CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

April 5, 2013

Russ, LLC
2804 Bentbay Cr.
Wichita, KS, 67204

REFERENCE: CON2013-00003 – City Conditional Use for a Nightclub in the City on LC Limited Commercial ("LC") zoned property; generally located east of Rock Road and north of Central Avenue.

Dear Applicant:

At its regular meeting on **March 21, 2013**, the Wichita - Sedgwick County Metropolitan Area Planning Commission (MAPC) considered the above captioned request. The action of the MAPC was to **APPROVE** the request, subject to the conditions of the attached Resolution. Because there were no valid appeals or protest petitions filed opposing this action by **April 4, 2013**, the action of the MAPC will be considered final.

Sincerely,

Bill Longnecker
Senior Planner

Copies to: Poe & Associates, c/o Tim Austin, 5040 E Central, Ste 200, Wichita, KS, 67208
Kim Edgington, 2632 N Cardinal Lane, Wichita, KS, 67204
Pete Meitzner, WCC II, e-mail
LaShonda Garnes, NA II, e-mail
Tom Stolz, Director -- MABCD, e-mail
Rick Stubbs, Asst. Director MABCD, e-mail
J.R. Cox, MABCD, e-mail

CONDITIONAL USE RESOLUTION NO. CON2013-00003

WHEREAS, Russ, LLC (owner); pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requests a Conditional Use for a "Night Club in the City," on approximately 1.83-acres -acres zoned LC Limited Commercial ("LC"), described as:

Lot 2 except beginning at the Southeast corner; thence West 244.41 feet; thence Northwesterly 100 feet; thence West 53.18 feet; thence North 233 feet; thence 65 feet; thence North 20 feet; thence East 20 feet; thence North 72 feet; thence West 20 feet; thence North 200 feet; thence East 166.92 feet; thence South 35.42 feet; thence East 110 feet more or less; thence Southwesterly 108 feet; thence Southeast 216 feet; thence South 208 feet to beginning, Block 1, Aull's 1st Addition to Wichita, Sedgwick County, Kansas; generally located east of Rock Road and north of Central Avenue.

WHEREAS, proper notice as required by the Unified Zoning Code and by the policy of the Metropolitan Area Planning Commission (hereinafter referred to as MAPC) has been given; and

WHEREAS, the MAPC did, at the meeting of March 21, 2013, consider said application; and

WHEREAS, the MAPC has authority to permit a Conditional Use, subject to any special conditions deemed appropriate in order to assure full compliance with the criteria of the Unified Zoning Code.

NOW, THEREFORE, BE IT RESOLVED by the Metropolitan Area Planning Commission that this application be approved to allow a Conditional Use for a "Night Club in the City," on approximately 1.83-acres zoned LC Limited Commercial ("LC"), described as:

Lot 2 except beginning at the Southeast corner; thence West 244.41 feet; thence Northwesterly 100 feet; thence West 53.18 feet; thence North 233 feet; thence 65 feet; thence North 20 feet; thence East 20 feet; thence North 72 feet; thence West 20 feet; thence North 200 feet; thence East 166.92 feet; thence South 35.42 feet; thence East 110 feet more or less; thence Southwesterly 108 feet; thence Southeast 216 feet; thence South 208 feet to beginning, Block 1, Aull's 1st Addition to Wichita, Sedgwick County, Kansas; generally located east of Rock Road and north of Central Avenue.

Approved subject to the following conditions:

(1) No outside loudspeakers or entertainment are permitted.

(2) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

Adopted this 21st day of March 2013.

METROPOLITAN AREA PLANNING COMMISSION

David Dennis, Chair MAPC

ATTEST:

John L. Schlegel, Secretary

AGENDA ITEM NO. 4

WICHITA–SEDGWICK COUNTY

STAFF REPORT

MAPC March 21, 2013
DAB II April 1, 2013

CASE NUMBER: CON2013-00003

APPLICANT/OWNER: RUSS, LLC and Daniel Bryant, VERG Central and Rock LLC (applicants) Poe and Associates, c/o Kim Edgington (agent)

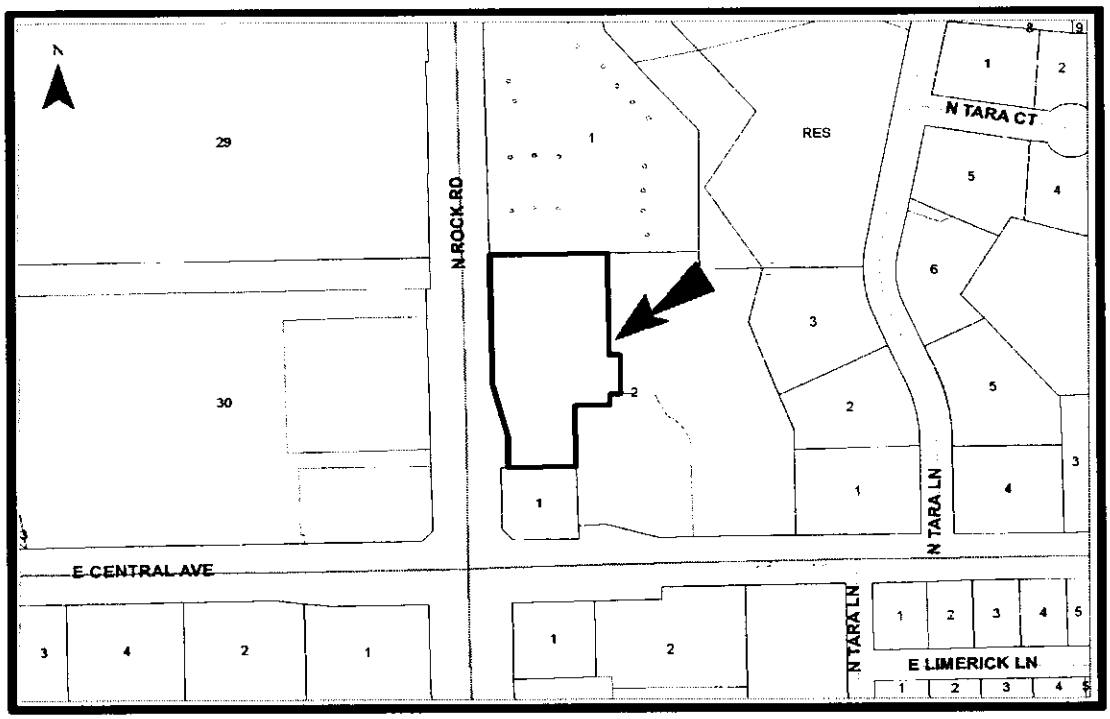
REQUEST: Conditional Use to allow a "Nightclub in the City"

CURRENT ZONING: "LC" Limited Commercial

SITE SIZE: Approximately 1.83-acres

LOCATION: Generally located east of Rock Road and north of Central Avenue (550 N. Rock Road).

PROPOSED USE: Live music, drinks and food



BACKGROUND: The LC limited Commercial ("LC") zoned site is part of a commercial strip that in the past housed such businesses (1980s) as "The Grape" and "The Shadow," both which provided entertainment, food and cereal malt beverages or alcoholic liquor. The applicants' propose to provide live music (entertainment), food and cereal malt beverages or alcoholic liquor under the business named "Ernie Biggs Dueling Pianos." The Unified Zoning Code (UZC, Sec.II-B.9.b.) defines a Nightclub in the City (nightclub) as "...an establishment located in the City that provides entertainment, which may include the provision of dancing by employees or patrons, and where cereal malt beverage or alcoholic liquor (drinks) are offered, consumed or served to the public or its members, and which may or may not serve food." When a nightclub is located within 300 feet of a Church or Place of Worship, public Park, public or parochial School or residential zoning District, approval of a Conditional Use is required; UZC, Sec.III-D6.w. The site is located within 300 feet of residential zoning. There is no history of a Use Exception or a Conditional Use that would have allowed what is now considered a nightclub on the site. Up until November 23, 2010, the site had maintained an Entertainment Establishment license. When the current applicants applied for an Entertainment Establishment license on January, 17, 2013, they were denied the license, due to the site's nightclub use losing its legal non-conforming status. The loss of the site's legal non-conforming nightclub status is based on the more than two- year absence of Entertainment Establishment license and the lack of a Use Exception or Conditional Use permitting a night when located within 300 feet of residential zoning. The applicant is applying for a Conditional Use for a nightclub because it is located within 300 feet of residential zoning. If the Conditional Use is approved, the applicant will be able to reapply for the renewal of the Entertainment Establishment license.

The proposed night club is one of several tenants in the LC zoned commercial strip building, located north of Central Avenue on the east side Rock Road. Other tenants include (but not limited to): a barber shop, a realtors office, a tailor's/alternation shop, a tanning salon, and a jewelry store. An LC zoned Starbucks coffee shop abuts the north side of the site. Further south, across Rock and Central Avenue, there are: a LC zoned bank, restaurant (DER), retail building and a commercial strip building. LC zoned medical offices and offices abut the east side of the site. MF-18 Multi-Family Residential ("MF-18") zoned condos abut the north side of the site. Further north and east of the site, beyond the condos and the medical/office, there are SF-5 Single-Family Residential ("SF-5") zoned residences and drainage. Multi-tenant LC zoned commercial buildings, a bank, a restaurant and a fast food restaurant are located west of the site, across Rock Road. The commercial buildings have restaurants, retail, office and maybe a bar. B Multi-Family Residential ("B") zoned apartments are also located west of the site across Rock. A LC zoned Dillon's, a Chili's restaurant (DER) and a Krispy Kreme donut shop are located southwest of the site, across Rock and Central.

The applicant's site plan shows the 7,763-square feet the night club will occupy, as well as the square footage of the tenants, the parking and existing drives onto Rock Road.

CASE HISTORY: The site is located on a portion of Lot 2, Block 1, Aull's Addition, which was recorded with the Register of Deeds January 8, 1975. BZA2010-42 reduced the required parking spaces (under 10%) for the expansion of a restaurant, from 128 to 120 spaces. BZA2012-67 further reduced the parking (under 10%) to 110 parking spaces, due to more building renovations. Staff has received calls about the request. All of the calls thought the site was already a nightclub and none expressed concern about the request. The applicants were advised to apply for a Conditional Use, when they were denied their Entertainment Establishment license by the City.

ADJACENT ZONING AND LAND USE:

NORTH:	MF-18, SF-5	Condos, drainage
SOUTH:	LC	Retail strip, retail, DER restaurants, grocery store, donut shop, bank
EAST:	LC, SF-5	Medical, office, single-family residential
WEST:	LC, B	Multi-tenant commercial, restaurant, fast food restaurant, bank, apartments

PUBLIC SERVICES: The site has two drives onto Rock Road. Rock is a major arterial street at this location, with four lanes and a center turn lane. There is also an inside turn lane into the south end of the site off of Rock. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The "*2030 Wichita Functional Land Use Guide*" depicts this location as being appropriate for "local commercial," which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities.

The UZC requires a Conditional Use for a nightclub when it is located within 300 feet of a Church or Place of Worship, public Park, public or parochial School or residential zoning District. The site is not currently permitted for a nightclub. Approval of a Conditional Use for a nightclub at this site would not introduce a new use to the area. The site has housed a nightclub for years, but there is no history of a Use Exception or a Conditional Use that would have allowed what is now considered a nightclub on the site. The loss of the site's legal non-conforming nightclub status is based on the more than 2 year absence of Entertainment Establishment license and the lack of a Use Exception or Conditional Use permitting a nightclub when located within 300 feet of residential zoning.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed night club is located within an existing commercial development, with direct access onto the Rock Road arterial. There are no proposed physical changes to the site. Existing commercial buildings are adjacent and

abutting its west, south east sides, allowing some buffering for adjacent SF-5 zoned single-family residences. The abutting MF-18 north property is developed as residential condos.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a nightclub be **APPROVED**, with the following conditions:

(1) No outside loudspeakers or entertainment are permitted.

(2) If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

(1) **The zoning, uses and character of the neighborhood:** The Rock Road and Central Avenue intersection has LC zoned commercial and office uses located on all four corners, including the LC subject site located off of the northeast corner of Rock and Central. The proposed night club is one of several tenants in the LC zoned commercial strip building, located north of Central Avenue on the east side Rock Road. Other tenants include (but not limited to): a barber shop, a realtors office, a tailor's/alternation shop, a tanning salon, and a jewelry store. An LC zoned Starbucks coffee shop abuts the north side of the site. Further south, across Rock and Central Avenue, there are: a LC zoned bank, a restaurant (DER), a retail building and a commercial strip building. LC zoned medical offices and offices abut the east side of the site. MF-18 Multi-Family Residential ("MF-18") zoned condos abut the north side of the site. Further north and east of the site, beyond the condos and the medical/office, there are SF-5 Single-Family Residential ("SF-5") zoned residences and drainage. Multi-tenant LC zoned commercial buildings, a bank, a restaurant and a fast food restaurant are located west of the site, across Rock Road. The commercial buildings have restaurants, retail, office and maybe a bar. B Multi-Family Residential ("B") zoned apartments are also located west of the site across Rock. A LC zoned Dillon's, a Chili's restaurant (DER) and a Krispy Kreme donut shop are located southwest of the site, across Rock and Central.

(2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LC, which accommodates office and retail uses. Approval of a Conditional Use would permit the site to continue to be used as a nightclub removing its non-conforming status.

(3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** Typical concerns about nightclubs include bad behavior resulting from

unlimited liquor sales, the noise from music and dancing, and the hours of the nightclub having a detrimental impact on the adjacent SF-5 zoned residences. These concerns have been present at this site, since the 1980s.

(4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The *"2030 Wichita Functional Land Use Guide"* depicts this location as being appropriate for "local commercial," which contains concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of uses includes: medical or insurance offices, auto repair or service stations, grocery stores, florist shops, restaurants and personal service facilities.

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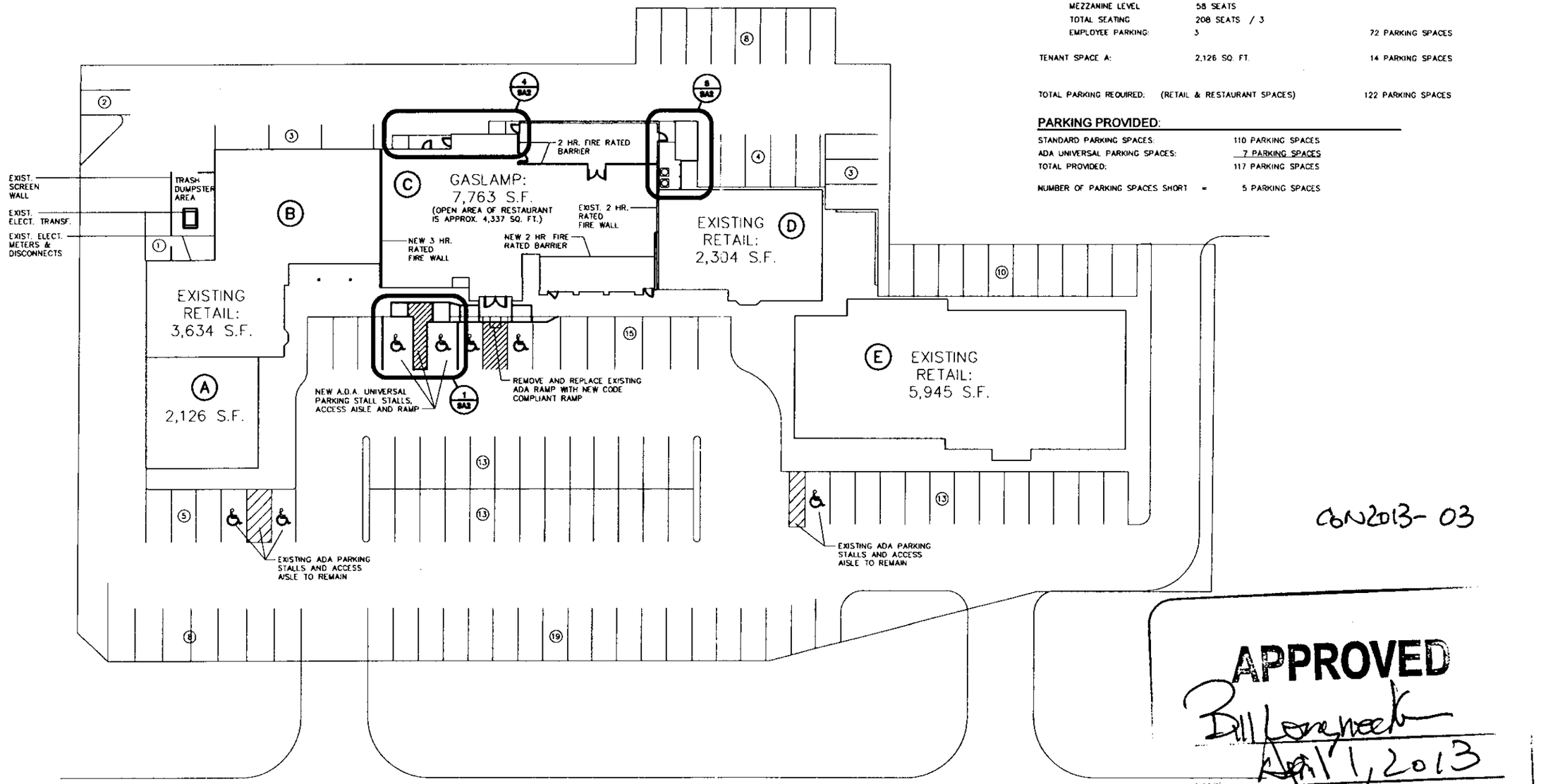
(5) **Impact of the proposed development on community facilities:** It is possible that approval of this request could result in an increased demand for police services.

PARKING REQUIRED:

SQ. FT. OF RETAIL AREA: TENANT SPACE B, D, & E:	11,883 SQ. FT. / 333 =	36 PARKING SPACES
SQ. FT. OF RESTAURANT AREA: TENANT SPACE C:	7,763 SQ. FT.	
RESTAURANT OCCUPANTS:		
LOUNGE/BAR	42 SEATS	
DINING	68 SEATS	
EXTERIOR PATIO	56 SEATS - 16 SEATS = 40 SEATS	
MEZZANINE LEVEL	58 SEATS	
TOTAL SEATING	208 SEATS / 3	
EMPLOYEE PARKING:	3	72 PARKING SPACES
TENANT SPACE A:	2,126 SQ. FT.	14 PARKING SPACES
TOTAL PARKING REQUIRED:	(RETAIL & RESTAURANT SPACES)	122 PARKING SPACES

PARKING PROVIDED:

STANDARD PARKING SPACES:	110 PARKING SPACES
ADA UNIVERSAL PARKING SPACES:	7 PARKING SPACES
TOTAL PROVIDED:	117 PARKING SPACES
NUMBER OF PARKING SPACES SHORT =	5 PARKING SPACES



A PARTIAL ARCHITECTURAL SITE PLAN*
SCALE: 1"= 20'-0"

NORTH

*Information provided by Winter Architects, Wichita, Kansas

CODE DATA

BUILDING CODE:	2006 INTERNATIONAL BUILDING CODE
PLUMBING CODE:	2000 UNIFORM PLUMBING CODE
MECHANICAL CODE:	2006 INTERNATIONAL MECHANICAL CODE
ELECTRICAL CODE:	2008 NATIONAL ELECTRIC CODE
BUILDING TYPE:	V-B
OCCUPANCY TYPE:	A2
FIRE SPRINKLED:	NO
OCCUPANT LOAD:	208 PEOPLE

CON2013-03

APPROVED
Bill Longnecker
April 1, 2013

B2A 2010-42

B2A 2012-67

AVLL's Addition

Recorded January 8, 1975

MILL CREEK VILLAGE
PARKING PLAN

CITY OF WICHITA, KANSAS
XXX XXXXX, P.E. - CITY ENGINEER
C.O.K. Proj# XXX-XXXXX O.C.A.# XXXXXX

No. | Date | By | Approved

POE & ASSOCIATES, INC.
3940 E. Central, Suite 200 ■ Wichita, KS 67208-4242
Phone 316/685-4114 ■ FAX 316/685-4444

PRELIM.

Engineer: T. AUSTIN
Designer: T. AUSTIN
Drawing: P:\1109P\Mill Creek Village\ASA1-a.dwg
Date: 11/9/2012

Sheet 1 of 1