development creates an unfair burden on the immediate single family owners in the area with increased traffic, increased noise levels, a decrease in property values, and unsafe conditions for children walking to and from school. Additionally, altering the land use in this corner creates an unusually large cluster of apartment complexes in one area and is inconsistent with the original mix of uses for the area.

The original plan for the land south of Clinton Pkwy between Crossgate and Inverness when it was annexed into the city was for a mixed use: residential with varying density, office use, and additional options for neighborhood services. There is nothing mixed about what is going on in this area now. The only thing unique about the properties in this area is whether or not they implemented the use of masonry, wood, or stone and what paint combinations they have chosen. All are large apartment complexes and yet another development off of Crossgate is a high density retirement complex.

Additionally, any original thoughts in the area of stepping the zoning intensity gradually up or down from one zoning class to another were certainly lost as I look out the back window of my single family zoned neighborhood and see 2 two-story eightplexes, and 2 huge three-story apartment buildings bordering the west edge of the site and parking area. The plan presented to a group of neighbors many years ago by Dial was to buffer the development adjacent to single family with a cul-de-sac of one-level duplexes (patio style homes) on its west edge that were sure to attract older tenants, and would create more of a transition into 2 story apartments with the taller 3 story buildings further to the east. It was presented as a retirement community with independent and assisted living units further to the east...sort of a new Brandon Woods. Although the increased density request was approved, that plan never came to fruition and as a result, over the years as each new idea and site plan was submitted, each developer asks for just a bit more to maximize their site plans...and over the years any transition or buffer was lost.

Now, the Commission is considering plans for another 164 units on the land in the SE corner of Inverness and Clinton Parkway. We believe that the original plan for this area was to mix it up a bit, and as a result, different zonings/uses were originally assigned to the various tracts that made up the original development plan. Should the City Commission agree to rezone the site and allow for more apartments as requested, then the City Commission will be ignoring what the original development plan was for the area when it was annexed. Another large apartment complex will only add more of the same to a large tract of ground that was originally zoned with differing uses for a reason. By allowing the current request, the area will consist of 4 large apartment complexes, all adjacent to one another creating a tremendous amount of noise, traffic, and trash, without any professional office space or without any neighborhood services as was originally proposed.

Additionally:

- With both Elementary and Jr. High School children walking to/from school in the area, and with the certain increase of traffic in the area, even more unsafe conditions will exist for our kids. Recent

decisions by Lawrence Public Schools to limit bussing means more kids are in the area as pedestrians. Approval of this 4th apartment complex in such close proximity of Sunflower Elementary, Southwest Jr. High, Raintree Montessori and Bishop Seabury Schools not only increases traffic, it creates dangerous conditions for our pedestrian children.

- The roundabout at 24th Place and Inverness is so heavily used that ruts have developed in the lane around the circle making it difficult to navigate, not to mention the deep ruts in the grass by vehicles that can't navigate the circle and end up going over the curbs. Years ago developers argued that traffic from the apartments would exit to the east on Crossgate and wouldn't increase the traffic burden on Inverness, or pose additional dangers to the children walking to and from school. An added 4th apartment complex will dramatically increase traffic on Inverness and certainly pose increased risks to our children.
- Property values in the area will decline as Buyers decide not to purchase a home in the immediate area because of the adjacency to these large apartment complexes. They will opt for other areas that are not impacted by the consequences that are associated with living next door to an apartment complex (let alone 4 complexes).
- And last, there has been much recent development of new apartment complexes in the community these last 2 years. These developments are outpacing any growth (or lack thereof) that Lawrence is experiencing. Approving apartment complex site plans in correctly zoned areas is one thing, changing the zoning to permit additional apartment building in an area already heavily saturated with apartments is poor planning, and most likely increasing vacancy rates throughout the city.

In summary, at one point our neighborhood was the first in an area with two public schools, a private Montessori school, and farm ground that was described in Horizon 2020 as appropriate for residential use. Although we understand that apartments are residences, the presence of 4 large apartment complexes with high levels of density are much more commercial in nature, and are much more damaging to the area than a mixed use plan with elements of single family, multi-family, some office, and some neighborhood services.

Approving such a large area of apartments contradicts recent neighborhood planning strategies; creates a tremendous burden on the area with increased traffic, noise and congestion; ultimately lowers property values in the area; and puts our children walking to and from close by schools in greater danger.

We oppose the zoning request, and we hope that the City Commission will take actions that are consistent with current neighborhood planning strategies, don't burden area neighborhoods, help citizens protect their property values, and keep our kids safe.

Respectfully,

Rob and Jamie Hulse

From: garberprop@aol.com [mailto:garberprop@aol.com]
Sent: Tuesday, September 15, 2009 9:18 AM
To: Sandra Day
Subject: Inverness & 24th Place zoning change

Hi Sandy,

We are writing you this letter to oppose the rezoning of the land on the northwest corner of 24th Place and Inverness Drive. We had recently looked at the land to purchase and realized with all the apartments already in place in the area or currently under construction that traffic was going to significantly change once the apartments that were currently being built were done and occupied. We already see a significant amount of traffic daily from the current apartments as well as Raintree Montessori, Sunflower Elementary & Southwest Jr. High schools and adding more apartments is only going to add to this problem. The traffic on Inverness is a madhouse every morning during drop off for the schools as well as every afternoon at pick up times. Parking is a problem whenever one of the schools has a function and adding more apartments means more parking issues as the overflow of cars will result in people parking on the streets.

Also as an adjacent landowner, we feel our units property values are also going to be greatly decreased since they will be "next door" to a large community of apartments. From our experience apartment complexes bring in more students to the area which means more cars, more parties, more noise issues, etc. which is a deterrent to those who are looking for a home away from the "college scene".

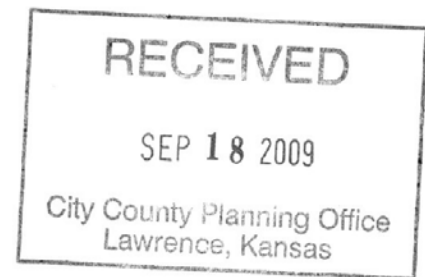
Please take our opposition into consideration when making a decision regarding the rezoning of this piece of land and thank you for your time.

Sincerely,

Michael L. Garber
Garber Enterprises, Inc.

September 18, 2009

Editor, Lawrence Journal World
Director, Lawrence-Douglas County Planning Commission
Mayor and Commissioners, Lawrence City Commission



Re: Expansion of Apartments at 4300 W. 24th Place (Inverness & Clinton Pkwy)

As a retired banker and former lender of both single family homes and apartments in cities *other than* Lawrence, I am a current resident in Lawrence and concerned about the current policies and approval of the continuance of building apartments in Lawrence.

The latest filing of a site plan and rezoning for a \$6 million project to add 164 apartments to the Lawrence market seems ill-advised by both the city officials, not to mention the approval of lending officials doing business with certain builders in our community.

Whatever happened to 'decent' looking apartments being constructed by Mr. Stultz's company, Highland Construction Company, especially those nearly completed on W. 24th Place just east of his proposed apartments, which I might add appear to be less than half occupied or rented.

Several years ago, it was the policy of most lenders to look closely at vacancy rates of both apartments and the inventory of unsold homes in the market before approving additional loans to these builders. One just has to look around Lawrence to see the many 'vacancy' signs in practically every apartment complex. Doesn't this indicated an over-building and unsound lending practices by both the developers/builders and lenders making the funds available? And another plan for 480 apartments near 6th and Queens Road???? Are we really anticipating such an explosion in population at KU and in our city???

While I, along with most Americans, desire a healthy economy with our population going back to work, I have to take issue to some point with Mr. Stultz' comment: "Quite frankly, I have a lot of subcontractors who want to go to work.." Well, duhhh!! What else is new!

Recommendation: Develop some type policy, but not solely at the discretion of city and county officials, in determining the number of housing permits and apartment units to be built. With the lack of sound lending practices these past several years by certain financial institutions, maybe it's time to look back at what really worked: for the betterment of the community, the builders, the realtors, and the lenders.

Let's not make the property just south of Clinton Parkway between Crossgate and Inverness 'apartment city', which it currently appears to be headed that way.

A concerned citizen 'loving' Lawrence!!

September 21, 2009

VIA FACSIMILE [785-832-3160]

Lawrence-Douglas County
Metropolitan Planning Commission
6 E. 6th St.
P.O. Box 708
Lawrence, KS 66044

RECEIVED

SEP 21 2009

City County Planning Office
Lawrence, Kansas

RE: Z-7-11-09; Request to rezone property at 4300 W. 24th Pl.

Dear Commissioners:

I am writing in reference to the request by BG Consultants, Inc. to rezone approximately 11 acres on the southeast corner of Inverness and Clinton Parkway at 4300 W. 24th Pl. from RSO to RM15. My wife, Lori Sinclair, and I have owned and lived at the property located at 4400 W. 24th Pl. since early in the fall of 2008. It is our first home, and it is across Inverness from the property BG Consultants wants to have rezoned. We moved there with excitement, believing it to be quiet neighborhood after living in student-oriented apartments near the KU campus for four years.

When we moved in, The Legends apartment complex was already standing, but it was about a block away from our home. Since moving in, however, two additional, large apartment complexes have been swiftly constructed on the land south of Clinton Parkway between Crossgate and Inverness. We have witnessed the effects of the recent developments, including a substantial increase in traffic and noise, particularly since our home is on a corner lot on the round-about at 24th and Inverness. As such, we are strongly opposed to rezoning the property at 4300 W. 24th from RSO to RM15.

Our opposition to the rezoning is rooted in several concerns which include traffic, noise, and property value. Based on the substantial increase in traffic and noise from the two most recent apartment complexes near our home, it is reasonable to assume that another apartment complex directly across the street would only exacerbate the problem and seriously affect our use and enjoyment of our property.

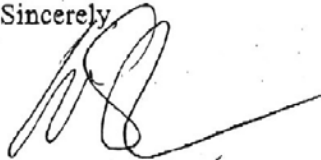
Furthermore, we are concerned that the construction of apartments directly across the street from us would negatively affect our property value. If and when we attempt to sell our property, it simply will not be as marketable with apartments directly across the street. Additionally, there is no shortage of apartment choices in Lawrence right now. The construction

Lawrence-Douglas County
Metropolitan Planning Commission
September 21, 2009
Page 2 of 2

of another apartment complex of questionable quality and durability is not necessary. Thus, we worry that in the long-term, new apartment developments in other parts of town will attract more tenants, and the proposed apartment complex across the street from us will fall into disrepair thereby negatively affecting our property value. We are seriously concerned that the requested rezoning and proposed development will accomplish nothing more than further pad the pockets of already wealthy developers without a thought as to the effects on surrounding property owners both short and long-term.

For these reasons, we respectfully ask that the Commission deny BG Consultants, Inc.'s request to rezone the property. Thank you.

Sincerely,



Luke (and Lori) Sinclair
4400 W. 24th Pl.
Lawrence, KS 66047
(785) 865-3724
(785) 783-8323 (work)

REZONING (USE PERMITTED UPON REVIEW) PROTEST PETITION

Protest Petition against REZoning of land in SE Corner of Clinton Parkway and Inverness Dr.

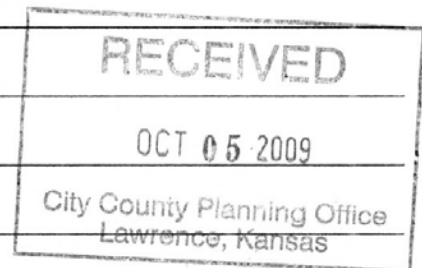
We, the undersigned property owners, do hereby protest the proposed rezoning by the Board of City Commissioners of Lawrence, Kansas from _____ (existing zoning) to _____ (proposed zoning) of (or the UPR to permit for _____ on) the following described property:

[Attach or insert legal description or general description of the real estate proposed to be rezoned (or for the proposed UPR). A description of the real estate is available through the Lawrence-Douglas County Planning Office.]

We, the undersigned, are owners of real property located within the statutory area of notification related to the area for which the rezoning (or UPR) is sought. See K.S.A. 12-757(f).

Note: Print name legible below or beside signature. All owners of the property must sign.

PRINTED NAME AND SIGNATURE OF OWNER	DESCRIPTION OF PROPERTY WITHIN NOTIFICATION AREA	RESIDENCE ADDRESS (IF DIFFERENT)	DATE
CHRIS L. HUTCHENS <i>Chris L. Hutchens</i>	residential prop	4401 W. 24 th pl.	10-5-09



DATE

)

SS:

)

each person whose name appears th

Ch. L. Hatcher

Chris L. Hutchens
Printed Name

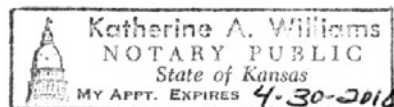
Circulator's Residence and Address 4401 W 24th Pl Date 10-5-09

Signed and sworn to (or affirmed) before me on this 5TH day of October

2009, by _____, circulator of this Protest Petition.

Katherine Williams

My appointment expires: 4-30-2010



TO: Lawrence City Commission

FROM: Rob and Jamie Hulse
4403 Gretchen Ct.
Lawrence KS 66047
785-841-7653
rob.hulse@att.net

DATE: September 29, 2009

RE: Rezoning of land in SE corner of Clinton Pkwy and Inverness Dr.

We're writing this letter to express our concerns and opposition for the request to rezone the property at the SE corner of Clinton Pkwy and Inverness, currently under consideration by the City Commission. We feel that another high density multi-family development creates an unfair burden on the immediate single family owners in the area with increased traffic, increased noise levels, a decrease in property values, and unsafe conditions for children walking to and from school. Additionally, altering the land use in this corner creates an unusually large cluster of apartment complexes in one area and is inconsistent with the original mix of uses for the area.

The original plan for the land south of Clinton Pkwy between Crossgate and Inverness when it was annexed into the city was for a mixed use: residential with varying density, office use, and additional options for neighborhood services. There is nothing mixed about what is going on in this area now. The only thing unique about the properties in this area is whether or not they implemented the use of masonry, wood, or stone and what paint combinations they have chosen. All are large apartment complexes and yet another development off of Crossgate is a high density retirement complex.

Additionally, any original thoughts in the area of stepping the zoning intensity gradually up or down from one zoning class to another were certainly lost as I look out the back window of my single family zoned neighborhood and see 2 two-story eightplexes, and 2 huge three-story apartment buildings bordering the west edge of the site and parking area. The plan presented to a group of neighbors many years ago by Dial was to buffer the development adjacent to single family with a cul-de-sac of one-level duplexes (patio style homes) on its west edge that were sure to attract older tenants, and would create more of a transition into 2 story apartments with the taller 3 story buildings further to the east. It was presented as a retirement community with independent and assisted living units further to the east...sort of a new Brandon Woods. Although the increased density request was approved, that plan never came to fruition and as a result, over the years as each new idea and site plan was submitted, each developer asks for just a bit more to maximize their site plans...and over the years any transition or buffer was lost.

Now, the Commission is considering plans for another 164 units on the land in the SE corner of Inverness and Clinton Parkway. We believe that the original plan for this area was to mix it up a bit, and as a result, different zonings/uses were originally assigned to the various tracts that made up the original development plan. Should the City Commission agree to rezone the site and allow for more apartments as requested, then the City Commission will be ignoring what the original development plan was for the area when it was annexed. Another large apartment complex will only add more of the same to a large tract of ground that was originally zoned with differing uses for a reason. By allowing the current request, the area will consist of 4 large apartment complexes, all adjacent to one another creating a tremendous amount of noise, traffic, and trash, without any professional office space or without any neighborhood services as was originally proposed.

Additionally:

- With both Elementary and Jr. High School children walking to/from school in the area, and with the certain increase of traffic in the area, even more unsafe conditions will exist for our kids. Recent

decisions by Lawrence Public Schools to limit bussing means more kids are in the area as pedestrians. Approval of this 4th apartment complex in such close proximity of Sunflower Elementary, Southwest Jr. High, Raintree Montessori and Bishop Seabury Schools not only increases traffic, it creates dangerous conditions for our pedestrian children.

- The roundabout at 24th Place and Inverness is so heavily used that ruts have developed in the lane around the circle making it difficult to navigate, not to mention the deep ruts in the grass by vehicles that can't navigate the circle and end up going over the curbs. Years ago developers argued that traffic from the apartments would exit to the east on Crossgate and wouldn't increase the traffic burden on Inverness, or pose additional dangers to the children walking to and from school. An added 4th apartment complex will dramatically increase traffic on Inverness and certainly pose increased risks to our children.
- Property values in the area will decline as Buyers decide not to purchase a home in the immediate area because of the adjacency to these large apartment complexes. They will opt for other areas that are not impacted by the consequences that are associated with living next door to an apartment complex (let alone 4 complexes).
- And last, there has been much recent development of new apartment complexes in the community these last 2 years. These developments are outpacing any growth (or lack thereof) that Lawrence is experiencing. Approving apartment complex site plans in correctly zoned areas is one thing, changing the zoning to permit additional apartment building in an area already heavily saturated with apartments is poor planning, and most likely increasing vacancy rates throughout the city.

In summary, at one point our neighborhood was the first in an area with two public schools, a private Montessori school, and farm ground that was described in Horizon 2020 as appropriate for residential use. Although we understand that apartments are residences, the presence of 4 large apartment complexes with high levels of density are much more commercial in nature, and are much more damaging to the area than a mixed use plan with elements of single family, multi-family, some office, and some neighborhood services.

Approving such a large area of apartments contradicts recent neighborhood planning strategies; creates a tremendous burden on the area with increased traffic, noise and congestion; ultimately lowers property values in the area; and puts our children walking to and from close by schools in greater danger.

We oppose the zoning request, and we hope that the City Commission will take actions that are consistent with current neighborhood planning strategies, don't burden area neighborhoods, help citizens protect their property values, and keep our kids safe.

Respectfully,

Rob and Jamie Hulse

A handwritten signature in cursive script, appearing to read "Chris L. Hutchins".

12 January 2010

City of Lawrence
Planning and Development
6 East 6th street
Lawrence, KS 66044

RECEIVED

JAN 14 2010

City County Planning Office
Lawrence, Kansas

Attn: Sandra Day, AICP

Re: **OPPOSITION** to Z-7-11-09 Rezoning of 10.97 acres, SE corner of Inverness and Clinton Parkway

Dear Ms. Day and the Planning Commission,

As neighbors in close proximity to this property, **we oppose** any adjustment to the current RSO zoning. Our Sunflower development is a lovely, quiet neighborhood of single family homes in close proximity to the Sunflower school. The properties just east and south of this parcel are currently multi-dwelling with a large younger/student population. Each morning and evening on my daily walks, I see their cars speeding around the neighborhood with the roadside littered with numerous debris, beer cans and other alcohol containers. Having this extended population in close area to the school I feel will further represent a safety issue to the local students and residence. In addition, the loss of quiet and tranquility to an established single-family home community is in further jeopardy.

Kindly consider the interest of us who live in this neighborhood as a factor in your evaluation. We have invested in our homes and this community maintained the area and peace of the neighborhood and work hard to hold our property values. Bringing additional multi-family development into the area will only decrease strained current values and local resources.

Thank you for your kind consideration in hearing our views over that of the developer BG Consultants.

Regards,



Stephen and Helen Slade
Property Owners and Residents
4219 Teal Drive
Lawrence KS 66047
785 843 1612

TO: Lawrence City Commission

FROM: Joe and Bridget Clark
4407 Gretchen Court
Lawrence KS 66047
Clark06@sbcglobal.net

DATE: 9-30-2009

RE: Rezoning of land in SE corner of Clinton Pkwy and Inverness Dr.

We are writing this letter in regard to the request to rezone the property at the SE corner of Clinton Pkwy and Inverness, currently under consideration by the City Commission. We strongly oppose another high density multi-family development in this area.

This area has many children attending Southwest Junior High, Sunflower Elementary, Raintree Montessori and Bishop Seabury. The traffic is already congested. There are now four large apartment complexes in the same area. This has significantly added to the noise and traffic in our neighborhood. The safety of the children walking to and from school is very much a concern. In addition, the decline of our property value is also worrisome.

We request that the City Commission take action to oppose this zoning request.

Sincerely,

Joe and Bridget Clark