

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B 244-15

Department Source: Public Works

To: City Council

From: City Manager & Staff

Council Meeting Date: 8/17/2015

Re: First Amended and Restated Development Agreement with Jeffrey E. Smith Investment Co for Property located on the Southeast Corner of Nifong Boulevard and Bethel Street

Documents Included With This Agenda Item

Council Memo, Resolution/Ordinance, Exhibits to Resolution/Ordinance

Supporting documentation includes: None

Executive Summary

Council passed Ordinance 21098 on October 3, 2011 authorizing a development agreement with Jeffrey E. Smith Investment Co., and rezoning property located on the southeast corner of Nifong Boulevard and Bethel Street. The development agreement included a project completion date of October 3, 2015. The City of Columbia and Jeffrey E. Smith Investment Co. wish to extend the completion date to October 3, 2018.

Discussion

The City entered into a development agreement, dated December 22, 2011, with Jeffrey E. Smith Investment Co., concerning the development of property located on the southeast corner of Nifong Boulevard and Bethel Street, referred to as the Peachtree Connector and Water Quality Basin project. As part of that agreement, the City is responsible for designing the east-west running street and stormwater detention system. The project goals include improving connectivity and traffic flow through the area as well as managing regional stormwater runoff and improving water quality within the watershed.

In January of 2015, the City entered into a professional engineering services contract with Engineering Surveys & Services to develop conceptual alignments of the proposed roadway and detention basin, and prepare a report with recommendations for final design. Phase II tasks include design engineering of street pavement, sidewalks and ramps, traffic control, and a stormwater management system.

Per the development agreement with Jeffrey E. Smith Investment Co., all work on this project shall be completed by October 3, 2015, the fourth annual anniversary of the date of the approval of the ordinance by council. The City and Jeffrey E Smith Investment Co. wish to extend the completion date to the 7th annual anniversary, or October 3, 2018, allowing adequate time for the projects to be designed and constructed. All other terms as outlined in the development agreement shall remain in effect.

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Fiscal Impact

Short-Term Impact: None related to the amended development agreement.

Long-Term Impact: None

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Development, Transportation

Strategic Plan Impact: Economic Development, Infrastructure

Comprehensive Plan Impact: Land Use & Growth Management, Infrastructure

Suggested Council Action

Authorize the City Manager to execute a First Amended and Restated Development agreement with Jeffrey E. Smith Investment Co., to extend the project completion date to October 3, 2018, for improvements to property located on the southeast corner of Nifong Boulevard and Bethel Street.

Legislative History

01/05/15 (R5-15) Authorizing a professional engineering services agreement with Engineering Surveys and Services, LLC for the Peachtree connector and water quality basin project.

10/3/11 (Ord 21098) Rezoning property located on the southeast corner of Nifong Boulevard and Bethel Street from Districts R-1, R-2, R-3 and O-1 to Districts PUD-17 and C-P, and authorizing a development agreement with Jeffrey E. Smith Investment Co

Department Approved

City Manager Approved

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 244-15

AN ORDINANCE

authorizing a first amended and restated development agreement with Jeffrey E. Smith Investment Co. relating to property located on the southeast corner of Nifong Boulevard and Bethel Street; directing the city clerk to have a certified copy of the amended and restated development agreement recorded; and fixing the time when this ordinance shall become effective.

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

SECTION 1. The City Manager is hereby authorized to execute a first amended and restated development agreement with Jeffrey E. Smith Investment Co. relating to property located on the southeast corner of Nifong Boulevard and Bethel Street. The form and content of the 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. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2015.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

COPY

**FIRST AMENDED AND RESTATED
DEVELOPMENT AGREEMENT**

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“this Agreement”) is made and entered by and between **the City of Columbia, Missouri**, a municipal corporation of the State of Missouri (“City” or “the City”) and **Jeffrey E. Smith Investment Co.** (“Owner” or “the Owner”), as of the Effective Date, which shall be the last day this Agreement is executed by either party as stated below.

WITNESSETH:

BACKGROUND RECITALS
[“Recitals”]

This Agreement is made and entered into by the City and the Owner (who may hereinafter be collectively referred to as “the Parties” and individually as a “Party”) in view of the following facts, matters and circumstances:

Owner is the owner of a tract of land (“the Land”) consisting of 22.52 acres, more or less, situated in the southeast quadrant of the intersection of Nifong Boulevard and Bethel Street in the City of Columbia, Missouri, which is legally described as the following described situated in Boone County, Missouri:

The Land is legally described under the heading “Complete Tract” on **Exhibit A**, which is annexed to this Agreement and is incorporated into this Agreement by reference the same as though fully set forth in this Agreement verbatim.

The Land has, pursuant to an application of the Owner for rezoning of the Land from Zoning Districts O-1, R-1, R-2 and R-3, been placed in Zoning Districts PUD-17, and C-P, pursuant to an Ordinance adopted by the City Council of the City as follows:

Council Bill No. 216-11A

Adopted by City Council on the 3rd of October, 2011 as Ordinance No. 021098

Such Ordinance may be referred to herein as “the Ordinance.”

The Ordinance placed portions of the Land in Zoning Districts PUD-17 and C-P as follows:

That part of the land placed in Zoning District PUD-17 is legally described on **Exhibit A** to this Agreement (which is incorporated into this Agreement the same as though fully set forth in this Agreement verbatim) under the heading/caption “PUD Tract” and consists of the 5.49 acres of the Land described under the heading/caption “Proposed PUD Tract”

That part of the Land placed in Zoning District C-P, consisting of 17.03 acres, more or less, is legally described on such Exhibit A under the heading/caption "Proposed C-P Tract."

The Ordinance adopted by the City Council, as hereinabove described in these Recitals, required of the Owner that the Owner enter into this Development Agreement with the City, pursuant to which the Owner agreed with the City to satisfy certain requirements, and to construct certain streets and other improvements, all as hereinafter described in this Agreement.

This Agreement was originally approved by the City Council as a part of the Ordinance. The Owner executed this Agreement, as it is required to do by the Ordinance, and the City executed this Agreement pursuant to authority granted by the City Council by way of the Ordinance.

The parties now wish to amend and restate this Agreement for mutual consideration acknowledged by each parties as being sufficient and received.

NOW, THEREFORE, in view of the foregoing Recitals and in consideration of the mutual promises, declarations, covenants and agreements of the Parties hereto, as hereinafter set forth, the Parties hereto do hereby mutually promise, declare, covenant, state and agree as follows:

1. Agreements to Run With the Land. The provisions of this Development Agreement shall constitute covenants running with the entirety of the Land, including:

a. That part of the Land which has, by the Ordinance, been placed in Zoning District PUD ("the PUD Tract"); and

b. That part of the land which has, by the Ordinance, been placed in Zoning District C-P (Planned Business District) ["the C-P Tract"].

All of the Land which is legally described on Exhibit A to this Agreement shall be subject to this Agreement, and the intention of the Parties is that all of the provisions of this Agreement shall run with the entirety of the Land described on Exhibit A, including that part described as the "C-P Tract" on Exhibit A, and that part of the Land described as the "PUD Tract" on Exhibit A. The provisions of this Development Agreement shall, therefore, constitute covenants running with the entirety of the Land.

2. "C-P Development Plans" and "PUD Development Plans". All references in this Agreement to a "C-P Development Plan" or "C-P Development Plans" shall mean those Development Plans which are, hereafter, from time to time, submitted to the City in conformity with the requirements of Section 29-17 of the Revised Ordinances of the City for approval by the City, in order that various portions of the C-P Tract can be developed pursuant to approved Development Plans which are approved by the City in conformity with the requirements of such Section 29-17. All references to a "PUD Plan" shall mean those Development Plans which are, hereafter, from time to time submitted to the City in conformity with the requirements of Section

29-10 (“Planned Unit Development”) Ordinances of the City, in order that the PUD Tract may be developed pursuant to PUD Development Plans which are approved by the City pursuant to such Section of the City’s Ordinances. Any reference to “Development Plans” hereinafter set forth in this Agreement shall refer to both of (and each of) all such C-P Development Plans and PUD Development Plans.

3. Site Signage. Each Development Plan submitted by the Owner or developer of any part of the C-P Tract shall provide that site signage shall be approved by the City Council as a part of the Development Plan, as provided for by Section 29-9(d)(9) of the Revised Ordinances of the City.

4. Traffic Impact Study Requirement. A Traffic Impact Study shall be submitted with the first PUD Development Plan for the PUD Tract, or the first C-P Development Plan for the C-P Tract, as the case may be. Such Traffic Impact Study shall show the impact of the Development of the entire Property, meaning both the C-P Tract and the PUD Tract, at full development (meaning full build out). The purpose of this study shall be to define the impacts of the proposed development on the Nifong corridor, being Nifong Boulevard from Providence Road to Baurichter Lane, and the Bethel Street corridor, meaning Bethel Street from Diego Drive to Sudbury Drive. The study shall also define the improvements which are required to mitigate such impacts. For purposes of this paragraph 4, the term “impacts” shall mean those traffic impacts on such corridors, which are caused by additional traffic within such corridors that will be generated by the proposed development. Improvements within such corridors may be required if there will be a reduction in the level of service at any intersection within such corridor, as a result of the anticipated impacts of such additional traffic, such that the level of service (“LOS”) at such intersection will be reduced below Level D. If the Traffic Impact Study indicates that LOS at an intersection will be reduced below Level D, then, in such event, the Traffic Study shall describe the mitigating improvements which would be required to restore the LOS at the affected intersection to an LOS that is the greater of (i) LOS D, or (ii) that LOS which would exist at such intersection without the traffic impacts of the Development; meaning that mitigating improvements shall be required if the traffic impact of the Development will reduce the LOS at an affected intersection below Level D, and further meaning that, if the LOS at an affected intersection will be reduced below Level D, then the mitigating improvements shall be such as will restore that LOS to the greater of LOS D or that LOS which would exist without the impact of the Development.

5. Concerns of Public Works Department. The following concerns of the Public Works Department shall be dealt with the first Development Plan for the C-P Tract and shall be updated with each subsequent Development Plan:

a. All access issues for both Bethel Street and Nifong Boulevard will be coordinated with the Traffic Engineer of the City’s Public Works Department;

b. During the planning stage for each Development Plan, the Owner shall design or cause to be designed on site stormwater conveyance, detention and management features and facilities which will prevent any rise (resulting from the development) in the 100 Year Flood

Plain Elevation at any location. Stormwater calculations will be provided which show the impact (with the planned facilities) to adjacent and downstream properties and infrastructure. The proposed development (taking into account the proposed new stormwater conveyance, management and retention facilities) shall not cause any rise in the 100 Year Flood Plain at any location and calculations shall be provided to show that such will be the case;

c. Even though the stormwater flows, and existing problems which exist downstream from the Land may be improved by the construction, on the City's Land, of the stormwater detention/retention system provided for by paragraph 9 of this Agreement, the Owner shall nevertheless be required, with respect to the Land, the Development to be placed on the Land, and for each Development Plan for each development to be placed on the Land, to conform with all stormwater requirements of Section 12A of the City's Ordinances, and such Section 12A will be adhered to for the development of the Land regardless of the effects of stormwater improvements on adjacent tracts of land, including but not limited to the stormwater improvements on the City's Land which are provided for by paragraph 9 below.

6. Addition Requirements and Conditions for Approval of, or to be Incorporated in Development Plans for the Land, Including Condition for and Requirements for Construction of Public Streets and Installation of Traffic Signals and Traffic Improvements. The approvals of any Development Plan for any part of the Land (including a PUD Development Plan for all or any part of the PUD Tract, and a C-P Development Plan for all or any part of the C-P Tract), are subject to conditions and requirements (which shall be a part of the conditions and requirements that are required to be satisfied by such approvals) as follows:

a. The Owner shall, at the Owner's expense, have, prior to such approval, completed or shall complete prior to the issuance of any final occupancy permit for any building or structure on the Land (including the PUD Tract and each and every part of the C-P Tract) that box culvert described in paragraph 14 of this Agreement; and

b. The Owner shall have, prior to such approval, completed and installed, or shall, prior to the issuance of any final occupancy permit for any building or structure placed on the Land (including the PUD Tract and each and every part of the C-P Tract) the installation of any traffic impact mitigating improvements which are shown to be required by the Traffic Impact Study or any Traffic Impact Study which is submitted pursuant to paragraph 4 of this Agreement;

c. The Owner shall have, prior to such approval, dealt with or shall prior to the issuance of any final occupancy permit for any building or structure on the land have dealt with, in a manner acceptable to the City's Public Works Department, the concerns of the City's Public Works Department as described in paragraph 5 of this Agreement;

d. The Owner shall have dedicated, by a plat, before a building permit shall be granted for any building or structure to be placed on the Land (including the PUD Tract and any part of the C-P Tract) the right-of-way for the "Proposed Local Non-Residential Street (Public)," as shown on **Exhibit B** to this Agreement, which such street runs north and south, and which

such street connects Nifong Boulevard with the proposed right-of-way, and shall also have dedicated by such plat the right-of-way for that part of the roundabout on the Owner's Property;

e. The Owner will have, at its expense, subject to the following provisions of this Agreement, or shall complete the following by no later than the first to occur of:

i. October 3, 2018, the seventh (7th) annual anniversary of the date of approval of the Ordinance by the City Council; or

ii. The issuance of any final occupancy permit for any building or structure on Development Area C as shown on Exhibit B to this Agreement,

done each of the following:

(1) The Owner shall (or will by the earliest to occur of such date or occurrence), at the Owner's expense, have caused the "Proposed Local Non-Residential Street (Public)," which runs north and south, and which is shown on Exhibit B to this Agreement [which such street connects Nifong Boulevard with the proposed roundabout] and the proposed roundabout at the southern terminus of such street to be designed and completed to the City's reasonable satisfaction;

(2) The Owner shall, at the Owner's expense, subject to the following provisions of this Agreement, and concurrently with the construction of such Proposed Local Non-Residential Street (Public) located on the Owner's Land, and construction of the entire roundabout, also have constructed and installed (or shall prior to the first to occur of such date or event also have constructed), pursuant to the City's reasonable design of same, that Proposed Local Non-Residential Street (Public), to be located on the City's Land, which leads east from the proposed roundabout to Peach Court/Peachtree Drive, thereby providing a complete roadway connection from Nifong Boulevard to Peach Court/Peachtree Drive;

(3) The Owner shall, at the Owner's expense, have caused to (or shall prior to the occurrence of the earliest to occur of such date or event cause to) be designed and installed and completed (subject to the City's approval and the City's reasonable approval of the design must be obtained), a permanent traffic signal ("the Traffic Signal"), to be located at the intersection of the Proposed Local Non-Residential Street (Public) and Nifong Boulevard, including the actual Traffic Signal, the controls for the Traffic Signal, and all improvements required for the installation and mounting and support of the Traffic Signal [meaning that the Owner's design shall provide for the design of the Traffic Signal, and all of its parts and components, including but not limited to the controls and support for the Traffic Signal]. (In the context of this subparagraph (3), "permanent" means that the Traffic Signal is installed with rigid, metal support poles rather than wooden poles and span wires. "Permanent" in this context does not mean that the Traffic Signal will never be relocated.); and

(4) The Owner shall have (or shall prior to the occurrence of the first to occur of such date or event), contemporaneously with the construction of the Proposed Local

Non-Residential Street (Public) running east from the roundabout hereinabove described in subparagraph (2), have constructed the stormwater detention/retention system to be located on the City's property, as described in paragraph 9 below, subject to the provisions of paragraph 9 below.

[Note: The intention of the Parties is that approval of each Development Plan for the Land shall contain a condition and requirement that the Owner shall, prior to the first to occur of October 3, 2018, or the issuance of a final occupancy permit for any building or structure on Development Area C, have completed all of the Proposed Local Non-Residential Street (Public) located on the Owner's Land and on the City's Land, and the proposed roundabout, and the design and installation of the Traffic Signal, and the construction of the stormwater detention/retention system to be located on the City's property as described in paragraph 9 below; the requirement being that all such actions and improvements shall be taken and completed prior to the first to occur of October 3, 2018 or the issuance of a final occupancy permit for any building or structure on Development Area C, and that each Development Plan for each part of the Land shall require that these actions shall be taken and completed prior to the first to occur of such date or event.]

[Further Note: The City shall provide the right-of-way for that portion of the roundabout which is located on the City's property, and shall provide the right-of-way for the east-west Proposed Local Non-Residential Street (Public) which connects such roundabout to Peach Court/Peachtree Drive.

The City must approve of the new permanent Traffic Signal at the intersection, and the Owner's agreement to construct the streets and to install the Traffic Signal are contingent upon this approval.

The Owner's obligations to provide, at its expense, for the construction of the street improvements, roundabout and Traffic Signal, as hereinabove described in this paragraph 6, are subject to the provisions of paragraph 7 which appears below.

Unless the Traffic Impact Study, which is required by paragraph 4 of this Agreement, or access issues for Bethel Street or Nifong Boulevard, shall indicate that the streets described in this paragraph 6 are required in connection with the development of any part of, or all of Development Areas A, B or D, as shown on **Exhibit B** to this Agreement, the construction of the new public streets hereinabove described in this paragraph 6 and the installation of the Traffic Signal hereinabove described in this paragraph 6 shall not be required until the earliest to occur of:

B October 3, 2018; or

B The issuance of a final occupancy permit for any building or structure on Development Area C.

If at the time of the submittal of a Development Plan for any of Development Area A, B or D, it is determined that, as a result of the Traffic Impact Study described in paragraph 4 of this Agreement, or by reason of access issues described in paragraph 5a of this Agreement, an additional access to Nifong Boulevard is required and that same should be required at the location

of the north-south running Proposed Local Non-Residential Street (Public) hereinabove described and as shown on **Exhibit B**, then until the first to occur of October 3, 2018 or the issuance of a final occupancy permit for a building or structure to be placed on Development Area C, such access to be provided at the location of such north-south Local Non-Residential Street may be provided by a temporary road or driveway, which will be replaced by the permanent Local Non-Residential Street by the first to occur of such date or event in conformity with the requirements set forth above in this paragraph 6.

If the construction of the required improvements [i.e., the streets, roundabout, traffic signal and stormwater facilities] is underway and the City is reasonably assured that such construction will be completed in a timely fashion or the construction of such improvements is substantially completed, but minor items of work or checklist items remain to be completed, the Owner shall be entitled to receive temporary certificates of occupancy, with the issuance of a final occupancy permit to be conditioned on completion of the required improvements.]

7. Computation of Credit for Sidewalk Improvements, to be Provided by the City. The Director of the Department of Public Works of the City and the Owner's engineers (Engineering Surveys & Services of Columbia, Missouri), have consulted with each other, in good faith, in seeking to determine the amounts of the costs which will be incurred by the Owner (hereinafter "the Credit Amount") as follows:

a. The amount of the additional costs that will be incurred by the Owner in constructing to the City's Non-Residential Public Street Standards and requirements, the proposed Local Non-Residential Street (Public), located on the City's Land, which runs east to west, and which connects the proposed roundabout to Peach Court/Peachtree Drive, over and above that cost which would be incurred by the Owner had such street been constructed as a Residential Street (Public), as opposed to a Local Non-Residential Street; meaning that additional costs that will be incurred by the Owner as a result of the requirement that such street be a Local Non-Residential Street, as opposed to a Residential Street, shall be determined; and

b. The amount of the additional costs that will be incurred by the Owner in constructing, to the City's Non-Residential Public Street Standards and requirements, the proposed Local Non-Residential Street (Public), located on the Owner's Land, which runs north and south, and which connects the proposed roundabout to Nifong Boulevard, over and above that cost which would be incurred by the Owner had such street been constructed as a residential street (public), as opposed to a local non-residential street; meaning that the additional cost incurred by the Owner as a result of the requirement that such street be a local non-residential street, as opposed to a residential street, shall be determined.

The total of the Owner's costs as described in subparagraphs a and b above shall be the "Credit Amount" described in paragraph 8. The Director of the City's Department of Public Works and the Owner's engineers have consulted with each other, in good faith, in seeking to determine the Credit Amount, and that Amount is acceptable to the Owner and the City.

The Parties agree that the Director of the City's Department of Public Works and the Owner's engineers have fairly consulted, and have determined that the appropriate "Credit Amount" shall be in the sum of Seventy-five Thousand Seven Hundred Seven Dollars (\$75,707.00). The Owner shall not be entitled to any credit for the Credit Amount, under paragraph 8 below, until the Owner has completed all of the improvements which the Owner is to complete under paragraph 6 above, to the City's satisfaction.

8. Construction of Sidewalk/Credit Amount to be Applied to Owner's Costs of Construction of Sidewalks. The City shall pay all of the costs for the placement of any sidewalks required by the City, which run alongside the east-west running proposed Local Non-Residential Street (Public) [that street which connects the roundabout to Peach Court/Peachtree Drive], and if the Owner installs such sidewalks, the City shall reimburse the Owner for all costs of installation of such sidewalks. The City, subject to the provisions of paragraph 7 above, shall bear the costs of the sidewalks, otherwise required by City Ordinance, running alongside the north-south proposed Local Non-Residential Street (that street which connects the roundabout to Nifong Boulevard) and the sidewalks otherwise required by ordinance which run alongside Nifong Boulevard on the north side of the Owner's proposed development, to the extent of (and only to the extent of) the Credit Amount; meaning that the City shall absorb the costs of these sidewalks to the extent of the Credit Amount, with the balance of the costs of such sidewalks being at the Owner's cost. If the Owner installs such sidewalks, then the City shall reimburse the Owner for the costs of such sidewalks running alongside the north-south proposed Local Non-Residential Street, and Nifong Boulevard, to the extent of (but only to the extent of) the Credit Amount. The Credit Amount shall not exceed the amount set forth in paragraph 7 above, which has been determined and agreed to by the Director of the City's Department of Public Works and the Owner's engineers.

9. Installation of Stormwater Detention/Retention System on City's Property. As stated in subparagraph (4) of subparagraph e of paragraph 6 of this Agreement, the Owner shall have, by the earliest to occur of October 3, 2018, or the issuance of a final occupancy permit for any building or structure on Development Area C of the C-P Tract installed, at the City's expense (and pursuant to the City's reasonable design, which shall be provided by the City), a stormwater detention/ retention system, on the City's Property, located to the east of the east property line of the Owner's land, which such City's Property is located on the north and south sides of the extension of the proposed Local Non-Residential Street (Public) connecting the roundabout to Peach Court/Peachtree Drive. Such system will be constructed and completed concurrently with the construction of the proposed Local Non-Residential Street (Public) located on the City's land, which runs east from the proposed roundabout to Peach Court/Peachtree Drive. Upon the completion of the construction of such stormwater detention/retention system, as designed by the City, to the City's reasonable satisfaction, the Owner shall be reimbursed for its costs in installing such system; provided that such costs shall not exceed Eight Hundred Twenty Thousand Dollars (\$820,000.00), or such additional amount as shall be approved by the Director of the City's Department of Public Works, and by ordinance adopted by the City Council which approves the additional amount of such costs, it being understood that any ordinance of the City Council approving additional costs can be adopted only if the City's Finance Director certifies that the

additional funds are available and such funds are appropriated by the City Council, in accordance with law, from available funds. Such reimbursement shall be made to the Owner only when:

a. The street improvements described in subparagraph e of paragraph 6 of this Agreement have been constructed and completed to the City's satisfaction; and

b. The stormwater improvements described in this paragraph 9 are completed to the City's satisfaction.

10. Design. As described in subparagraph (3) of subparagraph e of paragraph 6 of this Agreement, the Owner shall provide the design for the Traffic Signal, and all of its parts and components (as described in such subparagraph (3)). The Owner shall also design, to the City's reasonable specifications and reasonable requirements, the roundabout which is to be constructed by the Owner pursuant to subparagraphs (1) and (2) of subparagraph e of paragraph 6 of this Agreement. The City shall design (pursuant to a reasonable design) the stormwater retention system described in paragraph 9 of this Agreement, and the east-west running street, which connects the roundabout to Peach Court/Peachtree Drive as described in subparagraph (2) of subparagraph e of paragraph 6 of this Agreement). The Owner shall also design the north-south street (described in subparagraph (1) of subparagraph e of paragraph 6 of this Agreement). The Owner shall provide to the City, for its reasonable review and approval, all construction documents required for all roadway improvements which are to be designed by the Owner in order to show compliance with current City specifications (roadway and Stormwater). Coordination between the City and the Owner's designers for all improvements described in each of paragraphs 6, 8 and 9 of this Agreement shall be the responsibility of the Owner.

11. Easement to be Provided at Request of School District. The Owner shall, in conjunction with the submission of the Development Plan for Development Area C as shown on **Exhibit B** to this Agreement, be required (as a further condition to approval of such Development Plan) to consult with the school district of the City of Columbia, Missouri, meaning the Columbia, Missouri School District ("the District"), and shall inquire of the District as to whether the District desires that it, the District, be able to install a thirty foot (30') wide private driveway (not a public street) extending south from the proposed roundabout, running alongside the easterly boundary of the Owner's Land, which such private driveway ("the Private Driveway") will provide a connection from the roundabout to the parking lots of the District which serve, among other things, Rock Bridge High School. If the District desires to construct such Private Driveway, then the Owner shall grant to the District an easement for the construction, keeping, use (by the District and its employees and students), maintenance, repair and replacement of such Private Driveway. Such Private Driveway, if installed, will provide access to and egress from such parking lot (by such employees and students), to and from the roundabout and the proposed public streets which are to be constructed pursuant to this Development Agreement. If the District desires that it have the ability to construct such Private Driveway, then:

- i. The District will pay the cost of construction of the Driveway;
- ii. The District must design and approve such Driveway;

iii. The District will provide maintenance for and snow removal for such Driveway;

iv. The District's designers, who design the Private Driveway, and the Owner's engineers or designees and the Owner, shall work together, in good faith, in seeking to take all reasonable steps and actions which will prevent or curtail the parking of vehicles within or alongside such Private Driveway, as well as the parking of vehicles of teachers or students within the parking lots or parking facilities, to be placed within the Owner's Land, including the installation of curbs for the Driveway (which will prohibit or inhibit parking), and the installation of No Parking signage for the Driveway;

v. Unless the Driveway to be located within such easement is constructed within seven (7) years following the completion of the Proposed Local Non-Residential Street (Public) which connects to Nifong Boulevard, and the roundabout, the offer to provide and establish such easement shall cease and expire. Furthermore, if the Driveway located within such easement by the District, and such driveway is ever abandoned by the District, then the easement for the driveway shall be canceled, terminated and rendered of no further force or effect;

vi. The easement for the Private Driveway shall be dedicated by and described upon the plat for Development Area C which is described in paragraph 6a of this Agreement, but the easement shall be dedicated in conformity with the provisions of this paragraph 11.

12. Prevailing Wage. To the extent required by state law, prevailing wage shall be paid for the construction of all improvements which are to be constructed pursuant to this Agreement and which would be reasonably deemed to be public improvements, the construction of which is subject to state law prevailing wage requirements. This paragraph shall apply only to the public improvements specifically described in this Agreement, and then to the extent prevailing wage is required to be paid by applicable law.

13. Contingency. All of, and each of, the Owner's agreements to (and all requirements imposed or which can be imposed on the Owner to) construct the streets, roundabout and traffic signal, described in paragraph 6 of this Agreement, and the offsite retention/detention facility described in paragraph 9 of this Agreement, and to provide the easement for the Private Driveway hereinabove described in paragraph 11 of this Agreement, are contingent and conditioned upon the City's permitting the installation of the permanent signalized intersection at the proposed location of the future Proposed Local Non-Residential Street (Public) and Nifong Boulevard. If such signal placement is approved, the Owner shall be required to provide all such improvements, but shall not otherwise be required to do so as a condition to approval of any Development Plan.

14. Construction of Culvert East to West Along Nifong. As stated in subparagraph a of paragraph 6 of this Agreement, the Owner will have, or shall prior to the issuance of an occupancy permit for any building or structure placed on the Land, have constructed and completed, at the Owner's expense and pursuant to the requirements the City and any other

governmental authority having jurisdiction, a box culvert, encasing the stream/drainageway/ditch which runs along the south side of Nifong Boulevard, from east to west, in order that, in the future, when the City desires to implement its plans to widen and improve Nifong Boulevard, and to improve the Nifong/Bethel intersection, the City shall be able to go forward with such widening and improvements without any need to construct such culvert, or to obtain any U.S. Army Corps of Engineers permits to construct such culvert, and in order that the City's intended street improvements and intersection improvements may go forward without interference by the stream/ditch/drainageway. The Owner will consult with and work closely with the City's Public Works Department in order to be certain that all necessary rights-of-way for the City's intended Nifong Boulevard improvements and Bethel/ Nifong intersection improvements are available and, if required, will provide such additional rights-of-way as shall be required for these improvements.

15. References to Owner. All references in this Agreement to the "Owner" shall include the Owner and the Owner's successors in ownership of each and every part of the Land. Each and every owner of each and every part of the Land shall be bound by this Agreement and all of the provisions of this Agreement.

16. Recording. Either the Owner or the City may cause this Development Agreement to be recorded in the Real Estate Records of Boone County, Missouri, at the cost and expense of the recording Party.

17. Amendments. Any amendment to this Agreement must be in writing and must be executed by the City and the Owner, and any future owner of any part of the Land who would otherwise be obligated to perform any of the requirements imposed upon the Owner by this Agreement. Oral modifications or amendments of this Agreement shall be of no force or effect.

18. Entire Agreement. This Agreement contains the entire and complete agreement between the City and the Owner with respect to the requirements imposed upon the Owner for the providing of certain rights-of-way, and the construction and installation of certain improvements, all as hereinabove described in the Recitals for this Agreement and the above numbered paragraphs of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

CITY:
City of Columbia, Missouri

By: _____
Mike Matthes, City Manager
Date: _____

Approved as to form:

Nancy Thompson, City Counselor

I hereby certify that the expenditures in this contract are within the purpose of the appropriation to which they are charged, Account No. _____,

and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

John Blattell, City Finance Director

OWNER:

Jeffrey E. Smith Investment Co.

By: _____
Name Printed: Will Markel
its Executive VP
Date: 8-5-15

Attachments:

Exhibit A - Legal descriptions

Exhibit B - Site Plan

EXHIBIT A

March 16, 2011

Rockbridge Subdivision Block VIII

Amelia Reed
3/16/2011

Complete Tract

Two lots located in the southwest quarter of Section 25 T48N R13W and in the northwest quarter of Section 36 T48N R13W, in Columbia, Boone County, Missouri, being Lot 1 and Lot 2 Rockbridge Subdivision Block VIII, recorded in plat book 20 page 72 of the Boone County records.

Proposed PUD tract

A tract of land located in the northwest quarter of Section 36 T48N R13W, in Columbia, Boone County, Missouri, being part of Lot 1 and Lot 2 Rockbridge Subdivision Block VIII, recorded in plat book 20 page 72 of the Boone County records, described as follows:

Beginning at the southwest corner of Lot 2 Rockbridge Subdivision Block VIII, thence N 3°18'00"W, along the westerly line thereof, 330.83 feet; thence leaving said line, N 89°56'10"E 733.77 feet; thence S 0°03'50"E 330.30 feet to the southerly line of Lot 2 Rockbridge Subdivision Block VIII; thence S 89°56'10"W, along said line, 715.10 feet to the beginning and containing 5.49 acres.

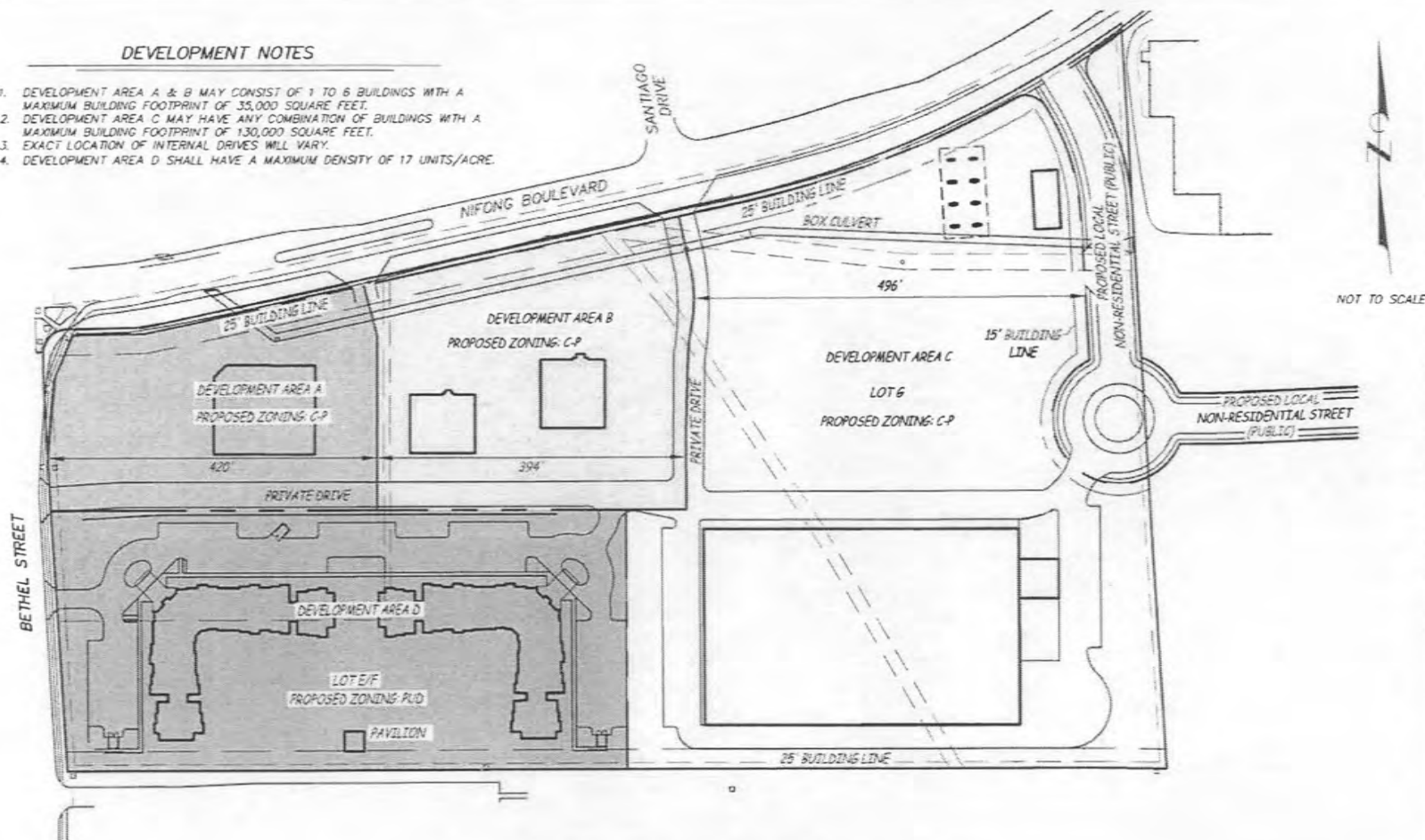
Proposed CP tract

A tract of land located in the southwest quarter of Section 25 T48N R13W and in the northwest quarter of Section 36 T48N R13W, in Columbia, Boone County, Missouri, being part of Lot 1 and Lot 2 Rockbridge Subdivision Block VIII, recorded in plat book 20 page 72 of the Boone County records, described as follows:

Beginning at the southeast corner of Lot 2 Rockbridge Subdivision Block VIII, thence along the southerly line thereof, N 89°24'00"W 98.75 feet; thence S 89°56'10"W 585.39 feet; thence, leaving said line, N 0°03'50"W 330.30 feet; thence S 89°56'10"W 733.77 feet to the westerly line of Lot 1 Rockbridge Subdivision Block VIII; thence along the lines of said Lot and Lot 2 Rockbridge Subdivision Block VIII, N 3°18'00"W 151.78 feet; thence along a curve to the right, having a radius of 730.94 feet, a distance of 52.36 feet, the chord being N 1°15'00"W 52.35 feet; thence along a curve to the right, having a radius of 30.00 feet, a distance of 46.11 feet, the chord being N 44°53'50"E 41.70 feet; thence N 88°55'50"E 98.55 feet; thence N 77°45'40"E 762.44 feet; thence along a curve to the left, having a radius of 1315.95 feet, a distance of 552.70 feet, the chord being N 65°43'50"E 548.65 feet; thence S 3°18'00"E 953.81 feet to the beginning and containing 17.03 acres.

DEVELOPMENT NOTES

1. DEVELOPMENT AREA A & B MAY CONSIST OF 1 TO 6 BUILDINGS WITH A MAXIMUM BUILDING FOOTPRINT OF 35,000 SQUARE FEET.
2. DEVELOPMENT AREA C MAY HAVE ANY COMBINATION OF BUILDINGS WITH A MAXIMUM BUILDING FOOTPRINT OF 130,000 SQUARE FEET.
3. EXACT LOCATION OF INTERNAL DRIVES WILL VARY.
4. DEVELOPMENT AREA D SHALL HAVE A MAXIMUM DENSITY OF 17 UNITS/ACRE.



ROCKBRIDGE SUBDIVISION BLOCK VIII CONCEPTUAL DEVELOPMENT & REZONING EXHIBIT COLUMBIA, MISSOURI FEBRUARY 23, 2011



Engineering Surveys & Services
1113 Fwy Street
Columbia, Missouri
573 - 445 - 2646
Missouri Engineering Corporation # 296490816

EXHIBIT B