

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

GOTTSCH LAND COMPANY,)	CASE NO. CI
a Nebraska Corporation,)	
)	
Plaintiff,)	
)	
-vs-)	COMPLAINT FOR DECLARATORY
)	AND INJUNCTIVE RELIEF
LMLC NORTHSTAR, LLC,)	
)	
Defendant.)	

COMES NOW the Plaintiff, GOTTSCH LAND COMPANY, and for its cause of action against the Defendant states as follows:

1. The Plaintiff, Gottsch Land Company, (“Gottsch”) is the Declarant of the Declaration of Covenants, Conditions, Restrictions and Easements of Lots 1-9, inclusive, Indian Creek Business Park recorded June 25, 2001 in the Register of Deeds, Douglas County, Nebraska (“ICBP Covenants”);
2. The Defendant, LMLC Northstar, LLC (“LMLC”) is a Colorado Limited Liability Company registered to do business in Nebraska and the owner of real property legally described as Lot 7 of Indian Creek Business Park, Douglas County, Nebraska and also referred to as 20020 Manderson Street, Omaha, Nebraska (“Property”);
3. That venue is proper for the reasons the dispute arises out of a contracted regarding the development of the Property, which is located in Douglas County, Nebraska.
4. That LMLC purchased the Property June 12, 2015 with the intention of constructing a Little Minds Learning Center;
5. That LMLC prepared plans for the construction of a Little Minds Learning Center on the Property;
6. Section 2(d) of the ICBP gives Gottsch, as Declarant, the sole and absolute discretion to refuse or approve plans which are not suitable or desirable for aesthetic or other reasons;
7. Gottsch approved the LMLC plans for the Property conditioned upon a written Agreement for Indemnity executed between the parties and dated August 13, 2015, (“Agreement”) attached hereto as Exhibit “A”;

8. That said Agreement calls for construction of the improvements on the Property according to the design prepared by 63 Architecture and dated July 15, 2015, such plans which are attached to the Agreement (“July 15, 2015 Plans”);

9. That said Agreement calls for Gottsch to approve the plans and specifications as revised pursuant to the agreement of LMLC to revise the plans for the improvements according to the design prepared by 63 Architecture and dated July 15, 2015;

10. That pursuant to the Agreement Gottsch approved the plans of LMLC and relied on the representation that such construction would be in accordance with the July 15, 2015 Plans.

11. The July 15, 2015 Plans called for an 8’-0” high vinyl fencing – solid privacy with two (2) 3’-0” wide walk gates and one (1) 8’-0” wide double service gate;

12. That LMLC proceeded with the construction of the Little Minds Learning Center on the Property but failed to construct the fence in accordance with the July 15, 2015 Plans;

13. That Gottsch relied on the installation of the 8’-0” high vinyl fencing pursuant to the July 15, 2015 Plans when it entered into the Agreement with LMLC for the reasons the fence would provide a blocked view of the play area from the parking lot;

14. That Gottsch during the construction of the Little Minds Learning Center Gottsch observed that LMLC had failed to install an 8’0” high vinyl fence and instead installed a 5’0” high fence, thereby eliminating the point of blocking the view of the playground from the parking lot;

15. That Gottsch notified LMLC of its breach and was informed by the agent for LMLC that it would not be installing an 8’0” high fence;

16. That thereafter, LMLC offered an alternative to the 8’0” high fence and agreed to install fifteen 10’0” Juniper trees along the south side of the play area fence to block the view of the play area from the parking lot;

17. LMLC agreed to install fifteen 10’0” Juniper trees along the south side of the play area fence but has failed and refused to follow through with such installation;

18. That such refusal is a material breach of the Agreements between the parties.

19. That Gottsch has no adequate remedy at law;

WHEREFORE, Gottsch prays as follows:

- a. That LMLC be ordered to comply with the Agreements by installing fifteen 10'0" Juniper trees along the south side of the play area fence to block the site of the play area from the parking lot;
- b. That LMLC be enjoined from operating Little Minds Learning Center until such time as it complies with the installation of the fence or the trees;
- c. That Gottsch recover its costs herein;
- d. That Gottsch have such other and further relief as the Court deems just and equitable.

GOTTSCH LAND COMPANY,
Plaintiff,

By: 

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Kathleen M. Foster, #23259
Laughlin, Peterson & Lang
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(402) 330-1900
Robert.peterson@lpllaw.com
Kathleen.foster@lpllaw.com
Attorneys for the Plaintiffs

VERIFICATION


STATE OF NEBRASKA)
COUNTY OF DOUGLAS)SS

The undersigned, Jeff Jackson, Vice President for GOTTSCH LAND COMPANY, states that he has read the contents of the foregoing Complaint for Injunctive Relief, and that the contents contained therein are true and correct as he verily believes.

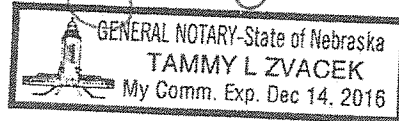


Jeff Jackson

SUBSCRIBED AND SWORN to before me by Jeff Jackson this 28 day of April, 2016.



Notary Public



AGREEMENT FOR INDEMNITY

THIS AGREEMENT is made and entered this 13th day of August, 2015 by and between GOTTSCH LAND CO., a Nebraska corporation, ("hereinafter" Gottsch"), and LMLC NORTHSTAR, LLC, a Colorado limited liability company (hereinafter "LMLC").

WITNESSETH

WHEREAS, Gottsch is the developer of the Indian Creek Business Park (hereinafter "ICBP") now located within the City of Omaha, Douglas County, Nebraska and is the Declarant under certain Covenants, Conditions, Restrictions and Easements affecting Lots 1 through 9, inclusive, in the ICBP; and

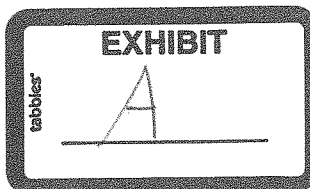
WHEREAS, LMLC is the owner of Lot 7 within the ICBP and desires to construct on said lot a child care center known as Little Minds Learning Center to provide daycare and related services for young children. As part of the licensing requirement for the LMLC the Nebraska Department of Health requires an outdoor play area for each child care facility; and

WHEREAS, Gottsch, as Declarant under the Declaration of Covenants has sole and absolute discretion to approve plans and specifications for improvements within the ICBP and has refused to approve the plans for LMLC for aesthetic reasons and potential harm to children attending the learning center due to the proximity of the learning center to the adjacent Indian Creek Golf Course; and

WHEREAS, the parties wish to provide for the approval of the Little Minds Learning Center conditioned upon certain design criteria for the learning center and indemnification to Gottsch for potential liability for approving the child care center on Lot 7 ICBP.

NOW, THEREFORE, in consideration of the preambles hereinabove set forth, the parties hereto agree as follows:

1. LMLC agrees to construct the improvements on Lot 7 ICBP according to the design prepared by C3 Architecture and dated July 15, 2015, 2015 which is incorporated into this Agreement.
2. As consideration for Gottsch's approval of the improvements and use of the property as a child care facility, LMLC agrees to indemnify and hold harmless Gottsch, its successors and assigns from any expense, claims or litigation incurred by or threatened as a result of injury or damages caused by errant golf balls to occupants or users of the childcare facility caused by players on the adjacent golf course.
3. Gottsch agrees to approve the plans and specifications as revised pursuant to the agreement of LMLC to revise the plans for the improvements according to the design prepared by C3 Architecture and dated July 15, 2015, 2015 which is incorporated into this Agreement and for the indemnity of LMLC.



Handwritten initials "SM" and "20" in the bottom right corner.

4. This Agreement shall inure to the benefit of the officers, directors, employees and successors of the parties hereto.

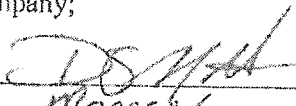
GOTTSCHE LAND CO, a Nebraska corporation

By 

Its VP

20507 Nicholas Circle, Suite 100
Elkhorn, NE 68022

LMLC NORTHSTAR, LLC, a Colorado limited liability company;

By 

Its Manager

Address 1999 Broadway Suite 710
Denver CO 80202

TENANT ACKNOWLEDGEMENT

1. Tenant acknowledges as the occupant and operator of the Little Minds Learning Center – Omaha, LLC situated on Lot 7, Indian Creek Business Park (“ICBP”), Omaha, Douglas County, Nebraska (the “Property”) adjacent to the Indian Creek Golf Course (Indian Creek) that the proximity of the Little Minds Learning Center - Omaha to the golf course presents a risk of harm to the Property and occupants of the Property in that golfers will from time to time hit golf balls from the golf course onto the Property.
2. Little Minds Learning Center - Omaha for itself and for its invitees and guests, acknowledges and consents to the unintentional intrusion of errant shots from the golf course onto the Property. For this purpose, an "errant shot" shall refer to a golf shot which is hit from the Indian Creek Golf Course into the Property.
3. The disclosures and acknowledgments herein are for the use and benefit of the Indian Creek Golf Course, LLC and Gottsch Land Company, developer of the ICBP, their respective officers, directors, members, managers, employees, guests and agents and their respective successors and assigns (collectively the "Grantees"). Without limitation of the foregoing, the Grantees shall include any golfer who is authorized as a member or guest to play golf at Indian Creek.
4. No Grantee shall have any liability, obligation or expense to the Tenant or Tenant's invitees and guests in respect of any personal injury, bodily injury or property damage occurring as a result of an errant shot which is not: (i) intentionally or willfully hit onto the Property; or (ii) hit in violation of the rules established by the operation of Indian Creek. **BY OCCUPYING THE PROPERTY, THE UNDERSIGNED ACKNOWLEDGES THE INHERENT DANGERS OF, AND INJURIES THAT CAN BE CAUSED BY, FLYING OBJECTS, AND HEREBY COVENANTS AND AGREES FOR ITSELF AND ITS GUESTS THAT THEY WILL NOT SUE ANY GRANTEE FOR PROPERTY DAMAGE, PERSONAL INJURY OR BODILY INJURY WHICH RESULTS DIRECTLY OR INDIRECTLY FROM AN ERRANT SHOT, PRESENTLY OR IN THE FUTURE. TENANT, BY OCCUPATION OF THE PROPERTY, ASSUMES ALL RISKS ASSOCIATED WITH ERRANT GOLF BALLS, AND AGREES AND COVENANTS NOT TO MAKE ANY CLAIM OR INSTITUTE ANY ACTION WHATSOEVER AGAINST A GRANTEE ARISING OR RESULTING FROM ANY ERRANT GOLF BALLS OR ANY DAMAGES THAT MAY BE CAUSED THEREBY. TENANT AGREES TO ADVISE THEIR GUESTS AND INVITERS OF THE RISKS ASSOCIATED WITH THE PROXIMITY OF THE PROPERTY TO THE INDIAN CREEK GOLF COURSE.**
5. Indian Creek may from time to time change the configuration and layout of the golf holes. Such changes may affect the frequency, trajectory and velocity of errant shots which pass onto the Property. Nevertheless, no cause of action shall be instituted against Indian Creek, LLC or Gottsch Land Company.

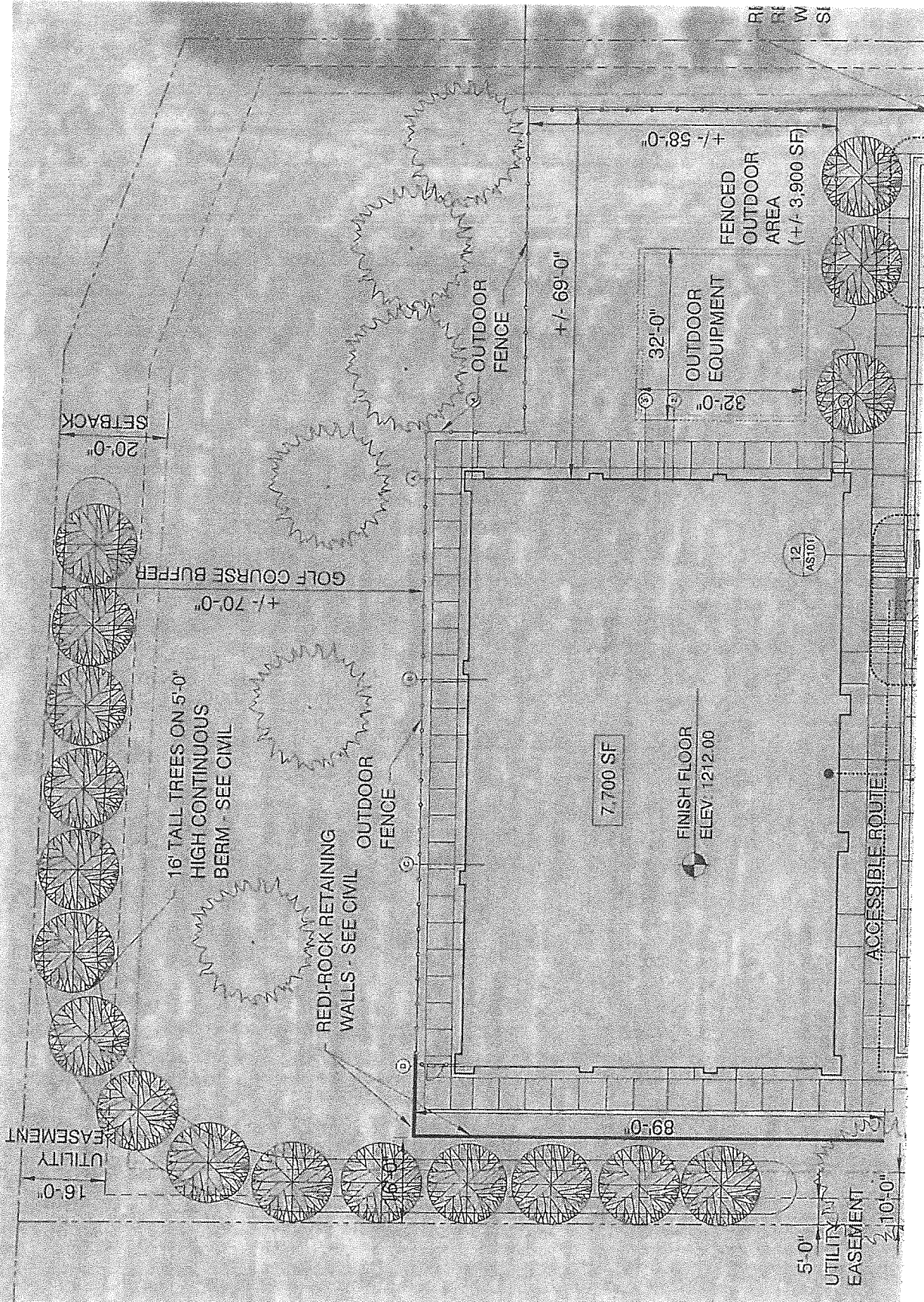
6. Indian Creek is private property. Tenant and its customers, invitees and guests shall have no right to trespass onto Indian Creek property.

DATED August 13, 2015.

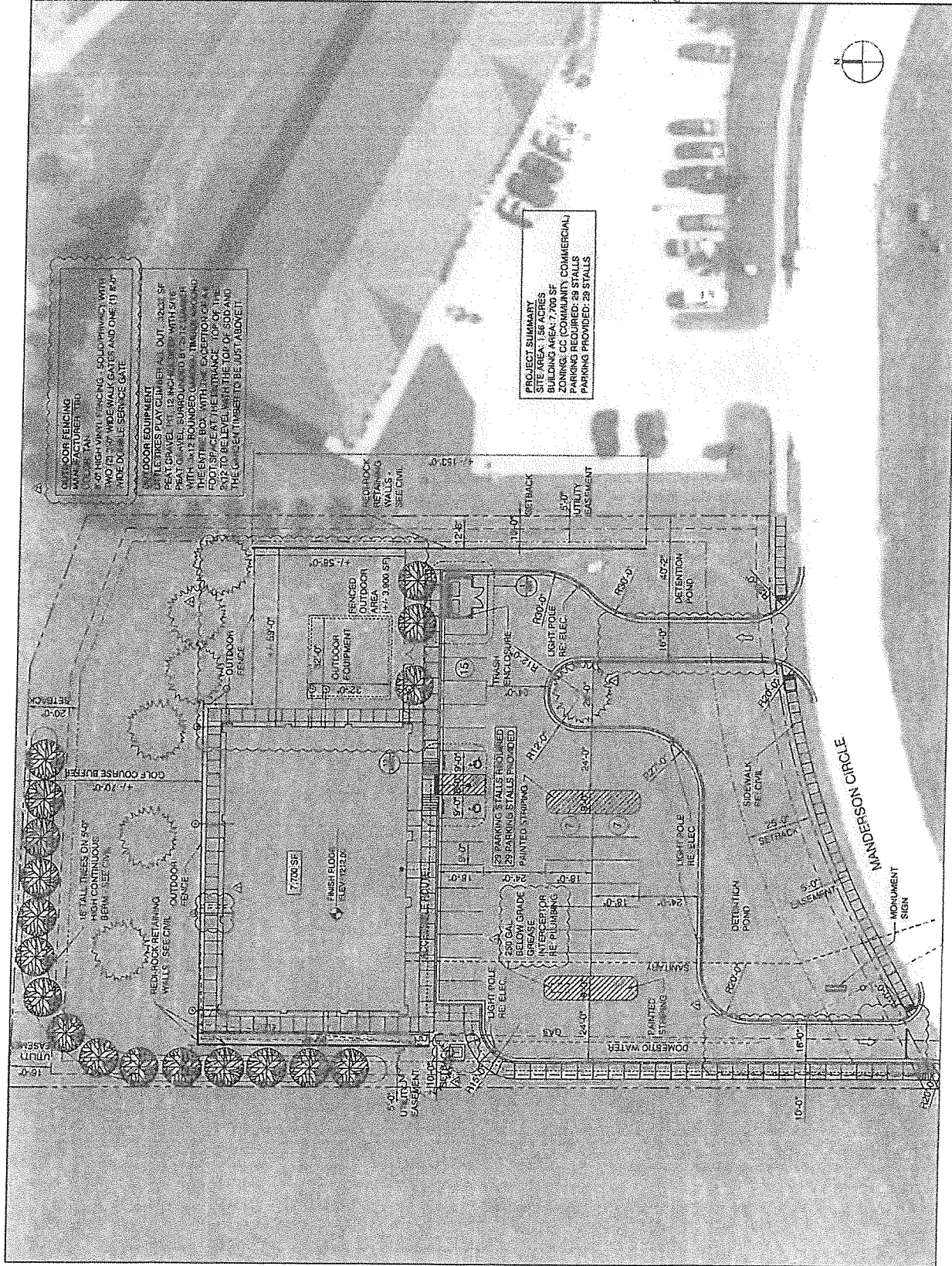
TENANT:

LITTLE MINDS LEARNING CENTER – OMAHA
LLC,

By 
Its Manager



ISSUED FOR PERMIT	04.07.15	
CITY COMMENTS	05.13.15	
FOR CONSTRUCTION	07.15.15	
ADDENDUM #		
NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	04.07.15
2	FOR CONSTRUCTION	07.15.15
3	ADDENDUM #1	
4	ADDENDUM #2	
5	ADDENDUM #3	
6	ADDENDUM #4	
7	ADDENDUM #5	
8	ADDENDUM #6	
9	ADDENDUM #7	
10	ADDENDUM #8	
11	ADDENDUM #9	
12	ADDENDUM #10	
13	ADDENDUM #11	
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29	ADDENDUM #27	
30	ADDENDUM #28	
31	ADDENDUM #29	
32	ADDENDUM #30	



OUTDOOR PLAY EQUIPMENT
 ALL PLAY EQUIPMENT SHALL BE 18" TALL TREES ON EXTERIOR SIDE OF WALL. SURROUNDING BY 6" HIGH WALK GATES AND ONE (1) 8'-0" WIDE DOUBLE SERVICE GATE.

PROJECT SUMMARY
 SITE AREA: 1.56 ACRES
 BUILDING AREA: 7,700 SF
 ZONING: CC COMMUNITY COMMERCIAL
 PARKING REQUIRED: 29 STALLS
 PARKING PROVIDED: 29 STALLS