

Introduced by _____

First Reading _____

Third Reading _____

Fifth Reading _____

Second Reading _____

Fourth Reading _____

Sixth Reading _____

Ordinance No. _____

Council Bill No. B 63-14 A

AN ORDINANCE

authorizing the City Manager to execute a development agreement with ACC OP Development LLC as it relates to property located on the northeast corner of Providence Road and Turner Avenue, and on the northwest corner of Turner Avenue and Fifth Street; directing the City Clerk to have the 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 development agreement with ACC OP Development LLC as it relates to property located on the northeast corner of Providence Road and Turner Avenue, and on the northwest corner of Turner Avenue and Fifth Street. The form and content of the 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 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 _____, 2014.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

Development Agreement

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into this ____ day of _____, 2014, (the “**Effective Date**”) between **ACC OP Development LLC**, a Delaware limited liability company, whose address is 12700 Hill Country Boulevard – Suite T-200, Austin, TX 78738, (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, 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 Agreement (the “**Developer Tract**”); and

WHEREAS, the current zoning of the Developer Tract is R-3; however, Developer has a pending application for rezoning to PUD-52 (“**Rezoning**”); and

WHEREAS, the Developer desires to construct residential housing structures on the Developer Tract generally in the manner shown on the PUD development plan (the “**PUD Plan**”), attached hereto as Exhibit B, being considered with the Rezoning to consist of a building not to exceed five (5) stories constructed to a maximum height of 80’ and containing a maximum of 182 dwelling units in a mix of one, two, three and/or four bedroom units (a maximum of 728 bedrooms) together with parking and related uses (the “**Project**”); and

WHEREAS, The City tentatively plans to begin construction of street and stormwater improvements to Turner Avenue during the 4th calendar quarter of 2015 and complete construction in the 3rd calendar quarter of 2016; and

WHEREAS, the Parties desire to enter into a Development Agreement to memorialize certain rights and obligations with respect to implementation of the PUD Plan together with construction and coordination of certain improvements along 5th Street, Turner Avenue and a portion of Fourth Street; and

WHEREAS, the existing use of the Developer Tract consists of 19 structures currently used as residential rental properties; 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 utility and public infrastructure within the geographical area of the Project; and

WHEREAS, the Parties desire to cooperate to ensure adequate water 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 1st calendar quarter of 2016 and to complete construction and open to residents on or before August 1, 2017 (the “**Project Schedule**”); and

WHEREAS, it is critical for Developer to receive the assurances and protections provided by this 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**” 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 pledge 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.

“**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 Agreement.

“**Commencement of Construction**” means the issuance of the building permit to authorize physical construction of the structures and shall not include demolition and grading activities on the site related to the Project prior to issuance of the building permit(s).

“**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, or 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 period of time beginning on the Effective Date and ending on 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 Contingency.** With respect to the use and development of the Project and the Developer Tract, the Developer’s obligations in this Agreement are contingent upon final approvals of the Rezoning and PUD Plan that are acceptable to Developer in its sole discretion.
3. **Water System Improvements.** If the City, in its sole discretion determines it is necessary or desirable for the water service improvements set forth herein and depicted in Exhibit C attached hereto to be constructed to serve the Project (the **“Water Infrastructure Improvements”**), Developer shall and does hereby agree to design, construct and dedicate to the public the Water Infrastructure Improvements at its sole cost and expense in compliance with the requirements of the Applicable Law. City agrees to accept the dedication of the Water Infrastructure Improvements for maintenance upon completion of construction pursuant to the terms of this Agreement. Prior to Commencement of Construction, the Developer shall submit to the City’s Water and Light Department for review and approval a complete set of engineered plans for the Water Infrastructure 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 Water Infrastructure Improvements shall be dedicated to the public prior to issuance of a certificate of occupancy to occupy the Project. Developer shall have no obligation to obtain or pay for easements or rights of way from third parties that may be necessary for the Water Infrastructure Improvements. Form.
4. **Sanitary Sewer Improvements.** Developer hereby agrees to contribute \$300,000 to 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. Form.
Form.

Payment for construction 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 and to occupy and use the Project for its intended purpose.~~ City will use its best efforts to construct the sanitary sewer improvements as set forth herein prior to the end of the construction period; however, if such sanitary sewer improvements are not completed by such time, the certificate of occupancy may be withheld if there is insufficient capacity to support the project as constructed.

5. **Electric System Requirements.** The Developer has projected electrical system load demands to serve the completed Project as set forth in Exhibit E. City has reviewed such demands and has determined planned extensions of the electrical system will be required in order for the site to have adequate supply to meet the projected service demands on the dates set forth in the Project Schedule. In order to ensure adequate electrical supply will be available to meet the demands of the project, the parties agree as follows:

- a. The Developer shall notify the City (as provided in Paragraph 12 hereof) and the City's Director of Water and Light at Columbia City Hall, 701 E Broadway, Columbia, MO 65201, in writing, at least one (1) year prior to the first date electric service will need to be provided to residents of the completed Project (the "**Required Service Date**");
- b. The notice provided by Developer to City shall include a riser diagram detailing the physical design and required capacity for electrical service to serve the completed Project on the Required Service Date;
- c. City will cause the electric system improvements to be constructed or make contingent arrangements to ensure the service capacity will be available to serve the completed Project on the Required Service Date;
- d. Nothing herein shall require the City to provide service capacity to serve the Project in excess of the electrical system load demand estimates set forth in Exhibit E.

6. **Availability of Public Utility Services.** City and Developer acknowledge that the availability of public utility services of electricity, 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 Agreement, the City will have-use its best efforts to ensure there will be adequate capacity to support the Project and the intended uses set forth herein by the end of the Construction Period and that if the Developer is not in default under

Form:

this 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 unless there is insufficient capacity to support the project as constructed. 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 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 and associated with obtaining building and construction permits.
8. **Street and Stormwater Improvements.** Developer agrees to dedicate all additional right-of-way, as shown in Exhibit B, to the City. The Developer agrees to donate temporary construction easements necessary for roadway and stormwater improvements along Turner Avenue and along Providence Road. The City and Developer agree to coordinate activities within any temporary construction easements to ensure there is no unwarranted or unreasonable disruption to the construction schedule of developer. The developer agrees to construct all sidewalk improvements along the north side of Turner Avenue between Providence Road and 5th Street. The developer agrees to construct all sidewalk improvements along the west side of 5th Street between Conley Avenue and Turner Avenue which are adjacent to the Developer Tract. The developer agrees to construct all stormwater improvements needed to convey stormwater that discharges from the street stormwater system in the northeast quadrant of the Providence and Turner intersection. Any additional right-of-way not shown on Exhibit B which is reasonably necessary or desirable for construction of the Turner Avenue or 5th Street improvements as determined by the Director of Public Works will be dedicated by developer at no charge to City at the time the building plans to construct the Project are reviewed and approved. Such additional right-of-way shall be limited to a maximum of 800 square feet and must be a minimum of two feet from any structure. In the event the City needs additional rights in excess of 800 square feet to construct the roadway improvements, Developer will grant City a street easement for such purposes, subject to the limitations contained herein.
9. **Fourth Street Improvements.** In the event the City approves the Rezoning and PUD Plan for the Developer Tract which requires the closure of all or a portion of Fourth Street to vehicular traffic, the City shall take such action to vacate or otherwise provide a right of use permit to Developer to construct and maintain the improvements contemplated by the approved PUD Plan, including but not limited to the following: emergency service vehicular access, pedestrian access, utilities corridor, designated fire lanes, placement of bollards and signs, vehicular access for waste services, sufficient space for compactors/recycling or other waste service containers (if located in the vacated right of way), enhanced landscaping, and sufficient traffic movement circulation for any areas to remain open to vehicle access or parking and emergency vehicle access.

10. **Transit Services.** Developer hereby agrees to purchase a minimum of 200 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 the opening of the Project. The price for the first two years shall be paid by Developer in a lump sum of \$52,000 prior to the 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.
11. **Building Demolition and Salvage.** Subject to the property seller's rights to remove property to which it is entitled under its sales contract with Developer, Developer agrees to permit a reclamation company to salvage anything deemed to be of value as determined by the Historic Preservation Commission of the City from the existing structures on the Property prior to demolition. The obligation contained in this section shall be conditioned upon the requirement that any such reclamation company shall be required to provide adequate insurance, obtain required permits and provide reasonable assurances to Developer with respect to health, safety, mitigation of risk and time of performance prior to commencing such reclamation activities.
12. **No Conflicting Enactments.** During the Term the City will not impose on the Project or Developer Tract by action of the City Council 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 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. The land use designation or permitted use of the Developer Tract as permitted under the Rezoning or PUD Plan or which would prohibit or limit the use of the Developer Tract for the Project as described in this Agreement;
 - b. Limitation or control of the availability of public utilities, services or facilities for the Project as described in this Agreement, unless such limitation or control is necessary to address health and safety issues created by the increase in capacity demanded by the Project which is in excess of the projected demands set forth in Exhibit E;
 - c. Application to the Project of any City Regulation otherwise allowed by this 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 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 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.

13. **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 Agreement:

- a. It is the intent of the Developer to complete construction of the Project by August 1, 2017. 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 Agreement shall terminate in such case without any further action required by the Parties.
- b. In no 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.

14. **Waiver.** Failure of any party to this 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 Agreement by any Party, unless otherwise expressly declared in writing, shall not be a continuing waiver or waiver of any subsequent breach of the same or other provision of this Agreement.

15. **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 Agreement.

16. **Headings.** All section headings in this 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 Agreement.

17. **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: ACC OP Development LLC
Attn: Chuck Carroll
12700 Hill Country Blvd., Ste. T-200
Austin, TX 78738

With a Copy to: Robert Hollis
Van Matre, Harrison, Hollis, and Taylor, 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

18. **No Adverse Inference.** This 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 Agreement. Accordingly, 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 Agreement.

19. **Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

20. **Jurisdiction and Venue.** Legal action concerning any dispute, claim or matter arising out of the Agreement shall be brought only in the Circuit Court of Boone County, Missouri.

21. **Severability or Partial Invalidity.** This Agreement is to be considered in its entirety and both parties acknowledge the assurances granted herein are dependent upon each other. If any term, covenant, condition or provision of this Agreement or the application thereof to

any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, such provision shall render the entire agreement invalid and unenforceable.

22. **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.
23. **Failure or Delay to Enforce.** No failure to exercise or delay in exercising any right hereunder on the part of any Party to this 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.
24. **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.
25. **Priority and Recording.** This 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 recordation of this Agreement, all conditions, terms and obligations of this Agreement are effective as to and binding on the Parties, their successors and assigns with the intention that this Agreement 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 Agreement is amended or terminated in accordance with the terms hereof.
26. **Binding Effect; Assignment.** This Agreement is not assignable by any party, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, without the consent of the City: (a) Developer may assign this 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 Agreement; (ii) Developer, and any assignee by accepting assignment of this 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 prior to or concurrently with the effective date of such assignment. There shall be no restrictions with respect to assignment of the Agreement by the Developer after the end of the Term.
27. **Power of the City.** Notwithstanding anything set forth in this 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 Governmental Requirements. Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Governmental Requirements.

28. **Time.** Time is of the essence in this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
29. **Sovereign Immunity.** Nothing in this 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.
30. **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 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 F 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.
31. **Inspection.** Upon reasonable prior notice, the City may conduct such periodic inspections of the public improvements contemplated herein 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 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 public improvements contemplated herein or any applicable phase thereof.
32. **Entire Agreement; Amendment.** It is agreed and understood by the parties that this Agreement embodies the entire understanding and represents the full and final agreement among the parties with respect to the subject matter hereof and supersede any and all prior commitments, agreements, discussions, representations, and understandings, whether written or oral, relating to the subject matter hereof; that this 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 Agreement; and (ii) except as otherwise expressly provided herein, this Agreement supersedes 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 Agreement unless expressly incorporated into this Agreement. This Agreement shall be amended only in writing and effective when signed by the parties. The exhibits attached to the Agreement are incorporated herein by reference.

33. **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 Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.
34. **Consents.** Whenever the consent or approval of either party is required under this Agreement, such consent shall not be unreasonably withheld or delayed.
35. **Counterparts.** This 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE
TO FOLLOW]

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

City of Columbia (“City”)

By: _____
Mike Matthes, City Manager

Attest:

By: _____
Sheela Amin, City Clerk

Approved as to form:

By: _____
Nancy Thompson, City Counselor

ACC OP Development LLC (“Developer”)

By: _____
Jonathan Graf, 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 Texas)
) ss.
County of Travis)

Field

On this _____ day of _____, 2014, before me personally appeared Johnathan Graf, Vice President, who upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is an authorized agent of **ACC OP Development LLC**, 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, TX

My commission expires _____.

Field

EXHIBIT A

Developer Tract

TWO TRACTS OF LAND LOCATED IN THE NE 1/4 OF SECTION 13, TOWNSHIP 48 NORTH, RANGE 13 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF UNIVERSITY ADDITION RECORDED IN PLAT BOOK 70 PAGE 128, VESSERS SUBDIVISION RECORDED IN PLAT BOOK 1, PAGE 35, AND BEING ALL OF THE CITY OF COLUMBIA SURVEY #304, AT PAGE 327, AND BEING ALL OF THE SURVEY SHOWN AS EXHIBIT "B", RECORDED IN BOOK 951, PAGE 411, AND BEING ALL OF THE SURVEYS RECORDED IN BOOK 418, PAGE 412, BOOK 316, PAGE 547, AND BOOK 479, PAGE 194, AND DESCRIBED BY THE DEEDS RECORDED IN BOOK 3582, PAGE 150, BOOK 2886, PAGE 150, BOOK 1631, PAGE 617, BOOK 1200, PAGE 148, BOOK 2598, PAGE 45, AND BOOK 2598, PAGE 44, BOOK 2638, PAGE 128, BOOK 991, PAGE 314, BOOK 3101, PAGE 68, BOOK 2216, PAGE 604, BOOK 611, PAGE 248, BOOK 1441, PAGE 396 AND BOOK 730, PAGE 244 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

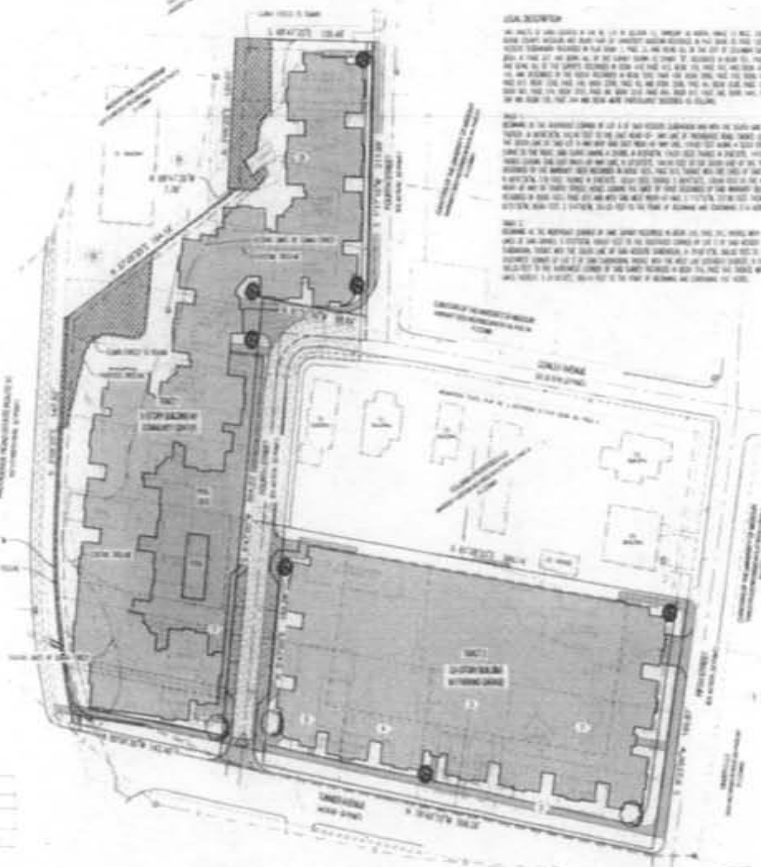
TRACT 1:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 6 OF SAID VESSERS SUBDIVISION AND WITH THE SOUTH LINE THEREOF, N 80°06'30"W, 142.40 FEET TO THE EAST RIGHT-OF- WAY LINE OF PROVIDENCE ROAD; THENCE LEAVING THE SOUTH LINE OF SAID LOT 6 AND WITH SAID EAST RIGHT-OF-WAY LINE, 174.82 FEET ALONG A 523.0 FOOT CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD, N 6°25'05"W, 174.01 FEET; THENCE N 3°09'25"E, 147.52 FEET; THENCE LEAVING SAID EAST RIGHT-OF-WAY LINE, N 57°29'55"E, 194.19 FEET TO THE SOUTH LINE OF THE TRACT DESCRIBED BY THE WARRANTY DEED RECORDED IN BOOK 1631, PAGE 617; THENCE WITH THE LINES OF SAID TRACT, N 88°47'35"W, 7.78 FEET; THENCE N 3°09'25"E, 120.01 FEET; THENCE S 88°47'35"E, 128.48 FEET TO THE WEST RIGHT-OFWAY OF FOURTH STREET; HENCE LEAVING THE LINES OF TRACT DESCRIBED BY SAID WARRANTY DEED RECORDED IN BOOK 1631, PAGE 617 AND WITH SAID WEST RIGHT-OF-WAY, S 1°17'15"W, 217.98 FEET; THENCE N 81°51'50"W, 98.84 FEET, S 5°47'00"W, 364.23 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.14 ACRES.

TRACT 2:

BEGINNING AT THE NORTHEAST CORNER OF SAID SURVEY RECORDED IN BOOK 316, PAGE 547, THENCE WITH THE LINES OF SAID SURVEY, S 9°23'00"W, 199.87 FEET TO THE SOUTHEAST CORNER OF LOT 2 OF SAID VESSER SUBDIVISION; THENCE WITH THE SOUTH LINE OF SAID VESSERS SUBDIVISION, N 79°48'10"W, 368.26 FEET TO THE SOUTHWEST CORNER OF LOT 5 OF SAID SUBDIVISION; THENCE

**WITH THE WEST LINE EXTENDED THEREOF, N 5°47'00"E, 189.28 FEET
TO THE NORTHWEST CORNER OF SAID SURVEY RECORDED IN BOOK
316, PAGE 547; THENCE WITH THE LINES THEREOF, S 81°28'55"E,
380.14 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.67ACRES.**



LABORATORY		PAT. NAME	
DATE		MR. J. - MISS M. - DR. J. - MISS L.	
TIME		WEEK REPORT - WEEK RECORD OF APPROX. DATE	

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TUBERCULIN COMPANIES		
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U.S. GOVERNMENT PRINTING OFFICE: 1967

PRELIMINARY PLAT & PUD PLAN
ACC OP DEVELOPMENT LLC

A MAJOR SUBDIVISION LOCATED IN SECTION 12,
TOWNSHIP 48 NORTH, RANGE 13 WEST
COLUMBIA, BOONE COUNTY, MISSOURI
FEBRUARY 2014

[illegible]

RECEIVED
FEB 27 2014
PLANNING DEPT.

OFFICE OF THE ATTORNEY GENERAL
STATE OF TEXAS
AUSTIN, TEXAS 78701

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U.S. DEPT. OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

1990-1991

REVISED
3/27/14



EXHIBIT C

Water System Improvements



EXHIBIT D

Sanitary Sewer Improvements

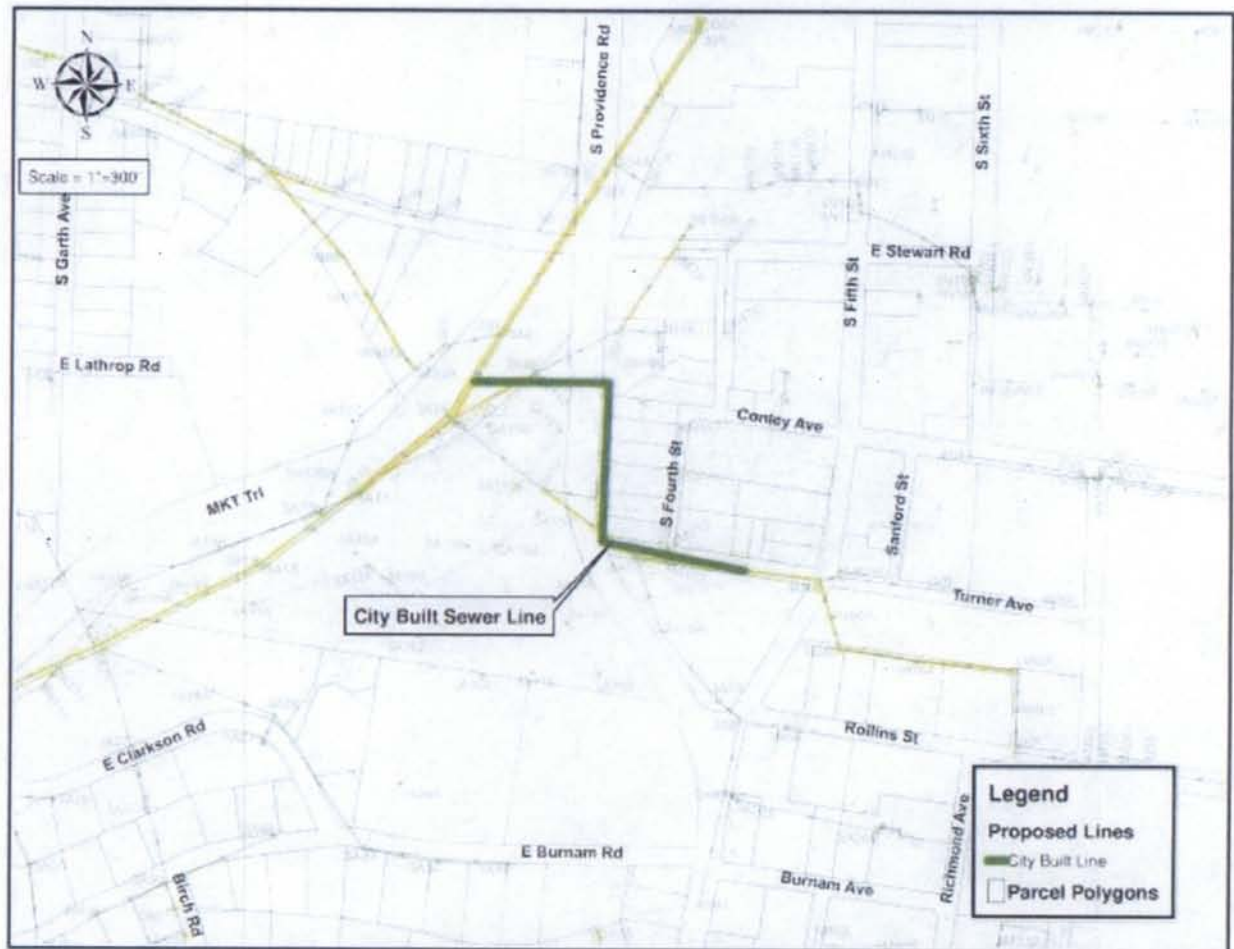


EXHIBIT E

Utilities Estimates

1. Plumbing Calculations
 - a. Site Building #1 and #2 wet utility demands
 - i. Sanitary Sewer – 4,318 DFU --> 12" sanitary sloped at 1%
12" sanitary sewer at 2%
 - ii. Total Water – 3,350 WSFU which equates to 500 GPM --> 6" domestic
 - iii. Fire --> Estimate 8" fire main
 - iv. Minimum pressure at --> 75psi
 - b. Building #1 Wet Utility Demand
 - i. Sanitary Sewer – 3,022 DFU --> 12" sanitary sewer at 1%
10" sanitary sewer at 2%
 - ii. Water – 2,345 WSFU which equates to 350 GPM --> 4" domestic water
 - c. Building #2 Wet Utility Demand
 - i. Sanitary Sewer – 1,296 DFU --> 8" sanitary sewer at 1%
8" sanitary sewer at 2%
 - ii. Water – 1,005 WSFU which equates to 210 GPM --> 4" domestic water
2. Electrical Preliminary Load Estimates
 - a. Site Building #1 and #2
 - i. Total NEC Demand 1,772 KVA
 - ii. KVA per unit @ 7 KVA/Unit – 1,274
 - b. Building #1
 - i. House - (1) 400A 208V/3PH. Service
 - ii. Club - (1) 600A 208V/3PH. Service
 - iii. Apartments - (2) 1600A 208V/3PH. Meter Centers
 - iv. Apartments - (2) 1400A 208V/3PH. Meter Centers
 - c. Building #2
 - i. House - (1) 400A 208V/3PH. Service
 - ii. Community - (1) 800A 208V/3PH. Service
 - iii. Garage - (1) 800A 208V/3PH. Service
 - iv. Apartments - (2) 1400A 208V/3PH. Meter Centers
 - d. Recommended XMFR sizes
 - i. (4) 500 KVA or
 - ii. (3) 750 kva

EXHIBIT F

Immigration Law Compliance Affidavit

STATE OF MISSOURI)
) ss:
COUNTY OF _____)

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,

- a) 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
- (b) 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:

1. My name is _____ and I am currently the President of _____ (hereinafter "Contractor"), whose business address is _____, and I am authorized to make this Affidavit.

2. I am of sound mind and capable of making this Affidavit, and am personally acquainted with the facts stated herein.

3. 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: _____

4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.

5. 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

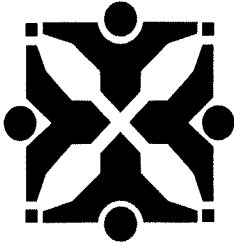
Printed Name:

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

Notary Public

My Commission Expires:

**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.



Source: City Manager

Agenda Item No:

To: City Council
From: City Manager and Staff

Council Meeting Date: March 12, 2014

Re: Authorizing a Development Agreement with ACC OP Development, LLC for Provision of Utility Services by the City.

EXECUTIVE SUMMARY:

Staff has prepared for Council consideration a development agreement with ACC OP Development, LLC which documents the terms under which the City will provide utility services to their residential housing structure project as shown on Exhibit B of the agreement.

DISCUSSION:

Council is aware of a number of projects in the central city (downtown) area of Columbia that have been put on hold due to the inability of many utility infrastructure systems to support additional capacity. Over the past few weeks, staff has been evaluating ways by which projects could be given a green light to proceed. The project proposed by ACC has a rezoning application currently pending for a planned district along with site plan approval. ACC has not yet acquired the real estate for the project, which is contingent upon rezoning, site plan and development agreement approval by the City.

ACC's project has been placed on hold due to inadequate sewer capacity to serve their housing development comprising 718 beds, as well as improvements needed for water and electric systems. Following much discussion and negotiation, ACC has agreed to contribute \$300,000 to fund a portion of the cost necessary for the reconstruction of the City's connecting sanitary sewer main shown in Exhibit D. This cost was derived based on an estimated \$450,000 total cost of the sewer main project to be pro-rated based on the number of beds to be served by both the ACC and the proposed adjacent development by Collegiate Housing Partners, LLC (CHP). It should be noted that this agreement with ACC is not dependent on a similar proposed development agreement with CHP, and that their \$300,000 contribution is in addition to standard connection and permit fees required to connect their development tract to the utilities. Additionally, if the water lines serving the ACC project site are determined to be inadequate by the Director of Water & Light, ACC will agree to construct and dedicate the water service improvements depicted in Exhibit C of the agreement at their sole expense. Finally, ACC will agree to make electric service capacity payments to the City should their project not be completed in the agreed upon timeframe.

ACC's \$300,000 contribution for sanitary sewer improvements to be constructed by the City is in addition to standard connection and permit fees required to connect their development tract to the utilities.

FISCAL IMPACT:

All improvements described will be paid for by the developer.

VISION IMPACT:

<http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php>

6 Vision Statement: Downtown Columbia is a hip and vibrant district with a diversity of easily accessible businesses, residences, attractions and institutions; it is an exciting gathering place for all types of people.

6.2 Goal: Downtown Columbia will have a variety of safe housing options, including new and revitalized units, for all age groups and income levels with easy access to desirable amenities. Development and design guidelines will be instituted.

SUGGESTED COUNCIL ACTIONS:

Approval of the legislation authorizing the development agreement with ACC OP Development, LLC.

FISCAL and VISION NOTES:					
City Fiscal Impact Enter all that apply		Program Impact		Mandates	
City's current net FY cost	\$0.00	New Program/ Agency?	No	Federal or State mandated?	No
Amount of funds already appropriated	\$0.00	Duplicates/Expands an existing program?	No	Vision Implementation impact	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	Yes	Enter all that apply: Refer to Web site	
Estimated 2 year net costs:		Resources Required		Vision Impact?	Yes
One Time	\$0.00	Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	6.0
Operating/ Ongoing	\$0.00	Requires add'l facilities?	Yes	Secondary Vision, Strategy and/or Goal Item #	6.2
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	



May 14, 2014

VIA EMAIL

Ms. Sheela Amin
City Clerk
City of Columbia
701 E. Broadway
P.O. Box 6015
Columbia, MO 65205

Re: Council Bill Nos. B45-14 and B63-14 (ACC OP DEVELOPMENT LLC)

Dear Ms. Amin:

Please allow this correspondence to serve as a formal request to table both Council Bill Nos. B45-14 and B63-14 from the May 19th, 2014 City Council meeting, to the July 7th, 2014 City Council meeting. ACC OP Development LLC, the applicant, is respectfully requesting that these Council Bills be tabled to allow additional time to continue coordination efforts with City Staff to further refine the rezoning request and associated development agreement.

Representatives of ACC OP Development LLC will be in attendance at the May 19th, 2014 City Council meeting to answer any specific questions related to this request. If you need anything further from us at this point, please let me know.

Respectfully,

Chuck Carroll
VP – Development
American Campus Communities

CC: Mike Matthes, City Manager, City of Columbia (via email)
Tony St. Romaine, Deputy City Manager, City of Columbia (via email)
William Talbot, CIO, American Campus Communities (via email)
Jake Newman, SVP - Development, American Campus Communities (via email)



June 27, 2014

VIA EMAIL

Ms. Sheela Amin
City Clerk
City of Columbia
701 E. Broadway
P.O. Box 6015
Columbia, MO 65205

Re: Council Bill Nos. B45-14 and B63-14 (ACC OP DEVELOPMENT LLC)

Dear Ms. Amin:

Please allow this correspondence to serve as a formal request to table both Council Bill Nos. B45-14 and B63-14 from the July 7th, 2014 City Council meeting, to the August 4th, 2014 City Council meeting. ACC OP Development LLC, the applicant, is respectfully requesting that these Council Bills be tabled to allow additional time to continue coordination efforts with City Staff to further refine the rezoning request and associated development agreement.

Representatives of ACC OP Development LLC will be in attendance at the July 7th, 2014 City Council meeting to answer any specific questions related to this request. If you need anything further from us at this point, please let me know.

Respectfully,

A handwritten signature in black ink, appearing to read "Chuck F. Carroll".

Chuck Carroll
VP – Development
American Campus Communities

CC: Mike Matthes, City Manager, City of Columbia (via email)
Tony St. Romaine, Deputy City Manager, City of Columbia (via email)
William Talbot, CIO, American Campus Communities (via email)
Jake Newman, SVP - Development, American Campus Communities (via email)

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B 63-14A Supplemental Information

Department Source: Law

To: City Council

From: City Manager & Staff

Council Meeting Date: August 4, 2014

Re: Supplemental Information for B45-14 and B63-14A

Documents Included With This Agenda Item

Supplemental Council Memo

Supporting documentation includes: None

Executive Summary

A substitute ordinance to approve the rezoning and PUD plan for the ACC project has been prepared for Council Consideration along with a revised Development Agreement.

Discussion

Bill 45-14 approving the rezoning and PUD Plan for the ACC OP Development project near the intersection of Turner Avenue and Providence Road has been amended to add additional conditions of approval. A highlight of some of the more significant changes to the ordinance includes the following:

Fourth Street - If Fourth Street is vacated by the City and incorporated into the PUD Plan, construction of the improvements to the former Fourth Street are required to be performed using pervious pavement.

Recycling - The installation and maintenance of on-site recycling containers is required.

Parking Garage Landscaping - The installation and maintenance of at least 4 xeriscape planters on the top level of the parking garage is required.

Climax Forest Retention and Reforestation - Retention of 25% of the existing climax forest is required together with reforestation of an additional 25% of the disturbed forest.

Tree Grates on Fifth Street - Trees will be required to be planted in the right of way along Fifth Street, provided the sidewalk is of sufficient width to meet city specifications.

Water Conservation - The installation of low flow toilets is required.

Energy Efficiency - The installation of Energy Star appliance is required along with a \$10,000 investment in solar technology.

Landscaping - A minimum of 20% of the land area is required to be landscaped. The minimum percentage excludes vacated Fourth Street and the right of way.

City of Columbia

701 East Broadway, Columbia, Missouri 65201



With regard to B63-14A, significant changes to the development agreement include:

Electric System Requirements - The electrical demands of the project were recalculated by the developer and revised in Exhibit E. Based on the revised load demand, the previous concerns regarding inadequate supply availability have been eliminated and the service requirements revised.

Street and Stormwater Improvements - An agreement to dedicate necessary right of way for future street construction has been added to the agreement.

Fourth Street Improvements - Enhanced improvements to Fourth Street in the event of vacation of the street right of way by the City have been incorporated into the agreement.

Transit Services - An agreement to purchase a minimum of two years of bus passes for 200 residents in the amount of \$52,000 is included in the agreement.

Building Demolition and Salvage - The developer is required to consult with the Historic Preservation Commission prior to demolition of the structures to preserve for salvage and reclamation any items deemed to be of value.

Fiscal Impact

Short-Term Impact: Please see original council memo. The amendment to the development agreement would provide additional transit fees to be paid by the developer in the amount of \$52,000.

Long-Term Impact: n/a

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Not Applicable

Strategic Plan Impact: Not Applicable

Comprehensive Plan Impact: Not Applicable

Suggested Council Action

n/a

Legislative History

n/a



Department Approved



City Manager Approved