

DEVELOPMENT AGREEMENT
(WESLEY FOUNDATION, 823 W. University Avenue)

THIS AGREEMENT, made and entered into this 9th day of January, 2017, by and between the **CITY OF STILLWATER, OKLAHOMA**, a municipal corporation, hereinafter called "City", and **WESLEY FOUNDATION OF OKLAHOMA STATE UNIVERSITY, INC.**, an Oklahoma Corporation, hereinafter called "Developer."

W I T N E S S E T H:

WHEREAS, Developer intends to develop a certain tract of land ("Property") located inside the corporate limits of the City of Stillwater, Oklahoma, hereinafter described in the attached Exhibit "A" and more specifically located within the Corridor Redevelopment Area, Form Based Codes; and

WHEREAS, Developer is required to construct and install certain improvements described and set forth in Chapter 23 of the Stillwater City Code or by other studies necessary for completion of the development ("Required Improvements"); and

WHEREAS, Developer is required to construct and install certain public realm improvements described and set forth in Chapter 23 Appendix, Form Based Codes ("Public Realm Improvements"); and

WHEREAS, the Required Improvements and the Public Realm Improvements are generally described in the attached Exhibit "B" and shown on construction plans accepted by and on file in the office of the City's Development Services Department ("Plans"); and

WHEREAS, Chapter 23 of the Stillwater City Code provides for the execution of a development agreement to enable Developer and City to establish terms and conditions for the completion of the Required Improvements/Public Realm Improvements and the continued progress of the development; and

WHEREAS, it is the intention of Developer and City to enter into such an agreement to facilitate the development of the property described in the attached Exhibit "A."

NOW, THEREFORE, in consideration of the foregoing and the following mutual covenants and agreements, the City and Developer agree as follows:

1. Engineering Services. All Plans necessary to demonstrate compliance with City Code, Standards and all other applicable requirements or regulations shall be submitted to, reviewed by, and stamped as accepted by the City of Stillwater prior to any construction.
2. Rights-of-Way. Prior to commencing the construction of any of the Required Improvements/Public Realm Improvements, the Developer shall acquire, if necessary, at its own expense, good and sufficient rights-of-way and easements on all lands and facilities to be traversed by the Required Improvements/Public Realm Improvements.
3. Construction. Developer shall furnish and install, at its own expense, the labor and material necessary to complete the Required Improvements/Public Realm Improvements. Said construction shall be in conformance with the accepted Improvement Plans and with the City Code, Standards and all other applicable requirements or regulations ("Construction Requirements").

Developer shall employ, at its own expense, a qualified testing company, to perform the materials testing necessary to demonstrate compliance with the Plans and Construction Requirements and shall furnish copies of test results to the City on a periodic basis throughout the construction period.

City shall inspect materials and workmanship at any time during the construction process and shall conduct inspections in a reasonably expeditious manner with as little interruption to the construction as is reasonably practicable under the circumstances. Any material or work not conforming to the Plans and the Construction Requirements shall be removed by Developer and/or replaced at Developer's expense. **Passage of an inspection during construction shall not constitute acceptance of any materials or workmanship by the City.** No part of the construction shall be covered or otherwise concealed until the City has inspected said construction.

The City shall issue a "Notice of Non-Compliance" ("Notice") whenever an inspection determines that construction does not strictly comply with the Plans and Construction Requirements. Notice will be issued to the Developer's contractor at the construction site if the contractor is available and a copy of the Notice will be sent to the Developer.

Any and all changes to the accepted Plans shall be submitted to the City for review and acceptance prior to proceeding with the change.

Developer shall provide all erosion control measures that are necessary to comply with the stormwater management and earth change requirements of the Stillwater City Code, Standards and the Oklahoma Department of Environmental Quality.

Clean-up. Developer shall be responsible for keeping on-site streets, off-site streets used as construction routes and rights-of-way clear of mud, rock and debris at all times during said construction.

Traffic Control. At all times during construction, the Developer shall be responsible for the erection and maintenance of traffic control devices in accordance with the standards contained within the latest version of the Manual on Uniform Traffic Control Devices. All lane or street closure applications shall be approved by the Stillwater Transportation Department. Access to existing private drives that are impacted by the project shall be maintained at all times by the Developer.

4. Phasing. The construction of the Required Improvements/Public Realm Improvements may be phased, provided that each phase includes those improvements necessary to fully comply with the requirements of City Code and all other applicable requirements or regulations. Proposed phasing plans shall be submitted to the Development Services Director for review and approval. Any approved "Phasing Plan" shall be submitted as an addendum to and attached to this Development Agreement as Exhibit "D."

The phasing is identified in Exhibit "D" of this agreement. If the land conveyance does not occur, the developer is responsible for installing/arranging for the required 27 parking spaces for the proposed development. The Planning Commission approved 27 spaces as the minimum number required and approved such to be installed in 2 phases.

5. Issuance of Building Permits. No building permits shall be issued for the Property unless (this is subject to change due to specific projects) :

- the Developer has submitted all plans, including but not limited to: required infrastructure improvement plans, public realm improvement plans, building construction plans, plumbing plans, mechanical plans, fire sprinkler and alarm plans, erosion and sediment control plans, site plans, etc, to the City of Stillwater;
- exception: parking spaces as approved by the Planning Commission in minimum number and timing (phase 1 and phase 2);
- those plans have been reviewed and accepted for code compliance by the City of Stillwater;
- fire protection is provided in order to bring combustibles on site;
- fire access is established in order to begin vertical building construction;

- the developer provides to the City, costs for future construction of parking area and associated improvements on Washington Street in-lieu-of performing the construction;
- the developer enters into this development agreement with the City of Stillwater, as accepted by the City Council;
- the developer provides the appropriate performance guarantee to the City of Stillwater;
- the developer provides elevation plans demonstrating compliance with the intent of the Form Based Codes;
- the developer pays all fees associated with building permits;
- developer understands: Within four months after the issuance of the first certificate of occupancy, or certificate of completion, the developer shall complete all improvements, and if the improvements are not completed within the four months, developer is deemed to be in default of this agreement.

6. Final Approval and Acceptance. Upon completion of the Required Improvements/Public Realm Improvements, the Developer shall request a final inspection to the Development Services department. The request shall be accompanied by a set of record drawings (as-builts) as defined in Chapter 23 of the City Code and a fully executed maintenance bond. Upon confirmation by the City that the Required Improvements/Public Realm Improvements have been constructed and the record drawings prepared in accordance with the Construction Requirements, the improvements will be scheduled for acceptance by the City Council. The Required Improvements/Public Realm Improvements intended for public ownership shall be conveyed to the City at no cost or expense to the City and free of any liens, charges, or encumbrances. Upon acceptance of the Required Improvements/Public Realm Improvements by the City Council, the performance guarantee shall be released and returned to Developer.

7. Warranty. For a period of one (1) year following the acceptance of the improvements by City Council ("Warranty Period"), the Developer shall be responsible for making any repairs or replacements that are necessary to restore and maintain said improvements to the same standard(s) applicable at the time of the City's acceptance of said improvements, and that are required due to defective materials or workmanship.

The City will perform a warranty inspection approximately thirty (30) business days prior to the end of the Warranty Period, and if necessary, issue a "warranty" punch list of items that are required to be corrected. All deficiencies identified in the warranty punch list shall be corrected by the Developer within twenty (20) business days. Upon completion of the required warranty by Developer and acceptance by the City as specified herein, Developer's maintenance bond shall be released.

8. Performance Guarantee. If the Developer requests that a building permit be issued within the Property prior to the City's acceptance of the Required Improvements/Public Realm Improvements, the Developer shall furnish to the City, at the Developer's expense, a performance guarantee in accordance with the requirements of Chapter 23 of the Stillwater City Code.

At no time shall the value of the performance guarantee be less than one hundred twenty five percent (125%) of the estimated cost of the uncompleted portion of the Required Improvements/Public Realm Improvements, unless the performance guarantee is in the form of a performance bond. At no time shall the value of the performance bond be less than one hundred percent (100%) of the estimated cost of the uncompleted portion of the Required Improvements/Public Realm Improvements.

The cost of the Required Improvements/Public Realm Improvements, shall be estimated by the project general manager and/or the engineer who prepared the Plans. All cost estimates will be reviewed and approved by the Development Services Director or designee. Estimated costs shall be consistent with the actual prices that are currently being paid for similar work within the City of Stillwater. If the cost estimate appears to be too low, the Developer will be asked to provide copies of executed contracts as proof of actual costs.

The cost estimate shall be in the form of a detailed line item cost estimate and shall include a description of each item, the unit of measure for each item, the quantity for each item, the unit price for each item and the total price for each item for all of the Required Improvements/Public Realm Improvements as shown on the Plans. The cost estimate shall be broken down into the following components that are included in the project: 1) REQUIRED IMPROVEMENTS: Public Streets, Private Streets, Traffic Control Devices, Sidewalks (only those that are the responsibility of the Developer), Water Distribution System, Sanitary Sewer Collection System, Sanitary Sewer Pre-Treatment Facilities, Storm Drainage Collection and Conveyance System, which includes stormwater detention and retention ponds, and 2) PUBLIC REALM IMPROVEMENTS as identified on the "plans".

Such guarantee be provided to the City with the developer signed development agreement and prior to the issuance of a building permit. The letter of credit or performance bond shall name the City of Stillwater as the only beneficiary and shall be for a period of 2 years maximum.

9. Sale or Transfer of Property. At least fourteen (14) days prior to the sale or transfer of the Property, a substitute performance guarantee shall be provided to the City to secure obligations under this Agreement by the Developer's proposed successor in interest. The failure to provide such substitute guarantee prior to said fourteen (14) day period shall constitute a failure to perform in accordance with this Agreement and shall give the City the right to proceed immediately to liquidate the performance guarantee.

10. Assignment. This Agreement shall not be assigned without the prior written consent of the City. This Agreement shall be binding upon the heirs, executors, successors and assigns of the Developer and upon its recording by the City, shall be deemed a covenant running with the property herein described, and shall be binding upon the successors in ownership of said land.

11. City Participation. There shall be no right to any City participation in any of the costs of constructing the Required Improvements/Public Realm Improvements.

12. Severability. If any covenant, term, condition, or provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, this entire agreement shall become null and void. Failure of the Developer to comply with the requirements set forth herein shall be deemed a material breach of this Agreement.

13. Amendment. No amendment, modification, or alteration of the terms or provisions of this Agreement shall be binding upon the City or the Developer unless the same is in writing and duly executed by both parties.

14. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Oklahoma. This Agreement shall be subject to, and construed in accordance with, the Stillwater City Charter, Stillwater City Code and the City of Stillwater Standards.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

WESLEY FOUNDATION OF OKLAHOMA
STATE UNIVERSITY, INC.
an Oklahoma Corporation

MAILING ADDRESS:
823 West University Avenue
Stillwater, Oklahoma 74074

By: Rex Largent
Rex Largent, Chair
Building and Long Range Planning Committee

Date: 12/22/2016

CITY OF STILLWATER, OKLAHOMA

Approved As to Legal Form and Content:

By: _____
Gina J. Noble, Mayor

John E. Dorman, City Attorney

Date: _____

Date: _____

EXHIBIT "A"
Legal Description

A TRACT OF LAND IN BLOCKS 2, COLLEGE CAMPUS ADDITION, AN ADDITION TO THE CITY OF STILLWATER, PAYNE COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS:

THE WEST 21.00 FEET OF LOT 3, BLOCK 2

AND

ALL OF LOTS 4, 5, AND 6, BLOCK 2

AND

THE EAST 6.00 FEET OF LOT 7, BLOCK 2

AND

THE WEST 48.50 FEET OF LOT 1, BLOCK 4

AND

THE EAST 136.50 FEET OF LOT 6, BLOCK 4

SAID TRACT OF LAND CONTAINS 30,913 SF (0.7097 ACRES), MORE OR LESS

EXHIBIT "B"

IMPROVEMENTS FOR: WESLEY FOUNDATION

In accordance with the Development Agreement by and between the CITY OF STILLWATER and the WESLEY FOUNDATION OF OKLAHOMA STATE UNIVERSITY, INC. dated January 9, 2017.

A. Date of Completion shall be January 8, 2019.

B. Estimated cost of the Required Improvements/Public Realm Improvements shall be \$ 75,989. A copy of the approved cost estimate is attached as Exhibit "C".

C. Schedule of improvements shall be:

Public Streets: All of the sub-grade preparation, pavement, curb, gutter and associated appurtenances as shown on the Plans and as required by the Construction Requirements.

Traffic Control Devices: All traffic control devices, including traffic signals, traffic signs and appurtenances as shown on the Plans and as required by the Construction Requirements.

Sidewalks: All sidewalks, ramps and associated appurtenances as shown on the Plans and as required by the Construction Requirements.

Storm Drainage Collection and Conveyance System: All drainage facilities including trenching, bedding, backfill, storm drain pipe and culverts, inlets, manholes, open channels, detention ponds, detention pond outlet structures, retention ponds and associated appurtenances and all erosion control measures as shown on the Plans and as required by the Construction Requirements.

Public Realm Improvements: All public realm improvements including parking, streetscaping, street lights, bicycle parking, cycle tracks/lanes, etc as shown on the Plans and as required by the Form Based Code construction requirements.

D. Performance Guarantee: A performance guarantee in the form of a Cash Escrow or Irrevocable Letter of Credit in the amount of \$84,798 (which is 125% of the estimated cost of the Required Improvements/Public Realm Improvements) or a Performance Bond in the amount of \$67,838 (which is the estimated cost of the Required Improvements/Public Realm Improvements) shall be submitted to the City prior to execution of this agreement.

E. Construction of Washington Street parking and associated improvements: A payment in-lieu-of construction of the Washington Street parking and associated improvements, in the amount of \$8,151 is provided to the City for the sole purpose of constructing the required improvements. Such payment is non-refundable and not subject to release back to the Developer.

F. Water Fees: Water capacity fee, meter tie-on fee and meter & fittings costs are collected at the time of building permit issuance.

G. Sewer Capacity Fee: A sewer capacity fee is collected at the time of building permit issuance.

H. Water Closet Fee: A water closet fee calculated at \$100 per toilet/urinal, is collected at the time of building permit issuance.

I. Transportation Fee: A transportation fee is collected at the time of building permit issuance.

J. Electric Connection Fee: An electric connection fee is collected at the time of building permit issuance

EXHIBIT "C"
Engineer's Cost Estimate



Opinion of Probable Construction Cost
 1199-01 Wesley Foundation (Washington Street Improvements)

Date: 12/21/16
 Prepared By: LS

Item	Description	Quantity	Unit	Unit price	Total
AMOUNT TO PERFORMANCE GUARANTEE					
DEMOLITION					
	Light pole	3	EA	\$ 150.00	\$ 450
	Water Meter	3	EA	\$ 125.00	\$ 375
	Cut & Cap 4" Water Main	1	EA	\$ 250.00	\$ 250
	Driveway Pavement	2,160	SF	\$ 2.00	\$ 4,320
	Curb & Gutter	163	LF	\$ 5.00	\$ 815
	Sidewalk Paving	1,218	SF	\$ 2.00	\$ 2,436
	Sub-base	3,135	CF	\$ 2.00	\$ 6,270
				subtotal:	\$ 14,916
PAVEMENT					
Street	8" PCC Class 'A' - Travel Lane	1,386	SF	\$ 5.00	\$ 6,930
	10" Treated Subgrade	1,386	SF	\$ 1.00	\$ 1,386
	6" Curb/Gutter	138	LF	\$ 17.50	\$ 2,415
Driveway	6" 3500 PSI Concrete w/ air	276	SF	\$ 4.70	\$ 1,297
	6" Type 'A' Agg. Base Rock	276	SF	\$ 2.40	\$ 662
	12" Treated Subgrade	276	SF	\$ 1.00	\$ 276
Sidewalk	4" PCC Sidewalk	1,602	SF	\$ 4.00	\$ 6,408
	2" Compacted Subgrade	1,602	SF	\$ 0.50	\$ 801
				subtotal:	\$ 20,176
DRY UTILITIES					
	Stop Sign & Post	1	EA	\$ 300.00	\$ 300
	Pedestrian Street Light (Typ. 3) - By City	1	LS	\$ 18,024.00	\$ 18,024
				subtotal:	\$ 18,324
LANDSCAPE					
	5'X5' Tree grate	3	EA	\$ 850.00	\$ 2,550
	Structural Soil	3,135	CF	\$ 3.50	\$ 10,973
	Tree - 2" Lace Bark Elm	3	EA	\$ 300.00	\$ 900
				subtotal:	\$ 14,423
Amount of Performance Guarantee: \$ 67,838					
FEE PAID IN LIEU OF CONSTRUCTION					
Center Island	4" PCC In-Fill/Sidewalk (stamped & stained)	232	SF	\$ 8.00	\$ 1,856
	2" Compacted Subgrade	232	SF	\$ 0.50	\$ 116
	6" Curb	50	LF	\$ 17.50	\$ 875
Center Parking	4" Parking Striping	140	LF	\$ 0.40	\$ 56
	Stain Existing Pavement	1,312	SF	\$ 4.00	\$ 5,248
				Fee Paid In Lieu of Construction	\$ 8,151

*OPCC is based on Plans Dated, 11/09/2016

The OPCC is supplied only for the guidance of the Client, it represents the Consultant's best judgment as a design professional. The Consultant does not guarantee the accuracy of the OPCC as compared to actual bids or cost to the Client. Consultant has no control over the cost of labor and materials, or the competitive bidding or market conditions.



OPCC
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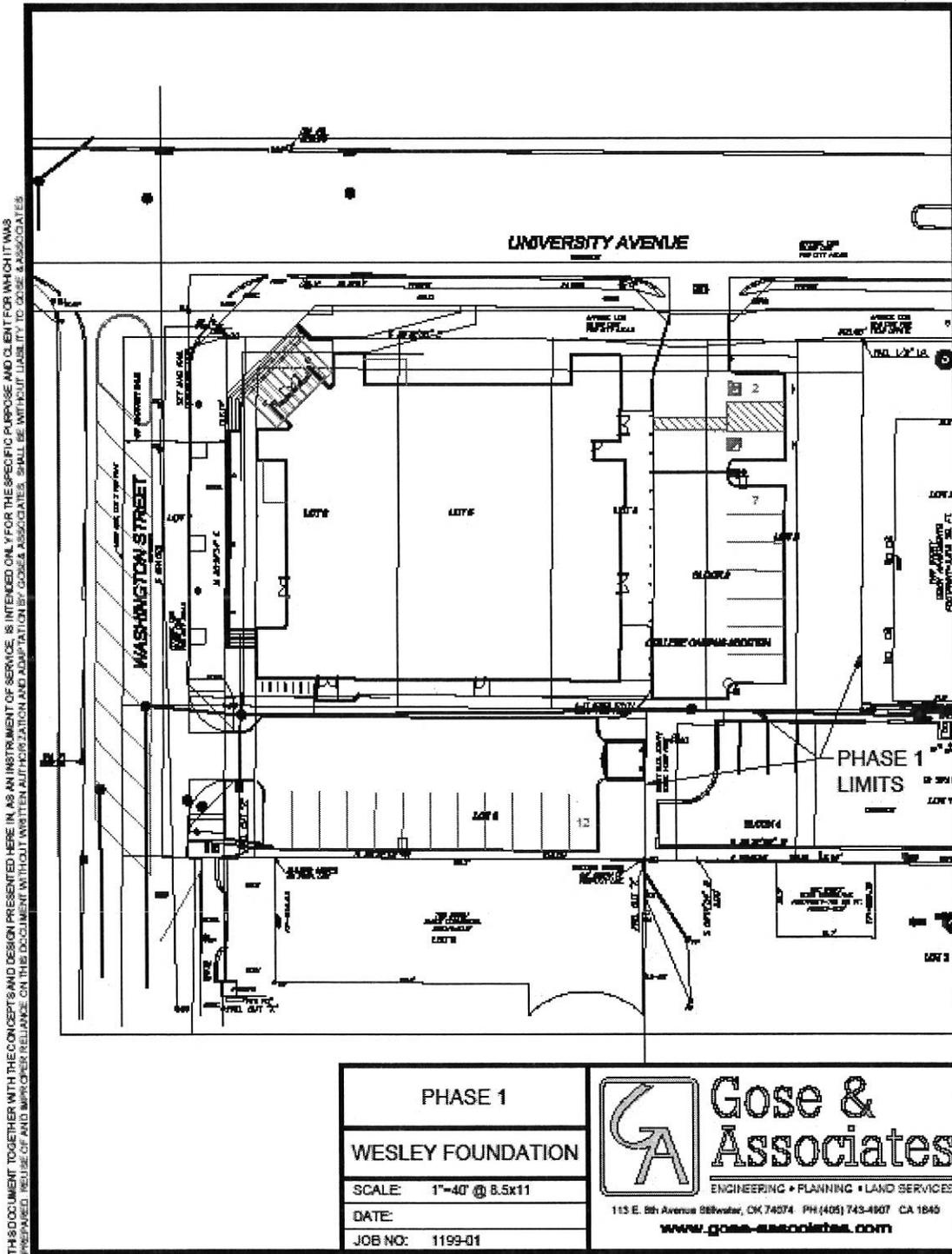
EXHIBIT "D"
Phasing Plan

This project may be constructed in two phases due to a land swap that is required with the adjacent property owner to the east. The property to the east is currently under contract to sell to OSU with a closing date of May 2017.

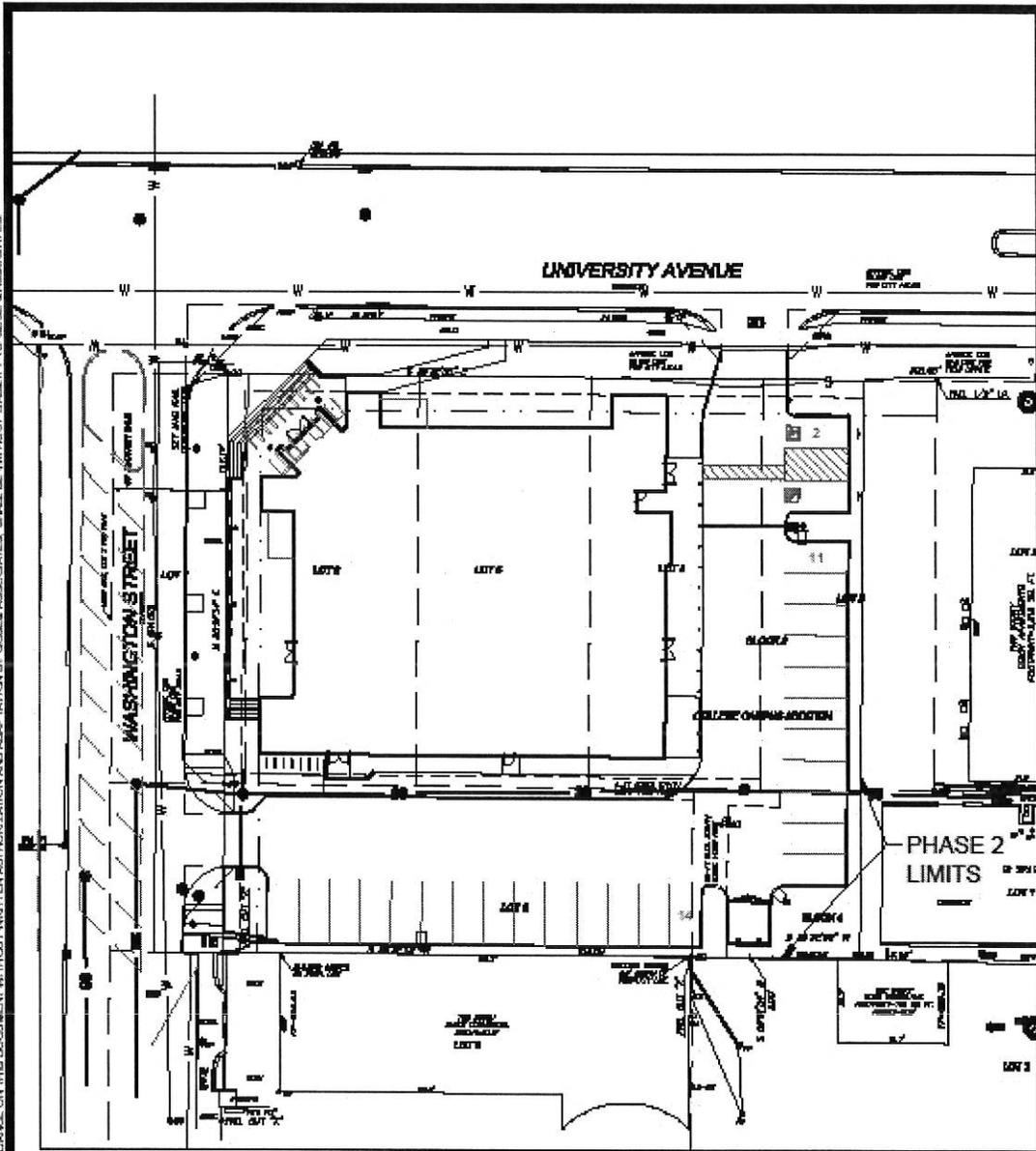
Phase 1 would be the conditions prior to the Wesley Foundation / OSU land swap and should only be necessary during the initial phases of building construction. Ultimate building construction and request for a certificate of occupancy should not occur any earlier than the Summer of 2018. Phase 2 includes the land swap and the additional parking spaces to meet the minimum required as established by a Warrant approved by the Planning Commission.

Phase 1: A total of 21 parking spaces are being proposed with two of those being van accessible spaces. The project would be constructed under these conditions if the land swap does not occur as planned; however, the additional parking spaces to meet the approved minimum requirement will be obtained for the project via an agreement for off-site parking.

Phase 2: A total of 27 parking spaces are being proposed with two of those being van accessible spaces along with the balance of the improvements shown on the approved Civil Construction Plans.



THIS DOCUMENT TOGETHER WITH THE CONCEPTS AND DESIGN PRESENTED HERE IN, AS AN INSTRUMENT OF SERVICE, IS INTENDED ONLY FOR THE SPECIFIC PURPOSE AND CLIENT FOR WHICH IT WAS PREPARED. REUSE OF AND IMPROPER RELIANCE ON THIS DOCUMENT WITHOUT WRITTEN AUTHORIZATION AND ADAPTATION BY GOSE & ASSOCIATES, SHALL BE WITHOUT LIABILITY TO GOSE & ASSOCIATES.



PHASE 2
WESLEY FOUNDATION
SCALE: 1"=40' @ 8.5x11
DATE:
JOB NO: 1199-01



Gose &
Associates

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