

# City of Columbia

701 East Broadway, Columbia, Missouri 65201



**Agenda Item Number:** B 258-14

**Department Source:** Law

**To:** City Council

**From:** City Manager & Staff

**Council Meeting Date:** August 4, 2014

**Re:** Referendum Petition to Repeal Bill B103-14A, Ordinance No. 022071

## Documents Included With This Agenda Item

Council memo, Ordinance

**Supporting documentation includes:** Referendum Petition to Repeal Bill B130-14A, Ordinance No. 022071 (page 1); City Clerk's Certification dated July 2, 2014; City Clerk's Certification of Supplementary Petition dated July 16, 2014.

## Executive Summary

On July 2, 2014, the City Clerk certified the petition submitted by Jeremy Root to repeal Ordinance No. 022071 contained a sufficient number of valid signatures of registered voters (certification attached) for a referendum under the City Charter. Two bills have been prepared for Council consideration. One would repeal Ordinance No. 022071, the other would place the repeal of Ordinance 022071 on the November 4, 2014 ballot.

## Discussion

Bill 130-14A enacted as Ordinance No. 022071 on May 19, 2014, approved an amended and restated development agreement with Opus Development Company, LLC. ("Opus"). The amended agreement altered the design of the project so the active living spaces would be consolidated on the ground floor along the Avenue of the Columns. All of the other terms and conditions of the agreement remained the same. The amended and restated development agreement provides for Opus to contribute \$200,000 to sanitary sewer infrastructure improvements and \$250,000 to water system improvements. In addition, Opus agreed to an advance purchase of 118 transit system bus passes in the amount of \$30,680.

Ordinance No. 022071 became effective on June 9, 2014 and the petition from Jeremy Root, demanding repeal of Bill 130-14A, was filed with the City Clerk the same day. Accordingly, the amended and restated agreement was never executed by either the developer or the City.

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Following an extensive review of the signatures presented, the City Clerk certified the petition as insufficient on July 2, 2014 and set forth the particulars in which the petition was defective (see attached July 2, 2014 certification). The petitioners were granted 14 days to file a supplementary petition, which was filed on July 16, 2014. Upon examination of the signatures contained in the supplementary petition, the city clerk determined the petition had been signed by a sufficient number of registered voters (see attached certification dated July 31, 2014).

Two bills have been prepared for Council consideration. One would repeal Ordinance No. 022071, the other would place the repeal of Ordinance No. 022071 on the November 4, 2014 ballot.

## **Fiscal Impact**

**Short-Term Impact:** Because the City will already be paying for a portion of the November election, the extra cost of placing this issue on the ballot would be minimal.

**Long-Term Impact:** The development agreement requires Opus to contribute \$450,000 for sanitary sewer and water line improvements plus guaranteed purchase of two years of bus transit passes in the amount of \$30,680. In the absence of a development agreement between the City and Opus, the obligation to assist with the cost of off-site infrastructure improvements and the purchase of transit system passes will be eliminated. The City will need to fund the entire cost of the infrastructure improvements through other means.

## **Vision, Strategic & Comprehensive Plan Impact**

Vision Impact: Development, Downtown, Governance and Decision Making

Strategic Plan Impact: Customer Focused Government, Growth Management, Infrastructure

Comprehensive Plan Impact: Land Use & Growth Management, Environmental Management, Infrastructure, Livable & Sustainable Communities

## **Suggested Council Action**

No suggested action.

# City of Columbia


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## Legislative History

1. Ordinance No. 022010 enacted March 19, 2014 approving original development agreement.
2. Ordinance No. 022071 enacted May 19, 2014 approving amended and restated development agreement.
3. Ordinance No. 022103 enacted June 16, 2014 repealing Ordinance No. 022010.
4. Bill B163-14 defeated June 16, 2014 (would have submitted Ordinance No. 022010 to voters.)

  
\_\_\_\_\_  
Department Approved

  
\_\_\_\_\_  
City Manager Approved

Introduced by \_\_\_\_\_

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Council Bill No. B 258-14

### **AN ORDINANCE**

calling a special election in the City of Columbia, Missouri, to be held on Tuesday, November 4, 2014, for the purpose of approving or rejecting Ordinance No. 022071 passed by the City Council on May 19, 2014, being "An Ordinance authorizing the City Manager to execute an amended and restated development agreement with Opus Development Company, L.L.C. as it relates to property located on the north side of Locust Street, between Seventh Street and Eighth Street; directing the City Clerk to have the development agreement recorded; and providing for the repeal of Ordinance No. 022010."; directing notification of the election authority; describing the form of the notice of election; and fixing the time when this ordinance shall become effective.

WHEREAS, on June 9, 2014, a petition was filed with the City Clerk entitled "Referendum Petition to Repeal Bill B130-14A, Ordinance No. 022071", which petition was found to contain an insufficient number of signatures of registered voters and certified as insufficient as a referendum petition by the City Clerk on July 2, 2014; and

WHEREAS, on July 16, 2014, a supplementary petition was filed with the City Clerk containing additional signatures for the "Referendum Petition to Repeal Bill B130-14A, Ordinance No. 022071"; and

WHEREAS, the City Clerk certified the "Referendum Petition to Repeal Bill B130-14A, Ordinance No. 022071" contained a sufficient number of signatures on July 31, 2014; and

WHEREAS, the City Council of the City of Columbia, Missouri has determined the "Referendum Petition to Repeal Bill B130-14A, Ordinance No. 022071" related to Ordinance No. 022071 which was approved by the City Council on May 19, 2014; and

WHEREAS, the City Council has voted not to repeal Ordinance No. 022071 and deems it expeditious to submit Ordinance No. 022071 to the voters for approval or rejection in accordance with Article XVII of the Home Rule Charter for the City of Columbia, Missouri.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. A special election is hereby ordered to be held in the City of Columbia, Missouri, on Tuesday, November 4, 2014, on the following question:

PROPOSITION 3

SHALL ORDINANCE NO. 022071, PASSED BY THE CITY COUNCIL ON MAY 19, 2014, BEING "AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH OPUS DEVELOPMENT COMPANY, L.L.C. AS IT RELATES TO PROPERTY LOCATED ON THE NORTH SIDE OF LOCUST STREET, BETWEEN SEVENTH STREET AND EIGHTH STREET; DIRECTING THE CITY CLERK TO HAVE THE DEVELOPMENT AGREEMENT RECORDED; AND PROVIDING FOR THE REPEAL OF ORDINANCE NO. 022010.", BE APPROVED OR REJECTED?

SECTION 2. The City Clerk is hereby authorized and directed to notify the Clerk of the County Commission of Boone County, Missouri, of the adoption of this ordinance no later than 5 o'clock p.m. on August 26, 2014, and to include in the notification all of the terms and provisions required by Chapter 115, RSMo. as amended.

SECTION 3. The form of the notice of election shall be substantially as set forth on "Exhibit A" attached hereto.

SECTION 4. The election shall be held and conducted, and the results thereof canvassed and returned, in all respects in accordance with the laws of the State of Missouri and the Charter and Ordinances of the City of Columbia, Missouri.

SECTION 5. This ordinance shall be in full force and effect from and after its passage.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor and Presiding Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

NOTICE OF SPECIAL ELECTION  
City of Columbia, Missouri

Notice is hereby given to the qualified voters of the City of Columbia, Missouri, that the City Council of the City has called an election to be held in the City on Tuesday, November 4, 2014, commencing at six o'clock a.m. and closing at seven o'clock p.m., on the question contained in the following sample ballot:

OFFICIAL BALLOT  
Special Election  
City of Columbia, Missouri  
Tuesday, November 4, 2014

PROPOSITION 3

SHALL ORDINANCE NO. 022071, PASSED BY THE CITY COUNCIL ON MAY 19, 2014, BEING "AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH OPUS DEVELOPMENT COMPANY, L.L.C. AS IT RELATES TO PROPERTY LOCATED ON THE NORTH SIDE OF LOCUST STREET, BETWEEN SEVENTH STREET AND EIGHTH STREET; DIRECTING THE CITY CLERK TO HAVE THE DEVELOPMENT AGREEMENT RECORDED; AND PROVIDING FOR THE REPEAL OF ORDINANCE NO. 022010.", BE APPROVED OR REJECTED?

- ☐ FOR THE ORDINANCE
- ☐ AGAINST THE ORDINANCE

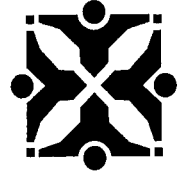
If you are in favor of approving the ordinance, place an "X" in the box opposite "For the Ordinance". If you are in favor of rejecting the ordinance, place an "X" in the box opposite "Against the Ordinance".

The election will be held at the following polling places in the City:

[polling places to be added by election authority]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Wendy Noren  
Clerk of the County Commission



## SUPPORTING DOCUMENTS INCLUDED WITH THIS AGENDA ITEM ARE AS FOLLOWS:

1. Referendum Petition to Repeal Bill B130-14A, Ordinance No. 022071 (page 1);
2. City Clerk's Certification dated July 2, 2014;
3. City Clerk's Certification of Supplementary Petition dated July 16, 2014

# REFERENDUM PETITION TO REPEAL BILL B130-14A, ORDINANCE NO. 022071

**Bill 130-14A: a proposed 6-story, 260-beds, 62-parking space student housing development at Eighth and Locust**

On May 19, 2014, Council passed Bill 130-14A, enacted as ordinance No. 022071, authorizing the City Manager to enter into a development agreement with Opus Development Co. to erect a student housing development on the north side of Locust Street, between Seventh and Eighth Street.

We, the undersigned petitioners and registered Columbia voters, consistent with the Charter of the City of Columbia, demand that Bill B130-14A, enacted as Ordinance No. 022071 be repealed or submitted to the voters.

FULL TEXT OF ORDINANCE: AN ORDINANCE authorizing the City Manager to execute an amended and restated development agreement with Opus Development Company, L.L.C. as it relates to property located on the north side of Locust Street, between Seventh Street and Eighth Street; directing the City Clerk to have the development agreement recorded; and providing for the repeal of Ordinance No. 022010. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS: SECTION 1. The City Manager is hereby authorized to execute an amended and restated development agreement with Opus Development Company, L.L.C. as it relates to property located on the north side of Locust Street, between Seventh Street and Eighth Street. The form and content of the amended and restated development agreement shall be substantially in the same form as set forth in "Attachment A" attached hereto. SECTION 2. The City Clerk is authorized and directed to have a certified copy of the amended and restated development agreement recorded in the office of the Boone County Recorder of Deeds. SECTION 3. In the event a referendum petition is not filed by the voters with the City Clerk pursuant to City Charter Article XVII requesting a repeal of this ordinance within the timeframe allowed for filing a referendum petition under the City Charter, Ordinance No. 022010 shall hereby be repealed in its entirety. A true and correct copy of the ordinance and development agreement is attached hereto and incorporated by reference.

NAME (Signature)	DATE SIGNED	REGISTERED VOTING ADDRESS (Street)	ZIP CODE	NAME (Printed or Typed)
Robert W. Achmeide	6/9/14	1907 McRee ST	65203	Robert W. Achmeide
1. Robert W. Achmeide	6/9/14	5106 Whitefish Dr	65203	David J. Parfitt
2. David J. Parfitt	6/9/14	4508 Sharon Ct	65203	Pat McCarty
3. Pat McCarty	6/9/14	503 Parkade Blvd	65202	Andrea Weingartner
4. Andrea Weingartner	6/9/14	4606 Southampton Ct	65202	Angela Patterson
5. Angela Patterson	6/9/14	4708 Derby Ridge Dr	65202	Jennifer Bloss
6. Jennifer Bloss	6/9/14	4708 Derby Ridge Dr	65202	Betty R. Bloss
7. Betty R. Bloss	6/9/14	2104 Iris Dr	65202	Kenneth Araiza
8. Kenneth Araiza	6/9/14	4403 Germantown Dr	65203	Sessice Nelson
9. Sessice Nelson	6/9/14	405 Hulen Dr	65203	Lori Krandsen
10. Lori Krandsen				

I, Ann Peters, (Petition Circulator) being first duly sworn, say that the above listed persons signed this page of the referendum petition, and each of them signed his/her name thereto in my presence; I believe that each has stated his/her name, registered voting address correctly, and that each signer is a registered voter of the state of Missouri, County of Boone, City of Columbia.

Signature of Circulator

3150 N. Rt 2 Columbia mo  
Address of Circulator 65202

Subscribed and sworn to before me this 9th day of June, A.D. 2014  
Notary Public (Seal)

Signature of Notary

My commission Expires:

DIANA L. RAHM  
Notary Public - Notary Seal  
State of Missouri  
County of Boone  
My Commission Expires July 8, 2017  
Commission #13590847



Introduced by Chadwick  
 First Reading 5-5-14 Second Reading 5-19-14  
 Ordinance No. 022073 Council Bill No. B 130-14 A

## AN ORDINANCE

authorizing the City Manager to execute an amended and restated development agreement with Opus Development Company, L.L.C. as it relates to property located on the north side of Locust Street, between Seventh Street and Eighth Street; directing the City Clerk to have the development agreement recorded; and providing for the repeal of Ordinance No. 022010.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

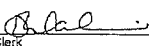
SECTION 1. The City Manager is hereby authorized to execute an amended and restated development agreement with Opus Development Company, L.L.C. as it relates to property located on the north side of Locust Street, between Seventh Street and Eighth Street. The form and content of the amended and restated development agreement shall be substantially in the same form as set forth in "Attachment A" attached hereto.


SECTION 2. The City Clerk is authorized and directed to have a certified copy of the amended and restated development agreement recorded in the office of the Boone County Recorder of Deeds.

SECTION 3. In the event a referendum petition is not filed by the voters with the City Clerk pursuant to City Charter Article XVII requesting a repeal of this ordinance within the timeframe allowed for filing a referendum petition under the City Charter, Ordinance No. 022010 shall hereby be repealed in its entirety.

PASSED this 19th day of May, 2014.

ATTEST:

  
 City Clerk

  
 Mayor and Presiding Officer

APPROVED AS TO FORM:

  
 City Counselor

 022073  
 Permanent Record  
 Filed in Clerk's Office

## Amended and Restated Development Agreement

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Amended and Restated Agreement") is made and entered into this 19th day of May, 2014, (the "Effective Date") between Opus Development Company, L.L.C., a Delaware limited liability company, whose address is 7733 Forsyth Boulevard, Ste. 1100, St. Louis, MO 63105, and its successors and assigns (the "Developer") and the City of Columbia, a municipal corporation and constitutional charter city under the laws of the State of Missouri, whose address is 701 East Broadway, Columbia, Missouri 65201 (the "City"), (collectively hereinafter referred to as the "Parties").

WHEREAS, City and Developer desire to re-evaluate the original development agreement approved by Bill 62-14A enacted as Ordinance 022010 on March 19, 2014 and desire to modify the project design and conceptual plan set forth in Exhibit B to provide for community spaces on the street-level floor along Eighth Street, giving the building an "active" ground floor together with an expanded time frame for consideration of the proposed plan by providing for introduction and first reading of the bill to approve this Amended and Restated Agreement at a regular council meeting scheduled for May 5, 2014 with public comment on such plan two weeks later at a regular council meeting scheduled on May 19, 2014; and

WHEREAS, Developer is the contract purchaser of certain tracts of land in the City of Columbia, Boone County, State of Missouri, described on Exhibit A to this Amended and Restated Agreement (the "Developer Tract"); and

WHEREAS, the current zoning of the Developer Tract is C-2; and

WHEREAS, the Developer desires to construct a residential housing structure on the Developer Tract generally in the manner shown on the depictions attached hereto as Exhibit B (the "Conceptual Site Plan") to consist of a building not to exceed six (6) stories in height and containing a maximum of 260 bedrooms in a mix of one, two, three and/or four bedroom units together with parking and related uses (the "Project"); and

WHEREAS, the existing use of the Developer Tract consists of three buildings currently used for commercial and residential purposes; and

WHEREAS, the Project to be constructed by Developer is a significant change of use from the existing use of the Developer Tract; and

WHEREAS, prior to issuance of a building permit to construct the Project, City and Developer desire to ensure adequate utilities and public infrastructure exist to serve the intended use; and

WHEREAS, the City has conducted a survey of existing public infrastructure within the overall downtown Columbia geographical area, which includes the Developer Tract; and

WHEREAS, inadequate water, fire protection, electric, storm water and sanitary sewer facilities exist to serve the proposed increase in use of the Developer Tract which will result from the Project construction; and

WHEREAS, the Developer desires to begin construction of the Project during the 2nd calendar quarter of 2014 and to complete construction and open to residents on or before 3rd calendar quarter of 2015 (the "Project Schedule"); and

WHEREAS, it is critical for Developer to receive the assurances and protections provided by this Amended and Restated Agreement in order to proceed with the acquisition of the Developer Tract and final design and construction of the Project in order to construct the Project according to the Project Schedule; and

WHEREAS, establishing the terms and conditions under which utilities will be provided to the Project will protect and benefit the health, safety, and general welfare of the City and is in the best interest of the public; and

NOW, THEREFORE, in consideration of the recitals set forth above, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Definitions.

"Affiliated Entity" of any Party means any other person directly or indirectly controlling, controlled by or under common control with, such person. For purposes of this definition, the term "control" (including the correlative meaning of the terms "controlling", "controlled by" and "under common control with"), as applied with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person whether through the ownership of voting securities or by contract or otherwise, provided (but without limiting the foregoing) that no pledges of voting securities of any person without the current right to exercise voting right with respect thereto shall by itself be deemed to constitute control over such person. Without limiting the generality of the foregoing, the word "Affiliate" with respect to Developer shall include any entity that directly or indirectly through one or more intermediaries is controlled by, controls or is under common control with some or all of (a) Developer, (b) the founder of Opus Holding, L.L.C. and Opus Holding Corporation group of companies, his children, his grandchildren or other members of his family or their issue, (c) the trustee of a trust or trusts for the benefit of the founder of Opus Holding, L.L.C. and the Opus Holding Corporation group of companies, his children, his grandchildren or other members of his family or their issue, or (d) a partner, limited liability company, corporation or other entity comprised of all or some of the above.

"Applicable Law" means those rules, regulations, official policies, standards and specifications, ordinances and resolutions which are controlled by the City and in force and effect on the Effective Date of this Amended and Restated Agreement.

"Commencement of Construction" means the issuance of the building permit to authorize physical construction of the structure and shall not include demolition and grading activities on the site related to the Project prior to issuance of the building permit.

"Construction Period" means the period of time the Project is under construction. The Construction Period shall commence at such time as City issues the building permit to construct the Project and such construction shall proceed without unnecessary delay until completion of the project, which shall be evidenced by issuance of a certificate of occupancy by the City.

"Governmental Authority" or "Governmental Authorities" means any municipal governmental authority, including all executive, legislative and administrative departments and bodies thereof having jurisdiction over the Developer, the Developer Tract, and the Project.

"Governmental Requirements" means all laws, ordinances, statutes, executive orders, rules, zoning requirements and agreements of any Governmental Authority that are applicable to the acquisition, renovation, demolition, development, and construction of the Developer Tract and/or Project including, without limitation, all required permits, approvals and any rules, guidelines or restrictions enacted or imposed by any Governmental Authorities.

"Term" means the earlier of: (i) the last day of the Construction Period; or (ii) the fifth anniversary date of the Effective Date, unless extended with the written consent of the City.

2. Project Development. With respect to the use and development of the Project and the Developer Tract and provided all requisite permits have been issued by the City, the Developer agrees to begin Commencement of Construction of the Project by September 1, 2014 in substantial conformance with the Conceptual Site Plan and complete such construction by the end of the Term pursuant to the terms and provisions herein and City agrees to permit construction of the Project pursuant to the terms and conditions of this Amended and Restated Agreement and Applicable Law. Notwithstanding anything contained herein to the contrary, this Amended and Restated Agreement shall terminate and the terms and provisions shall be null, void, and of no force or effect and the Parties shall have no further obligations hereunder if Commencement of Construction has not occurred by September 1, 2014.

3. Storm Water Improvements. As part of the Project, the Developer shall replace the existing storm water improvements serving the Developer Tract with new structures (the "Storm Water Improvements") in a new location within the Developer Tract that is consistent with the Conceptual Site Plan and as shall be approved by the City and the Developer. The Developer shall construct such Storm Water Improvements at its sole cost and expense and shall cause the Storm Water Improvements to be designed, constructed and dedicated to comply with the requirements of the Applicable Law. City agrees to accept the dedication of the Storm Water Improvements for maintenance upon completion thereof pursuant to the terms of this Amended and Restated Agreement and to vacate any rights and

interests it may have on or around the location of the existing storm water improvements at the time that the City accepts the Storm Water Improvements. Prior to Commencement of Construction, the Developer shall submit to the City's Public Works Department for review and approval a complete set of engineered plans for the Storm Water Improvements. Said plans shall be prepared by a registered engineer authorized to perform such work and shall be designed in accordance with the Applicable Law. The Storm Water Improvements shall be dedicated to the public prior to issuance of a certificate of occupancy to occupy the Project.

4. **Water System Improvements.** Developer hereby agrees to pay to City \$250,000 for the upgrade and reconstruction of the water main depicted in Exhibit E attached hereto (the "Water System Infrastructure"). Subject to the public improvement process requirements set forth in Chapter 22 of the Columbia City Code, the City shall perform the construction and be responsible for all remaining costs of reconstruction of the Water System Infrastructure in excess of Developer's contribution. Developer's payment for the upgrade and reconstruction of the Water System Infrastructure shall be made by Developer to City prior to issuance of the building permit to construct the Project. Nothing contained herein shall prohibit City from requiring other developers or property owners to contribute to the cost of reconstruction of the Water System Infrastructure. Failure of City to construct or complete the Water System Infrastructure improvements prior to the end of the Construction Period shall not prevent Developer from obtaining a certificate of occupancy following construction of the Project or obtaining any other necessary approvals to occupy and use the Project for its intended purpose.
5. **Sanitary Sewer Improvements.** Developer hereby agrees to pay to City \$200,000 for the reconstruction and/or rehabilitation of the connecting sanitary sewer main depicted in Exhibit D attached hereto (the "Sanitary Sewer Infrastructure"). Subject to the public improvement process requirements set forth in Chapter 22 of the Columbia City Code, the City shall perform the construction and be responsible for all remaining costs of reconstruction of the Sanitary Sewer Infrastructure in excess of Developer's contribution. Developer's payment for the reconstruction of the Sanitary Sewer Infrastructure shall be made by Developer to City prior to issuance of the building permit to construct the Project. Nothing contained herein shall prohibit City from requiring other developers or property owners to contribute to the cost of reconstruction of the Sanitary Sewer Infrastructure. Failure of City to construct or complete the Sanitary Sewer Infrastructure improvements prior to the end of the Construction Period shall not prevent Developer from obtaining a certificate of occupancy following construction of the Project or obtaining any other necessary approvals to occupy and use the Project for its intended purpose.
6. **Availability of Public Utility Services.** City and Developer acknowledge that the availability of public utility services of electricity, water, storm water and sanitary sewer capacity is critical to the Project. The Developer has submitted to the City the projected load and flow demands for public utility services to be generated by the Project at the end of the Construction Period as set forth in Exhibit E attached hereto (the "Utility Estimates"). The City has reviewed the Utility Estimates and hereby commits that, in combination with the Developer commitments contained in this Amended and Restated Agreement, the City will have adequate capacity to support the Project and the intended uses set forth herein by the

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necessary to address health and safety issues created by the increase in capacity demanded by the Project which is in excess of the capacity contemplated herein;

- c. Apply to the Project any City Regulation otherwise allowed by this Amended and Restated Agreement that is not uniformly applied to all similar types of development projects and project sites within the Downtown Community Improvement District boundaries; and
- d. Establish, enact, increase, or impose against the Project or Developer Tract any fees, taxes (including without limitation general, special and excise taxes), assessments or other monetary obligations other than those imposed and applied on all similar types of development projects and project sites within the Downtown Community Improvement District boundaries; provided however, if such additional fees, taxes, assessments or other monetary obligations related to the utility infrastructure improvements are imposed by City against the Developer Tract, the Developer shall have the right to claim a credit for any payments and construction enhancements made by Developer pursuant to this Amended and Restated Agreement.

Nothing herein shall limit the City's authority to enact ordinances, resolutions, or otherwise pass laws or promulgate rules or regulations with regard to any matter, so long as same does not have the effect of limiting construction of the Project on the Developer Tract within the Term in substantially the same manner as set forth in this Amended and Restated Agreement. City expressly retains the right to control and determine all matters relating to the public streets and rights of way without any regard to the impact such decisions may have on the Project or Developer Tract, including but not limited to the granting of right of use permits and/or street closures adjacent to the Developer Tract

10. **Timing of Project Construction and Completion.** Subject to the following, the Developer shall endeavor in good faith and with reasonable diligence to proceed with and construct the Project during the Term and as described in this Amended and Restated Agreement:
  - a. It is the intent of the Developer to complete construction of the Project by August 31, 2013. The timing, order and rate of development shall be in Developer's sole discretion. It shall not be an event of default hereunder if the Project is not constructed during the Term; rather, this Amended and Restated Agreement shall terminate in such case without any further action required by the Parties.
  - b. In an event shall a delay by Developer to complete construction of the Project according to the Project Schedule result in a refund or claim for refund of Developer's contribution for the construction of the Sanitary Sewer Improvements.
11. **Waiver.** Failure of any party to this Amended and Restated Agreement to insist on the full performance of any of its provisions by the other Party shall not constitute a waiver of such performance unless the Party failing to insist on full performance of the provision declares in writing signed by it that it is waiving such performance. A waiver of any breach under this Amended and Restated Agreement by any Party, unless otherwise expressly declared in

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end of the Construction Period and that if the Developer is not in default under this Amended and Restated Agreement the City will not deny Developer the ability to connect to such essential public services to serve the Project at the end of the Construction Period. In no event shall the commitment of the City to reserve, construct or supply adequate capacity to support the Project extend beyond the Term of this Amended and Restated Agreement, nor shall the City's commitment herein to provide public utility services be in excess of the Utility Estimates.

7. **Permit and Connection Fees.** In addition to the commitments of Developer contained herein, the Developer shall pay to the City, at the time and in the amount required by the Applicable Law, the standard connection and permit fees associated with connecting the Developer Tract to the utilities.
8. **Transit Services.** Developer hereby agrees to purchase 118 transit system bus passes for use of residents of the Project for each fall and spring semester of The University of Missouri for the first two years following opening of the Project. The price for the first two years shall be paid by Developer in a lump sum of \$30,680 prior to end of the Construction Period. During the first two years following opening of the Project, Developer may purchase additional bus passes as desired at the rate of \$65.00 per pass. After the first two years following end of the Construction Period, Developer may continue to purchase transit system bus passes at the rates then in effect as Developer determines to be necessary or desirable for use of its residents. Provided City is in receipt of payment for bus passes from Developer, City shall provide such passes to Developer at least two weeks prior to the start of each semester.
9. **No Conflicting Enactments.** During the Term the City will not impose on the Project or Developer Tract, whether by action of the City Council or otherwise, any Governmental Requirement (to the extent that the City has authority with respect to a Governmental Requirement), ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a "City Regulation" and collectively the "City Regulations") that reduces the assurances provided by this Amended and Restated Agreement with respect to the availability of public utilities for the development, maintenance, and operation of the Project. Nothing contained herein shall prohibit the City from enacting a Governmental Requirement and imposing the same on the Project and Developer Tract for protection of the health, safety and welfare of the public in the same manner and to the same extent as imposed on the general public. During the Term, any change in the following shall not be effective as applied to the Developer Tract without the express written agreement of Developer:
  - a. Change any land use designation or permitted use of the Development Tract existing as of the Effective Date of this Amended and Restated Agreement which would prohibit or limit the use of the Developer Tract for the Project as described in this Amended and Restated Agreement;
  - b. Limit or control the availability of public utilities, services or facilities for the Project as described in this Amended and Restated Agreement, unless such limitation is

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writing, shall not be a continuing waiver or waiver of any subsequent breach of the same or other provision of this Amended and Restated Agreement.

12. **Governing Law.** The laws of the State of Missouri (without regard to conflicts of law) shall govern the validity, construction, enforcement and interpretation of this Amended and Restated Agreement.
13. **Headings.** All section headings in this Amended and Restated Agreement are for the convenience of the reader only and are not intended, nor shall they be deemed, to define or limit the scope of any provision of this Amended and Restated Agreement.
14. **Notices.** All notices, demands, requests, and other communications required or permitted hereunder shall be in writing shall be considered delivered: (a) upon personal delivery to the party to whom the notice is directed; or (b) two (2) business days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows (or to such other address as the Parties may specify by notice given pursuant to this section):

To Developer:	Opus Development Company, L.L.C. 7733 Forsyth Boulevard, Ste. 1100 St. Louis, MO 63105 Attn: Joe Downs
With a Copy to:	Opus Development Company, L.L.C. 7733 Forsyth Boulevard, Ste. 1100 St. Louis, MO 63105 Attn: Legal Department
And a Copy to:	Robert Hollis Van Matre, Harrison, Hollis, Taylor, and Bacon, P.C. 1103 East Broadway Columbia, MO 65201
To City:	City of Columbia Attn: City Manager 701 East Broadway Columbia, MO 65201
With a Copy to:	City of Columbia Attn: City Counselor 701 E. Broadway Columbia, MO 65201

15. **No Adverse Inference.** This Amended and Restated Agreement shall not be construed more strongly against one Party or the other. The Parties had equal access to input with respect to, and influence over, the provisions of this Amended and Restated Agreement. Accordingly,

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no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Amended and Restated Agreement.

16. **Third Party Beneficiaries.** There are no third party beneficiaries to this Amended and Restated Agreement.
17. **Jurisdiction and Venue.** Legal action concerning any dispute, claim or matter arising out of the Amended and Restated Agreement shall be brought only in the Circuit Court of Boone County, Missouri.
18. **Severability or Partial Invalidity.** This Amended and Restated Agreement is to be considered in its entirety and both parties acknowledge the assurances granted herein are dependent upon each other. If any provision of this Amended and Restated Agreement is for any reason held to be invalid or unenforceable, such provision shall render the entire agreement invalid and unenforceable.
19. **Gender and Number.** Pronouns and any reference to a person or persons, wherever used herein, and of whatever gender, shall include natural persons, corporations, associations, partnerships and other entities of every kind and character, and the singular shall include the plural and vice versa, wherever and as often as may be appropriate.
20. **Failure or Delay to Enforce.** No failure to exercise or delay in exercising any right hereunder on the part of any Party to this Amended and Restated Agreement shall operate as a waiver thereof, and no single or partial exercise of any right of such Party shall preclude any other or further exercise of such right or the exercise of any other right.
21. **Force Majeure.** In the event that either Party shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, riots, insurrection, the act, failure to act or default of the other Party, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.
22. **Priority and Recording.** This Amended and Restated Agreement shall be recorded in the records of Boone County, Missouri and the covenants, rights and obligations contained herein shall run with the Developer Tract. By the recording of this Amended and Restated Agreement, all conditions, terms and obligations of this Amended and Restated Agreement are effective as to and binding on the Parties, their successors and assigns with the intention that this Amended and Restated Agreement with the intention that it will, in addition to the Parties hereto, govern all future and subsequent owners of all or any portion of the Developer Tract unless and until this Amended and Restated Agreement is amended or terminated in accordance with the terms hereto.
23. **Binding Effect; Assignment.** This Amended and Restated Agreement is not assignable by any party, without the prior written consent of the other Party, which consent shall not be

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29. **Entire Agreement; Amendment.** It is agreed and understood by the parties that this Amended and Restated Agreement embodies the entire understanding and represents the full and final agreement among the parties with respect to the subject matter hereof and supercede any and all prior commitments, agreements, discussions, representations, and understandings, whether written or oral, relating to the subject matter hereof; that this Amended and Restated Agreement may not be contradicted or varied by evidence of prior or contemporaneous written or oral agreements or discussions of the parties, or subsequent oral agreements or discussions of the parties; that there are no oral agreements among the parties, and no representations, agreements or promises not set forth herein have been made. Without limiting the foregoing, Developer acknowledges that: (i) no promise or commitment has been made to it by or on behalf of the City other than as set forth in this Amended and Restated Agreement; and (ii) except as otherwise expressly provided herein, this Amended and Restated Agreement supercedes and replaces any and all proposals, letters of intent and approval and commitment letters relating to the subject matter hereof, none of which shall be considered a part of this Amended and Restated Agreement unless expressly incorporated into this Amended and Restated Agreement. This Amended and Restated Agreement shall be amended only in writing and effective when signed by the parties.
30. **Representatives Not Personally Liable.** No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Amended and Restated Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Amended and Restated Agreement.
31. **Counterparts.** This Amended and Restated Agreement may be executed in several counterparts, each of which is an original and all of which together constitute but one and the same document.

[IF REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -  
SIGNATURE PAGE TO FOLLOW]

unreasonably withheld. Notwithstanding the foregoing, without the consent of the City: (a) Developer may assign this Amended and Restated Agreement, and its rights hereunder, to an Affiliated Entity, provided that (i) Developer shall remain jointly and severally liable with the assignee for the obligations contained in this Amended and Restated Agreement; (ii) Developer, and any assignee by accepting assignment of this Amended and Restated Agreement, expressly agrees to defend and indemnify City from any litigation arising out of the assignment; and (iii) written notice of the assignment, including the name of the assignee, is provided to City at least fifteen (15) business days prior to the effective date of such assignment.

24. **Power of the City.** Notwithstanding anything set forth in this Amended and Restated Agreement to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. All financial obligations of the City shall be subject to future appropriation of the City in accordance with Applicable Laws and Requirements. Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Requirements.
25. **Time.** Time is of the Essence in this Amended and Restated Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Amended and Restated Agreement requires their continued cooperation.
26. **Sovereign Immunity.** Nothing in this Amended and Restated Agreement shall constitute or be construed as a waiver of the City's governmental or official immunity or its officers or employees from liability or suit pursuant to Section 537.600 RSMo.
27. **Authorized Employees.** Developer acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Developer therefore covenants that it is not knowingly in violation of Section 285.530(1), RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on any project which is the subject of this Amended and Restated Agreement, and that its employees are lawfully eligible to work in the United States. Developer will execute an Immigration Law Compliance Affidavit in substantially the same form as attached hereto in Exhibit GF and will cause any person or entity performing work on the Infrastructure Project to confirm compliance with Section 285.530(1) and execute an Immigration Law Compliance Affidavit.
28. **Inspection.** Upon reasonable prior notice, the City may conduct such periodic inspections of the Project, including any applicable phase, as may be generally provided in the Applicable Law or for inspection thereof pursuant to comply with the terms of this Amended and Restated Agreement. The Developer shall not deny the City and its officers, employees, agents and independent contractors the right to inspect upon reasonable prior written request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Project or any applicable phase thereof.

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IN WITNESS WHEREOF, the Parties have duly executed and delivered this Amended and Restated Agreement as of the date first above written.

CITY OF COLUMBIA, MISSOURI ("City")

By: \_\_\_\_\_  
Mike Matthes, City Manager

ATTEST:

By: \_\_\_\_\_  
Sheela Amia, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nancy Thompson, City Counselor

OPUS DEVELOPMENT COMPANY, L.L.C.  
("Developer")

By: \_\_\_\_\_  
David J. Menke, Vice President

State of Missouri )  
 ) ss.  
County of Boone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me personally appeared Mike Matthes, who, upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is an authorized agent for the City of Columbia, Missouri and that he has executed this document on behalf of said entity as the free act and deed of said entity, and that he is duly empowered by said entity to execute this document on said entity's behalf.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at my office in Columbia, Missouri, the day and year first above written.

\_\_\_\_\_, Notary Public  
Commissioned in \_\_\_\_\_ County, MO

My commission expires \_\_\_\_\_.

State of Missouri )  
 ) ss.  
County of Boone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me personally appeared David J. Menke, who upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is a Vice President of Opus Development Company, L.L.C., that he executed the foregoing on behalf of said company, as the free act and deed of said company, and pursuant to the authority vested in him to execute the foregoing by the company, that the foregoing is binding in all respects upon said company, and that said company is duly empowered to enter into the foregoing.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_, Notary Public  
Commissioned in \_\_\_\_\_ County, MO

My commission expires \_\_\_\_\_.

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#### EXHIBIT A

##### Developer Trust

A TRACT OF LAND LOCATED IN THE SE 1/4 OF SECTION 12, TOWNSHIP 48 NORTH, RANGE 13 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF LOTS 85, 86, AND ALL OF LOT 87 OF THE ORIGINAL TOWN, NOW CITY OF COLUMBIA AS RECORDED IN BOOK A, PAGE 335 AND DESCRIBED BY THE DEEDS RECORDED IN BOOK 3291, PAGE 110, BOOK 3179, PAGE 81, BOOK 3198, PAGE 15, BOOK 3179, PAGE 82, BOOK 1310, PAGE 670, BOOK 1072, PAGE 427, AND BOOK 3212, PAGE 168 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

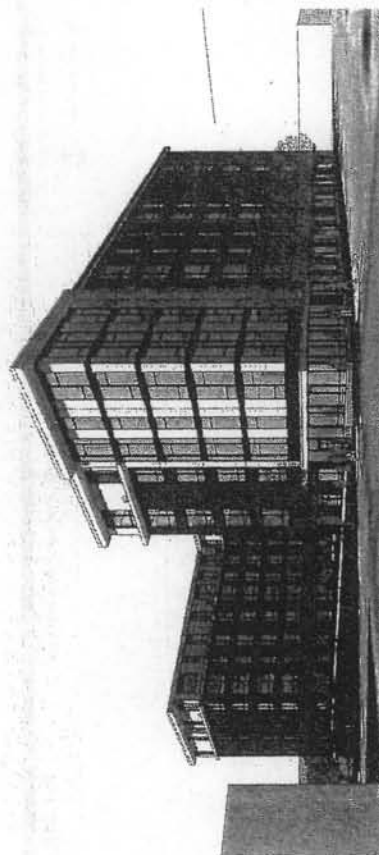
BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 87, N 88°48'55"W, 239.61 FEET TO THE SOUTHWEST CORNER SAID LOT 85; THENCE WITH THE WEST LINE OF SAID LOT 85, N 1°10'35"E, 142.22 FEET TO THE NORTHWEST CORNER OF LOT 85 AND THE SURVEY RECORDED IN BOOK 623, PAGE 597; THENCE S 88°50'15"E, 239.65 FEET TO THE NORTHEAST CORNER OF SAID LOT 87; THENCE S 1°11'40"W, 142.31 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.75 ACRES.

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#### EXHIBIT B

##### Conceptual Site Plan

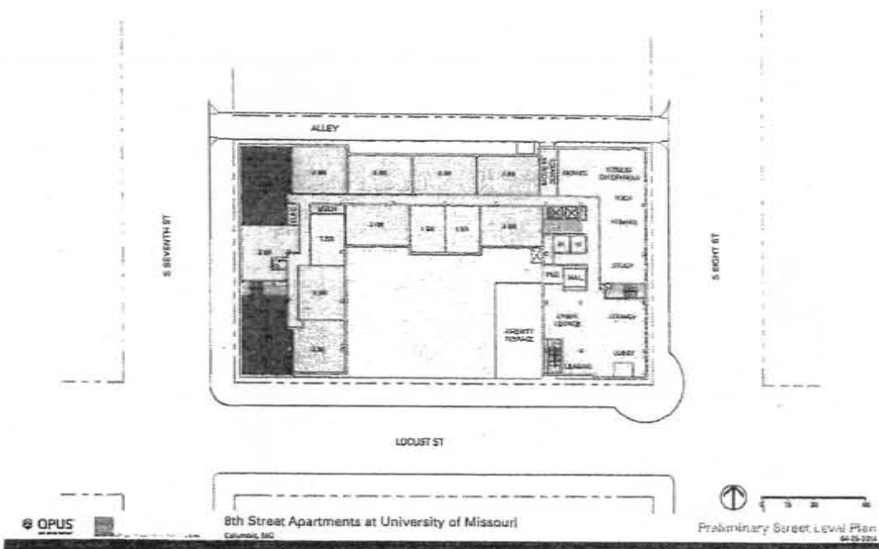
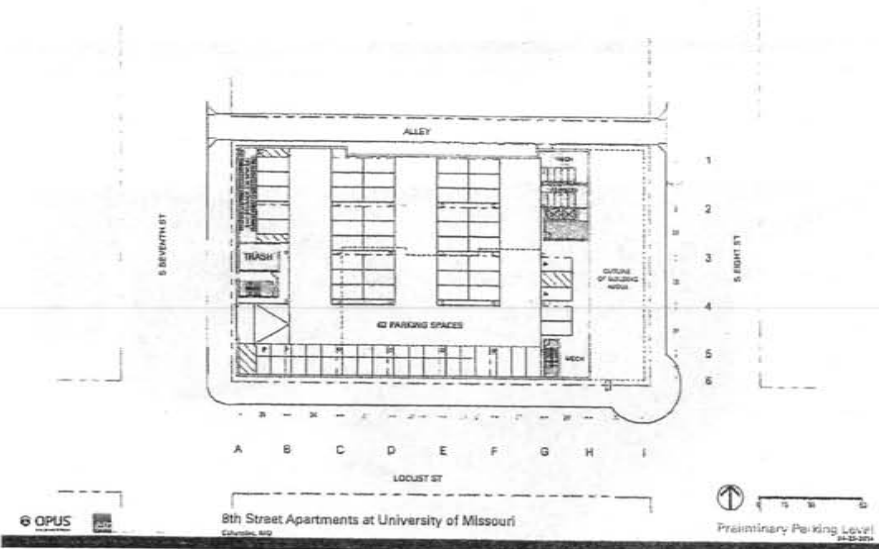
14

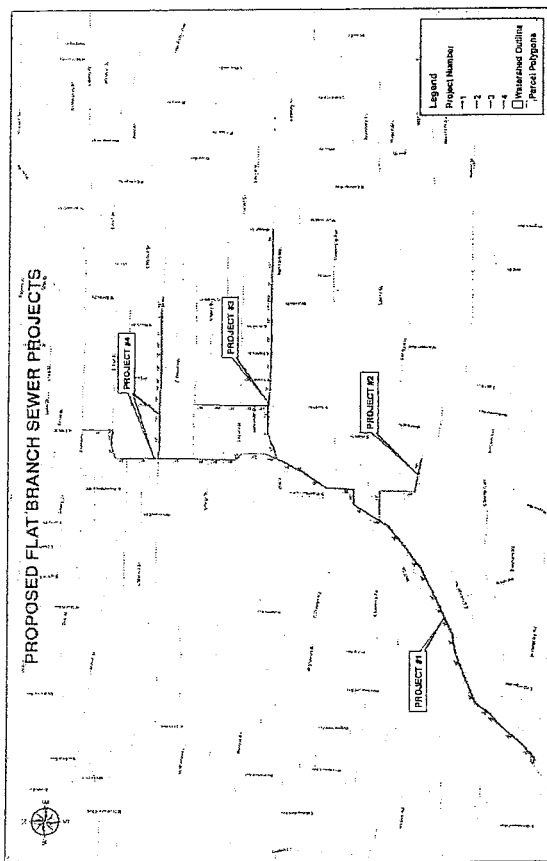


Conceptual Design Perspective  
8/28/2014

8th Street Apartments at University of Missouri  
Columbia, MO

OPUS  
ARCHITECTS





## EXHIBIT E

### Utilities Estimates

#### Sanitary

Load = 1300 drainage fixture units (DFU)  
 Service size = two 6" connections or one 8" connection  
 Total gallons per day = 11,552  
 Average gallons per minute = 8.0  
 Peak gallons per minute = 32.1

#### Domestic Water

Load = 210 gpm, 1000 water supply fixture units (WSFU)  
 Service size = 3" pipe, 3" meter

Fire Protection: 4" to 6" connection, depending on pressure

#### Electrical

Load = total ~900KVA diversified  
 Service size = One service @ 1200 A, 120Y/208V 3ph AND another @ 1600A to include house loads OR one service at 2,500A 120Y/208V 3ph

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## EXHIBIT F

### Form of Immigration Law Compliance Affidavit

STATE OF MISSOURI }  
 COUNTY OF \_\_\_\_\_ } ss:

#### AFFIDAVIT

(as required by Section 285.530, Revised Statutes of Missouri)

As used in this Affidavit, the following terms shall have the following meanings:

EMPLOYEE: Any person performing work or service of any kind or character for hire within the State of Missouri.

FEDERAL WORK AUTHORIZATION PROGRAM: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

KNOWINGLY: A person acts knowingly or with knowledge,

- with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or
- with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

UNAUTHORIZED ALIEN: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, who, being duly sworn, states on his/her oath or affirmation as follows:

- My name is \_\_\_\_\_ and I am currently the President of \_\_\_\_\_ (hereinafter "Contractor"), whose business address is \_\_\_\_\_, and I am authorized to make this Affidavit.
- I am of sound mind and capable of making this Affidavit, and am personally acquainted with the facts stated herein.
- Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the following services contracted between Contractor and the City of Columbia: \_\_\_\_\_
- Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.
- Attached hereto is documentation affirming Contractor's enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.

Further, Affiant saith not.

Signature of Affiant  
 Printed Name: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public

My Commission Expires:

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\*PLEASE NOTE: Acceptable enrollment and participation documentation consists of the following 2 pages of the E-Verify Memorandum of Understanding: (1) A valid, completed copy of the first page identifying the Contractor, and (2) A valid copy of the signature page completed and signed by the Contractor, and the Department of Homeland Security - Verification Division.



# CITY OF COLUMBIA, MISSOURI

OFFICE OF CITY CLERK

**CERTIFICATION RE: THE "REFERENDUM PETITION TO REPEAL BILL B130-14A, ORDINANCE NO. 022071"**

Per Section 130 of the Charter of the City of Columbia, Missouri, I, Sheela Amin, City Clerk in and for the City of Columbia, County of Boone, State of Missouri, hereby certify today, July 2, 2014, that the referendum petition entitled "Referendum Petition To Repeal Bill B130-14A, Ordinance No. 022071" is insufficient as it has been signed by only 3,069 City of Columbia registered voters.

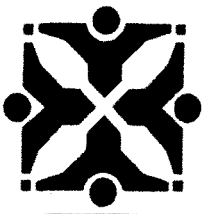
The required number of City of Columbia registered voter signatures needed was equal in number to at least 25 percent of the number of votes cast for council member-at-large at the last municipal election, which by my calculation comes to 3,209 signatures (12,835 x 25%).

Given under my hand and seal of said City this 2nd day of July, 2014.

(seal)

A handwritten signature in black ink, appearing to read 'Sheela Amin'.

Sheela Amin  
City Clerk  
City of Columbia, Missouri



# CITY OF COLUMBIA, MISSOURI

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OFFICE OF CITY CLERK

**CERTIFICATION RE: THE "REFERENDUM PETITION TO REPEAL BILL B130-14A, ORDINANCE NO. 022071" AFTER THE SUPPLEMENTARY PETITION WAS SUBMITTED**

Per Sections 130 and 131 of the Charter of the City of Columbia, Missouri, I, Sheela Amin, City Clerk in and for the City of Columbia, County of Boone, State of Missouri, hereby certify today, July 31, 2014, that the referendum petition entitled "Referendum Petition To Repeal Bill B130-14A, Ordinance No. 022071" has been signed by a sufficient number of registered voters after receipt and review of the supplementary petition as it has been signed by 3,512 City of Columbia registered voters.

The required number of City of Columbia registered voter signatures needed was equal in number to at least 25 percent of the number of votes cast for council member-at-large at the last municipal election, which by my calculation comes to 3,209 signatures (12,835 x 25%).

This certification does not waive any rights or obligations the City may have, on behalf of itself or others, to claim or declare deficiencies in the form, content or subject matter of the petition, including but not limited to, any allegation or finding the substance of the ordinance relates to exercise of administrative powers by the City which are not subject to referendum under law.

Given under my hand and seal of said City this 31st day of July, 2014.

(seal)

Sheela Amin  
City Clerk  
City of Columbia, Missouri