DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("this Agreement") is made and entered into the last executed by a party as indicated on the signature pages below, by and between **the City of Columbia**, **Missouri**, a municipal corporation of the State of Missouri ("City") and **Christiansen Investments**, **LLC** a Missouri limited liability company ("Owner"). The City and the Owner may hereinafter be collectively referred to as the Parties and individually as a Party.

RECITALS

The Subject Property. Owner holds title to approximately _____ acres of land currently located in the unincorporated area of Boone County legally described in the attached **Exhibit A.** (the "Subject Property").

Petition for Annexation. The Subject Property is now located in the unincorporated area of Boone County, Missouri ("the County"). Owner has filed with the City a Petition for Annexation of the Subject Property into the geographic limits of the City ("the Annexation Petition"), provided that the Subject Property is rezoned per owner's application submitted to the City on or about the _____ day of ______, 2016, in Case No. 16-34 ("Owner's Zoning Application").

Proposed Zoning. Owner desires to develop the Subject Property as for commercial, office, and residential uses, The Owner's Zoning Application divides the Subject Property into seven (7) Lots, depicted on the attached **Exhibit B**. Owner's Zoning Application seeks zoning of such Lots, each with the uses described in Owner's Zoning Application as follows:

- Lot 1 PUD, Planned Unit Development,
- Lot 2 O-1, Office,
- Lot 3 C-P, Planned Commercial,
- Lot 4 C-3, Commercial,
- Lot 5 C-3, Commercial,
- Lot 6 R-3, Residential,
- Lot 7 C-3, Commercial.

NOW, THEREFORE, in view of the foregoing Recitals and in consideration of the mutual promises, declarations, covenants and agreements of the City and Owner as hereinafter set forth, the Parties hereto do hereby agree as follows:

1. **Definitions**. For purposes of this Agreement, the following terms shall have the followings meanings:

"This Agreement" means this Development Agreement.

"Certificate of Occupancy" means a certificate of occupancy issued by the City under Section 29-37(b)(1) of the Columbia Code of Ordinances.

"City" means the City of Columbia, Missouri.

"Owner" or "the Owner" means the current Owner of the Subject Property, Christiansen Investments, LLC, a Missouri limited liability company, and its successors in ownership to each part of the Subject Property.

- 2. *Contingencies*. This Agreement is contingent upon Owner's Petitions for Annexation and Zoning Application being granted by the City.
- 3. Agreements to Run with the Land. The provisions of this Agreement shall constitute covenants running with the entirety of the Subject Property and each and every part of the Subject Property, and shall bind the current Owner and all of such successors and assigns.
- 4. Owner's Obligations for Development.

a. Extension of Boone Industrial Drive

i. As a prerequisite to the issuance of a Building Permit for Lot 7, Owner will fully construct Boone Industrial Drive with appurtenant utilities to a Local Non-residential street standard from Highway 763 (Range Line Street) to the right-of-way for White Tiger Lane, as shown on **Exhibit B**.

b. Access to Lot 7.

- i. Owner will make good faith effort to secure right-of-way from adjacent property owned by Karon L. Rowe to allow the dedication of a full right-of-way and the roadway construction of Boone Industrial Drive. Nothing herein shall obligate the City to exercise its authority of eminent domain nor shall Owner's failure to obtain rights-of-way for Boone Industrial Drive relieve Owner of the obligations set forth in subsection 4(a) above.
- ii. If such right-of-way is not acquired prior to construction, then the roadway of Boone Industrial Drive shall still be constructed in general location of future-right of-way of Boone Industrial Drive as shown on **Exhibit B**, utilizing access easements granted to Owner. Owner represents that the access easements are sufficient to allow access to Lot 7 from Highway 763 (Range Line Street). A separate Right of Use Agreement allowing Owner use of dedicated rights-of-way will be required for all roadway located within in the right-of-way of Boone Industrial Drive until such time as full right-of-way is acquired and the roadway is accepted. At the time that right-of-way from adjacent property owned by Karon L. Rowe is dedicated and accepted by the City, the City may accept the roadway constructed, or may require repairs to such roadway prior to acceptance.

c. Extension of White Tiger Lane.

- i. As a prerequisite to the issuance of a Building Permit on either Lots 3 or 4, Owner will construct White Tiger Lane and appurtenant utilities to a Local Non-residential street standard from Brown School Road to and including the intersection with Boone Industrial Drive, as shown on **Exhibit B**.
- ii. As a prerequisite for a Building Permit for Lot 6, Owner shall construct White Tiger Lane with appurtenant utilities to a Local Non-residential street standard from the southern property line of the Subject Property to and including Boone Industrial Drive, as shown on **Exhibit B**, provided, if a Building Permit for Lot 6 is sought prior to issuance of a Building Permit for Lots 3 or 4, the construction of White Tiger Lane as set forth in subparagraph 4(c)(i) above shall also be a prerequisite to issuance of a Building Permit for Lot 6.

d. Brown School Road.

- i. Owner shall relocate all utilities (including, but is not limited to, gas and water facilities) that are within the current or proposed right-of-way of Brown School Road (including facilities the easements of which overlap with the current or proposed right-of-way of Brown School Road, but shall not include the utilities under the intersection of Brown School Road and Highway 763/Range Line Street) to wholly within utility easements to be shown on a preliminary plat of the Subject Property and dedicated on any final plat of property adjacent to Brown School Road. Such relocation shall occur at the time of final platting of Lots 1, 2, 3 and 4, provided that relocation of utilities adjacent to Lot 5 shall occur upon final platting of Lot 4.
- ii. Prior to final platting of any Lots 1, 2, 3 or 4, Owner shall provide a traffic impact study, which shall study the necessity of limited access points onto Brown School Road, the widening of Brown School, provision of turn lanes, and other traffic impact identified by City. Owner may be relieved of this obligation to provide a traffic impact study if City can identify a recommended plan for access to Brown School Road and other traffic improvements, and Owner agrees to provide improvements consistent with such recommended plan by reflecting the recommended plan on any such final plat for any lot abutting Brown School Road.

e. <u>Park Trail Easement.</u>

i. Within ninety (90) days of annexation of the Subject Property into the corporate limits of the city, Owner shall dedicate a trail easement along the north side of Cow Branch Creek to allow for a future trail. The trail easement shall be no less than fifty (50) feet wide as measured from the top of the bank of Cow Branch Creek, provided such trail easement shall include all areas within the FEMA defined "Zone X," up to a maximum width of one hundred (100) feet, as measured from the top of the bank of Cow Branch Creek.

- ii. As part of the construction of White Tiger Lane as provided in subparagraph 4(c)(i) above, Owner shall construct an "at water" trail crossing of White Tiger Lane. In the event an "at water" trail crossing of White Tiger Lane is not permitted by the United State Army Corps of Engineer, Owners will construct an "at street level crossing" of White Tiger Lane and shall dedicate any additional trail easements necessary to facilitate an "at street" level crossing, if required.
- iii. An "at water crossing" will be defined as a crossing within the drainage conveyance structure with the trail pathway set at or above water level and allowing a typical trail width of eight (8) feet and a height above floor level of seven (7) feet.
- iv. An "at street level crossing" will be defined as a crossing that is not within the drainage conveyance structure but instead would be at the street level of White Tiger Lane and may include additional infrastructure such as ADA accessible ramps, signage, striping, or other facilities. Specific infrastructure needs will be determined at the time of design for White Tiger Lane and approved by City.
- 5. Construction and Bonding of Improvements. Except as otherwise expressly indicated herein, all public improvements required under the regulations of City or this Agreement shall be constructed in accordance with City's Street, Storm Sewer, and Sanitary Sewer Specifications and Standards, as may be amended, or any successor specifications and standards adopted by City and construction plan shall be approved by City prior to construction of such facilities. Upon review of construction plans for any improvement required to be constructed pursuant to this Agreement, City may, in its sole discretion, require that Owner post a performance bond or other financial instruments acceptable to the City Counselor to secure construction of such improvements.
- 6. **Recording**. Owner shall cause this Development Agreement to be recorded in the Real Estate Records of Boone County, Missouri, at the cost and expense of Owner.
- 7. **Amendments**. Any amendment to this Agreement must be in writing and must be executed by City and Owner, and any future owner of any part of the Subject Property who would otherwise be obligated to perform any of the requirements imposed upon Owner by this Agreement. Oral modifications or amendments of this Agreement shall be of no force or effect.
- 8. **Remedies**. The parties to this Agreement may, either in law or equity, by suit, action, mandamus or other proceedings in court, seek declaratory relief, enforce and compel specific performance of this Agreement, provided that in no event shall City have any liability in damages, costs (including attorneys' fees) or any other monetary liability to Owner or any affiliate of Owner, any person claiming through Owner, or to their respective successors, assigns, heirs and personal representatives in respect of any suit, claim, or cause of action arising out of this Agreement or any of the actions or transactions contemplated herein.
- 9. **Third Party Actions**. Owner shall have the right, but not the obligation to assume the costs of defense of any action or proceeding initiated by a third party challenging this Agreement, the annexation, the zoning or rezoning of the Subject Property, or any other actions

or transactions contemplated by this Agreement (including, without limitation, to settle or compromise any claim or action for which Owner has assumed the defense) with counsel of Owner's choosing and City and Owner agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent City and Owner in any such proceeding. In no event shall City have any liability to Owner for damages or otherwise in the event that all or any part of this Agreement, the ordinances approving the annexation of the Subject Property, or the approval of a zoning request shall be declared invalid or unconstitutional in whole or in part by a final (as to which all rights of appeal have been exhausted or expired) judgment of a court of competent jurisdiction, and, in the event Owner elects not to assume such defense and costs, City shall have no obligation to defend or to assume the costs of defense of any such action.

10. *Notices*. All notices between the parties hereto shall be in writing and shall be sent by certified or registered mail, return receipt requested, by personal delivery against receipt or by overnight courier, shall be deemed to have been validly served, given or delivered immediately when delivered against receipt or three (3) business days after deposit in the mail, postage prepaid, or one (1) business day after deposit with an overnight courier, and shall be addressed as follows:

If to City: If to Developer:

City of Columbia, Missouri ATTN: City Manager 701 E. Broadway Columbia, MO 65205-6015

Each party shall have the right to specify that notice is to be addressed to another address by giving to the other party ten (10) days written notice thereof.

- 11. Hold Harmless. Owner at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to City) and hold harmless City, its municipal officials, elected officials, boards, commissions, officers, employees, attorneys, and agents from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Owner, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Owner may be liable, in the activities performed, or failed to be performed, by Owner under this Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of City, its elected officials, officers, employees, agents or contractors. The indemnification, duty to defend and hold harmless obligations set forth in this Section shall survive for a period of five (5) years from the date of expiration or termination of this Agreement.
- 12. *Insurance*. Owner shall provide, at its sole expense, and maintain during all times in which Owner is constructing public improvements pursuant to this Agreement commercial

general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by City, with a rating by Best of not less than "A," that shall protect Owner, City, and City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by Owner, its officers, directors, employees and agents, or any subcontractors of Owner. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Owner operations, products, services or use of automobiles, or construction equipment. The amount of insurance for required herein shall be in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo. for political subdivisions; provided that nothing herein shall be deemed to waive City's sovereign immunity. An endorsement shall be provided which states that City is named as an additional insured and stating that the policy shall not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without 30 days advance written notice of such event being given to City.

13. **Entire Agreement**. This Agreement contains the entire and complete agreement between City and Owner with respect to the requirements imposed upon Owner for the providing of certain rights-of-way and interests in land, and the construction and installation of certain improvements, all as hereinabove described in the Recitals for this Agreement and the above numbered paragraphs of this Agreement. Parties agree that this Agreement constitutes a lawful contract between the Parties and Owner hereby acknowledges and agrees that this Agreement and provisions of City's Code of Ordinances applicable to this Agreement constitute lawful exercises of City's authority and police power.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year indicated below.

		CITY:	
		CITY	OF COLUMBIA, MISSOURI
		By:	Mike Matthes, City Manager
		Date:	Mike Matthes, City Manager
ATTE	EST:		
By:	Sheela Amin, City Clerk		
APPR	OVED AS TO FORM:		
By:	Nancy Thompson, City Counselor		
	TE OF MISSOURI)) ss		
me pe City of seal of of its deed of	ersonally known, who, being by me dof Columbia, Missouri, and that the se of the City and that this instrument was City Council and the City Manager of the City. IN TESTIMONY WHEREOF, I have	uly swo cal affixe s signed acknow	20, before me appeared Mike Matthes, to orn, did say that he is the City Manager of the ed to the foregoing instrument is the corporate I and sealed on behalf of the City by authority reledged this instrument to be the free act and onto set by hand and affixed my official seal,
at my	office in Columbia, Boone County, M	Aissouri.	, the day and year first above written.
			Notary Public
Му со	ommission expires:	_•	

OWNER:

CHRISTIANSEN INVESTMENTS, LLC

By:	
Printed	Name:
Date:	
STATE OF MISSOURI)) SS	
COUNTY OF BOONE)	
On this day of, to me personally know that he is of Christiliability company, and that said instrument was company by authority of its members, and acknow deed of said limited liability company.	ansen Investments, LLC, a Missouri limited signed on behalf of said limited liability
IN TESTIMONY WHEREOF, I have hereur office in the State and County aforesaid, on the day	·
My commission expires:	, Notary Public

EXHIBIT A LEGAL DESCRIPTION

Tracts to be rezoned

Tract 1 – to PUD

A tract of land located in the southeast quarter of Section 25 T49N R13W, in Boone County, Missouri, being part of the tract described by a deed recorded in book 4273 page 95 of the Boone County records, and further described as follows:

Beginning at the center of Section 25-49-13, also being the northwest corner of the tract described by a survey recorded in book 977 page 236, thence S 87°21'20"E, along the quarter section line, and the north line of tract described by a survey recorded in book 977 page 236, a distance of 468.61 feet; thence leaving said line, S 1°22'40"W 1096.03 feet; thence N 67°38'20"W 496.89 feet to the quarter section line, and the west line of tract described by a survey recorded in book 977 page 236; thence N 1°05'50"E, along said line, 928.47 feet to the beginning and containing 10.83 acres.

Tract 2 - to O-1

A tract of land located in the southeast quarter of Section 25 T49N R13W, in Boone County, Missouri, being part of the tract described by a deed recorded in book 4273 page 95 of the Boone County records, and further described as follows:

Starting at the center of Section 25-49-13, also being the northwest corner of the tract described by a survey recorded in book 977 page 236, thence S 87°21'20"E, along the quarter section line, and the north line of tract described by a survey recorded in book 977 page 236, a distance of 468.61 feet to the point of beginning.

From the point of beginning, thence continuing along the quarter section line, and the north line of tract described by a survey recorded in book 977 page 236, S 87°21′20″E 365.05 feet; thence leaving said line, S 1°22′40″W 924.75 feet; thence S 48°13′40″W 314.60 feet; thence N 67°38′20″W 145.06 feet; thence N 1°22′40″E 1096.03 feet to the beginning and containing 8.94 acres.

A tract of land located in the southeast quarter of Section 25 T49N R13W, in Boone County, Missouri, being part of the tract described by a deed recorded in book 4273 page 95 of the Boone County records, and further described as follows:

Starting at the center of Section 25-49-13, also being the northwest corner of the tract described by a survey recorded in book 977 page 236, thence S 87°21'20"E, along the quarter section line, and the north line of tract described by a survey recorded in book 977 page 236, a distance of 833.66 feet to the point of beginning.

From the point of beginning, thence continuing along the quarter section line, and the north line of tract described by a survey recorded in book 977 page 236, S 87°21'20"E 554.08 feet; thence leaving said line, S 1°22'40"W 520.33 feet; thence along a curve to the left, having a radius of 230.00 feet, a distance of 61.38 feet, the chord being S 6°16'00"E 61.19 feet; thence S 13°54'40"E 246.47 feet; thence N 68°58'10"W 405.26 feet; thence S 48°13'40"W 336.41 feet; thence N 1°22'40"E 924.75 feet to the beginning and containing 10.00 acres.

A tract of land located in the southeast quarter of Section 25 T49N R13W, in Boone County, Missouri, being part of the tract described by a deed recorded in book 4273 page 95 of the Boone County records, and further described as follows:

Starting at the center of Section 25-49-13, also being the northwest corner of the tract described by a survey recorded in book 977 page 236, thence S 87°21'20"E, along the quarter section line, and the north line of tract described by a survey recorded in book 977 page 236, a distance of 1,387.74 feet to the point of beginning.

From the point of beginning, thence continuing along the quarter section line, and the north line of tract described by a survey recorded in book 977 page 236, S 87°21'20"E 743.30 feet to the right of way line of Brown School Road, described by a deed recorded in book 3194 page 107; thence along said right of way line and the right of way line of State Route 763, described by said deed, S 1°24'10"W 16.47 feet; thence S 81°45'30"E 97.10 feet; thence S 84°01'40"E 100.72 feet; thence S 87°58'50"E 118.01 feet; thence S 45°16'40"E 96.20 feet; thence S 1°24'10"W 250.00 feet; thence S 6°43'40"E 342.95 feet; thence S 1°24'20"W 145.39 feet; thence S 42°18'20"W 138.63 feet; thence N 88°35'20"W 27.72 feet; thence S 1°24'10"W 25.47 feet to a southerly line of the tract described by a survey recorded in book 977 page 236; thence along the lines of said tract, N 86°14'00"W 326.48 feet; thence S 3°46'30"W 102.76 feet; thence N 86°13'40"W 602.20 feet to a corner of said tract; thence, leaving the lines of said tract, continuing N 86°13'40"W 33.02 feet; thence N 1°44'50"E 123.23 feet; thence along a curve to the left, having a radius of 230.00 feet, a distance of 62.86 feet, the chord being N 6°04'50"W 62.67 feet; thence N 13°54'40"W 291.53 feet; thence along a curve to the right, having a radius of 230.00 feet, a distance of 61.38 feet, the chord being N 6°16'00"W 61.19 feet; thence N 1°22'40"E 520.33 feet to the beginning and containing 25.69 acres.

A tract of land located in the southeast quarter of Section 25 T49N R13W, in Boone County, Missouri, being part of the tract described by a deed recorded in book 4273 page 95 of the Boone County records, and further described as follows:

Starting at the center of Section 25-49-13, also being the northwest corner of the tract described by a survey recorded in book 977 page 236, thence S 1°05'50"W, along the quarter section line, and the west line of tract described by a survey recorded in book 977 page 236, a distance of 928.47 feet to the point of beginning.

From the point of beginning, thence leaving the quarter section line, and the west line of tract described by a survey recorded in book 977 page 236, S 67°38'20"E 641.95 feet; thence N 48°13'40"E 651.01 feet; thence S 68°58'10"E 405.26 feet; thence S 13°54'40"E 45.06 feet; thence along a curve to the right, having a radius of 230.00 feet, a distance of 62.86 feet, the chord being S 6°04'50"E 62.67 feet; thence S 1°44'50"W 123.23 feet; thence S 86°13'40"E 33.02 feet to a corner of the tract described by a survey recorded in book 977 page 236; thence along the lines of said tract, S 1°44'50"W 330.60 feet; thence N 86°13'40"W 1505.31 feet; thence N 1°05'50"E 418.83 feet to the beginning and containing 15.11 acres.

Exhibit B Depiction of Lots and Improvements

