

## PERFORMANCE CONTRACT

This Performance Contract (the "Contract") is entered into on the date of the last signatory noted below, by and between the CITY OF COLUMBIA, MO ("City") and JDM II SF NATIONAL, LLC, a Delaware limited liability company ("Subdivider")

City and Subdivider agree as follows:

1. Subdivider shall construct, erect and install all improvements and utilities required in connection with the final plat of State Farm Subdivision – Block 2 including sidewalks and all improvements and utilities shown on the plat and related construction plans, within 60 months after the City Council approves the plat.
2. If street, utility or other construction of public improvements should occur on or adjacent to Lot 1A (the "Property") at the initiative of the City Council, as benefit assessment projects, Subdivider agrees to bear Subdivider's equitable and proportionate share of construction costs, as determined by such assessments.
3. No utility service connections or occupancy permits shall be issued to the Subdivider or to any other person for any structure on the Property unless and until all utilities and improvements have been constructed, erected and installed in the structure and upon the lot or lots on which the structure is situated in accordance with all applicable ordinances, rules and regulations of the City. Subdivider agrees to provide any necessary temporary construction easements for construction of utilities and public infrastructure required in this Contract.
4. No occupancy permit shall be issued to Subdivider or any other person for any structure constructed on the Property unless the street and sidewalk adjacent to the structure have been completed in compliance with the City's Standard Street Specifications.
5. City may construct, erect or install any improvement and utility not constructed, erected or installed by Subdivider as required by this Contract. City may perform such work using City employees or City may contract for performance of the work. Subdivider shall reimburse City for all costs and expenses incurred by City in connection with the construction, erection or installation of the improvements or utilities under this paragraph. Subdivider agrees to pay City all expenses and costs, including reasonable attorneys' fees, incurred by City in collecting amounts owed by Subdivider under this paragraph.
6. City shall not require a bond or other surety to secure the construction of the utilities required in connection with the final plat.
7. The remedies set forth in this Contract are not exclusive. City does not waive any other remedies available to enforce Subdivider's obligations under this Contract or to recover damages resulting from Subdivider's failure to perform its obligations under this Contract.
8. The provisions of this Contract constitute covenants running with the entirety of the Property. In the event Subdivider conveys the Property to any third party, the Subdivider's obligations under this Contract shall automatically be assigned to, and be binding upon, the then-current owners of the Property and all of such owners' successors and assigns. In the event one or more third parties purchase the Property, each of the purchasers shall be bound by the terms of this Contract and hereby

agree to perform all obligations of Subdivider under this Contract. If any sale or transfer (including any transfer by operation of law) of the Property by Subdivider (or any subsequent owner of the Property making such a transfer) occurs, Subdivider (or such subsequent transferor) shall be relieved from any and all obligations and liabilities under this Contract.

9. Upon adoption, the City shall cause this performance contract to be recorded with the Recorder of Deeds of Boone County, Missouri, at the cost and expense of the Subdivider. A copy of the recorded instrument shall be provided to the Subdivider by the City.

10. This Contract is not intended to confer any rights or remedies on any person other than the parties.

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year of the last signatory noted below.

CITY OF COLUMBIA, MISSOURI

*TK*  
By: \_\_\_\_\_  
John Glascock, City Manager  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM:

*BT*  
\_\_\_\_\_  
Nancy Thompson, City Counselor

JDM II SF NATIONAL, LLC,  
a Delaware limited liability company

By: JDM II SF National Mezz, LLC,  
a Delaware limited liability company,  
Sole Member

By: JDM Partners Opportunity Fund II LLC,  
a Delaware limited liability company,  
Sole Member

By: JDM Partners, L.L.C., an Arizona  
Limited liability company,  
Managing Member

By: *Tom Malley*  
Name: *Tom Malley*  
Its: Authorized Representative