

ORDINANCE NO. CON-2862

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ACQUISITION OF LANDS OR INTERESTS THEREIN BY CONDEMNATION FOR THE IMPROVEMENT OF A MAIN TRAFFICWAY - 127TH STREET, METCALF AVENUE TO NALL AVENUE IN THE CITY OF OVERLAND PARK, JOHNSON COUNTY, KANSAS.

WHEREAS, the Governing Body of the City of Overland Park, Kansas, did by Resolution No. 3803, declare the necessity for, and authorize a survey and description of lands or interests therein to be condemned by the City for the following improvement:

The construction of 127th Street from 60 feet east of the centerline of Metcalf Avenue to 60 feet west of the centerline of Nall Avenue. Construction will include a dual 28 foot roadway with a 24 foot median located in 120 feet of right-of-way. Left turn lanes will be located at side streets as required. Concrete sidewalks, 5 feet in width, will be located on the south side of 127th Street. An asphalt bike and pedestrian trail, 10 feet in width, will be located on the north side of 127th Street. The project also includes construction of storm sewers, street lights, retaining walls, restoration, and other items incidental to the street construction; and

WHEREAS, said survey and description was filed with the City Clerk of the City of Overland Park, Kansas, on the 12<sup>th</sup> day of February, 2010.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

SECTION 1. It is hereby authorized and provided that the lands or interests therein hereafter described be acquired for the following improvement:

The construction of 127th Street from 60 feet east of the centerline of Metcalf Avenue to 60 feet west of the centerline of Nall Avenue. Construction will include a dual 28 foot roadway with a 24 foot median located in 120 feet of right-of-way. Left turn lanes will be located at side streets as required. Concrete sidewalks, 5 feet in width, will be located on the south side of 127th Street. An asphalt bike and pedestrian trail, 10 feet in width, will be located on the north side of 127th Street. The project also includes construction of storm sewers, street lights, retaining walls, restoration, and other items incidental to the street construction; to wit:

TRACT NO. 1

OWNER: Deer Creek Office I, LLC

**FEE SIMPLE ESTATE**

A part of land of Lot 1, DEER CREEK OFFICES, a subdivision of land in the City of Overland Park, Johnson County, Kansas, and being more particularly described as follows:

Commencing at the Northwest corner of Lot 1 of said subdivision; thence North 88° 11' 34" East 20.00 feet, on the North line of said Lot 1 and the South right-of-way line of 127th Street; thence South 43° 02' 22" West 28.21 feet to a point on the West line of said Lot 1 and the East right-of-way line of Metcalf Avenue; thence North 02° 06' 50" West 20.00 feet on said line to the Point of Beginning.

The above described tract of land contains 200 square feet, more or less.

**TEMPORARY CONSTRUCTION EASEMENT**

A part of land of Lot 1, DEER CREEK OFFICES, a subdivision of land in the City of Overland Park, Johnson County, Kansas, and being more particularly described as follows:

Commencing at the Northwest corner of Lot 1 of said subdivision; thence South 02° 06' 50" East 20.00 feet on the East right-of-way line of Metcalf Avenue to the Point of Beginning; thence North 43°02'22" East 14.10 feet; thence North 88°11'34" East 447.96 feet on a line parallel to the North line of said Lot 1 to a point on East line of said Lot 1; thence South 00°00'11" West 15.00 feet on said East line of Lot 1; thence South 88° 11' 34" West 457.41 feet to a point on the West line of said Lot 1 and the East right-of-way line of Metcalf Avenue; thence North 02° 06' 50" West 5.00 feet on said line to the Point of Beginning.

The above described tract of land contains 6,815 square feet, more or less.

TRACT NO. 2

OWNER: Deer Creek SPE, LLC

**TEMPORARY CONSTRUCTION EASEMENT**

All of the North 25 feet of the West 25 feet of the following described tract of land:

Lot 1, DEER CREEK APARTMENTS, a subdivision in the City of Overland Park, Johnson County, Kansas.

The above described tract of land contains 625 square feet, more or less.

And also:

All that part of Lot 1, DEER CREEK APARTMENTS, a subdivision in the City of Overland Park, Johnson County, Kansas, more particularly described as follows:

Commencing at the Northeast corner of said Lot 1; thence South 88°11'34" West 312.56 feet along the North line of said Lot 1 to the Point of Beginning; thence South 54°30'09" West 18.03 feet; thence South 01°48'26" East 40 feet; thence South 88°11'34" West 70 feet; thence North 01°48'26" West 40 feet; thence North 58°07'02" West 18.03 feet to the North line of said Lot 1; thence North 88°11'34" East 100 feet along said North line to the Point of Beginning.

The above described tract of land contains 3,650 square feet, more or less.

TRACT NO. 3

OWNERS: Michael Young  
Diane Galante

**TEMPORARY CONSTRUCTION EASEMENT**

All of the North 3 feet of the following described tract of land:

Lot 5, Block 2, DEER CREEK PARK SECOND PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

The above described tract of land contains 234 square feet, more or less.

TRACT NO. 4

OWNER: Charles A. Beeman, Trustee of the Charles A. Beeman Revocable Living Trust  
DTD 3-11-99

**TEMPORARY CONSTRUCTION EASEMENT**

All of the North 3 feet of the following described tract of land:

Lot 4, Block 2, DEER CREEK PARK SECOND PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

The above described tract of land contains 457 square feet, more or less.

TRACT NO. 5

OWNERS: Craig E. Stevenson  
Christine J. Stevenson

**TEMPORARY CONSTRUCTION EASEMENT**

All of the North 3 feet of the following described tract of land:

Lot 3, Block 2, DEER CREEK PARK SECOND PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

The above described tract of land contains 346 square feet, more or less.

TRACT NO. 6

OWNERS: Walter Ricci  
Carol A. Ricci-Jasmer

**TEMPORARY CONSTRUCTION EASEMENT**

All of the North 3 feet of the following described tract of land:

Lot 2, Except the Easterly 5 feet, Block 2, DEER CREEK PARK SECOND PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.

The above described tract of land contains 336 square feet, more or less.

TRACT NO. 14

OWNERS: Phillip Ray Miller  
Glenda Jo Miller

**TEMPORARY CONSTRUCTION EASEMENT**

All of the North 25 feet of the West 10 feet of the following described tract of land:

Lot 29, Block 1, DEER CREEK PARK, a subdivision in the City of Overland Park, Johnson County, Kansas.

The above described tract of land contains 250 square feet, more or less.

TRACT NO. 16

OWNERS: Marvin L. Lindmark, Jr.  
Gayle J. Lindmark

**TEMPORARY CONSTRUCTION EASEMENT**

All that part of Lot 1, Block 1, DEER CREEK PARK, a subdivision in the City of Overland Park, Johnson County, Kansas, more particularly described as follows:

Beginning at the Northwest corner of said Lot 1; thence North 88°00'38" East 14.62 feet along the North line of said Lot 1; thence South 42°16'58" West 20.95 feet to the West line of said Lot 1; thence North 01°59'22" West 15 feet along said West line to the Point of Beginning.

The above described tract of land contains 110 square feet, more or less.

TRACT NO. 19

OWNER: CNL Income EAGL Midwest Golf, LLC

**TEMPORARY CONSTRUCTION EASEMENT**

A tract of land in the Northeast Quarter of Section 29-Township 13 South-Range 25 East, in the City of Overland Park, Johnson County, Kansas, and being more particularly described as follows:

Commencing at the Northwest corner of the Northeast Quarter of said Section 29;

Thence North 88° 00' 38" East 785.58 feet, on the North line of said Northeast Quarter;

Thence South 01° 59' 22" East 60.00 feet; to the Northeast corner of Lot 5, Block 1, DEER CREEK PARK, a subdivision of land in the City of Overland Park, Johnson County, Kansas and the Point of Beginning;

Thence North 88° 00' 38" East 200.12 feet on a line parallel to the North line of said Northeast Quarter to a point 15.00 feet north of the Northwest corner of Tract A, TURNBERRY, a subdivision of land in the City of Overland Park, Johnson County, Kansas;

Thence South 02° 06' 51" East 80.00 feet to a point on the West line of said Tract A;

Thence South 88° 00' 38" West 156.66 feet to a point on the East line of Lot 6, Block 1, of said DEER CREEK PARK;

Thence North 30° 35' 44" West 91.13 feet on the East line of Lot 6 and Lot 5 on said DEER CREEK PARK to the Point of Beginning, containing 14,271 square feet or 0.3276 acres.

TRACT NO. 19A

OWNER: North Star Development Co., Inc.

**FEE SIMPLE ESTATE**

A tract of land in the Northeast Quarter of Section 29-Township 13 South-Range 25 East, in the City of Overland Park, Johnson County, Kansas, and being more particularly described as follows:

Commencing at the Northwest corner of the Northeast Quarter of said Section 29;

Thence North 88° 00' 38" East 785.58 feet, on the North line of said Northeast Quarter;

Thence South 01° 59' 22" East 30.00 feet to the Point of Beginning;

Thence North 88° 00' 38" East 200.05 feet, on a line parallel with said North line;

Thence South 02° 06' 51" East 30.00 feet;

Thence South 88° 00' 38" West 200.12 feet on a line parallel with said North line to the Northeast corner of Lot 5, Block 1, DEER CREEK PARK, a subdivision of land in the City of Overland Park, Johnson County, Kansas;

Thence North 01° 59' 22" West 30.00 feet to the Point of Beginning, containing 6,002 square feet or 0.1378 acres.

TRACT NO. 20

OWNER: CNL Income EAGL Midwest Golf, LLC

**TEMPORARY CONSTRUCTION EASEMENT**

All of the North 65 feet of the West 50 feet of the following described tract of land:

Tract A, TURNBERRY, a subdivision in the City of Overland Park, Johnson County, Kansas.

The above described tract of land contains 3,250 square feet, more or less.

TRACT NO. 27

OWNER: Karin-127 Nall, LLC

**FEE SIMPLE ESTATE**

All that part of the Southeast quarter of Section 20, Township 13, Range 25 in the City of Overland Park, Johnson County, Kansas, more particularly described as follows:

Note: The following description lies in the tract of land described in Book 220405 Page 009771, recorded in the Johnson County Department of Records and Tax Administration office.

Commencing at the Southeast corner of said Southeast quarter; thence South 88°00'38" West 500.00 feet along the South line of said Southeast quarter; thence North 01°59'22" West 60.00 feet to the Point of Beginning; thence South 78°24'23" West 161.83 feet; thence North 01°59'22" West 27.00 feet; thence North 88°00'38" East 159.56 feet to the Point of Beginning.

The above described tract of land contains 2,154 square feet, more or less.

**TEMPORARY CONSTRUCTION EASEMENT**

All that part of the Southeast quarter of Section 20, Township 13, Range 25 in the City of Overland Park, Johnson County, Kansas, more particularly described as follows:

Note: The following description lies in the tract of land described in Book 220405 Page 009771, recorded in the Johnson County Department of Records and Tax Administration office.

Commencing at the Southeast corner of said Southeast quarter; thence South 88°00'38" West 500.00 feet along the South line of said Southeast quarter; thence North 01°59'22" West 60.00 feet to the North line of 127<sup>th</sup> Street Right-of-Way as now established and to the Point of Beginning; thence South 88°00'38" West 159.56 feet; thence North 01°59'22" West 80.03 feet; thence North 88°00'38" East 159.56 feet; thence South 01°59'22" East 80.03 feet to the Point of Beginning.

The above described tract of land contains 12,769 square feet, more or less.

TRACT NO. 28

OWNERS: Greg T. Spies  
Kimberley S. Spies

**FEE SIMPLE ESTATE**

All that part of the Southeast quarter of Section 20, Township 13, Range 25 in the City of Overland Park, Johnson County, Kansas, more particularly described as follows:

Note: The following description lies in the tract of land described in Document No. 2091108, Vol. 3515 Page 356, recorded in the Johnson County Department of Records and Tax Administration office.

Commencing at the Southeast corner of said Southeast quarter; thence South 88°00'38" West 659.56 feet along the South line of said Southeast quarter, thence North 01°59'22" West 20.00 feet to the Point of Beginning; thence South 88°00'38" West 250.00 feet on the North right of way line of 127<sup>th</sup> Street; thence North 01°59'22" West 40.00 feet; thence North 88°00'38" East 250.00 feet; thence South 01°59'22" East 40.00 feet to the Point of Beginning.

The above described tract of land contains 10,000 square feet, more or less.

### **TEMPORARY CONSTRUCTION EASEMENT**

All that part of the Southeast quarter of Section 20, Township 13, Range 25 in the City of Overland Park, Johnson County, Kansas, more particularly described as follows:

Note: The following description lies in the tract of land described in Document No. 2091108, Vol. 3515 Page 356, recorded in the Johnson County Department of Records and Tax Administration office.

Commencing at the Southeast corner of said Southeast quarter; thence South 88°00'38" West 659.56 feet along the South line of said Southeast quarter; thence North 01°59'22" West 60.00 feet to the Point of Beginning; thence South 88°00'38" West 250.00 feet; thence North 01°59'22" West 15.00 feet; thence North 88°00'38" East 215.36 feet; thence North 64°35'40" East 37.74 feet; thence South 01°59'22" East 30.00 feet to the Point of Beginning.

The above described tract of land contains 4,010 square feet, more or less.

TRACT NO. 29

OWNERS: Greg T. Spies  
Kimberley S. Spies

### **TEMPORARY CONSTRUCTION EASEMENT**

All that part of the Southeast quarter of Section 20, Township 13, Range 25 in the City of Overland Park, Johnson County, Kansas, more particularly described as follows:

Note: The following description lies in the tract of land described in Document No. 2026668, Book 3357 Page 764, recorded in the Johnson County Department of Records and Tax Administration office.

Commencing at the Southeast corner of said Southeast quarter; thence South 88°00'38" West 909.56 feet along the South line of said Southeast quarter; thence North 01°59'22" West 60.00 feet to the North Right-of-Way line of 127<sup>th</sup> Street as now established and the Point of Beginning; thence South 88°00'38" West 415.08 feet along said North Right-of-Way line; thence North 01°50'20" West 65.00 feet; thence North 88°00'38" East 60.28 feet; thence South 66°38'36" East 105.12 feet; thence North 88°00'38" East 259.64 feet; thence South 01°59'22" East 20.00 feet to the Point of Beginning.

The above described tract of land contains 13,154 square feet, more or less.

TRACT NO. 45

OWNERS: Thomas J. Shaver  
Martha A. Shaver

**TEMPORARY CONSTRUCTION EASEMENT**

A part of land of Lot 1, Block 48, STONEYBROOK, FOURTH PLAT, a subdivision of land in the City of Overland Park, Johnson County, Kansas, and being more particularly described as follows:

Commencing at the Southeast corner of said Lot 1; thence South 88° 11' 34" West 25.05 feet on the South line of said Lot 1 and the North right-of-way line of 127<sup>th</sup> Street; thence North 44° 34' 56" East 18.05 feet to the beginning of a curve concave to the Southeast having a radius of 342.00 feet; thence Northeasterly 96.66 feet on said curve to a point on the Northerly line of said Lot 1; thence South 71° 04' 54" East 12.03 feet on said Northerly line of said Lot 1 to the Northeast corner of said Lot 1 and the beginning of a curve concave to the Southeast having a radius of 330.00 feet; thence Southwesterly 95.35 feet on said curve and the Westerly right-of-way line of Glenwood Avenue; thence South 01° 48' 26" East 9.42 feet on said right-of-way line to the Point of Beginning.

The above described tract of land contains 1,364 square feet, more or less.

TRACT NO. 57

OWNER: Old Metcalf Investors, LLC

**TEMPORARY CONSTRUCTION EASEMENT**

All that part of Lot 3, METCALF 127, a subdivision in the City of Overland Park, Johnson County, Kansas, more particularly described as follows:

Beginning at the Southeast corner of said Lot 3; thence South 88° 11' 34" West 322 feet along the South line of said Lot 3 to the Southwest corner of said Lot 3; thence North 01°53'37" West 10 feet along the West line of said Lot 3; thence North 88°11'34" East 247.11 feet; thence North 01°48'26" West 16 feet; thence North 88 °11'34" East 74.87 feet, to the East line of said Lot 3; thence South 01°53'37" East 26 feet along said East line to the Point of Beginning.

The above described tract of land contains 4,418 square feet, more or less.

TRACT NO. 58

OWNER: First Commercial Bank, N.A.

**FEE SIMPLE ESTATE**

A part of land of Lot 2, METCALF 127, a subdivision of land in the City of Overland Park, Johnson County, Kansas, and being more particularly described as follows:

Beginning at the Southwest corner of Lot 2 of said subdivision; thence North 01° 53' 34" West 30.00 feet, on the West line of said Lot 2 and the East right-of-way line of Metcalf Avenue; thence South 46° 51' 00" East 42.46 feet to a point on the South line of said Lot 2 and the North right-of-way line of 127th Street; thence South 88° 11' 34" West 30.00 feet on said line to the Point of Beginning.

The above described tract of land contains 450 square feet, more or less.

**PERMANENT SIDEWALK & UTILITY EASEMENT**

A part of land of Lot 2, METCALF 127, a subdivision of land in the City of Overland Park, Johnson County, Kansas, and being more particularly described as follows:

Commencing at the Southwest corner of Lot 2 of said subdivision; thence North 01° 53' 34" West 30.00 feet, on the West line of said Lot 2 and the East right-of-way line of Metcalf Avenue to the Point of Beginning; thence North 01° 53' 34" West 40.09 feet, on the West line of said Lot 2 and the East right-of-way line of Metcalf Avenue; thence North 88° 06' 26" East 5.00 feet; thence South 01° 53' 34" East 45.10 feet, on a line parallel with said West line of said Lot 2 and said East right-of-way line of Metcalf Avenue; thence North 46° 51' 00" West 7.08 feet to the Point of Beginning.

The above described tract of land contains 213 square feet, more or less.

**TEMPORARY CONSTRUCTION EASEMENT**

A part of Lot 2, METCALF 127, a subdivision of land in the City of Overland Park, Johnson County, Kansas, and being more particularly described as follows:

Commencing at the Southwest corner of Lot 2 of said subdivision; thence North 01° 53' 34" West 70.09 feet, on the West line of said Lot 2 and the East right-of-way line of Metcalf Avenue to the Point of Beginning; thence North 01° 53' 34" West 5.00 feet, on said lines; thence North 88°06'26" East 10.00 feet; thence South 01° 53' 34" East 35.00 feet on a line parallel with said West line of said Lot 2 and said East right-of-way line of Metcalf Avenue; thence North 88°23'26" East 30.15 feet; thence South 75°06'29" East 104.40 feet; thence North 88°11'34" East 52.89 feet on a line parallel with the South line of said Lot 2 and the North right-of-way line of 127<sup>th</sup> Street to a point on the East line of said Lot 2; thence South 01°53'37" East 10.00 feet on said East line to a point on the South line of said Lot 2 and the North right-of-way line of 127<sup>th</sup> Street; thence South 88°11'34" West 163.00 feet on said lines; thence North 46° 51' 00" West 35.38 feet; thence North 01° 53' 34" West 45.10 feet, on a line parallel with said West line of said Lot 2 and said East right-of-way line of Metcalf Avenue; thence South 88° 06' 26" West 5.00 feet to a point on the West line of said Lot 2 and said East right-of-way line of Metcalf Avenue and the Point of Beginning.

The above described tract of land contains 4,323 square feet, more or less.

SECTION 2. It is further authorized and provided that, as soon as practicable after the passage of this ordinance, action be initiated to exercise the power of eminent domain in accordance with K.S.A. 26-501 *et seq.*, the Eminent Domain Procedure Act, to condemn all lands and interests therein hereinbefore described.

SECTION 3. This ordinance shall take effect and be in force from and after its publication in an official City newspaper.

PASSED by the Governing Body this 1<sup>st</sup> day of March, 2010.

APPROVED by the Mayor this 1<sup>st</sup> day of March, 2010.

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Carl Gerlach, Mayor

ATTEST:

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Marian Cook, City Clerk

APPROVED AS TO FORM:

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Tammy M. Owens  
Senior Assistant City Attorney