

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made and entered into by and among 1611 UNIVERSITY, LLC, 1615 UNIVERSITY, LLC, and 1617 UNIVERSITY, LLC (“Petitioners”) and City of Columbia, Missouri (“Columbia”).

WHEREAS, Petitioners are the owners of certain real property located within Columbia more particularly described in Exhibit A (“the Property”).

WHEREAS, Petitioners filed three applications to re-plat the Property with Columbia into three separate plats to be known as Fyfer Subdivision Plat No. 2, Fyfer Subdivision Plat No. 3 and Fyfer Subdivision Plat No. 4, collectively referred to herein as the “Application”;

WHEREAS, on November 15, 2021, the Columbia City Council denied the Application to re-plat the Property.

WHEREAS, after Columbia’s denial of the Application to re-plat, Petitioners filed an action in the Circuit Court of Boone County seeking among other things mandamus, an appeal of administrative action by the City, a declaratory judgment, and an inverse condemnation claim set forth in the Circuit Court of Boone County case entitled 1611 University, LLC, et al. v. City of Columbia, Case Number 22BA-CV00132-01 (“the Lawsuit”);

WHEREAS, the Parties have determined that they wish to resolve the Lawsuit and have agreed to enter into this Agreement to set forth the terms and conditions upon which such dispute may be resolved between the Parties.

NOW, THEREFORE, in consideration of the forgoing recitals and of the mutual promises and covenants set forth in this Agreement, the Parties agree as follows:

1. Petitioners shall re-submit the Application for re-plat of the Property in the same manner as the re-plat denied by Columbia on November 15, 2021.
2. Such Application shall be processed by Columbia according to Columbia’s normal processes and procedure for consideration by the Planning and Zoning Commission and City Council, except that the Petitioners shall not be required to pay any additional application fees or reimburse Columbia for any additional expenses incurred with the advertisement and processing of the Application.
3. Columbia anticipates that its City Council, upon review and reconsideration of the Application will find approval of the Application is in the best interest of the City and will accordingly approve said Application in similar form as set forth in the previously denied Council Bills 356-21, 357-21 and 358-21. Provided, however, in the event the City Council does not approve the Application, this Agreement shall be null and void and

Petitioners will proceed with the Lawsuit as if this Agreement was never executed by the Parties.

4. Provided the City Council approves the Application within 90 days of the execution of this Agreement, Petitioners do hereby release Columbia as set forth herein:

In consideration of the recitals, promises and covenants made herein, Petitioners agree for themselves, their present, past and future subsidiaries, and affiliated corporations, divisions, companies, affiliates, predecessors, principals, partners, joint venturers, representatives, successors, and assigns, and its past and present owners, members, directors, officers, employees, stockholders, attorneys, agents, and insurers, and all persons acting by, through, under or in concert with any of them and all other persons, firms and corporations whomsoever (for purposes of this Section, "Petitioners"), to irrevocably and unconditionally waive, release and forever discharge Columbia, and its present, past and future direct and indirect parents, subsidiaries, affiliated corporations, divisions, affiliates, predecessors, principals, partners, joint venturers, co-investors, representatives, financing sources, successors, assigns, employees, officers, directors, employees, stockholders, agents, general agents, brokers, attorneys, representatives and insurers, and all persons acting by, through, under or in concert with any of them and all other persons, firms and corporations whomsoever (the "Released Parties") from any and all liability, actions, causes of action, common law claims, statutory claims, demands, damages, liens or conditional payments, expenses, and fees (including attorney's fees, court costs, expert witness fees, etc.), whether known or unknown, foreseen or unforeseen, that Petitioners may now or hereafter have against the Released Parties and/or have on account of, arising out of, or in connection with all interactions, transactions or contracts, express or implied, between Petitioners and the Released Parties set forth in the Lawsuit. This is a release of all claims or potential claims by Petitioners against the Released Parties that could have been brought in the Lawsuit, and this Release should not be read to limit the reach of the Release.

The proceeding release shall automatically go into effect upon the City Council approval of the Application and payment of the consideration set forth in paragraph 5, below.

5. After City Council approval of the Application, Columbia will pay Petitioners fifteen thousand dollars 00/100 (\$15,000.00).

6. After receiving the payment described in paragraph 5, Petitioners shall dismiss with prejudice the Lawsuit.

7. The Parties acknowledge that the consideration supporting this Agreement is sufficient consideration, that this Agreement is entered into in good faith, and that this Agreement shall never be considered at any time or for any purpose as an admission of liability by Columbia or that Columbia acted wrongfully with respect to the Application,

Petitioners, or any other action, person or entity. Columbia specifically denies any liability to Petitioners on the part of itself, its employees, and its agents.

8. The Parties further expressly acknowledge and agree that no party is a “prevailing party” or “successful party” for purposes of any further claim for statutory or contractual attorneys’ fees or costs.

9. This Agreement is made and entered into in the State of Missouri, and shall in all respects be interpreted, enforced, and governed under the laws of Missouri, without regard to the law relating to the conflicts of laws.

10. This Agreement may not be amended or modified in any respect whatsoever, except by a writing duly executed by all Parties. The Parties each agree that each will make no claim at any time that this Agreement has been orally amended or modified. No oral waiver of any term shall be effective for any purposes.

11. Each of the Parties hereto further represents and declares that it has carefully read this Agreement and knows its contents and that each Party signs the same freely and voluntarily.

12. Each of the Parties represents and declares that in executing this Agreement it has relied solely upon its own judgment, belief and knowledge, and the advice and recommendations of its own independently selected counsel, concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by the other Party hereto or by any person representing the other Party.

13. Each of the Parties acknowledges that it, with the assistance of competent counsel, has participated in the drafting of this Agreement and that any ambiguity should not be construed for or against either of the Parties on account of such drafting. Any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that drafted the applicable provision is not applicable and is hereby waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the Parties and this Agreement.

14. This Agreement sets forth the entire agreement between the Parties as respects its subject matter and fully supersedes all other oral and written understandings or agreements between the Parties pertaining to the subject matter of this Agreement, unless specifically referenced herein. The terms of this Agreement are contractual and not mere recitals, and the nonenforceability of any provision of this Agreement shall not affect the enforceability of any other provision.

15. By their signatures below, the individuals executing this Agreement represent and warrant that they have the authority to bind the Parties on whose behalf they sign.

16. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument.

[SIGNATURES ON THE NEXT PAGE]

I have carefully read this Agreement; I fully understand the Agreement's contents and the effects thereof, including the Releases in Paragraphs 2-4.

CITY OF COLUMBIA, MISSOURI

DATED: _____

By: _____

Title: _____

APPROVED AS TO FORM:

City Counselor

1611 UNIVERSITY, LLC

DATED: _____

By: _____

Title: _____

1615 UNIVERSITY, LLC

DATED: _____

By: _____

Title: _____

1617 UNIVERSITY, LLC

DATED: _____

By: _____

Title: _____

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

On the _____ day of _____, 2023, before me personally appeared 1611 UNIVERSITY, LLC, to me known to be the person named herein and who executed the foregoing Release and acknowledged to me, voluntarily executed same.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

On the _____ day of _____, 2023, before me personally appeared 1615 UNIVERSITY, LLC, to me known to be the person named herein and who executed the foregoing Release and acknowledged to me, voluntarily executed same.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires:

EXHIBIT A

1615 UNIVERSITY, LLC – formerly known as 1615, 1617 UNIVERSITY, LLC

1611 University Avenue, Columbia, Missouri - A part of Lot Fifteen (15) and part of Lot Sixteen (16) in Block Five (5) in FYFER'S SUBDIVISION of FYFER'S ADDITION to the City of Columbia, Boone County, Missouri, described as follows: Beginning on the south line of said Lot 15, at a point 30 feet east of the southwest corner of said lot, thence north parallel to the west line of said lot to the north line of Lot 15, thence east along the north line of Lots 15 and 16, the distance of 100 feet, thence south parallel to the west line of Lot 15 to the south line of Lot 16, thence west 100 feet to the Point of Beginning.

1615 University Avenue, Columbia, Missouri - Parcel 1. A part of Lots Sixteen (16) and Seventeen (17), in Block Five (5) of FYFER'S SUBDIVISION of FYFER'S ADDITION to the City of Columbia, Missouri, described as follows, to-wit Beginning at a point on the south line of said Lot 16, 10 6 feet west of the southeast corner thereof, thence north to a point on the north line of said Lot, 10 feet west of the northeast corner of said Lot, thence along the north line of Lots 16 and 17, 50 feet to a point 40 feet east of the northwest corner of said Lot 17, thence south to a point on the south line of said Lot 17, 40 feet east of the southwest corner thereof, thence west along the south line of said Lots 16 and 17 to the POINT OF BEGINNING (1615 University)

1617 University Avenue, Columbia, Missouri - Parcel 2 The east thirty (3) feet of Lot Number Seventeen (17) and the west twenty (20) feet of Lot Number Eighteen (18) in Block Number Five (5) of FYFER'S SUBDIVISION of FYFER'S ADDITION to the City of Columbia, Missouri (1617 University)