

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

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

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

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

Council Bill No. B 308-12

**AN ORDINANCE**

authorizing a charitable contribution agreement with Lake of the Woods South, LLC and JJ Bull Run, LLC for the donation of property located on Port Way; authorizing a stormwater facility easement; 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 charitable contribution agreement with Lake of the Woods South, LLC and JJ Bull Run, LLC for the donation of property located on Port Way. The form and content of the agreement shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 2. The City Manager is hereby authorized to execute a stormwater facility easement with Lake of the Woods South, LLC and JJ Bull Run, LLC. The form and content of the easement shall be substantially as set forth in "Attachment B" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

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

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

APPROVED AS TO FORM:

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City Counselor

**CHARITABLE CONTRIBUTION AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between LAKE OF THE WOODS SOUTH, LLC, a Missouri limited liability company, hereinafter called "DONOR," and THE CITY OF COLUMBIA, MISSOURI, a municipal corporation, hereinafter called "DONEE," and JJ BULL RUN, LLC, a Missouri limited liability company, hereinafter called "BULL RUN," and LAKE OF THE WOODS SOUTH, LLC, a Missouri limited liability company, hereinafter called "WOODS SOUTH:"

**WITNESSETH:**

In consideration of the respective covenants of the parties and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby mutually agree as follows:

1. That DONOR agrees to convey to DONEE as a charitable contribution, upon the terms and conditions herein set out, the title to the following described property located on Port Way in the City of Columbia, Boone County, Missouri, herein referred to as the "Property," to-wit:

Lot 102C of Eastport Plat 1-A-3 as shown by the Administrative Plat recorded in Book 3859, Page 160, Deed Records of Boone County, Missouri.

together with all appurtenances thereto.

2. The value of the aforesaid Property for charitable contribution purposes shall be the appraised value of said Property as determined by Steven W. Wise, MAI Appraiser, less the value of the Stormwater Facility Easement referred to in paragraph 4 below as determined by said appraiser. DONOR shall at DONOR'S expense obtain an appraisal of the Property and an appraisal of the easement referred to in paragraph 4 below by Steven W. Wise, MAI Appraiser, which qualifies as a Qualified Appraisal under the Internal Revenue Code and deliver a copy of said appraisal to DONEE.

3. DONOR shall convey to DONEE at closing by General Warranty Deed fee simple absolute marketable title in fact to the above described Property free and clear of all liens, interests, leases, restrictions, easements and encumbrances, except subject to the Permitted Exceptions referred to below herein and subject to real estate taxes for 2012 which

shall be prorated as of the date of closing using the most current real estate tax assessment information furnished by the Boone County Assessor.

4. The parties shall at closing execute the original copy of the Stormwater Facility Easement attached hereto as Exhibit "A" and the original copy of said easement shall be recorded in the office of the Recorder of Deeds of Boone County, Missouri immediately after the recording of the General Warranty Deed referred to in the preceding paragraph.

5. DONOR shall within ten (10) days hereafter deliver to DONEE a commitment to issue an owner's policy of title insurance on the Property described in paragraph 1 above with the amount of the title insurance coverage to be the appraised value of the Property less the value of the aforesaid easement and the amount of said title insurance coverage shall be added to said title insurance commitment prior to closing and said title insurance commitment shall name DONEE as insured and shall be executed by a reputable title insurance company licensed to write title insurance in Missouri, which policy shall insure the owner's title to be marketable in fact as called for by this Agreement and shall provide that a policy shall be issued to DONEE immediately after the DONOR'S General Warranty Deed to DONEE is placed of record.

DONEE shall have the right to object to any matter shown in the title insurance commitment which DONEE believes may adversely affect the DONEE'S intended use of the Property by giving written notice of such to DONOR. If DONEE does not object to a matter which is shown in the title insurance commitment within ten (10) days after DONEE receives the title insurance commitment, DONEE shall be deemed to have waived the right to object to that particular item which shall be deemed a "Permitted Exception" except DONEE shall not be required to object to any lien on the Property and DONOR shall at closing procure the release of any liens on the Property.

If DONEE objects to a matter shown in the title insurance commitment within the aforesaid ten (10) day period, this Agreement shall be null and void.

DONOR agrees to pay, discharge and procure release of any liens on the Property on the closing date.

After the DONOR'S General Warranty Deed has been placed of record, DONOR shall procure the policy of title insurance and deliver the same to DONEE. DONOR shall pay all expenses for the title insurance, including the title insurance premium. The title insurance

commitment and the title insurance policy shall include coverage against mechanic's liens and shall not exclude mechanic's lien coverage.

6. That DONEE shall at closing execute and deliver to DONOR a completed Form 8283 Noncash Charitable Contributions issued by the Internal Revenue Service showing a noncash charitable contribution from DONOR to DONEE in the amount of the appraised value of the Property less the appraised value of the easement referred to above herein.

7. This Agreement shall be closed at 10:00 a.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, at the office of Boone-Central Title Company, 601 East Broadway, Columbia, Missouri, or at such other time and place as the parties may mutually agree, at which time all monies and papers shall be delivered as specified herein and all other things called for by this Agreement at the time of closing shall be done.

8. DONOR shall pay the cost for the preparation of this Agreement, the closing service charge of the title company for closing services rendered in connection with the closing of this Agreement and the recording fee for recording the above described General Warranty Deed and the above described easement.

9. All notices required or permitted hereunder shall be in writing, sent to the party to whom addressed at the following address(es) and shall be deemed delivered to, and received by, the other party when (i) actually received, if hand delivered, (ii) deposited with an overnight courier, package prepaid, or (iii) placed in the United States Mail, certified letter, return receipt requested, with postage prepaid; the said address(es) being as follows:

To DONOR: Lake of the Woods South, LLC  
c/o Thomas C. Mendenhall  
302 Campusview Drive, Suite 203  
Columbia, MO 65201

To DONEE: City of Columbia, Missouri  
c/o Mike Matthes, City Manager  
701 East Broadway  
P.O. Box 6015  
Columbia, MO 65205-6015

To BULL RUN: JJ Bull Run, LLC  
c/o Thomas C. Mendenhall  
302 Campusview Drive, Suite 203  
Columbia, MO 65201

To WOODS SOUTH:      Lake of the Woods South, LLC  
                                 c/o Thomas C. Mendenhall  
                                 302 Campusview Drive, Suite 203  
                                 Columbia, MO 65201

or at such other address as either party may specify by notice in writing to the other party.

10.    The parties hereto agree that time is of the essence of each of the provisions of this Agreement.

11.    This Agreement shall be governed by the laws of the State of Missouri and the jurisdiction and venue of any dispute between the parties in regard to this transaction shall be in the Circuit Court of Boone County, Missouri.

12.    This agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the property.

13.    The date of this Agreement shall be the date that the last party to this Agreement executed this Agreement.

14.    The provisions hereof shall inure to the benefit of and shall be binding upon the respective parties hereto and to their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto executed this agreement the day and year first above written.

DONOR:

LAKE OF THE WOODS SOUTH, LLC,  
a Missouri limited liability company

BY: \_\_\_\_\_  
GARY R. EVANS, Member

BY: \_\_\_\_\_  
RICHARD A. MENDENHALL, Member

BY: \_\_\_\_\_  
THOMAS C. MENDENHALL, Member

BY: \_\_\_\_\_  
JOHN L. McGEE, Member

BY: \_\_\_\_\_  
RICHARD C. THOMAS, Member

BY: \_\_\_\_\_  
BRIAN D. CONNELL, Member

BY: DANVILLE PROPERTIES, LLC, a Kansas  
limited liability company, Member

BY: \_\_\_\_\_  
RONALD K. PEDEN, Co-Trustee of  
Ronald and Diana Peden Living Trust,  
Member of Danville Properties, LLC

BY: \_\_\_\_\_  
DIANA R. PEDEN, Co-Trustee of  
Ronald and Diana Peden Living Trust,  
Member of Danville Properties, LLC

BY: \_\_\_\_\_  
LESLIE L. PEDEN, Member of  
Danville Properties, LLC

Dated: \_\_\_\_\_

DONEE:

CITY OF COLUMBIA, MISSOURI

BY: \_\_\_\_\_  
MIKE MATTHES, City Manager

ATTEST:

\_\_\_\_\_  
SHEELA AMIN, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
FRED BOECKMANN, City Counselor

Dated: \_\_\_\_\_

**BULL RUN:**

**JJ BULL RUN, LLC, a Missouri limited liability company**

**BY: \_\_\_\_\_  
JOHN L. MCGEE, Member**

**BY: \_\_\_\_\_  
GARY R. EVANS, Member**

**BY: \_\_\_\_\_  
THOMAS C. MENDENHALL, Member**

**BY: \_\_\_\_\_  
RICHARD A. MENDENHALL, Member**

**BY: WD8, LLC, a Missouri limited liability company, Member of JJ Bull Run, LLC**

**BY: \_\_\_\_\_  
RICHARD C. THOMAS, Member of  
WD8, LLC**

**BY: \_\_\_\_\_  
FRANK V THOMAS, Member of  
WD8, LLC**

**Dated: \_\_\_\_\_**

**WOODS SOUTH:**

**LAKE OF THE WOODS SOUTH, LLC,  
a Missouri limited liability company**

**BY: \_\_\_\_\_  
GARY R. EVANS, Member**

**BY: \_\_\_\_\_  
RICHARD A. MENDENHALL, Member**

**BY: \_\_\_\_\_  
THOMAS C. MENDENHALL, Member**

BY: \_\_\_\_\_  
JOHN L. McGEE, Member

BY: \_\_\_\_\_  
RICHARD C. THOMAS, Member

BY: \_\_\_\_\_  
BRIAN D. CONNELL, Member

BY: DANVILLE PROPERTIES, LLC, a Kansas  
limited liability company, Member

BY: \_\_\_\_\_  
RONALD K. PEDEN, Co-Trustee of  
Ronald and Diana Peden Living Trust,  
Member of Danville Properties, LLC

BY: \_\_\_\_\_  
DIANA R. PEDEN, Co-Trustee of  
Ronald and Diana Peden Living Trust,  
Member of Danville Properties, LLC

BY: \_\_\_\_\_  
LESLIE L. PEDEN, Member of  
Danville Properties, LLC

Dated: \_\_\_\_\_

**CONSENT**

The undersigned, who is a Lessee under the terms of a Lease-Purchase Agreement on the above described Lot 102D of Eastport Plat 1-A-3, Book 3859, Page 160, Deed Records of Boone County, Missouri, does hereby consent to the provisions of the foregoing Charitable Contribution Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

MONAHAN ENTERPRISES V, INC.,  
a Missouri corporation

BY: \_\_\_\_\_  
AMY M. MONAHAN, President

ATTEST:

\_\_\_\_\_  
MICHAEL J. MONAHAN, Secretary

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**STORMWATER FACILITY EASEMENT**

THIS EASEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between THE CITY OF COLUMBIA, MISSOURI, a municipal corporation, hereinafter called "CITY" (Grantor/Grantee) and JJ BULL RUN, LLC, a Missouri limited liability company, hereinafter called "BULL RUN," (Grantor/Grantee) and LAKE OF THE WOODS SOUTH, LLC, a Missouri limited liability company, hereinafter called "WOODS SOUTH" (Grantor/Grantee):

WITNESSETH:

WHEREAS, CITY owns the following described real estate situated in Boone County, Missouri, hereinafter called "Tract 1," to-wit:

Lot 102C of Eastport Plat 1-A-3 as shown by the Administrative Plat recorded in Book 3859, Page 160, Deed Records of Boone County, Missouri.

WHEREAS, BULL RUN owns the following described real estate situated in Boone County, Missouri, hereinafter called "Tract 2," to-wit:

Lot 102D of Eastport Plat 1-A-3 as shown by the Administrative Plat recorded in Book 3859, Page 160, Deed Records of Boone County, Missouri.

WHEREAS, WOODS SOUTH owns the following described real estate situated in Boone County, Missouri, hereinafter called "Tract 3," to-wit:

Lot 102E of Eastport Plat 1-A-3 as shown by the Administrative Plat recorded in Book 3859, Page 160, Deed Records of Boone County, Missouri.

**EXHIBIT A**

WHEREAS, CITY is willing to grant to BULL RUN and WOODS SOUTH a perpetual, nonexclusive Stormwater Facility Easement over and across a part of the above described Tract 1 for the use and benefit of the present and future owners of the above described Tracts described below herein.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY does hereby grant to BULL RUN and WOODS SOUTH a perpetual, nonexclusive stormwater facility easement over and across the following described part of the above described Tract 1, herein referred to as the "Easement Area," to-wit:

A tract of land being the west part of Lot 102C, Eastport Plat 1-A-3, recorded in Book 3859 Page 160, Records of Boone County, Missouri, located in the Northeast Quarter of Section 10, Township 48 North, Range 12 West, Columbia, Boone County, Missouri, and being more particularly described as follows:

Beginning at the southwest corner of said Lot 102C; thence with the lines of said Lot 102C, N0°04'00"W, 132.88 feet; thence N89°56'00"E, 433.08 feet; thence N70°52'30"E, 200.54 feet; thence leaving the lines of said Lot 102C, S64°07'30"E, 70.71 feet; thence S19°07'30"E, 177.14 feet to the south line of said Lot 102C; thence with said south line, S89°56'00"W, 744.06 feet to the point of beginning and containing 2.42 acres.

for the use and benefit of the present and future owners of the Tracts described in paragraph 8 below who shall have the right to install, construct, reconstruct, alter, repair and maintain stormwater retention and detention ponds and other stormwater management facility in said Easement Area, all for the use and benefit of the present and future owners of the Tracts described in paragraph 8 below.

The parties hereby covenant and agree as follows in regard to the foregoing Easement Area, to-wit:

1. That the owners of the Tracts described in paragraph 8 below shall use the Easement Area only for the installation, construction, reconstruction, alteration, maintenance and repair of the stormwater management facility to serve the Tracts described in paragraph 8 below and for no other purpose.
2. That the CITY shall not use the Easement Area for any purpose which interferes with the stormwater management facility referred to in the preceding paragraph.

3. That the owners of each Tract described in paragraph 8 below who use any part of the Easement Area for stormwater drainage shall share with the owners of each other said Tract, on a pro rata basis based upon the square footage of each said tract, the cost to install, maintain and repair the stormwater management facility in the Easement Area except as otherwise provided herein and the owners of said Tracts shall maintain the stormwater management facility in the Easement Area in compliance with the Ordinances of the City of Columbia, Missouri.

4. That in the event the owner of any Tract makes any use of the Easement Area which causes damage to the stormwater management facility in the Easement Area, the party engaged in said use shall at the expense of said party promptly repair the damage to the stormwater management facility in the Easement Area in a good and workmanlike manner.

5. All decisions pertaining to the maintenance and repair of the Easement Area and pertaining to the installation, maintenance and repair of the stormwater management facility in the Easement Area shall be determined by the owners of fifty-one percent (51%) or more of the square footage of the Tracts described in paragraph 8 below who use the Easement Area for stormwater drainage, except in the event of a voting deadlock the same shall be resolved by the written decision of the Director of Public Works of the City of Columbia, Missouri, whose decision shall be final, and except the owners of the Tracts shall in any event take such action necessary to cause the Easement Area and the stormwater facility in the Easement Area to be in compliance with the Ordinances of the City of Columbia, Missouri.

6. In the event the owner of any Tract as defined herein fails to pay such owner's share of the cost and expense of repair and maintenance of the Easement Area or of the installation, repair or maintenance of the stormwater facility in the Easement Area or should any such owner fail to repair any damage caused to the Easement Area by such owner, then any owner of any other Tract as defined herein shall have the right to pay said costs and expenses and/or the cost to repair any said damage, and the owner failing to pay the same shall reimburse the owner paying the same the amount of said costs and expenses so paid, together with interest thereon at the rate of nine percent (9%) per annum from the date of demand, and the owner entitled to such reimbursement shall also be entitled to recovery from the owner who fails to pay

the same the costs and expenses incurred in connection with enforcing said right of reimbursement, including court costs, reasonable litigation expenses and reasonable attorney fees.

7. That the owner of each Tract as defined herein shall have the right to enforce the provisions of this document and shall have the right to proceed in law or in equity, or both, against any person or persons violating or attempting to violate any of the provisions of this document, to include the remedy of injunction or damages, or both, and said remedies shall be cumulative and not exclusive, and in any said legal proceedings the prevailing party shall have the right to recover from the other party all reasonable litigation expenses, including court costs and reasonable attorney fees.

8. The term "Tract" as used herein shall be deemed to mean the above described Tract 2 and Tract 3, except (a) in the event hereafter a said Tract is subdivided into smaller tracts by survey, plat, deed or other document, each said smaller tract shall thereupon be deemed a "Tract" under the provisions of this document and except (b) WOODS SOUTH shall have the right by document recorded in the office of the Recorder of Deeds of Boone County, Missouri to permit the owner of the following described real estate, to-wit:

Lot 102B of Eastport Plat 1-A-2, a Replat of Lot 102 of Eastport Plat 1-A-1, as shown by the Administrative Plat thereof recorded in Book 2809, Page 177, Records of Boone County, Missouri.

to use the Easement Area for stormwater drainage on such terms and conditions it deems appropriate, in which event said real estate or any subdivision of the same shall be deemed a Tract under the provisions of this document.

9. That no deed or other conveyance of title to any part of the above described real estate hereafter shall be deemed to abrogate or amend this easement unless executed by all appropriate parties and unless expressly so stated in said document which must specifically refer to this paragraph of this document.

10. The easements and covenants herein contained shall run with the land and shall inure to and be binding upon the undersigned and upon the successors in title to the above described Tracts.

TO HAVE AND TO HOLD said easements and rights unto the parties hereto and their successors and assigns forever.

IN WITNESS WHEREOF, the undersigned has hereunto executed this easement the day and year first above written.

CITY:

CITY OF COLUMBIA, MISSOURI

BY: \_\_\_\_\_  
MIKE MATTHES, City Manager

ATTEST:

\_\_\_\_\_  
SHEELA AMIN, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
FRED BOECKMANN, City Counselor

BULL RUN:

JJ BULL RUN, LLC, a Missouri limited liability company

BY: \_\_\_\_\_  
JOHN L. MCGEE, Member

BY: \_\_\_\_\_  
GARY R. EVANS, Member

BY: \_\_\_\_\_  
THOMAS C. MENDENHALL, Member

BY: \_\_\_\_\_  
RICHARD A. MENDENHALL, Member

BY: WD8, LLC, a Missouri limited liability company, Member of JJ Bull Run, LLC

BY: \_\_\_\_\_  
RICHARD C. THOMAS, Member of  
WD8, LLC

BY: \_\_\_\_\_  
FRANK V THOMAS, Member of  
WD8, LLC

Dated: \_\_\_\_\_

WOODS SOUTH:

LAKE OF THE WOODS SOUTH, LLC,  
a Missouri limited liability company

BY: \_\_\_\_\_  
GARY R. EVANS, Member

BY: \_\_\_\_\_  
RICHARD A. MENDENHALL, Member

BY: \_\_\_\_\_  
THOMAS C. MENDENHALL, Member

BY: \_\_\_\_\_  
JOHN L. McGEE, Member

BY: \_\_\_\_\_  
RICHARD C. THOMAS, Member

BY: \_\_\_\_\_  
BRIAN D. CONNELL, Member

BY: DANVILLE PROPERTIES, LLC, a Kansas limited liability company, Member

BY: \_\_\_\_\_  
RONALD K. PEDEN, Co-Trustee of  
Ronald and Diana Peden Living Trust,  
Member of Danville Properties, LLC

BY: \_\_\_\_\_  
DIANA R. PEDEN, Co-Trustee of  
Ronald and Diana Peden Living Trust,  
Member of Danville Properties, LLC

BY: \_\_\_\_\_  
LESLIE L. PEDEN, Member of  
Danville Properties, LLC

Dated: \_\_\_\_\_

STATE OF MISSOURI    )  
                                  ) SS.  
COUNTY OF BOONE    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me appeared MIKE MATTHES, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this instrument to be the free act and deed of the City.

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

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_



STATE OF MISSOURI     )  
  ) SS.  
COUNTY OF BOONE     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared GARY R. EVANS, RICHARD A. MENDENHALL, THOMAS C. MENDENHALL, JOHN L. McGEE and BRIAN D. CONNELL, Members of LAKE OF THE WOODS SOUTH, LLC, a Missouri limited liability company, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed as said Members.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the state and county aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF MISSOURI     )  
  ) SS.  
COUNTY OF BOONE     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared RICHARD C. THOMAS, Member of LAKE OF THE WOODS SOUTH, LLC, a Missouri limited liability company, known to me to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as said Member.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the state and county aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF KANSAS        )  
                                  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared RONALD K. PEDEN and DIANA R. PEDEN, Co-Trustees of Ronald and Diana Peden Living Trust, Members of Danville Properties, LLC, a Kansas limited liability company, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed as said Members.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the state and county aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF KANSAS        )  
                                  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared LESLIE L. PEDEN, Member of Danville Properties, LLC, a Kansas limited liability company, known to me to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as said Member.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the state and county aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

---

**STORMWATER FACILITY EASEMENT**

THIS EASEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between THE CITY OF COLUMBIA, MISSOURI, a municipal corporation, hereinafter called "CITY" (Grantor/Grantee) and JJ BULL RUN, LLC, a Missouri limited liability company, hereinafter called "BULL RUN," (Grantor/Grantee) and LAKE OF THE WOODS SOUTH, LLC, a Missouri limited liability company, hereinafter called "WOODS SOUTH" (Grantor/Grantee):

WITNESSETH:

WHEREAS, CITY owns the following described real estate situated in Boone County, Missouri, hereinafter called "Tract 1," to-wit:

Lot 102C of Eastport Plat 1-A-3 as shown by the Administrative Plat recorded in Book 3859, Page 160, Deed Records of Boone County, Missouri.

WHEREAS, BULL RUN owns the following described real estate situated in Boone County, Missouri, hereinafter called "Tract 2," to-wit:

Lot 102D of Eastport Plat 1-A-3 as shown by the Administrative Plat recorded in Book 3859, Page 160, Deed Records of Boone County, Missouri.

WHEREAS, WOODS SOUTH owns the following described real estate situated in Boone County, Missouri, hereinafter called "Tract 3," to-wit:

Lot 102E of Eastport Plat 1-A-3 as shown by the Administrative Plat recorded in Book 3859, Page 160, Deed Records of Boone County, Missouri.

WHEREAS, CITY is willing to grant to BULL RUN and WOODS SOUTH a perpetual, nonexclusive Stormwater Facility Easement over and across a part of the above described Tract 1 for the use and benefit of the present and future owners of the above described Tracts described below herein.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY does hereby grant to BULL RUN and WOODS SOUTH a perpetual, nonexclusive stormwater facility easement over and across the following described part of the above described Tract 1, herein referred to as the "Easement Area," to-wit:

A tract of land being the west part of Lot 102C, Eastport Plat 1-A-3, recorded in Book 3859 Page 160, Records of Boone County, Missouri, located in the Northeast Quarter of Section 10, Township 48 North, Range 12 West, Columbia, Boone County, Missouri, and being more particularly described as follows:

Beginning at the southwest corner of said Lot 102C; thence with the lines of said Lot 102C, N0°04'00"W, 132.88 feet; thence N89°56'00"E, 433.08 feet; thence N70°52'30"E, 200.54 feet; thence leaving the lines of said Lot 102C, S64°07'30"E, 70.71 feet; thence S19°07'30"E, 177.14 feet to the south line of said Lot 102C; thence with said south line, S89°56'00"W, 744.06 feet to the point of beginning and containing 2.42 acres.

for the use and benefit of the present and future owners of the Tracts described in paragraph 8 below who shall have the right to install, construct, reconstruct, alter, repair and maintain stormwater retention and detention ponds and other stormwater management facility in said Easement Area, all for the use and benefit of the present and future owners of the Tracts described in paragraph 8 below.

The parties hereby covenant and agree as follows in regard to the foregoing Easement Area, to-wit:

1. That the owners of the Tracts described in paragraph 8 below shall use the Easement Area only for the installation, construction, reconstruction, alteration, maintenance and repair of the stormwater management facility to serve the Tracts described in paragraph 8 below and for no other purpose.

2. That the CITY shall not use the Easement Area for any purpose which interferes with the stormwater management facility referred to in the preceding paragraph.

3. That the owners of each Tract described in paragraph 8 below who use any part of the Easement Area for stormwater drainage shall share with the owners of each other said Tract, on a pro rata basis based upon the square footage of each said tract, the cost to install, maintain and repair the stormwater management facility in the Easement Area except as otherwise provided herein and the owners of said Tracts shall maintain the stormwater management facility in the Easement Area in compliance with the Ordinances of the City of Columbia, Missouri.

4. That in the event the owner of any Tract makes any use of the Easement Area which causes damage to the stormwater management facility in the Easement Area, the party engaged in said use shall at the expense of said party promptly repair the damage to the stormwater management facility in the Easement Area in a good and workmanlike manner.

5. All decisions pertaining to the maintenance and repair of the Easement Area and pertaining to the installation, maintenance and repair of the stormwater management facility in the Easement Area shall be determined by the owners of fifty-one percent (51%) or more of the square footage of the Tracts described in paragraph 8 below who use the Easement Area for stormwater drainage, except in the event of a voting deadlock the same shall be resolved by the written decision of the Director of Public Works of the City of Columbia, Missouri, whose decision shall be final, and except the owners of the Tracts shall in any event take such action necessary to cause the Easement Area and the stormwater facility in the Easement Area to be in compliance with the Ordinances of the City of Columbia, Missouri.

6. In the event the owner of any Tract as defined herein fails to pay such owner's share of the cost and expense of repair and maintenance of the Easement Area or of the installation, repair or maintenance of the stormwater facility in the Easement Area or should any such owner fail to repair any damage caused to the Easement Area by such owner, then any owner of any other Tract as defined herein shall have the right to pay said costs and expenses and/or the cost to repair any said damage, and the owner failing to pay the same shall reimburse the owner paying the same the amount of said costs and expenses so paid, together with interest thereon at the rate of nine percent (9%) per annum from the date of demand, and the owner entitled to such reimbursement shall also be entitled to recovery from the owner who fails to pay

the same the costs and expenses incurred in connection with enforcing said right of reimbursement, including court costs, reasonable litigation expenses and reasonable attorney fees.

7. That the owner of each Tract as defined herein shall have the right to enforce the provisions of this document and shall have the right to proceed in law or in equity, or both, against any person or persons violating or attempting to violate any of the provisions of this document, to include the remedy of injunction or damages, or both, and said remedies shall be cumulative and not exclusive, and in any said legal proceedings the prevailing party shall have the right to recover from the other party all reasonable litigation expenses, including court costs and reasonable attorney fees.

8. The term "Tract" as used herein shall be deemed to mean the above described Tract 2 and Tract 3, except (a) in the event hereafter a said Tract is subdivided into smaller tracts by survey, plat, deed or other document, each said smaller tract shall thereupon be deemed a "Tract" under the provisions of this document and except (b) WOODS SOUTH shall have the right by document recorded in the office of the Recorder of Deeds of Boone County, Missouri to permit the owner of the following described real estate, to-wit:

Lot 102B of Eastport Plat 1-A-2, a Replat of Lot 102 of Eastport Plat 1-A-1, as shown by the Administrative Plat thereof recorded in Book 2809, Page 177, Records of Boone County, Missouri.

to use the Easement Area for stormwater drainage on such terms and conditions it deems appropriate, in which event said real estate or any subdivision of the same shall be deemed a Tract under the provisions of this document.

9. That no deed or other conveyance of title to any part of the above described real estate hereafter shall be deemed to abrogate or amend this easement unless executed by all appropriate parties and unless expressly so stated in said document which must specifically refer to this paragraph of this document.

10. The easements and covenants herein contained shall run with the land and shall inure to and be binding upon the undersigned and upon the successors in title to the above described Tracts.

TO HAVE AND TO HOLD said easements and rights unto the parties hereto and their successors and assigns forever.

IN WITNESS WHEREOF, the undersigned has hereunto executed this easement the day and year first above written.

CITY:

CITY OF COLUMBIA, MISSOURI

BY: \_\_\_\_\_  
MIKE MATTHES, City Manager

ATTEST:

\_\_\_\_\_  
SHEELA AMIN, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
FRED BOECKMANN, City Counselor

BULL RUN:

JJ BULL RUN, LLC, a Missouri limited liability company

BY: \_\_\_\_\_  
JOHN L. MCGEE, Member

BY: \_\_\_\_\_  
GARY R. EVANS, Member

BY: \_\_\_\_\_  
THOMAS C. MENDENHALL, Member

BY: \_\_\_\_\_  
RICHARD A. MENDENHALL, Member

BY: WD8, LLC, a Missouri limited liability company, Member of JJ Bull Run, LLC

BY: \_\_\_\_\_  
RICHARD C. THOMAS, Member of  
WD8, LLC

BY: \_\_\_\_\_  
FRANK V THOMAS, Member of  
WD8, LLC

Dated: \_\_\_\_\_

WOODS SOUTH:

LAKE OF THE WOODS SOUTH, LLC,  
a Missouri limited liability company

BY: \_\_\_\_\_  
GARY R. EVANS, Member

BY: \_\_\_\_\_  
RICHARD A. MENDENHALL, Member

BY: \_\_\_\_\_  
THOMAS C. MENDENHALL, Member

BY: \_\_\_\_\_  
JOHN L. MCGEE, Member

BY: \_\_\_\_\_  
RICHARD C. THOMAS, Member

BY: \_\_\_\_\_  
BRIAN D. CONNELL, Member

BY: DANVILLE PROPERTIES, LLC, a Kansas limited liability company, Member

BY: \_\_\_\_\_  
RONALD K. PEDEN, Co-Trustee of  
Ronald and Diana Peden Living Trust,  
Member of Danville Properties, LLC

BY: \_\_\_\_\_  
DIANA R. PEDEN, Co-Trustee of  
Ronald and Diana Peden Living Trust,  
Member of Danville Properties, LLC

BY: \_\_\_\_\_  
LESLIE L. PEDEN, Member of  
Danville Properties, LLC

Dated: \_\_\_\_\_

STATE OF MISSOURI    )  
                                  ) SS.  
COUNTY OF BOONE    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me appeared MIKE MATTHES, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this instrument to be the free act and deed of the City.

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

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_





STATE OF KANSAS        )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared RONALD K. PEDEN and DIANA R. PEDEN, Co-Trustees of Ronald and Diana Peden Living Trust, Members of Danville Properties, LLC, a Kansas limited liability company, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed as said Members.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the state and county aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:  
  
\_\_\_\_\_

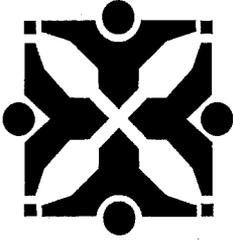
STATE OF KANSAS        )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared LESLIE L. PEDEN, Member of Danville Properties, LLC, a Kansas limited liability company, known to me to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed as said Member.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the state and county aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:  
  
\_\_\_\_\_



Source: Public Works

*John*

Agenda Item No:

To: City Council  
From: City Manager and Staff

*MM*

Council Meeting Date: Nov 5, 2012

Re: Authorizing a Charitable Contribution Agreement and a Stormwater Facility Easement for Property Located on Port Way in Columbia

**EXECUTIVE SUMMARY:**

Staff has prepared for Council an ordinance authorizing the City Manager to execute a Charitable Contribution Agreement to accept the donation of property located on Port Way in Columbia, and a Stormwater Facility Easement (see attached diagram).

**DISCUSSION:**

Lake of the Woods South, LLC is donating property located on Port Way to the City of Columbia. A City park will be located on the eastern part of the property while stormwater management facilities for neighboring developments will be located on the western part. The stormwater management facilities will be privately maintained by the developments as specified in the agreement, and an easement will be granted to them for that purpose. Rather than split the area where the stormwater management facilities for the adjacent developments are located, the property owner proposed leaving the property whole and keeping an easement to maintain the facilities. This arrangement is acceptable to the departments of Public Works and Parks and Recreation.

**FISCAL IMPACT:**

The property, along with all the title work and appraisal, is being donated to the City so no money will be expended on the acquisition.

**VISION IMPACT:**

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

A variety of attractive, well-maintained parks throughout Columbia-including neighborhood parks, regional parks, nature parks, and urban parks-will ensure all residents have access to a full range of outdoor and indoor recreational opportunities.

**SUGGESTED COUNCIL ACTIONS:**

Approval of the ordinance authorizing the City Manager to execute a Charitable Contribution Agreement and a Stormwater Facility Easement for property located on Port Way in Columbia.

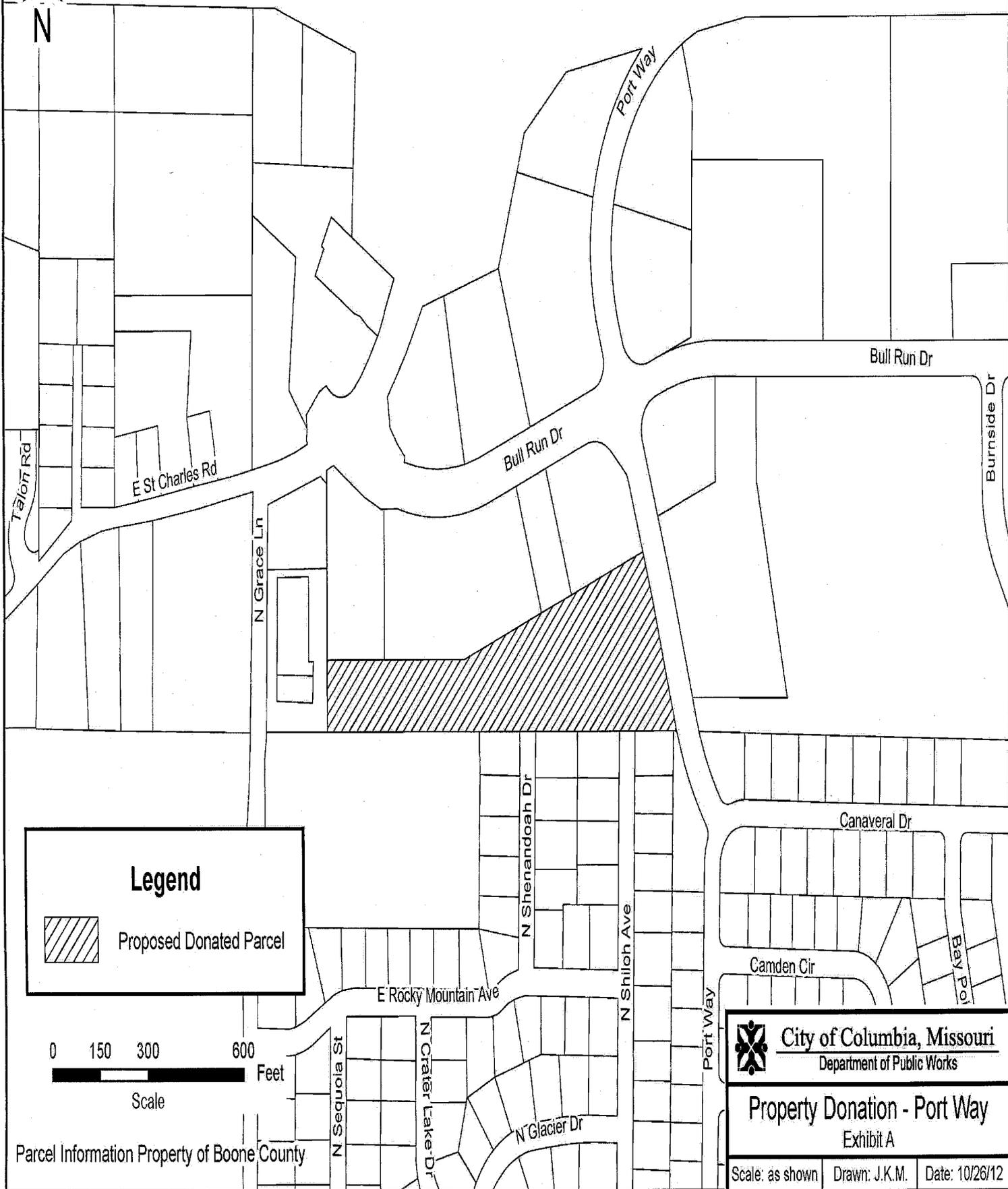
FISCAL and VISION NOTES:					
City Fiscal Impact Enter all that apply		Program Impact		Mandates	
City's current net FY cost	\$0.00	New Program/ Agency?	No	Federal or State mandated?	No
Amount of funds already appropriated	\$0.00	Duplicates/Expands an existing program?	No	<b>Vision Implementation impact</b>	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	No	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 #	12.1
Operating/ Ongoing	\$0.00	Requires add'l facilities?	No	Secondary Vision, Strategy and/or Goal Item #	12.2
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	

I-70

I-70



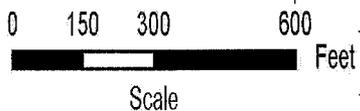
I-70 Dr SE



### Legend



Proposed Donated Parcel



Scale

Parcel Information Property of Boone County



City of Columbia, Missouri  
Department of Public Works

## Property Donation - Port Way

Exhibit A

Scale: as shown Drawn: J.K.M. Date: 10/26/12