AN ORDINANCE VACATING A PORTION OF
OLD DUELLO ROAD PURSUANT TO SECTION
228.160 RSMo AND APPROVING A REAL
PROPERTY EXCHANGE AGREEMENT
RELATED THERETO

WHEREAS, Hwy N Plaza, LLC (“Owner”) owns approximately
2.2 acres of property near the intersection of
Highway N and Duello Road in St. Charles County,
a portion of which is situated between a stub of Old
Duello Road and the current alignment of Duello
Road; and

WHEREAS, the County has undertaken the David Hoeckel
Parkway Phase IV Project (the “Project”) to realign
and improve the intersection of Highway N, Duello
Road, and Hopewell Road; and

WHEREAS, the previous realignment of the intersection of
Highway N and Duello Road left a stub of Old
Duello Road in place solely for purposes of
providing public road access to Owner’s property,
and the new project will make a portion of said stub
no longer necessary; and

WHEREAS, during negotiations with the Owner to acquire the
new right-of-way needed for the Project, Owner
requested to be able to enclose and/or cultivate the
portion of right-of-way that will no longer be
needed upon conclusion of the Project and agreed to
grant the new right-of-way in exchange for vacation
of the old right-of-way, among other terms; and
WHEREAS, Section 228.160 RSMo provides that in cases where the route of a road is to be relocated between two points, the old right-of-way corridor may be vacated once the road is open in the new corridor; and

WHEREAS, the County Engineer is requesting vacation of the old right-of-way pursuant to said statute because the road has not been lengthened and it is equally or more convenient to travelers; and

WHEREAS, the County Engineer has confirmed that the portion of Old Duello Road proposed to be vacated is no longer needed to be used and maintained as a County road, and therefore the public will not be adversely affected by the proposed vacation; and

WHEREAS, the County Engineer has confirmed that notice of the request for vacation has been provided for by posting printed notices in at least five public places in the county, including a sign placed at the location of the right-of-way requested to be vacated, all listing a public hearing date of April 13, 2020 at 7:00 p.m., at which time the County Council will have the opportunity to hear any comments the public has to offer on this matter; and

WHEREAS, no interested parties have appeared and given good cause why the vacation should not take place.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF ST. CHARLES COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The County Council hereby finds that the portion of Old Duello Road sought to be vacated is no longer be needed to be used and maintained as a County road.
Section 2. The County Council hereby finds that there is no good cause why the proposed vacation should not take place.

Section 3. The section of Old Duello Road shown as the section labeled Parcel “6B” on Exhibit 6 to the agreement attached as Exhibit A hereto, and described in the legal description labeled “Parcel 6B (1/24/20) Right of Way” on Exhibit 7 to said agreement, is hereby deemed abandoned and vacated. By operation of law, the property on each side of the centerline of the vacated portion of Old Duello Road shall revert to the adjoining property owner.

Section 4. Hwy N Plaza, LLC, as the owner of property on both sides of the area to be vacated, shall be vested with title to said area.

Section 5. The terms of the Real Property Exchange Agreement attached as Exhibit A hereto are hereby approved.

Section 6. A certified copy of this ordinance, with attached exhibits and the aforementioned Affidavit of the County Engineer, shall be filed with the office of the Recorder of Deeds.

Section 7. This ordinance shall be in full force and effect from and after the date of its passage and approval.
REAL PROPERTY EXCHANGE AGREEMENT

This REAL PROPERTY EXCHANGE AGREEMENT is made by and between Hwy N Plaza, LLC, a Missouri Limited Liability Company, a/k/a Highway N Plaza, LLC ("Owner"), and St. Charles County, Missouri ("County"), a political subdivision of the State of Missouri, on the date last written below.

WHEREAS, Owner owns a parcel of land comprising approximately 2.2 acres along Highway N east of its intersection with Duello Road in St. Charles County, Missouri, with an Assessor Parcel Identification Number of 4-0038-S008-00-0010.2000000 ("the Property"); and

WHEREAS, County has undertaken a project to realign the intersections of Duello Road, Highway N, and Hopewell Road ("the Project"); and

WHEREAS, in order to complete the Project, County needs to acquire right-of-way from a portion of the Property; and

WHEREAS, County has excess land acquired from an earlier road improvement project adjacent to the Property; and

WHEREAS, the parties are willing to enter into this Agreement that provides for the needed right-of-way to be exchanged with County for the adjacent excess land, along with vacation of right-of-way of a portion of Old Duello Road that is no longer in use.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. County shall make the following modifications to the Project:

   County will, during construction of the Project, replace the existing gravel entrance to the Property from Highway N with a new entrance to the Property from Highway N that is constructed substantially in conformance with the entrance shown on the construction plan sheets dated 9/5/2019 attached hereto as Exhibit 1. Nothing in this Agreement shall be construed as limiting Owner’s rights to seek replacement or expansion of said entrance in the future. Owner acknowledges that any requests for future modifications of said entrance would need to be addressed to the Missouri Department of...
Transportation as the entity having jurisdiction over Highway N, or to such other agency as may assume such jurisdiction in the future.

2. Promptly after approval of this Agreement by the St. Charles County Council as provided for below, Owner shall deliver to County a special warranty deed that conveys to County a fee simple interest in the “New R.O.W.” area depicted on Exhibit 2 and described in Exhibit 3, consisting of approximately 8,781 SF. Said deed shall be in a form prepared by County and approved by Owner, such approval not to be withheld unreasonably. Owner shall further cooperate with County to provide any other documentation reasonably necessary to close the transaction. County shall be entitled to record said deed upon receipt and shall thereafter proceed with the work planned for the Project within a reasonable period of time, subject to delays beyond County’s control such as weather conditions or lack of satisfactory bids for the work.

3. Promptly after approval of this Agreement by the St. Charles County Council as provided for below, County shall (a) deliver to Owner a quitclaim deed that conveys to Owner a fee simple interest in the parcel labeled “6A” depicted on Exhibit 4 and described in Exhibit 5, consisting of approximately 15,579 SF; and (b) deliver to Owner a revocable license agreement allowing for Owner’s future use of the existing pavement of Old Duello Road. Said deed and revocable license agreement shall be in a form prepared by County and approved by Owner, such approval not to be withheld unreasonably. County shall further cooperate with Owner to provide any other documentation reasonably necessary to close the transaction. Owner shall be entitled to record said deed upon receipt.
4. County will, in the manner specified below, vacate all public road right-of-way in the area labeled “6B” depicted on Exhibit 6 and described in Exhibit 7, consisting of approximately 5,673 SF, subject to easements in favor of any existing utility users within such area. County shall also deliver to Owner a quitclaim deed to the area to be vacated after such vacation is complete, and said deed shall recite that it is subject to utility easements. Said quitclaim deed shall be in a form prepared by County and approved by Owner, such approval not to be withheld unreasonably.

5. The right-of-way vacation will be sought pursuant to § 228.160 RSMo. on the basis that Duello Road has been relocated in the past. Once the County Council passes an ordinance vacating said right-of-way, County will cause a certified copy of the ordinance approving the vacation and the quitclaim deed to be recorded in the St. Charles County Recorder of Deeds Office, with a copy of the recorded documents sent by email to Owner at Owner’s last known email address.

6. This Agreement is contingent upon approval by the St. Charles County Council. After the Agreement is signed by the parties, County will submit a proposed bill to the County Council that will, if passed by the Council as an ordinance, (1) approve this Agreement and the real property exchange contemplated herein, and (2) approve the vacation of the right-of-way contemplated herein pursuant to § 228.160 RSMo. The vacation of the right-of-way contemplated by this Agreement is to be effective upon recordation of said ordinance.

7. This Agreement is furthermore contingent upon the holder of any deed of trust or other lien on Owner’s Property providing a release of its interests in the property to be conveyed to the County pursuant to this Agreement, including without limitation
the deed of trust recorded in Deed Book 5710, Page 1882, on or about January 19, 2012. Following execution of this Agreement, County shall request any holder of a lien upon the property to be conveyed under this Agreement (including any deed of trust to that property) to subordinate that lien to the County and waive that lien’s priority, or properly to release the property to be conveyed by this Agreement from that lien; and Owner agrees to cooperate as needed in making such request(s) and providing such relevant information as any lienholder may require. County shall not seek approval of this Agreement by the St. Charles County Council until such time as any applicable lien has been addressed.

8. NO KNOWLEDGE OF HAZARDOUS OR TOXIC SUBSTANCES ON PROPERTY: Owner represents that to the best of Owner’s knowledge and belief, there has been no generation, transportation, storage, treatment, disposal, release, leakage, spillage or emission of any hazardous or toxic substance of material or any aboveground or underground petroleum product contamination on the subject property during Owner’s ownership or during previous ownerships at least insofar as Owner has observed or has been informed. In the alternative, if Owner does have knowledge of any of the aforementioned events occurring on the subject property, that information is set out below. If at any time during the period between the execution of this Agreement and the closing thereof, Owner has actual knowledge of, learn of, or have a reason to believe that any of the aforementioned events occurred on the subject property, Owner shall give notice to County immediately.

9. TERMINATION: County may, at its discretion, void this Agreement if the Owner reveals the existence of hazardous or toxic substances on the property. Further,
County may, at its discretion, void this Agreement if it does not close within one hundred eighty (180) days of its execution by the Owner and County.

10. LAWS OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri.

11. POSSESSION OF PROPERTY: Owner hereby agrees to vacate and give County peaceable possession of the property to be conveyed by this Agreement upon the closing of this Agreement. Owner hereby waives all statutory and common law notice to vacate said premises and as a further consideration for this Agreement, hereby consents that County may institute all necessary legal proceedings to obtain possession of the property at any time after County becomes entitled to possession of said property under this Agreement.

12. ADDITIONAL PROVISION: The Owner agrees to notify County during the pendency of this Agreement of any plans to sell the property to be conveyed under this Agreement, or to refinance any mortgage loan on the property.

[remainder of page left blank intentionally; signature page follows]
IN WITNESS WHEREOF, the parties have entered into this Real Property Exchange Agreement on the date last written below.

ST. CHARLES COUNTY, MISSOURI

By: ___________________________ Date: ___________________________
    Craig Tajkowski,
    County Engineer

HWY N PLAZA, LLC
a/k/a Highway N Plaza, LLC

By its Manager, Ed Holthaus Realty LLC

By: ___________________________ Date: ___________________________
    Ed Holthaus, Manager
This is in Lenny that we have, at the request of St. Charles County, made a right of way survey of Route N in Township 46 North, Range 2 East of the Fifth Principal, St. Charles County, Missouri. This survey was made in accordance with the current minimum standards for property boundary surveys of the Missouri Department of Natural Resources, Division of Geology and Land Survey, and that the result of said survey is shown on this plat. We certify that the above plat was made from an actual survey according to the records available and recorded.

EASEMENT EXHIBIT “A”
TOWNSHIP 46 NORTH - RANGE 2 EAST
ST. CHARLES COUNTY, MISSOURI
EXHIBIT 3

LEGAL DESCRIPTION

PARCEL 8 (11/4/19)

RIGHT-OF-WAY

A tract of land being part of that parcel conveyed to Hwy N Plaza, LLC by Deed recorded in Book 4171, Page 1833 of the Office of Recorder of Deeds, St. Charles, MO, situated in Section 8, Township 46 North, Range 2 East of the 5th Principal Meridian, St. Charles County, Missouri, being more particularly described as follows:

Beginning along the existing Northern Right-of-Way Line of Route N at the Southeast corner of said parcel, thence along said Northern Right-of-Way Line North 79° 51' 11" West for a distance of 65.12 feet to a point; thence along said Northern Right-of-Way Line 51.61 feet along a circular curve concave to the Northeast having a radius of 380.28 feet, chord bearing North 75° 49' 16" West and a chord length of 51.57 feet to the Southwest corner of said parcel; thence North 6° 10' 22" East for a distance of 93.46 feet to a point along the existing Western property line of said parcel; thence leaving said Western property line 122.87 feet along a non-tangent circular curve concave to the Northeast having a radius of 780.00 feet, chord bearing South 62° 24' 37" East and a chord length of 122.75 feet to a point along the Eastern property line of said parcel; thence along said Eastern property line South 4° 29' 49" West for a distance of 60.37 feet to the Point of Beginning.

The total described parcel contains 8,781 square feet, more or less.
THIS IS TO CERTIFY THAT WE HAVE, AT THE REQUEST OF ST. CHARLES COUNTY, MADE A RIGHT OF WAY SURVEY OF ROUTE N IN TOWNSHIP 46 NORTH, RANGE 2 EAST OF THE FIFTH PRINCIPAL ST. CHARLES COUNTY, MISSOURI. THIS SURVEY WAS MADE IN ACCORDANCE WITH THE CURRENT MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS OF THE MISSOURI DEPARTMENT OF NATURAL RESOURCES, DIVISION OF GEOLOGY AND LAND SURVEY, AND THAT THE RESULT OF SAID SURVEY IS SHOWN ON THIS PLAT. WE CERTIFY THAT THE ABOVE PLAT WAS MADE FROM AN ACTUAL SURVEY ACCORDING TO THE RECORDS AVAILABLE AND RECORDED.

EASEMENT EXHIBIT "A"
SECTION 8
TOWNSHIP 46 NORTH - RANGE 2 EAST
ST. CHARLES COUNTY, MISSOURI
EXHIBIT __

LEGAL DESCRIPTION

PARCEL 6A (1/24/20)

A tract of land being part of that parcel conveyed to Saint Charles County by Deed recorded in Book 3696, Page 2737 of the Office of Recorder of Deeds, St. Charles, MO, situated in Section 8, Township 46 North, Range 2 East of the 5th Principal Meridian, St. Charles County, Missouri, being more particularly described as follows:

Commencing along the existing Northern Right-of-Way Line of Route N at the Southeast corner of said parcel; thence along the Eastern property line of said parcel North 0° 15' 6" East for a distance of 142.52 feet to a point; thence leaving said Eastern property line North 39° 46' 8" West for a distance of 46.65 feet to the Point of Beginning; thence North 39° 46' 8" West for a distance of 140.99 feet to a point; thence North 1° 37' 44" West for a distance of 65.54 feet to a point; thence 138.64 feet along a circular curve concave to the Northwest having a radius of 411.00 feet, chord bearing North 39° 42' 52" East and a chord length of 137.98 feet to a point; thence South 75° 35' 5" East for a distance of 5.28 feet to a point; thence South 0° 15' 6" West for a distance of 278.71 feet to the Point of Beginning.

The total described parcel contains 15,579 square feet, more or less.
EXHIBIT 6

STATE OF MISSOURI
PROFESSIONAL LAND SURVEYOR
LE 2459

THIS IS TO CERTIFY THAT WE HAVE, AT THE REQUEST OF ST. CHARLES COUNTY, MADE A RIGHT OF WAY SURVEY OF ROUTE N IN TOWNSHIP 46 NORTH, RANGE 2 EAST OF THE FIFTH PRINCIPAL, ST. CHARLES COUNTY, MISSOURI. THIS SURVEY WAS MADE IN ACCORDANCE WITH THE CURRENT MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS OF THE MISSOURI DEPARTMENT OF NATURAL RESOURCES, DIVISION OF GEOLOGY AND LAND SURVEY, AND THAT THE RESULT OF SAID SURVEY IS SHOWN ON THIS PLAT. WE CERTIFY THAT THE ABOVE PLAT WAS MADE FROM AN ACTUAL SURVEY ACCORDING TO THE RECORDS AVAILABLE AND RECORDED.

EASEMENT EXHIBIT "A"
SECTION 8
TOWNSHIP 46 NORTH - RANGE 2 EAST
ST. CHARLES COUNTY, MISSOURI
EXHIBIT __

LEGAL DESCRIPTION

PARCEL 6B (1/24/20)

RIGHT-OF-WAY

A tract of land being part of that parcel conveyed to Saint Charles County by Deed recorded in Book 3696, Page 2737 of the Office of Recorder of Deeds, St. Charles, MO, situated in Section 8, Township 46 North, Range 2 East of the 5th Principal Meridian, St. Charles County, Missouri, being more particularly described as follows:

Commencing along the existing Northern Right-of-Way Line of Route N at the Southeast corner of said parcel; thence along the Eastern property line of said parcel North 0° 15' 6" East for a distance of 142.52 feet to the Point of Beginning; thence leaving said Eastern property line North 39° 46' 8" West for a distance of 46.65 feet to a point; thence North 0° 15' 6" East for a distance of 173.19 feet to a point; thence South 82° 20' 57" East for a distance of 30.25 feet to a point along the Eastern property line of said parcel; thence along said Eastern property line South 0° 15' 6" West for a distance of 205.02 feet to the Point of Beginning.

The total described parcel contains 5,673 square feet, more or less.