

49.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2009-0178 Resolution In Committee

Resolution Granting an Improvement Easement between the City of West Allis and Ramco-Gershenson Properties, L.P., to construct an entrance feature for the Towne Centre Shopping Center located at 6740-6800 W. Greenfield Ave. (Tax Key No. 439-0001-008)

Introduced: 8/4/2009

Controlling Body: Safety & Development Committee

Sponsor(s): Safety & Development Committee

COMMITTEE RECOMMENDATION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
			Barczak				✓
			Czaplewski				
<u>8/4/09</u>		✓	Kopplin	✓			
			Lajsic	✓			
			Narlock				
			Reinke	✓			
			Roadt				
	✓		Sengstock				
			Vitale	✓			
			Weigel				
			TOTAL	<u>4</u>	<u>0</u>		<u>1</u>

[Signature]
 Chair _____ Vice-Chair _____ Member _____

COMMON COUNCIL ACTION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
			Barczak				✓
			Czaplewski	✓			
<u>AUG 04 2009</u>	✓	✓	Kopplin	✓			
			Lajsic	✓			
			Narlock				✓
			Reinke	✓			
			Roadt	✓			
			Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
			TOTAL	<u>8</u>	<u>-</u>		<u>2</u>

Dev
BINS
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STANDING COMMITTEES OF THE CITY OF WEST ALLIS COMMON COUNCIL

ADMINISTRATION & FINANCE

Chair: Kurt E. Kopplin
Vice-Chair: Vincent Vitale
Thomas G. Lajsic
Richard F. Narlock
Rosalie L. Reinke

PUBLIC WORKS

Chair: Gary T. Barczak
Vice-Chair: Martin J. Weigel
Michael J. Czaplewski
Daniel J. Roadt
James W. Sengstock

SAFETY & DEVELOPMENT

Chair: Thomas G. Lajsic
Vice-Chair: Richard F. Narlock
Kurt E. Kopplin
Rosalie L. Reinke
Vincent Vitale

LICENSE & HEALTH

Chair: Michael J. Czaplewski
Vice-Chair: James W. Sengstock
Gary T. Barczak
Daniel J. Roadt
Martin J. Weigel

ADVISORY

Chair: Rosalie L. Reinke
Vice-Chair: Daniel J. Roadt
Kurt E. Kopplin
Richard F. Narlock
Vincent Vitale



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2009-0178

Final Action:

AUG 04 2009

Sponsor(s): Safety & Development Committee

Resolution Granting an Improvement Easement between the City of West Allis and Ramco-Gershenson Properties, L.P., to construct an entrance feature for the Towne Centre Shopping Center located at 6740-6800 W. Greenfield Ave. (Tax Key No. 439-0001-008)

WHEREAS, Ramco-Gershenson Properties, L.P. ("Ramco"), owner of the West Allis Towne Centre, has agreed with the City of West Allis to construct certain improvements at the entrance to the Shopping Center in connection with a bus stop in front of the Shopping Center; and,

WHEREAS, the improvements that are to be located within the Easement Area (the "Improvements"), which include, but are not limited to, certain landscaping features, brick pavers, trash containers, benches, lighting fixtures and a retaining wall, will be constructed in accordance with the final plans approved by the Plan Commission on January 28, 2009; and,

WHEREAS, Ramco has agreed to grant the City of West Allis a permanent, non-exclusive easement over the Property for the purpose of allowing the public to use the Easement Area; and,

WHEREAS, the City faces potential liability of a lawsuit action by any person for damages, injuries or death arising from the use of the Easement Area, however, Ramco has agreed to reimburse the City up to the maximum amount recoverable by any person, \$50,000, consistent with Wisconsin Statute section 893.80; and,

WHEREAS, the reimbursement agreement between the City and Ramco, along with the low risk of any lawsuit action, justifies the City entering into the Improvement Agreement with Ramco-Gershenson Properties, L.P.

NOW, THEREFORE, BE IT RESOLVED by the Common Council as follows:

1. That the Improvement Easement between the City of West Allis and Ramco-Gershenson Properties, L.P., to construct an entrance feature for the Towne Centre Shopping Center located at 6740-6800 W. Greenfield Ave., in the form attached hereto and the same is hereby approved.

2. That the Mayor and the City Administrative Officer, Clerk/Treasurer be and are hereby authorized and directed to execute and deliver the attached Improvement Easement on behalf of the City of West Allis.


Sent agreement to Dev for signatures

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3. That the City Attorney be and is hereby authorized to make such non-substantive changes, modifications, additions and deletions to and from the various provisions of the easement, including any and all attachments, exhibits, addendums and amendments, as may be necessary and proper to correct inconsistencies, eliminate ambiguity and otherwise clarify and supplement said provisions to preserve and maintain the general intent thereof, and to prepare and deliver such other and further documents as may be reasonably necessary to complete the transactions contemplated therein.

DEV-R-563-8-4-09

Cc: Department of Development

ADOPTED AUG 04 2009


Paul M. Ziehler, City Admin. Officer, Clerk/Treas.

APPROVED 8/14/09


Dan Devine, Mayor

IMPROVEMENT EASEMENT AGREEMENT

THIS IMPROVEMENT EASEMENT AGREEMENT ("Agreement") is made this 19th day of August, 2009, by and between: (i) RAMCO-GERSHENSON PROPERTIES, L.P., whose address is 31500 Northwestern Highway – Suite 300, Farmington Hills, MI 48334, referred to herein as "Grantor," and CITY OF WEST ALLIS, a municipal corporation whose address is 7525 West Greenfield Avenue, West Allis, WI 53226, as "Grantee."

WHEREAS, Grantor is the owner of that property described in Exhibit A attached hereto and by reference made a part hereof and currently known as "West Allis Towne Centre" (the "Property"); and

WHEREAS, Grantor has agreed with Grantee to construct certain improvements and a bus stop at the entrance to the Property, which improvements will be located upon a portion of the Property as described in Exhibit B, attached hereto and made a part hereof (the "Easement Area"); and

WHEREAS, the improvements that are to be located within the Easement Area (the "Improvements"), which include, but are not limited to, certain landscaping features, brick pavers, trash containers, benches, lighting fixtures and a retaining wall, will be constructed in accordance with the final plans identified on Exhibit C, attached hereto and made a part hereof (the "Final Plans"); and

WHEREAS, Grantor has agreed to grant to Grantee a permanent, non-exclusive easement over the Property for the purpose of allowing the public to use the Easement Area.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto and for the sum of Ten Dollars (\$10), the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Grantor hereby grants to Grantee, as well as the general public, the right to enter the Easement Area in order to use the Improvements for their intended purpose.
2. All work to be performed shall be performed in a good and workmanlike manner and free of construction or mechanic's liens. Grantee shall cause the Improvements to be maintained in a good, useable, clean and attractive condition, in accordance with all laws, regulations, and governmental directives. Grantor shall not interfere with the use of the Improvements by all parties entitled to use the same. No party hereto shall modify or move any of the Improvements once constructed without the consent of the other parties hereto.
3. Subject to the limits on tort claims to third parties set forth in Wisconsin Statute section 893.80 and Grantor's reimbursement obligation set forth below, Grantee shall indemnify, defend, and hold Grantor, and all members, partners, shareholders, officers, directors, employees, and agents of Grantor harmless from and against any and all loss, cost, liability and/or expense (including reasonable attorneys' fees) incurred by any of them as a result of the installation and maintenance of the Improvements and the use of the Easement Area as contemplated by this Agreement.

By executing this Agreement, Grantor hereby agrees on behalf of the owner of the

Property to reimburse Grantee an amount not to exceed \$50,000 recovered, consistent with Wisconsin Statute section 893.80, by any person for damages, injuries or death in any action founded on tort arising from the use of the Easement Area as contemplated by this Agreement. The owner of the Property shall only have such obligation if: (i) Grantee notifies such owner of any such claim within 30 days after Grantee is notified in writing of the existence of such claim, and (ii) Grantee allows such owner or its insurer to participate in all settlement discussions, approve any proposed settlement, and participate fully in any litigation arising out of such claim. Such reimbursement obligation is a covenant running with the land, binding upon the successors and assigns of Grantee. The reimbursement obligation shall only be the responsibility of the party that owns the Property at the time that the events giving rise to any claim occur. If more than one party owns the Property at any time, such obligation shall be the responsibility of the party that owns the largest portion of the Property at the time that the events giving rise to such claim occur.

4. Grantor warrants that, as of the date of this Agreement, it has marketable fee simple title to the Property subject to no encumbrances which will interfere with Grantee's use of the Easement Area. Grantor warrants that there is no mortgage or similar monetary lien encumbering the Easement Area. Grantor shall defend, indemnify and hold Grantee harmless from and against all claims, losses, liabilities and expenses incurred by Grantee as a result of breach of the foregoing warranty.

5. In the event that Grantee breaches any of its covenants set forth in this Agreement, Grantor shall have the right to notify Grantee of such breach, and if Grantee fails to commence to cure such breach within ten (10) days of the date that such notice is given (or, in the case of an emergency, such shorter period of time as may be reasonable under the circumstances) then Grantor shall have the right to take all steps necessary to cure such breach, including engaging in self help with respect to maintenance and repair. To the extent that Grantor has expended any funds in connection therewith, Grantee shall reimburse Grantor for the full amount therefor within ten (10) days after Grantee receives an invoice therefor from Grantor, which invoice shall contain reasonable backup documentation evidencing the amount of such costs.

6. This Agreement may not be amended except by a writing signed by the parties or their respective successors or assigns.

7. Any notice required or desired to be given under this Agreement shall be in writing and shall be personally delivered or sent by certified or registered mail, postage prepaid, return receipt requested, to the parties at their respective addresses as indicated above, or at such other address as may be designated by a party by notice in writing. Any such notice shall be deemed to have been delivered three (3) days after mailing or when delivered in person or by a nationally recognized overnight courier service.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

9. Miscellaneous.

(a) This Easement may be executed in counterpart originals, each of which, when taken together, shall be deemed one and the same instrument.

(b) All of the covenants, conditions, agreements and restrictions set forth in this Easement are intended to be and shall be construed as covenants running with the land, binding upon, and inuring to the benefit of and enforceable by the parties hereto, their respective successors and assigns, upon the terms, provisions and conditions hereinabove set forth.

(c) This Easement contains the entire agreement between the parties as to the subject matter contained herein and there are no other terms, expressed or implied, except as contained herein.

(d) In the event that any one or more of the provisions contained in this Easement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Easement and this Easement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

[Signatures appear on following page]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement the date and year first above written.

Jeanette Wardeniski

CITY OF WEST ALLIS,
a Wisconsin municipal corporation

Kristin Johnson

By: Dan Devine

Its: Mayor - W. Allis

"Grantee"

Jeanette Wardeniski

CITY OF WEST ALLIS,
a Wisconsin municipal corporation

Kristin Johnson

By: Paul Th Zedler

Its: City adm off / CLT.

"Grantee"

STATE OF WISCONSIN)
) SS.
COUNTY OF MILWAUKEE)

The foregoing instrument was acknowledged before me this 17 day of August, 2009,
by Dan Devine, the Mayor, of THE CITY OF
WEST ALLIS, a Wisconsin Municipal Corporation.

Dane Linger
*, Milwaukee, Notary Public
County, Wisconsin

Milwaukee County, Wisconsin
My commission expires: 4-1-10



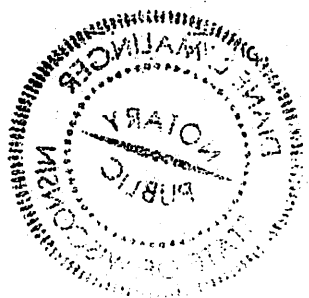
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Notation of procedure

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STATE OF WISCONSIN)
) SS.
COUNTY OF MILWAUKEE)

The foregoing instrument was acknowledged before me this 19 day of August, 2009, by Alan M. Ziskler, the City Attorney / Clerk Trust, of THE CITY OF WEST ALLIS, a Wisconsin Municipal Corporation.

Diane L. Malinger
*, Notary Public
Milwaukee County, Wisconsin



My commission expires: 4-11-10

RAMCO-GERSHENSON PROPERTIES, L.P.
a Delaware limited partnership

By: Ramco-Gershenson Properties Trust,
a Maryland real estate investment trust,
its general partner

By: Thomas W. Litzler
Its: THOMAS W. LITZLER
EXECUTIVE VICE PRESIDENT DEVELOPMENT
AND NEW BUSINESS INITIATIVES

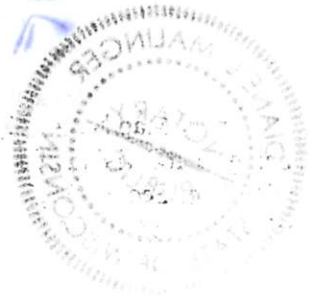
STATE OF Michigan)
) SS.
COUNTY OF Oakland)

The foregoing instrument was acknowledged before me this 25 day of August, 2009, by Thomas W. Litzler, the Exec. V.P. Development, of Ramco-Gershenson Properties Trust, general partner of Ramco-Gershenson Properties, L.P.

Karen K. Wittich
*, Notary Public
Macomb County, Michigan
Acting in Oakland County, Michigan
My commission expires: 2-23-2011



Drafted by and when recorded return to:
Alan M. Hurvitz, Esq.
Honigman Miller Schwartz and Cohn LLP
38500 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304-5048
Telephone: (248) 566-8454



THOMAS W. LITZL FR
EXECUTIVE VICE PRESIDENT OF PROMENT
AND NEW BUSINESS INITIATIVES



EXHIBIT A

Parcels 1, 2 and 3 of Certified Survey Map No. 4756, being a redivision of Lot 1, in Block 1, in Assessor's Plat No. 270, being a subdivision of a part of the SW $\frac{1}{4}$, SE $\frac{1}{4}$ and the N/E $\frac{1}{4}$ of Section 34, and a part of the SW $\frac{1}{4}$ of Section 35, T 7 N, R 21 E, in the City of West Allis, Milwaukee County, Wisconsin, recorded June 4, 1986 in Reel 1891, Image 1147 as Document No. 5921484.

Together with a non-exclusive right of entry and use for pedestrian and vehicular ingress and egress purposes across that part of Lot 1 in Block 1 in Assessor's Plat No. 270, being a subdivision of a part of the SW $\frac{1}{4}$, SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of Section 34, and part of the SW $\frac{1}{4}$ of Section 35, T 7 N, R 21 E, in the City of West Allis, Milwaukee County, Wisconsin, which is bounded and described as follows:

Commencing at the South $\frac{1}{4}$ corner of Section 34, thence North $00^{\circ}29'00''$ East along the North-South $\frac{1}{4}$ lines of Section 34 aforesaid 33.00 ft. to a point on the North side of West Greenfield Avenue; thence South $89^{\circ}35'20''$ West along the North side of West Greenfield Avenue 614.94 ft. to a point; thence North $38^{\circ}38'40''$ West 38.77 ft. to a point on the present East line of South 70th Street; thence North $01^{\circ}36'20''$ East along the East line of South 70th Street 117.10 ft. to a point, then North $00^{\circ}26'04''$ East along the East line of South 70th Street 421.84 ft. to a point; thence South $89^{\circ}37'30''$ East 92.35 ft. to the of beginning of said easement; continuing thence South $89^{\circ}37'30''$ East 15.00 ft. to a point; thence North $00^{\circ}28'53''$ East 172.77 ft. to a point, thence South $89^{\circ}31'07''$ East 74.68 to a point; thence North $00^{\circ}25'26''$ East 267.00 ft. to a point; thence South $89^{\circ}34'34''$ East 295.73 ft. to a point; thence South $60^{\circ}17'43''$ East 149.32 ft. to a point; thence South $89^{\circ}36'27''$ East 509.61 ft. to a point; thence South $00^{\circ}25'37''$ West 554.31 ft. to a point; thence South $89^{\circ}34'23''$ East 47.00 ft. to a point; thence North $00^{\circ}25'37''$ East 584.34 ft. to a point; thence North $89^{\circ}36'27''$ West to a point; thence North $60^{\circ}17'43''$ West 6.82 ft to a point; thence North $00^{\circ}24'12''$ East 604.03 ft. to a point; thence North $85^{\circ}51'43''$ West 354.34 ft. to a point; thence North $86^{\circ}55'04''$ West 231.19 ft. to a point on the East line of South 70th Street; thence south $00^{\circ}26'04''$ West along the East line of South 70th Street 30.01 ft. to a point; thence South $88^{\circ}32'00''$ East 229.74 ft to a point; thence $84^{\circ}48'31''$ East 306.57 ft. to a point; thence South $42^{\circ}36'22''$ East 29.63 ft. to a point; thence South $00^{\circ}24'12''$ West 539.74 ft. to a point; thence North $60^{\circ}17'43''$ West 98.21 ft. to a point; thence North $89^{\circ}34'34''$ West 302.94 ft. to a point; thence South $00^{\circ}25'26''$ West 276.98 ft. to a point; thence North $89^{\circ}31'07''$ West 167.17 ft. to a point on the East line of South 70th Street; thence South $00^{\circ}26'04''$ west along the East line of South 70th Street 30.00 ft. to a point; thence South $89^{\circ}31'07''$ East 92.48 ft. to a point; thence South $00^{\circ}28'53''$ West 157.80 ft. to the point of beginning.

Also storm sewer rights as set forth in an instrument dated October 15, 1992 recorded in the Office of the Register of Deeds for Milwaukee County on January 12, 1993 in Reel 2946, Image 878-882, as Document No. 6713871.

Also, that part of Lot in Block 1 in Assessor's Plat No. 270, being a subdivision of the SW ¼, SE ¼ and the NE ¼ of Section 34 and part of the SW ¼ of Section 35, T 7 N, R 21 E, in the City of West Allis, Milwaukee County, Wisconsin which is bounded and described as follows:

Commencing at the South ¼ corner of said Section 34; thence North 00°20'00" East along the North/South ¼ line of said Section 33.00 ft. to a point on the North line of West Greenfield Avenue; thence North 89°36'00" East along the North line of West Greenfield Avenue 607.98 ft. to the Southeast corner of Parcel 3 of Certified Survey Map No. 4756; thence North 00°25'37" East 144.45 ft. to the point of beginning of the land to be described; thence South 89°36'00" West 80.00 ft. to a point; thence North 00°25'37" East 30.08 ft. to a point; thence South 89°37'59" East 30.35 ft. to a point; thence South 00°22'01" West 10.17 ft. to a point; thence South 89°37'59" East 49.63 ft. to a point; thence South 00°25'37" West 18.84 ft. to the point of beginning.

EXHIBIT B

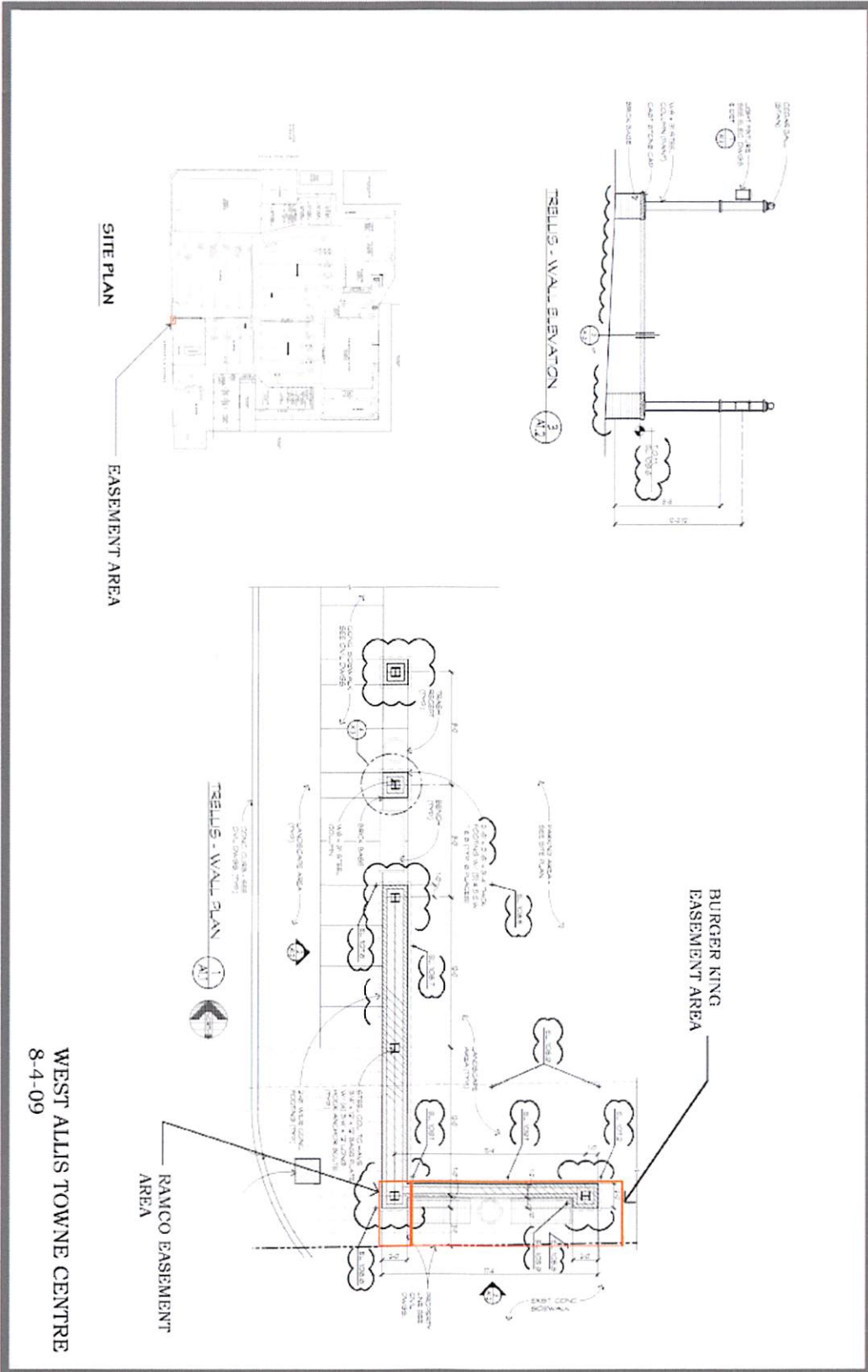


EXHIBIT C

Improvements to be Constructed on Easement Area

**Masonry retaining wall
Stamped concrete sidewalk
2 benches
1 trash receptacle
2 decorative light poles
Landscaping**