


| | | | | | | | |
|---|--------------------------------------|--|--|-----------|---------------------|--|----|
|  | AGENDA ITEM EXECUTIVE SUMMARY | | | | | | |
| | Title: | Recommendation to Approve and Execute a Release and Reimbursement Agreement between the City and SC Out Parcels One LLC c/o The Krausz Companies, Inc. (3710 Main Street, Cooper's Hawk) | | | | | |
| | Presenter: | Chris Bong, P.E. | | | | | |
| Please check appropriate box: | | | | | | | |
| | Government Operations | | | | Government Services | | |
| X | Planning & Development (8/8/16) | | | | City Council | | |
| Estimated Cost: | | N/A | | Budgeted: | YES | | NO |
| If NO, please explain how item will be funded: | | | | | | | |
| | | | | | | | |
| Executive Summary: | | | | | | | |
| <p>The proposed Cooper's Hawk plan at the Charlestowne Mall Quad of St. Charles currently shows 3 locations where the proposed outdoor patio hardscape will be closer than the City Engineering Manual recommended 20 feet separation from existing City watermain. Providing the full 20 feet of separation from permanent structures creates a physical hardship for the development of the property as it essentially eliminates the possibility of the outdoor patios.</p> <p>Of the areas in question, the northwest corner patio is our main concern as it has a steel "pergola" structure over the patio. In addition to the northwest corner, there are 2 other minor watermain separation concerns at the northeast and southeast building corners. Those 2 corners are included in this agreement as additional protection as those patios are only concrete hardscape without a pergola type structure.</p> <p>We have worked with the applicant to find a practical solution that is agreeable to both the City and Developer. There is an engineering part of the solution; specifically the applicant has agreed to shift a short segment of the watermain so that 10 feet of separation is provided from the northwest patio corner.</p> <p>The item currently up for consideration is the legal part of the solution, namely that the Developer will provide a Release and Reimbursement Agreement to protect the City from any future damages to the Developer's building and/or the City's watermain as a result of providing less than 20 feet of separation at these 3 locations. Staff has worked with the City's legal counsel to draft this agreement.</p> | | | | | | | |
| Attachments: (please list) | | | | | | | |
| Resolution Release and Reimbursement Agreement Plan Exhibit Overall Plan and Northwest Corner | | | | | | | |
| Recommendation / Suggested Action (briefly explain): | | | | | | | |
| Staff recommends approval and execution of the resolution for a Release and Reimbursement Agreement between the City and SC Out Parcels One LLC c/o The Krausz Companies, Inc. | | | | | | | |
| For office use only: | | Agenda Item Number: 3a | | | | | |

City of St. Charles, Illinois
Resolution No. _____

**A Resolution to Approve and Execute a Release and Reimbursement
Agreement between the City and SC Out Parcels One LLC c/o The
Krausz Companies, Inc. (3710 Main Street, Cooper's Hawk)**

**Presented & Passed by the
City Council on _____**

BE IT RESOLVED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois to approve and execute the Release and Reimbursement Agreement between the City and SC Out Parcels One LLC c/o The Krausz Companies, Inc. attached hear to.

PRESENTED to the City Council of the City of St. Charles, Illinois, this 15th day of August 2016.

PASSED by the City Council of the City of St. Charles, Illinois, this 15th day of August 2016.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 15th day of August 2016.

Raymond Rogina, Mayor

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

RELEASE AND REIMBURSEMENT AGREEMENT

THIS RELEASE AND REIMBURSEMENT AGREEMENT, entered into this ____ day of July, 2016 by and between the **CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois, a Municipal Corporation** (hereinafter "City"), and **SC OUT PARCELS ONE LLC**, a Delaware limited liability company, (hereinafter "Developer"),

WITNESSETH:

WHEREAS, the Developer has received approval from the City to develop a 11,300 square foot building and associated hardscape (the "Building") on The Quad Unit 2, Lot 1 located at 3710 Main Street, St. Charles, Illinois (the "Site"); and,

WHEREAS, the Developer has submitted plans to the City detailing the location of the Building on the Site; and,

WHEREAS, the utility plans submitted to the City (as attached hereto as Exhibit "A"), depict the location of the proposed Building and the 3 locations of City water main at the northwest, northeast and southeast corners of the building as of the date of this agreement (the "WM"); and,

WHEREAS, the City of St. Charles' Engineering Design and Inspection Policy Manual (the "Policy Manual") recommends that "Water appurtenances shall be a minimum of (20) feet from permanent structures;" (See attached portion of Policy Manual, attached hereto as Exhibit "B"); and,

WHEREAS, the Developer, through its agent, has requested that it be permitted to deviate from the Policy Manual and construct the Building within (10) feet of the WM, (as depicted on Exhibit "A"); and,

WHEREAS, the City requires that the Developer provide this Agreement in consideration for the City allowing the Developer to construct the Building closer than twenty (20) feet from the WM.

NOW THEREFORE, in fulfillment of the obligations agreed upon by the Developer and the City, the parties are agreed as follows:

1. **Recitals.** The preceding paragraphs are deemed by the parties to constitute affirmative representations of fact intended by each of the parties to be relied on by the other, and those representations are incorporated and included within the terms of this Agreement.

2. **Release.** Developer hereby releases the City, its officers, employees, agents, successors and assigns (the "Released Parties") from any and all claims, demands, judgments, penalties, liabilities, costs, damages and expenses for injury to persons or damage to property ("Claims") that Developer has against the City that are caused by or arise out of a break of the WM or any excavation work performed by the City to repair the WM, to the extent that the Claims were caused solely by, result solely from or arise solely out of the fact that the Building is closer to the WM than the distance recommended in the current version of the Policy Manual. This Release does not extend to Claims incurred by Developer as a result of the negligence or willful acts of the Released Parties.

3. **Reimbursement.** If Developer damages the WM during the construction of the Building, and the damage was caused solely due to the fact that the Building is closer to the WM than the distance recommended in the current version of the Policy Manual, then Developer will reimburse the City for all of the City's reasonable out-of-pocket expenses incurred in repairing the damage to the WM promptly after receipt of written notice from the City together with an invoice or other documentation identifying the expenses incurred by the City.

4. **Attorneys' Fees and Costs.** In the event of any action or proceeding is filed concerning the terms of this Agreement, then the prevailing party shall be entitled to collect all its costs associated with the action or proceeding, including, but not limited to, its reasonable attorneys' fees and court costs.

5. **Waiver and Amendments.** This Agreement may only be waived, modified, amended, Terminated or discharged in writing signed by the parties hereto. A waiver so signed shall be effective only for the specific purpose set forth therein.

6. **Arbitration.** Disputes regarding this Agreement shall be submitted to binding arbitration before one single arbitrator of the American Arbitration Association (AAA) in Chicago, Illinois in accordance with its Commercial Arbitration Rules. The fees and costs of the AAA shall be

Shared equally by the parties. In the event a party files a suit to enforce any award in arbitration, such action shall be filed and venue shall be in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois.

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Developer and the City and their respective successors and assigns.

8. Choice of Law. This Agreement shall be governed by, construed and enforced in Accordance with the laws of the State of Illinois.

9. Notices. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to Developer and the City of St. Charles as follows:

Developer: SC Out Parcels One LLC
c/o The Krausz Companies, Inc.
44 Montgomery Street, Suite 3300
San Francisco, CA 94104

With a copy to its manager: IEQ Management Inc.
300 Delaware Avenue, Suite 210
Wilmington, DE 19801
Attention: Daniel W. Krausz

City of St. Charles: The City of St. Charles
2 East Main Street
St. Charles, Illinois 60174
(630) 377-4400 (phone)
(630) 377-4440 (fax)

With a copy to its attorneys: John M. McGuirk
Hoscheit, McGuirk, McCracken & Cuscaden, P.C.
1001 East Main Street, Suite G
St. Charles, IL 60174
(630) 513-8700 (phone)
(630) 513-8799 (fax)

[The signature page follows]

IN WITNESS WHEREOF the parties have hereunto set their hands and seals on the day,
month and year first above written.


**CITY OF ST. CHARLES of Kane and DuPage
Counties, Illinois, a Municipal Corporation**

By: _____
Mayor

Attest: _____
Clerk

SC OUT PARCELS ONE LLC,
a Delaware limited liability company

By: IEQ Management Inc.
a Delaware corporation
its Manager

By: 
Daniel W. Krausz
President

After recording, return to:
The City of St. Charles
2 East Main Street
St. Charles, IL 60174

STATE OF DELAWARE)
)ss.
COUNTY OF NEW CASTLE)

On the 8th day of July 2016, personally appeared before me Daniel W. Krausz, the signer of the within instrument, who duly acknowledged to me that he executed the same.

CAITLYN BROWN
Notary Public
STATE OF DELAWARE

SEAL **My Commission Expires 07-08-2017**



Notary Public

My Commission Expires:

July 8, 2017

STATE OF ILLINOIS)
) ss
COUNTY OF)

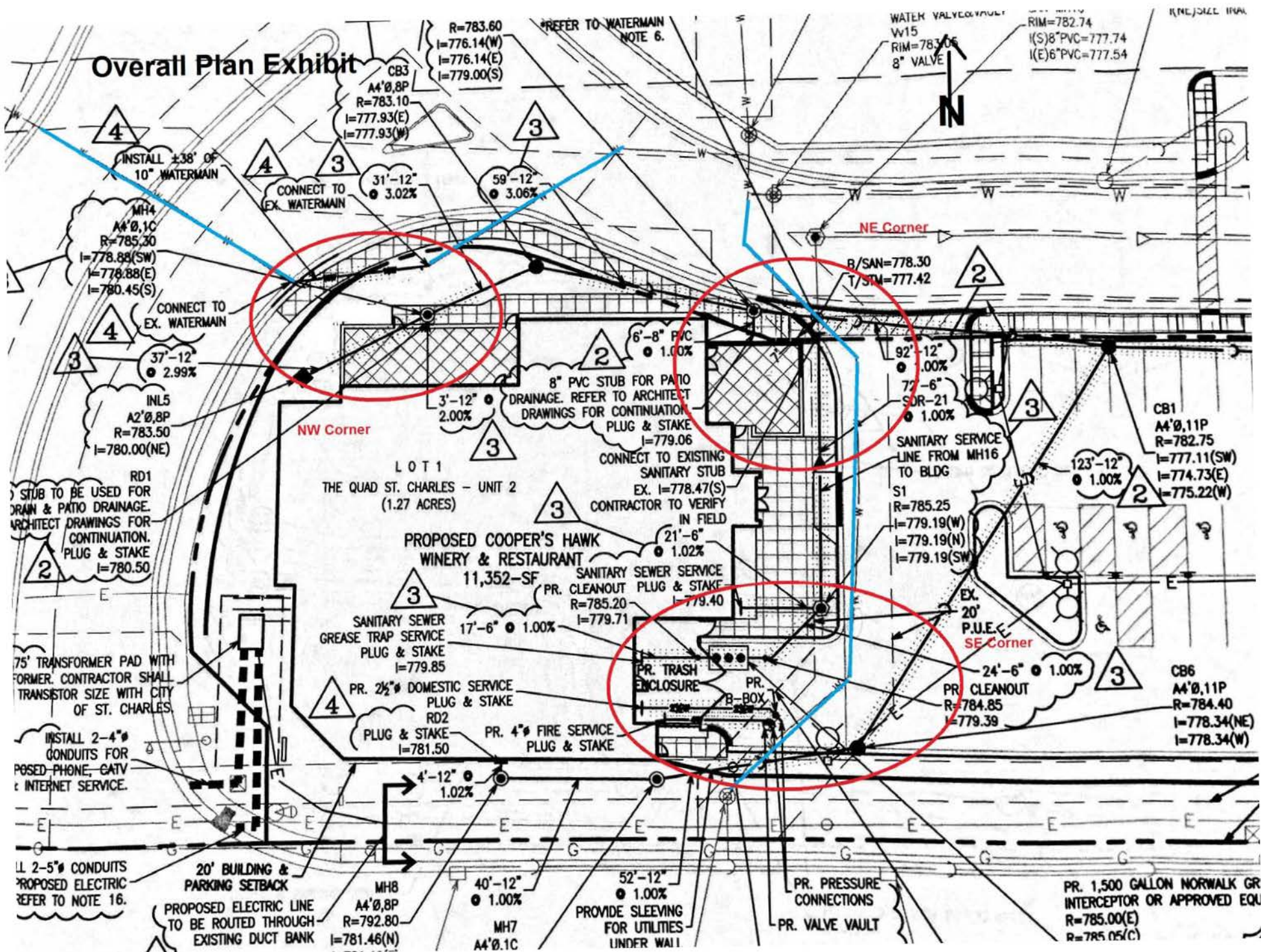
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Raymond Rogina, personally known to me to be the Mayor of the City of St. Charles, a municipal corporation and Nancy Garrison, personally known to me to be the City Clerk of the City of St. Charles, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk of said corporation they caused their signatures to be affixed thereto, and caused the corporate seal of said corporation to be affixed thereto, pursuant to the authority given by the Council of the City of St. Charles as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 2016

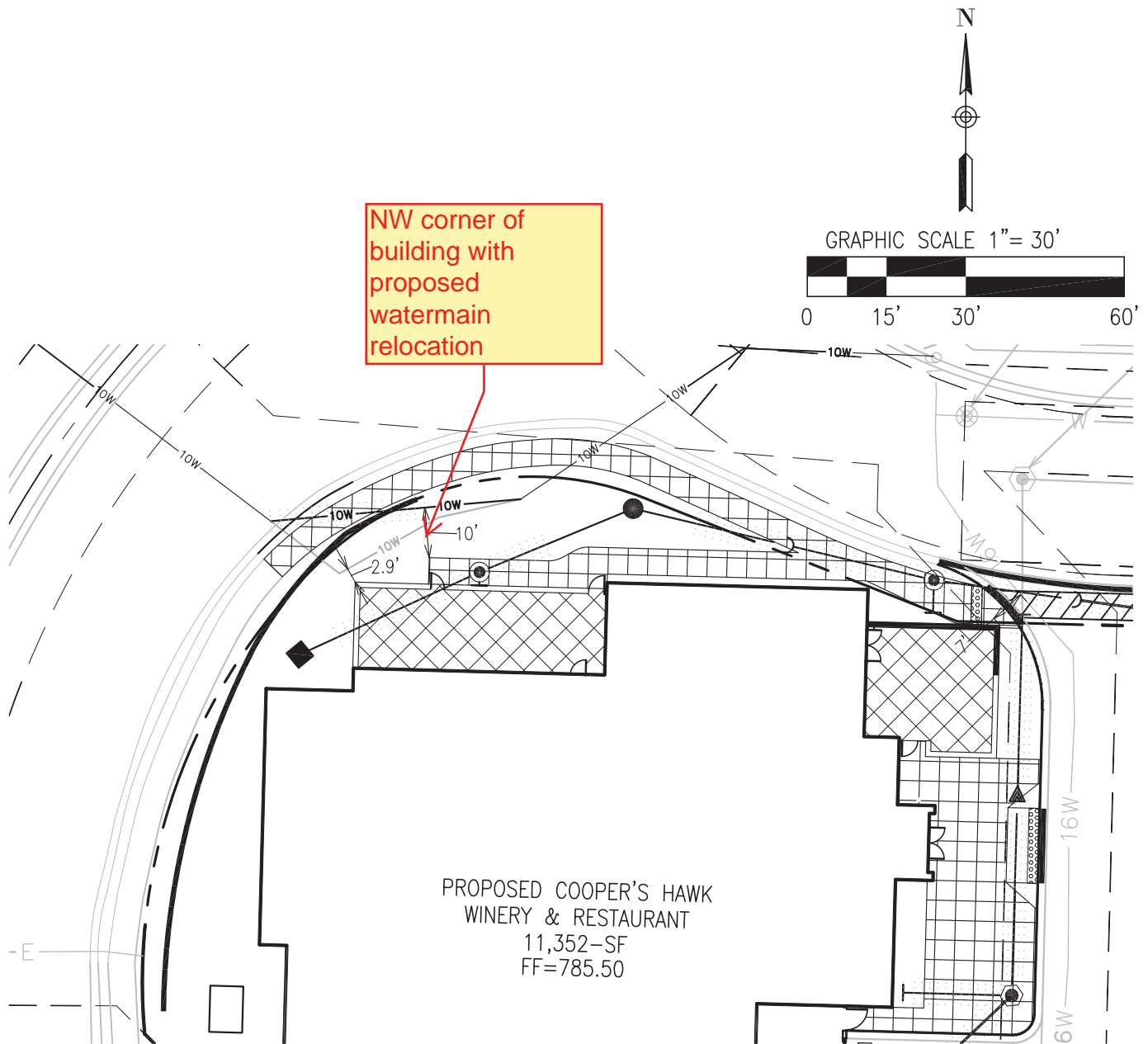
NOTARY PUBLIC

SEAL

Overall Plan Exhibit



NORTHWEST PATIO EXHIBIT



**JACOB & HEFNER
ASSOCIATES**

1910 S. Highland Avenue, Suite 100, Lombard, IL 60148
PHONE: (630) 652-4600, FAX: (630) 652-4601
www.jacobandhefner.com

| | | | |
|----------------|--------------------------|----------|-------|
| PROJECT NAME: | THE QUAD - COOPER'S HAWK | | |
| CLIENT NAME: | SC OUT PARCEL ONE | | |
| LOCATION: | ST. CHARLES, IL | | |
| DATE PREPARED: | 6/8/16 | | |
| SHEET: | EX1 | JOB NO.: | F021c |