

BOONE COUNTY MO DEC 10 2010

Development Agreement

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 10th day of December, 2010, by and among **East Richland Road Properties, L.L.C.** and **Richland Road Properties, L.L.C.**, Missouri limited liability companies (collectively, the "Developer") and the **City of Columbia**, a municipal corporation (the "City"), (Developer and City collectively hereinafter referred to as the "Parties" or "Party" as may be the case).

WITNESSETH

WHEREAS, Developer is the owner of a certain tract of land in Boone County, State of Missouri, described on **Exhibit A** attached hereto and incorporated herein by this reference (the "Developer Tract"); and

WHEREAS, the City is desirous of extending Rolling Hills Road northward from its current northern terminus through and adjacent to the Developer Tract; and

WHEREAS, the Parties are desirous of the Developer Tract becoming annexed to the corporate limits of the City with the zoning classifications as described in the Petition Requesting Annexation of Land to the City of Columbia, Missouri and Application for the Permanent Rezoning of Property ("Annexation/Rezoning") attached hereto as **Exhibit B** and incorporated herein by this reference; and

WHEREAS, the Parties are desirous of entering into the Agreement to bind the Parties with regard to the completion of Rolling Hills Road, the conveyance of right of way for same, establishing conditions precedent to preliminary plat approval, and determining the location of access points within the Developer Tract.

NOW, THEREFORE, for and in consideration of the aforementioned facts which are incorporated in this Agreement and in consideration of the mutual exchange of covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Definitions: As used in this Agreement, the following terms have the following meanings:

a. "City" means the City of Columbia, a municipal corporation a constitutional charter city under the laws of the State of Missouri, whose address is 701 East Broadway, Columbia, Missouri 65201.

b. "Code" means the Code of Ordinances of the City of Columbia.

c. "Contingency" means the condition precedent to this Agreement as described in paragraph 2 of this Agreement.

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d. "Developer" means East Richland Road Properties, L.L.C. and Richland Road Properties, L.L.C., Missouri limited liability companies, 620 N. Trade Wind Parkway, Columbia, MO 65201 or their successor or assigns.

e. "Plan Approval" means having obtained the necessary City approval (PUD plan or CP plan, as may be the case) to utilize real estate in a manner allowed by the applicable zoning ordinances.

f. "Rolling Hills Road Extension" means construction of a minor arterial road by the City from the northern terminus of Rolling Hills Road (which is adjacent to the southern border of the Developer Tract) to and connecting with the southern edge of Richland Road (which is adjacent to the northern border of the Developer Tract) as generally shown on the master roadway plan depiction attached hereto as **Exhibit C** and incorporated herein by this reference.

2. Contingency. The obligations in this Agreement shall be contingent upon the approval of the Annexation/Rezoning. Unless the Contingency is satisfied, this Agreement shall not be applicable or effective. However, if the Contingency is satisfied then this Agreement shall be binding upon the Parties and their respective successors.

3. Obligations of Developer.

a. The Developer shall dedicate, at no charge to the City, the necessary right of way to allow for the construction of the roadways depicted on Exhibit C: Rolling Hills Road Extension, Richland Road half-width necessary for future construction as a major arterial, an east-west collector roadway, and, if justified by traffic study, a north-south collector roadway across the Developer Tract. With respect to the Rolling Hills Road Extension, the precise right of way to be dedicated by the Developer shall be determined by the final roadway design plans approved by the City. The Parties agree that, should the final alignment of the Rolling Hills Road Extension cause a shift in the boundary lines of any of the Tracts, the City shall approve such shifts as minor revisions to the applicable development plans, so long as there is no net increase in developable units in said Tracts. Any right of way dedicated by the Developer pursuant to this paragraph, shall include the accompanying easements necessary for construction, drainage, utilities, sidewalks, and drainage structures.

b. The Developer shall refrain from seeking preliminary plat approval or development plan approval for the area shown as Tract 2, Tract 3, and Tract 4 on the depiction attached hereto as **Exhibit D** until the alignment on said Tracts for the Rolling Hills Road Extension is approved by the City Council of the City.

c. The Developer shall refrain from seeking preliminary plat approval for Tract 5 on the depiction attached hereto as **Exhibit D** for more than 100 units until an east-west roadway connecting with the Rolling Hills Road Extension and extending into Tract 5 connects with Route WW or Richland Road or Stadium Boulevard (Highway 740) or some other arterial roadway or another roadway with at least a collector

classification that connects with an arterial roadway.

d. Prior to obtaining Plan Approval for any portion of the Developer Tract, Developer shall cause a traffic impact study ("TIS") to be completed by a traffic engineer of Developer's choosing. The purpose of a TIS will be to determine the effect, of development contemplated in the applicable Plan Approval, on the roadway system in and around the Developer Tract and potential improvements to said roadway system that the City and MoDOT may require to maintain agreed upon levels of service at intersections within said roadway system. The scope of the TIS and levels of service that will be agreed upon shall be determined at a "kick-off" meeting of the Developer, the traffic engineer performing the TIS, interested departments of the City, Boone County, and MoDOT. Said levels of service shall be reasonable and not unduly difficult to maintain such that extraordinary improvements are necessary to maintain same. In that regard, the following shall apply:

- i. If Tracts 2, 3, and 4 develop before Tract 5, the TIS may initially cover Tracts 2, 3 and 4 for the then current conditions (including the Rolling Hills Road Extension). Tracts 2, 3, and 4 shall be included together.
- ii. If the initial TIS is performed as described above in paragraph 3(e)(i), then it shall be updated to include Tract 5 as development plans are submitted for Tract 5. The final TIS shall include all Tracts and shall consider the levels of service twenty years into the future from the date the development plans are submitted, or the year 2030; whichever is greater.
 1. The intersections studied in the TIS shall be identified in the kick-off meeting and shall include the following:
 - a. St. Charles Road & Bull Run Drive
 - b. St. Charles Road & Grace Lane
 - c. St. Charles Road & Richland Road
 - d. Rolling Hills Road & Richland Road
 - e. Rolling Hills Road & any East-West collector existing or planned between Route WW and Route Z
 - f. Rolling Hills Road & Route WW
 2. The roadway segments studied in the TIS shall be identified in the kick-off meeting and shall include the following:
 - a. St. Charles Road from Bull Run Drive to Grace Lane
 - b. Grace Lane from Richland Road to St. Charles Road
 - c. Rolling Hills Road from Richland Road to Route WW
 - d. Richland Road from St. Charles Road to Rolling Hills Road
- e. At the time Developer obtains a final plat for either Tract 4 or 5 and if the City so requests at that time, Developer shall use its good faith efforts to convey, at a

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commercially reasonable price, approximately 2 acres, within said Tract 4 or 5, to the City for use as an emergency services facility.

- f. At the time Developer obtains final plat approval of the 300th dwelling unit in Tracts 3, 4, and 5 and if the City so requests at that time or such later date as may be requested by the City, Developer shall convey at no charge to the City up to 10 acres of real estate reasonably located, as mutually agreed by the Parties, within Tract 5 for use as a park. Said 10 acres shall be located within Tract 5 such that its use as a park is beneficial to the Developer Tract as a residential development. The City shall develop said park as soon as reasonably possible subject to the City's public improvement process and the availability of appropriated funds, and same shall be maintained and operated by the City in the same manner as other City parks.
- g. Developer shall grant easements at no charge to the City for trails along the North fork of Grindstone Creek through Tracts 4 and 5 in conjunction with final plat approval within Tract 4 or 5. The location of said easements shall be reasonably located in close proximity to Grindstone Creek with the precise location to be determined by the City Parks and Recreation Department. The location of said trails shall not unreasonably interfere with the development of Tract 4 or 5.
- h. Developer shall only harvest timber located on any of the Tracts in accordance with a tree preservation plan approved by a City arborist or an approved landscaping plan which complies with Section 29-25 and Chapter 12A of the Code.

4. City's Obligations.

a. The City shall refrain from issuing tax bills in the future against the Developer Tract for any costs incurred by the City associated with its obligations hereunder.

b. Subject to the City's public improvement process and the availability of appropriated funds the City shall complete construction of the Rolling Hills Road Extension on or before October 31, 2012.

c. The City shall allow access to City roadways that conform to the adopted Access Management Guidelines as are generally shown in Exhibit C.

5. Severability and 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.

6. 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.

7. Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered under this Agreement, the Parties agree to perform, execute and/or deliver or cause to be delivered, executed and/or delivered all further acts, deeds, and assurances reasonably necessary to consummate the transactions contemplated hereby, so long as such further acts, deeds and assurances are not in violation of any confidentiality provision of any agreement, whether or not all the Parties to this Agreement are parties to the confidential agreement.

8. 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.

9. Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be delivered: (a) if sent by messenger, upon personal delivery to the party to whom the notice is directed; (b) if sent by telecopier, upon electronic or telephonic confirmation of receipt from the receiving telecopier; (c) if sent by reputable overnight courier, with request for next business day delivery, on the next business day after sending; or (d) whether actually received or not, 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:

East Richland Road Properties, L.L.C.
620 N. Trade Wind Parkway
Columbia, MO 65201

Richland Road Properties, L.L.C.
620 N. Trade Wind Parkway
Columbia, MO 65201

WITH A COPY TO:

Van Matre, Harrison, Volkert, and Hollis, P.C.
1103 East Broadway
P.O. Box 1017
Columbia, MO 65205-1017
Attention: Robert Hollis, Esq.
Facsimile: (573) 875-0017

TO CITY:

City of Columbia
Attn: H. William Watkins, City Manager
701 East Broadway
P.O. Box 6015
Columbia, MO 65205

WITH A COPY TO:

City of Columbia
c/o Fred A. Boeckmann, Esq.
701 E. Broadway
P.O. Box 6015
Columbia, MO 65205

10. Exhibits. The Exhibits that are referenced in and attached to this Agreement are incorporated in, and made a part of, this Agreement for all purposes.

11. 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.

12. Entire Contract and Modification. This Agreement sets forth all the promises, covenants, agreements, conditions, and understandings between the parties hereto and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, expressed or implied, oral or written, except as herein contained. This Agreement may be modified only by an agreement in writing signed by the Parties.

13. Binding Effect; Assignment. This Agreement shall be binding on, and shall inure to the benefit of, the Parties hereto and their respective legal representatives, successors, and assigns.

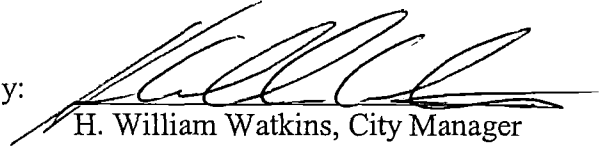
[Signature Page Follows]

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

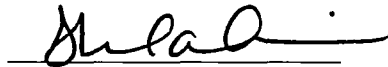
City of Columbia, Missouri ("City")

By:


H. William Watkins, City Manager

Attest:

By:


Sheela Amin, City Clerk

Approved as to form:

By:


Fred Boeckmann, City Counselor

East Richland Road Properties, L.L.C.
("Developer")

By:


Robert Hollis, Authorized Agent

Richland Road Properties, L.L.C.
("Developer")

By:


Robert Hollis, Authorized Agent