Council Bill: B 63-14

MOTION TO AMEND: _____

MADE BY: _____

SECONDED BY: _____

MOTION: I move that Council Bill B 63-14 be amended as set forth on this amendment sheet.

==========

Attachment A attached to this amendment sheet is substituted for the Attachment A attached to the original bill.

Development Agreement

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into this ___ day of _____, 2014, (the "**Effective Date**")between **ACC OP Development LLC**, a Delaware limited liability company, whose address is 12700 Hill Country Boulevard – Suite T-200, Austin, TX 78738, (the "**Developer**") and the **City of Columbia,** a municipal corporation and constitutional charter city under the laws of the State of Missouri, whose address is 701 East Broadway, Columbia, Missouri 65201 (the "**City**"), (collectively hereinafter referred to as the "**Parties**").

WHEREAS, Developer is the contract purchaser of certain tracts of land in the City of Columbia, Boone County, State of Missouri, described on Exhibit A to this Agreement (the "**Developer Tract**"); and

WHEREAS, the current zoning of the Developer Tract is R-3; however, Developer has a pending application for rezoning to PUD-52; and

WHEREAS, the Developer desires to construct a residential housing structure on the Developer Tract generally in the manner shown on the depictions attached hereto as Exhibit B (the "**Site Plan**") to consist of a building not to exceed five (5) stories in height and containing a maximum of 182 dwelling units in a mix of one, two, three and/or four bedroom units (a maximum of 728 bedrooms) together with parking and related uses (the "**Project**"); and

WHEREAS, the existing use of the Developer Tract consists of 17 structures currently used as residential rental properties; and

WHEREAS, the Project to be constructed by Developer is a significant change of use from the existing use of the Developer Tract; and

WHEREAS, prior to issuance of a building permit to construct the Project, City and Developer desire to ensure adequate utilities and utility infrastructure exist to serve the intended use; and

WHEREAS, the City has conducted a survey of existing utility infrastructure within the overall downtown Columbia geographical area, which includes the Developer Tract; and

WHEREAS, inadequate water, fire protection, electric, storm water and sanitary sewer facilities exist to serve the proposed increase in use of the Developer Tract which will result from the Project construction; and

WHEREAS, the Developer desires to begin construction of the Project during the 1st calendar quarter of 2015 and to complete construction and open to residents on or before 3rd calendar quarter of 2016 (the "**Project Schedule**"); and

WHEREAS, it is critical for Developer to receive the assurances and protections provided by this Agreement in order to proceed with the acquisition of the Developer Tract and final design and construction of the Project in order to construct the Project according to the Project Schedule; and

WHEREAS, establishing the terms and conditions under which utilities will be provided to the Project will protect and benefit the health, safety, and general welfare of the City and is in the best interest of the public; and

NOW, THEREFORE, in consideration of the recitals set forth above, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Definitions**.

"**Affiliated Entity**" means a business entity in which the Developer has an ownership interest of at least 10% but less than 50%.

"**Applicable Law**" means those rules, regulations, official policies, standards and specifications, ordinances and resolutions which are controlled by the City and in force and effect on the Effective Date of this Agreement.

"**Commencement of Construction**" means the issuance of the building permit to authorize physical construction of the structure and shall not include demolition and grading activities on the site related to the Project prior to issuance of the building permit.

"**Construction Period**" means the period of time the Project is under construction. The Construction Period shall commence at such time as City issues the building permit the construct the Project and such construction shall proceed without unnecessary delay until completion of the project, which shall be evidenced by issuance of a certificate of occupancy by the City.

"**Governmental Authority**" or "**Governmental Authorities**" means any municipal governmental authority, including all executive, legislative and administrative departments and bodies thereof having jurisdiction over the Developer, the Developer Tract, or the Project.

"**Governmental Requirements**" means all laws, ordinances, statutes, executive orders, rules, zoning requirements and agreements of any Governmental Authority that are applicable to the acquisition, renovation, demolition, development, and construction of the Developer Tract and/or Project including, without limitation, all required permits, approvals and any rules, guidelines or restrictions enacted or imposed by any Governmental Authorities.

"**Term**" means (2) years from the Effective Date, or (ii) the date on which construction of the Project is completed following commencement of construction during the two (2) year period

following the Effective Date, so long as the Developer is continuously and diligently pursuing completion of such construction without unnecessary delay, provided that such Term shall not extend more than three (3) years from the Effective Date without the written consent of City.

2. **Project Development Contingency**. With respect to the use and development of the Project and the Developer Tract, the Developer's obligations in this Agreement are contingent upon approval of rezoning of the Developer Tract to a planned district with a development plan and conditions that are acceptable to Developer.

3. **Water System Improvements.** If the City, in its sole discretion determines it is necessary or desirable for the water service improvements set forth herein and depicted in Exhibit C attached hereto to be constructed to serve the Project (the "Water Infrastructure Improvements"), Developer shall and does hereby agree to design, construct and dedicate to the public the Water Infrastructure Improvements at its sole cost and expense in compliance with the requirements of the Applicable Law. City agrees to accept the dedication of the Water Infrastructure Improvements for maintenance upon completion of construction pursuant to the terms of this Agreement. Prior to Commencement of Construction, the Developer shall submit to the City's Water and Light Department for review and approval a complete set of engineered plans for the Water System Improvements. Said plans shall be prepared by a registered engineer authorized to perform such work and shall be designed in accordance with the Applicable Law. The Water Infrastructure Improvements shall be dedicated to the public prior to issuance of a certificate of occupancy to occupy the Project.

4. **Sanitary Sewer Improvements.** Developer hereby agrees to contribute $300,000 to the reconstruction and/or rehabilitation of the connecting sanitary sewer main depicted in Exhibit D attached hereto (the "Sanitary Sewer Infrastructure"). Subject to the public improvement process requirements set forth is Chapter 22 of the Columbia City Code, the City shall perform the construction and be responsible for all remaining costs of reconstruction of the Sanitary Sewer Infrastructure in excess of Developer's contribution. Payment for construction of the Sanitary Sewer Infrastructure shall be made by Developer to City prior to issuance of the building permit to construct the Project. Nothing contained herein shall prohibit City from requiring other developers or property owners to contribute to the cost of reconstruction of the Sanitary Sewer Infrastructure. Failure of City to construct or complete the Sanitary Sewer Infrastructure improvements prior to the end of the Construction Period shall not prevent Developer from obtaining a certificate of occupancy following construction of the Project.

5. **Electric System Improvements**. The parties acknowledge the City does not currently have the capacity in its electrical system to serve the completed Project and City will be required to construct system improvements to meet the service demands of the completed Project (the "**Electric System Improvements**"). City agrees to construct the Electric System Improvements to serve the Project and to provide interim temporary electric service to serve the Project as follows:

a. The Developer shall notify the City (as provided in Paragraph 13 hereof) and the City's Director of Water and Light at Columbia City Hall, 701 E. Broadway, Columbia, MO 65201, in writing, at least one (1) year prior to the first date electric service will need to be provided to residents of the completed Project (the "**Required Service Date**");
b. The notice provided by Developer to City shall include a riser diagram detailing the physical design and required capacity for electrical service to serve the completed Project on the Required Service Date;
c. City will cause the Electric System Improvements to be constructed or make contingent arrangements to ensure the service capacity will be available to serve the completed Project on the Required Service Date;
d. In the event the Project construction is not complete on the Required Service Date, Developer shall begin making payments to the City for the electrical service capacity reserved thirty days following the Required Service Date (the "Payment In Lieu of Service"). The Payment In Lieu of Service shall be for the prior month and calculated based on a capacity charge of $3/Kw-mth, utilizing the demands shown on the riser diagram submitted to the City in the one-year notice of the Required Service Date. Payments in Lieu of Service shall continue for each month, or part thereof, until Developer receives a certificate of occupancy to occupy the Project.

6. **Availability of Public Utility Services**. City and Developer acknowledge that the availability of public utility services of electricity, water, and sanitary sewer capacity is critical to the Project. The Developer has submitted to the City the projected load and flow demands for public utility services to be generated by the Project at the end of the Construction Period as set forth in Exhibit E hereto (the "**Utility Estimates**"). The City has reviewed the Utility Estimates and hereby commits that, in combination with the Developer commitments contained in this Agreement, the City will have adequate capacity to support the Project and the intended uses set forth herein by the end of the Construction Period and that if the Developer honors its commitments under this Agreement the City will not deny Developer the ability to connect to such essential public services to serve the Project at the end of the Construction Period. In no event shall the commitment of the City to reserve, construct or supply adequate capacity to support the Project extend beyond the Term of this Agreement, nor shall the City's commitment herein to provide public utility services be in excess of the Utility Estimates.

7. **Permit and Connection Fees.** In addition to the commitments of Developer contained herein, the Developer shall pay to the City, at the time and in the amount required by the Applicable Law, the standard connection and permit fees associated with connecting the Developer Tract to the utilities.

8. **No Conflicting Enactments**. During the Term the City will not impose on the Project or Developer Tract by action of the City Council any Governmental Requirement (to the extent that the City has authority with respect to a Governmental Requirement), ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a "City Regulation" and collectively the "City Regulations") that reduces the assurances

provided by this Agreement with respect to the availability of public utilities for the development, maintenance, and operation of the Project. Nothing contained herein shall prohibit the City from enacting a Governmental Requirement and imposing the same on the Project and Developer Tract for protection of the health, safety and welfare of the public in the same manner and to the same extent as imposed on the general public. During the Term, any change in the following shall not be effective as applied to the Developer Tract without the express agreement of Developer:

a. Change any land use designation or permitted use of the Development Tract in a manner not contemplated by this Agreement which would prohibit or limit the use of the Developer Tract for the Project as described in this Agreement;

b. Limit or control the availability of public utilities, services or facilities for the Project as described in this Agreement, unless such limitation is necessary to address health and safety issues created by the increase in capacity demanded by the Project which is in excess of the capacity contemplated herein;

c. Apply to the Project any City Regulation otherwise allowed by this Agreement that is not uniformly applied to all similar types of development projects and project sites within the Downtown Community Improvement District boundaries; and

d. Establish, enact, increase, or impose against the Project or Developer Tract any fees, taxes (including without limitation general, special and excise taxes), assessments or other monetary obligations other than those imposed and applied on all similar types of development projects and project sites within the Downtown Community Improvement District boundaries; provided however, if such additional fees, taxes, assessments or other monetary obligations related to the utility infrastructure improvements are imposed by City against the Developer Tract, the Developer shall have the right to claim a credit for any payments and construction enhancements made by Developer pursuant to this Agreement.

Nothing herein shall limit the City's authority to enact ordinances, resolutions, or otherwise pass laws or promulgate rules or regulations with regard to any matter, so long as same does not have the effect of limiting construction of the Project on the Developer Tract within the Term in substantially the same manner as set forth in this Agreement. City expressly retains the right to control and determine all matters relating to the public streets and rights of way without any regard to the impact such decisions may have on the Project or Developer Tract, including but not limited to the granting of right of use permits and/or street closures adjacent to the Developer Tract.

9. **Timing of Project Construction and Completion.** Subject to the following, the Developer shall endeavor in good faith and with reasonable diligence to proceed with and construct the Project during the Term and as described in this Agreement:

a. It is the intent of the Developer to complete construction of the Project by August 30, 2016. The timing, order and rate of development shall be in Developer's sole

discretion. It shall not be an event of default hereunder if the Project is not constructed during the Term; rather, this Agreement shall terminate in such case without any further action required by the Parties.

b. In no event shall a delay by Developer to complete construction of the Project according to the Project Schedule result in a refund or claim for refund of Developer's contribution for the construction of the Sanitary Sewer Improvements.

10. **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.

11. **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.

12. **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.

13. **Notices**. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing shall be considered delivered: (a) upon personal delivery to the party to whom the notice is directed; or (b) 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:	ACC OP Development LLC Attn: Chuck Carroll 12700 Hill Country Blvd., Ste. T-200 Austin, TX 78738
With a Copy to:	Robert Hollis Van Matre, Harrison, Hollis, Taylor, and Bacon, P.C. 1103 East Broadway Columbia, MO 65201
To City:	City of Columbia Attn: City Manager 701 East Broadway Columbia, MO 65201
With a Copy to:	City of Columbia Attn: City Counselor

14. **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.

15. **Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

16. **Jurisdiction and Venue.** Legal action concerning any dispute, claim or matter arising out of the Agreement shall be brought only in the Circuit Court of Boone County, Missouri.

17. **Severability or Partial Invalidity**. This Agreement is to be considered in its entirety and both parties acknowledge the assurances granted herein are dependent upon each other. If any provision of this Agreement is for any reason held to be invalid or unenforceable, such provision shall render the entire agreement invalid and unenforceable.

18. **Gender and Number.** Pronouns and any reference to a person or persons, wherever used herein, and of whatever gender, shall include natural persons, corporations, associations, partnerships and other entities of every kind and character, and the singular shall include the plural and vice versa, wherever and as often as may be appropriate.

19. **Failure or Delay to Enforce.** No failure to exercise or delay in exercising any right hereunder on the part of any Party to this Agreement shall operate as a waiver thereof, and no single or partial exercise of any right of such Party shall preclude any other or further exercise of such right or the exercise of any other right.

20. **Force Majeure.** In the event that either Party shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, riots, insurrection, the act, failure to act or default of the other Party, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

21. **Priority and Recording.** This Agreement shall be recorded in the Records of Boone County, Missouri with the intention that it will, in addition to the Parties hereto, govern in the future with respect to all subsequent owners of all or any portion of the property to which this Agreement applies as of the Effective Date unless and until this Agreement is amended or terminated in accordance with the terms hereof. Any party foreclosing any mortgage, deed of trust, lien or other encumbrance affecting the Developer Tract or part thereof or interest therein, and any party acquiring title to or any interest in any portion of the Developer Tract as a result of the foreclosure, shall acquire and hold such title or interest subject to the provisions of this Agreement. Any transferee of any interest in any of the Developer Tract shall automatically be deemed, by acceptance of such interest, to have agreed to be bound by

allf the provisions of this Agreement, and to have agreed to perform and do any and all things required to be done and performed hereunder by the owner of the interest so transferred.

22. **Binding Effect; Assignment.** This Agreement is not assignable by any party to a non-affiliated third party. Developer may assign its rights to an Affiliated Entity as defined herein, provided that (i) Developer shall remain jointly and severally liable with the assignee for the obligations contained in this Agreement; (ii) Developer, and any assignee by accepting assignment of this Agreement, expressly agrees to defend and indemnify City from any litigation arising out of the assignment; (iii) written notice of the assignment, including the name of the assignee, is provided to City at least fifteen (15) business days prior to the effective date of such assignment.

23. **Power of the City.** Notwithstanding anything set forth in this Agreement to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. All financial obligations of the City shall be subject to future appropriation of the City in accordance with Applicable Laws and Requirements. Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Requirements.

24. **Time.** Time is of the Essence in this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

25. **Sovereign Immunity.** Nothing in this Agreement shall constitute or be construed as a waiver of the City's governmental or official immunity or its officers or employees from liability or suit pursuant to Section 537.600 RSMo.

26. **Authorized Employees.** Developer acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Developer therefore covenants that it is not knowingly in violation of Section 285.530(1), RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on any project which is the subject of this Agreement, and that its employees are lawfully eligible to work in the United States. Developer will execute an Immigration Law Compliance Affidavit in substantially the same form as attached hereto in Exhibit ~~G~~F and will cause any person or entity performing work on the Infrastructure Project to confirm compliance with Section 285.530(1) and execute an Immigration Law Compliance Affidavit.

27. **Inspection.** The City may conduct such periodic inspections of the Project including any applicable phase as may be generally provided in the Applicable Law or for inspection thereof pursuant to comply with the terms of this Agreement. The Developer shall not deny the City and its officers, employees, agents and independent contractors the right to inspect, upon reasonable prior written request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Project or any applicable phase thereof.

28. **Entire Agreement; Amendment.** It is agreed and understood by the parties that this Agreement embodies the entire understanding and represents the full and final agreement among the parties with respect to the subject matter hereof and supersede any and all prior commitments, agreements, discussions, representations, and understandings, whether written or oral, relating to the subject matter hereof; that this Agreement may not be contradicted or varied by evidence of prior or contemporaneous written or oral agreements or discussions of the parties, or subsequent oral agreements or discussions of the parties; that there are no oral agreements among the parties, and no representations, agreements or promises not set forth herein have been made. Without limiting the foregoing, Developer acknowledges that: (i) no promise or commitment has been made to it by or on behalf of the City other than as set forth in this Agreement; and (ii) except as otherwise expressly provided herein, this Agreement supersedes and replaces any and all proposals, letters of intent and approval and commitment letters relating to the subject matter hereof, none of which shall be considered a part of this Agreement unless expressly incorporated into this Agreement. This Agreement shall be amended only in writing and effective when signed by the parties.

29. **Representatives Not Personally Liable.** No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

30. **Counterparts.** This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute but one and the same document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE TO FOLLOW]

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

City of Columbia ("City")

By: _____
Mike Matthes, City Manager

Attest:

By: _____
Sheela Amin, City Clerk

Approved as to form:

By: _____
Nancy Thompson, City Counselor

ACC OP Development LLC ("Developer")

By: _____
Jonathan Graf, Vice President~~Chuck Carroll, Authorized Agent~~

State of Missouri)
) ss.
County of Boone)

On this _____ day of _____, 2014, before me personally appeared Mike Matthes, who, upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is an authorized agent for the **City of Columbia, Missouri** and that he has executed this document on behalf of said entity as the free act and deed of said entity, and that he is duly empowered by said entity to execute this document on said entity's behalf.

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

_____
_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

State of Missouri)
) ss.
County of Boone)

On this _____ day of _____, 2014, before me personally appeared Johnathan Graf, Vice President~~**Chuck Carroll**~~, who upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is an authorized agent of **ACC OP Development LLC,** that he executed the foregoing on behalf of said company, as the free act and deed of said company, and pursuant to the authority vested in him to execute the foregoing by the company, that the foregoing is binding in all respects upon said company, and that said company is duly empowered to enter into the foregoing.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my seal the day and year first above written.

_____
_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

EXHIBIT A

Developer Tract

TWO TRACTS OF LAND LOCATED IN THE NE 1/4 OF SECTION 13, TOWNSHIP 48 NORTH, RANGE 13 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF UNIVERSITY ADDITION RECORDED IN PLAT BOOK 70 PAGE 128, VESSERS SUBDIVISION RECORDED IN PLAT BOOK 1, PAGE 35, AND BEING ALL OF THE CITY OF COLUMBIA SURVEY #304, AT PAGE 327, AND BEING ALL OF THE SURVEY SHOWN AS EXHIBIT "B", RECORDED IN BOOK 951, PAGE 411, AND BEING ALL OF THE SURVEYS RECORDED IN BOOK 418, PAGE 412, BOOK 316, PAGE 547, AND BOOK 479, PAGE 194, AND DESCRIBED BY THE DEEDS RECORDED IN BOOK 3582, PAGE 150, BOOK 2886, PAGE 150, BOOK 1631, PAGE 617, BOOK 1200, PAGE 148, BOOK 2598, PAGE 45, AND BOOK 2598, PAGE 44, BOOK 2638, PAGE 128, BOOK 991, PAGE 314, BOOK 3101, PAGE 68, BOOK 2216, PAGE 604, BOOK 611, PAGE 248, BOOK 1441, PAGE 396 AND BOOK 730, PAGE 244 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

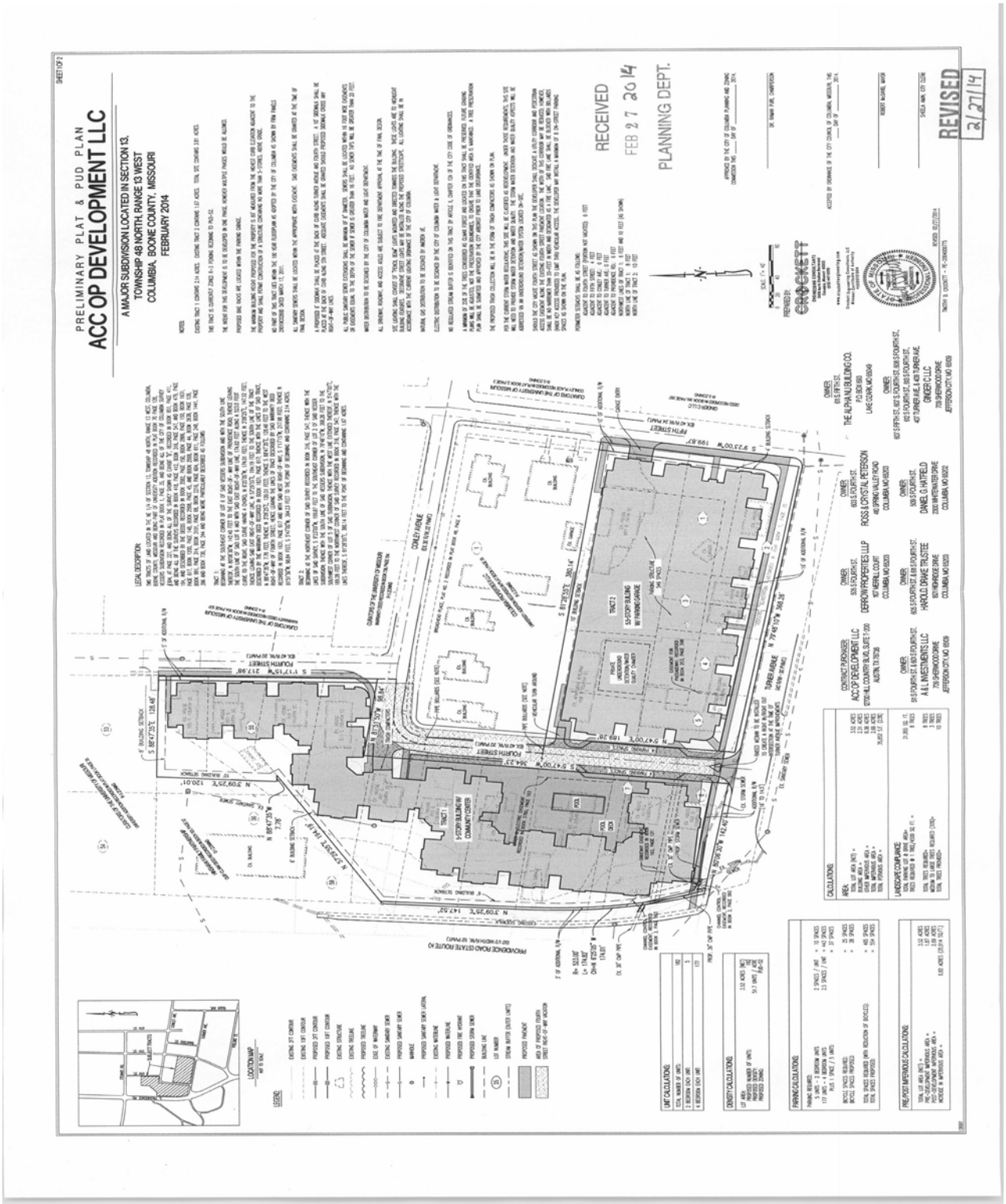
TRACT 1:
BEGINNING AT THE SOUTHEAST CORNER OF LOT 6 OF SAID VESSERS SUBDIVISION AND WITH THE SOUTH LINE THEREOF, N 80°06'30"W, 142.40 FEET TO THE EAST RIGHT-OF- WAY LINE OF PROVIDENCE ROAD; THENCE LEAVING THE SOUTH LINE OF SAID LOT 6 AND WITH SAID EAST RIGHT-OF-WAY LINE, 174.82 FEET ALONG A 523.0 FOOT CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD, N 6°25'05"W, 174.01 FEET; THENCE N 3°09'25"E, 147.52 FEET; THENCE LEAVING SAID EAST RIGHT-OF-WAY LINE, N 57°29'55"E, 194.19 FEET TO THE SOUTH LINE OF THE TRACT DESCRIBED BY THE WARRANTY DEED RECORDED IN BOOK 1631, PAGE 617; THENCE WITH THE LINES OF SAID TRACT, N 88°47'35"W, 7.78 FEET; THENCE N 3°09'25"E, 120.O1 FEET; THENCE S 88°47'35"E, 128.48 FEET TO THE WEST RIGHT-OFWAY OF FOURTH STREET; HENCE LEAVING THE LINES OF TRACT DESCRIBED BY SAID WARRANTY DEED RECORDED IN BOOK 1631, PAGE 617 AND WITH SAID WEST RIGHT-OF-WAY, S 1°17'15"W, 217.98 FEET; THENCE N 81°51'50"W, 98.84 FEET, S 5°47'00"W, 364.23 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.14 ACRES.

TRACT 2:
BEGINNING AT THE NORTHEAST CORNER OF SAID SURVEY RECORDED IN BOOK 316, PAGE 547, THENCE WITH THE LINES OF SAID SURVEY, S 9°23'00"W, 199.87 FEET TO THE SOUTHEAST CORNER OF LOT 2 OF SAID VESSER SUBDIVISION; THENCE WITH THE SOUTH LINE OF SAID VESSERS SUBDIVISION, N 79°48'10"W, 368.26 FEET TO THE SOUTHWEST CORNER OF LOT 5 OF SAID SUBDIVISION; THENCE

WITH THE WEST LINE EXTENDED THEREOF, N 5°47'00"E, 189.28 FEET TO THE NORTHWEST CORNER OF SAID SURVEY RECORDED IN BOOK 316, PAGE 547; THENCE WITH THE LINES THEREOF, S 81°28'55"E, 380.14 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.67 ACRES.

EXHIBIT B

~~Conceptual~~ Site Plan



PRELIMINARY PLAT & PUD PLAN

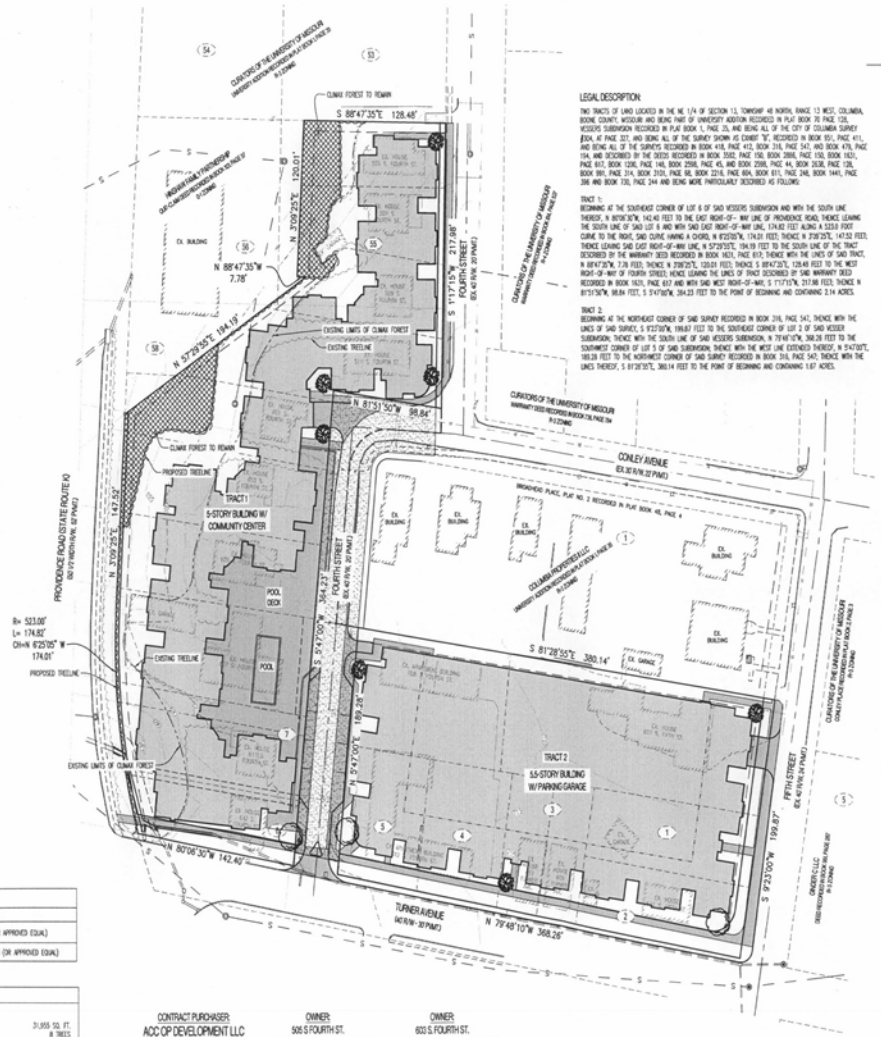
ACC OP DEVELOPMENT LLC

A MAJOR SUBDIVISION LOCATED IN SECTION 13, TOWNSHIP 48 NORTH, RANGE 13 WEST COLUMBIA, BOONE COUNTY, MISSOURI FEBRUARY 2014



LOCATION MAP
NOT TO SCALE

LEGEND:
- EXISTING 2FT CONTOUR
- EXISTING 10FT CONTOUR
- PROPOSED 2FT CONTOUR
- PROPOSED 10FT CONTOUR
- EXISTING STRUCTURE
- EXISTING TREELINE
- PROPOSED TREELINE
- EDGE OF WATERWAY
- EXISTING SANITARY SEWER
- PROPOSED SANITARY SEWER
- MANHOLE
- PROPOSED SANITARY SEWER LATERAL
- EXISTING WATERLINE
- PROPOSED WATERLINE
- PROPOSED FIRE HYDRANT
- PROPOSED STORM SEWER
- BUILDING LINE
- (35) LOT NUMBER
- STREAM BUFFER (OUTER LIMITS)
- PROPOSED PAVEMENT



LEGAL DESCRIPTION:

TWO TRACTS OF LAND LOCATED IN THE NE 1/4 OF SECTION 13, TOWNSHIP 48 NORTH, RANGE 13 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF UNIVERSITY ADDITION RECORDED IN PLAT BOOK 70, PAGE 108, MISSERS SUBDIVISION RECORDED IN PLAT BOOK 1, PAGE 25, AND BEING ALL OF THE CITY OF COLUMBIA SURVEY #304, AT PAGE 327, AND BEING ALL OF THE SURVEY SHOWN AS EXHIBIT "B", RECORDED IN BOOK 951, PAGE 411, AND BEING ALL OF THE SURVEYS RECORDED IN BOOK 418, PAGE 412, BOOK 316, PAGE 542, AND BOOK 479, PAGE 194, AND DESCRIBED BY THE DEEDS RECORDED IN BOOK 3582, PAGE 150, BOOK 2894, PAGE 150, BOOK 1631, PAGE 617, BOOK 1208, PAGE 148, BOOK 2598, PAGE 45, AND BOOK 2598, PAGE 44, BOOK 2638, PAGE 128, BOOK 891, PAGE 314, BOOK 2103, PAGE 88, BOOK 2216, PAGE 604, BOOK 611, PAGE 246, BOOK 1441, PAGE 286 AND BOOK 130, PAGE 244 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 1:
BEGINNING AT THE SOUTHEAST CORNER OF LOT 6 OF SAID MISSERS SUBDIVISION AND WITH THE SOUTH LINE THEREOF, N 88°06'30"W, 142.40 FEET TO THE EAST RIGHT-OF-WAY LINE OF PROVIDENCE ROAD; THENCE LEAVING THE SOUTH LINE OF SAID LOT 6 AND WITH SAID EAST RIGHT-OF-WAY LINE, 174.82 FEET ALONG A 523.0 FOOT CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD, N 8°25'05"W, 174.01 FEET; THENCE, N 3°09'25"E, 147.52 FEET; THENCE LEAVING SAID EAST RIGHT-OF-WAY LINE, N 57°29'57"E, 194.19 FEET TO THE SOUTH LINE OF THE TRACT DESCRIBED BY THE WARRANTY DEED RECORDED IN BOOK 1631, PAGE 617; THENCE WITH THE LINES OF SAID TRACT, N 88°47'35"W, 7.78 FEET; THENCE, N 3°09'25"E, 120.01 FEET; THENCE, S 88°47'35"E, 128.48 FEET TO THE WEST RIGHT-OF-WAY OF FOURTH STREET; HENCE LEAVING THE LINES OF TRACT DESCRIBED BY SAID WARRANTY DEED RECORDED IN BOOK 1631, PAGE 617 AND WITH SAID WEST RIGHT-OF-WAY, S 1°17'15"W, 217.88 FEET; THENCE N 81°51'50"W, 98.84 FEET, S 5°47'00"W, 304.23 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.14 ACRES.

TRACT 2:
BEGINNING AT THE NORTHEAST CORNER OF SAID SURVEY RECORDED IN BOOK 316, PAGE 542; THENCE WITH THE LINES OF SAID SURVEY, S 9°23'00"W, 199.83' FEET TO THE SOUTHEAST CORNER OF LOT 2 OF SAID MISSER SUBDIVISION; THENCE WITH THE SOUTH LINE OF SAID MISSERS SUBDIVISION, N 79°48'10"W, 368.26 FEET TO THE SOUTHWEST CORNER OF LOT 5 OF SAID SUBDIVISION; THENCE WITH THE WEST LINE EXTENDED THEREOF, N 5°47'00"E, 169.26 FEET TO THE NORTHWEST CORNER OF SAID SURVEY RECORDED IN BOOK 316, PAGE 542; THENCE WITH THE LINES THEREOF, S 81°28'55"E, 380.14 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.67 ACRES.

NOTES

EXISTING TRACT 1 CONTAINS 2.14 ACRES. EXISTING TRACT 2 CONTAINS 1.67 ACRES. TOTAL SITE CONTAINS 3.81 ACRES.

THIS TRACT IS CURRENTLY ZONED R-3 PENDING REZONING TO PUD-32.

THE INTENT FOR THIS DEVELOPMENT IS TO BE DEVELOPED IN ONE PHASE, HOWEVER MULTIPLE PHASES WOULD BE ALLOWED.

PROPOSED BMP FACILITIES ARE LOCATED WITHIN THE PARKING GARAGE.

THE MAXIMUM BUILDING HEIGHT PROPOSED FOR THE PROPERTY IS 80' MEASURED FROM THE HIGHEST CURB ELEVATION ADJACENT TO THE PROPERTY AND SHALL PERMIT CONSTRUCTION OF A STRUCTURE CONTAINING NO MORE THAN 5-STORIES, ABOVE GRADE.

NO PART OF THIS TRACT LIES WITHIN THE 100 YEAR FLOODPLAIN AS ADOPTED BY THE CITY OF COLUMBIA AS SHOWN BY FIRM PANELS 29019C0280D DATED MARCH 17, 2011.

ALL SANITARY SEWERS SHALL BE LOCATED WITHIN THE APPROPRIATE WIDTH EASEMENT. SAID EASEMENTS SHALL BE GRANTED AT THE TIME OF FINAL DESIGN.

A PROPOSED 6' SIDEWALK SHALL BE PLACED AT THE BACK OF CURB ALONG TURNER AVENUE AND FOURTH STREET. A 10' SIDEWALK SHALL BE PLACED AT THE BACK OF CURB ALONG 5TH STREET. ADEQUATE EASEMENTS SHALL BE GRANTED SHOULD PROPOSED SIDEWALK CROSS ANY RIGHT-OF-WAY LINES.

ALL PUBLIC SANITARY SEWER EXTENSIONS SHALL BE MINIMUM OF 8" DIAMETER. SEWERS SHALL BE LOCATED WITHIN 16 FOOT WIDE EASEMENTS OR EASEMENTS EQUAL TO THE DEPTH OF THE SEWER IF SEWER IS GREATER THAN 16 FEET. NO SEWER TAPS WILL BE GREATER THAN 20 FEET.

WATER DISTRIBUTION TO BE DESIGNED BY THE CITY OF COLUMBIA WATER AND LIGHT DEPARTMENT.

ALL DRIVEWAY, ROADWAY, AND ACCESS AISLES ARE SUBJECT TO FIRE DEPARTMENT APPROVAL AT THE TIME OF FINAL DESIGN.

SITE LIGHTING SHALL CONSIST OF "PENCIL BEAM" LIGHTS MOUNTED AND DIRECTED TOWARDS THE BUILDING. THESE LIGHTS ARE TO HIGHLIGHT BUILDING FEATURES. DECORATIVE STREET LIGHTS MAY BE INSTALLED ALONG THE PROPOSED STREETSCAPE. ALL LIGHTING SHALL BE IN ACCORDANCE WITH THE CURRENT LIGHTING ORDINANCE OF THE CITY OF COLUMBIA.

NATURAL GAS DISTRIBUTION TO BE DESIGNED BY AMEREN UE.

ELECTRIC DISTRIBUTION TO BE DESIGNED BY THE CITY OF COLUMBIA WATER & LIGHT DEPARTMENT.

NO REGULATED STREAM BUFFER IS IDENTIFIED ON THIS TRACT BY ARTICLE X, CHAPTER 12A OF THE CITY CODE OF ORDINANCES.

A MINIMUM OF 25% OF THE TREES CONSIDERED AS CLIMAX FOREST AND LOCATED ON THIS TRACT SHALL BE PRESERVED. FUTURE GRADING PLANS WILL BE ADJUSTED, NOT THE PRESERVATION BOUNDARIES, TO ENSURE THAT THE IDENTIFIED AREA IS MAINTAINED. A TREE PRESERVATION PLAN SHALL BE SUBMITTED AND APPROVED BY THE CITY ARBORIST PRIOR TO LAND DISTURBANCE.

THE PROPOSED TRASH COLLECTION WILL BE IN THE FORM OF TRASH COMPACTORS AS SHOWN ON PLAN.

PER THE CURRENT STORM WATER REGULATIONS, THIS SITE WILL BE CLASSIFIED AS REDEVELOPMENT. UNDER THOSE REQUIREMENTS, THIS SITE WILL NEED TO PROVIDE STORM WATER DETENTION AND WATER QUALITY. THE STORM WATER DETENTION AND WATER QUALITY ASPECTS WILL BE ADDRESSED VIA AN UNDERGROUND DETENTION/WATER SYSTEM LOCATED ON-SITE.

SHOULD THE CITY VACATE FOURTH STREET AS SHOWN ON THIS PLAN THE DEVELOPER SHALL DEDICATE A UTILITY CORRIDOR AND PEDESTRIAN ACCESS EASEMENT ALONG THE EXISTING FOURTH STREET PAVEMENT LOCATION. THE WIDTH OF THIS CORRIDOR MAY BE REDUCED; HOWEVER, SHALL BE NO NARROWER THAN 20-FEET IN WIDTH AND DESIGNATED AS A FIRE LANE. SAID FIRE LANE SHALL BE BLOCKED WITH BOLLARDS (EACH KEY ACCESS PROVIDED) TO LIMIT THRU VEHICULAR ACCESS. THE DEVELOPER MAY INSTALL A MAXIMUM OF 8 ON-STREET PARKING SPACES AS SHOWN ON THE PLAN.

PERIMETER SETBACKS SHALL BE AS FOLLOWS:
- ADJACENT TO FOURTH STREET (PORTION NOT VACATED): 0 FEET
- ADJACENT TO FIFTH STREET: 4 FEET
- ADJACENT TO CONLEY AVE.: 0 FEET
- ADJACENT TO TURNER AVE.: 0 FEET
- ADJACENT TO PROVIDENCE RD.: 6 FEET
- NORTHWEST LINES OF TRACT 1: 6 FOOT AND 10 FEET (AS SHOWN)
- NORTH LINE OF TRACT 1: 8 FEET
- NORTH LINE OF TRACT 2: 10 FEET

PLANTING NOTES:		
	QUANTITY	PLANT SPECIES
	3	PIN OAK - QUERCUS PALUSTRIS (OR APPROVED EQUAL)
	7	SARGENT CRABAPPLE - MALUS SARGENTII (OR APPROVED EQUAL)

CALCULATIONS:		
LANDSCAPE COMPLIANCE:		
TOTAL PARKING LOT & DRIVE AREA =		31,955 SQ. FT.
TREES REQUIRED @ 1 TREE/4500 SQ FT. =		8 TREES
TOTAL TREES REQUIRED =		8 TREES
MEDIUM TO LARGE TREES REQUIRED (30%) =		3 TREES
TOTAL TREES PROVIDED =		10 TREES
CLIMAX FOREST:		
EXISTING CLIMAX FOREST =		27,187 SQ. FT.
PRESERVED CLIMAX FOREST =		6,865 SQ. FT. (25%) MINIMUM TO BE PRESERVED SHALL BE 25%

CONTRACT PURCHASER:
ACC OP DEVELOPMENT LLC
12700 HILL COUNTRY BLVD., SUITE T-200
AUSTIN, TX 78738

OWNER:
501 S FOURTH ST. & 603 S FOURTH ST.
A & L INVESTMENTS LLC
709 SHERWOOD DRIVE
JEFFERSON CITY, MO 65109

OWNER:
506 S FOURTH ST.
DERROW PROPERTIES LLLP
107 MERRILL COURT
COLUMBIA, MO 65203

OWNER:
605 S FOURTH ST. & 611 S FOURTH ST.
HAROLD DRAKE TRUSTEE
912 HIGHRIDGE DRIVE
COLUMBIA, MO 65203

OWNER:
603 S. FOURTH ST.
ROSS & CRYSTAL PETERSON
410 SPRING VALLEY ROAD
COLUMBIA, MO 65203

OWNER:
509 S FOURTH ST.
DANIEL G. HATFIELD
2300 WHITEWATER DRIVE
COLUMBIA, MO 65202

OWNER:
611 S. FIFTH ST.
THE ALPHA NU BUILDING CO.
P.O. BOX 630
LAKE OZARK, MO 65049

OWNER:
607 S FIFTH ST., 607 S. FOURTH ST., 608 S FOURTH ST., 612 S FOURTH ST., 613 S FOURTH ST., 407 TURNER AVE. & 409 TURNER AVE.
GINGER C LLC
709 SHERWOOD DRIVE
JEFFERSON CITY, MO 65109

RECEIVED
FEB 27 2014
PLANNING DEPT.

SCALE: 1"= 40'
0 20 40

APPROVED BY THE CITY OF COLUMBIA PLANNING AND ZONING COMMISSION THIS ____ DAY OF _____, 2014.

DR. RAMIN PUR, CHAIRPERSON

ACCEPTED BY ORDINANCE OF THE CITY COUNCIL OF COLUMBIA, MISSOURI, THIS ____ DAY OF _____, 2014.

ROBERT McDAVID, MAYOR

SHEILA MAIN, CITY CLERK

PREPARED BY:
CROCKETT
ENGINEERING CONSULTANTS
3608 South Stadium Boulevard
Columbia, Missouri 65203
(573) 447-0855
www.crockettengineering.com
Crockett Engineering Consultants, LLC
Missouri Certificate of Authority
#2005151004

STATE OF MISSOURI
TIMOTHY D. CROCKETT
NUMBER PE-2004008775
PROFESSIONAL ENGINEER

REVISED: 02/27/2014

TIMOTHY D. CROCKETT - PE-2004008775

REVISED
2/27/14

EXHIBIT C

Water System Improvements

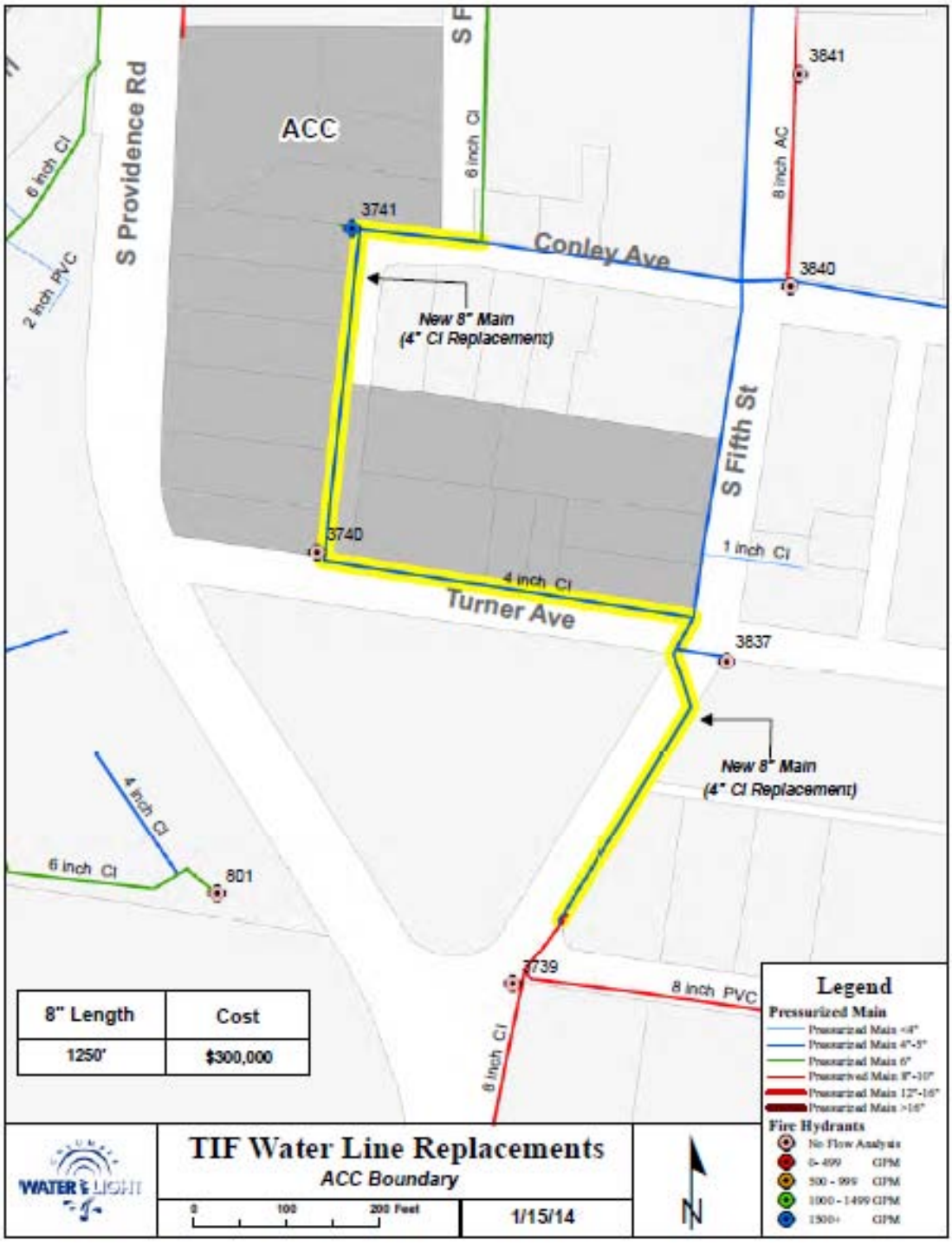


EXHIBIT D

Sanitary Sewer Improvements

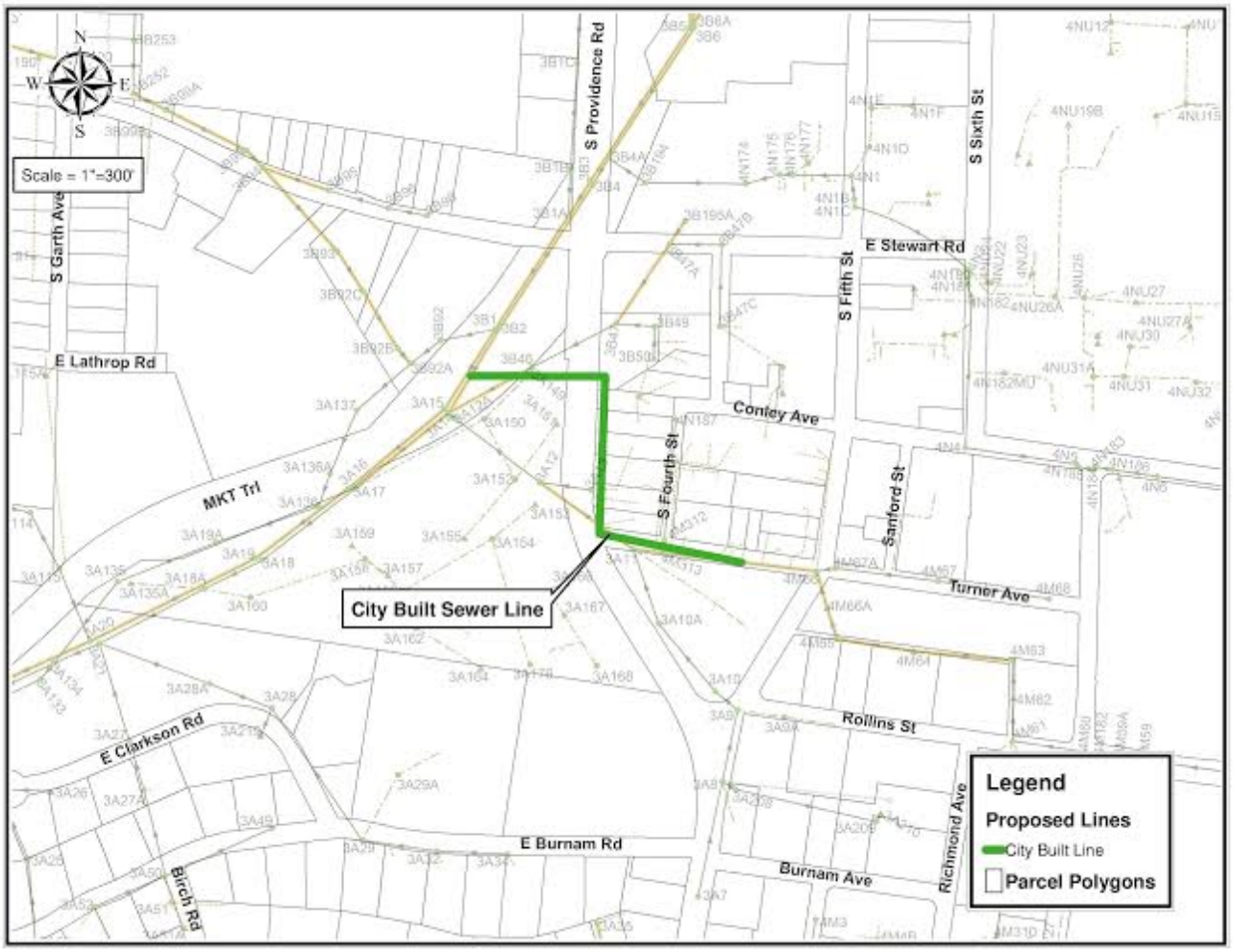


EXHIBIT E

Utilities Estimates

1. Plumbing Calculations

   a. Building #1

      i. Sanitary Sewer – 2344.00 DFU --> 10” sanitary pipe
      ii. Water - 1572.60 TSFU which equates to 278.7GPM --> 4” domestic water pipe
      iii. Fire --> Estimate 8” fire main
      iv. Minimum pressure at building in order to achieve 25psi at furthest fixture --> 74.25psi

   b. Building #2

      i. Sanitary Sewer – 2021.00 DFU --> 10” sanitary pipe :
      ii. Water - 1378.95 TSFU which equates to 255.5GPM --> 4” domestic water pipe
      iii. Fire --> Estimate 6” fire main
      iv. Minimum pressure at building in order to achieve 25psi at furthest fixture --> 66.95psi

2. Electrical Calculations

   ~~a. Building #1~~

   Building #1 Prelim. Loads Estimates
      i. House - (1) 800A 208V/3PH. Service
      ii. Club - (1) 600A 208V/3PH. Service
      iii. Apartments - (3) 1600A 208V/3PH. Meter Centers
      iv. Apartments - (1) 1200A 208V/3PH. Meter Centers

   Building #2 Prelim. Loads Estimates
      i. House - (1) 800A 208V/3PH. Service
      ii. Community - (1) 800A 208V/3PH. Service
      iii. Garage - (1) 800A 208V/3PH. Service
      iv. Apartments - (2) 1600A 208V/3PH. Meter Centers

      ~~i. Garage: (1) 800A 208V/3PH. SERVICE~~
      ~~ii. House - (1) 800A 208V/3PH. SERVICE~~
      ~~iii. Apartments - (2) 1600A 208V/3PH. METER CENTERS~~

b. Building #2

i. House - (1) 800A 208V/3PH. SERVICE
ii. Community - (1) 800A 208V/3PH. SERVICE
iii. Apartments - (2) 1600A 208V/3PH. METER CENTERS

EXHIBIT F
Immigration Law Compliance Affidavit

STATE OF MISSOURI)
) ss:
COUNTY OF)

AFFIDAVIT

(as required by Section 285.530, Revised Statutes of Missouri)

As used in this Affidavit, the following terms shall have the following meanings:

EMPLOYEE: Any person performing work or service of any kind or character for hire within the State of Missouri.

FEDERAL WORK AUTHORIZATION PROGRAM: Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

KNOWINGLY: A person acts knowingly or with knowledge,

a) with respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist(; or
(b) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

UNAUTHORIZED ALIEN: An alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. 1324a(h)(3).

BEFORE ME, the undersigned authority, personally appeared _____, who, being duly sworn, states on his/her oath or affirmation as follows:

1. My name is _____ and I am currently the President of _____ (hereinafter "Contractor"), whose business address is _____, and I am authorized to make this Affidavit.

2. I am of sound mind and capable of making this Affidavit, and am personally acquainted with the facts stated herein.

3. Contractor is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the following services contracted between Contractor and the City of Columbia:

_____.

4. Contractor does not knowingly employ any person who is an unauthorized alien in connection with the contracted services set forth above.

5. Attached hereto is documentation affirming Contractor's enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.

Further, Affiant saith not.

Signature of Affiant
Printed Name:

Subscribed and sworn to before me this day of ,2011.

Notary Public

My Commission Expires:

PLEASE NOTE: Acceptable enrollment and participation documentation consists of the following 2 pages of the E-Verify Memorandum of Understanding: (1) A valid, completed copy of the first page identifying the Contractor; and (2) A valid copy of the signature page completed and signed by the Contractor, and the Department of Homeland Security - Verification Division.

Introduced by _____

First Reading _____ Second Reading _____

Ordinance No. _____ Council Bill No. _____B 63-14_____

AN ORDINANCE

authorizing the City Manager to execute a development agreement with ACC OP Development LLC as it relates to property located on the northeast corner of Providence Road and Turner Avenue, and on the northwest corner of Turner Avenue and Fifth Street; directing the City Clerk to have the development agreement recorded; 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 development agreement with ACC OP Development LLC as it relates to property located on the northeast corner of Providence Road and Turner Avenue, and on the northwest corner of Turner Avenue and Fifth Street. The form and content of the development agreement shall be substantially in the same form as set forth in "Attachment A" attached hereto.

SECTION 2. The City Clerk is authorized and directed to have a certified copy of the development agreement recorded in the office of the Boone County Recorder of Deeds.

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

PASSED this _____ day of _____, 2014.

ATTEST:

_____ _____

City Clerk Mayor and Presiding Officer

APPROVED AS TO FORM:

_____

City Counselor

Development Agreement

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into this ___ day of _____, 2014, (the "**Effective Date**")between **ACC OP Development LLC**, a _____ limited liability company, whose address is 12700 Hill Country Boulevard – Suite T-200, Austin, TX 78738, (the "**Developer**") and the **City of Columbia,** a municipal corporation and constitutional charter city under the laws of the State of Missouri, whose address is 701 East Broadway, Columbia, Missouri 65201 (the "**City**"), (collectively hereinafter referred to as the "**Parties**").

WHEREAS, Developer is the contract purchaser of certain tracts of land in the City of Columbia, Boone County, State of Missouri, described on Exhibit A to this Agreement (the "**Developer Tract**"); and

WHEREAS, the current zoning of the Developer Tract is R-3; however, Developer has a pending application for rezoning to PUD-52; and

WHEREAS, the Developer desires to construct a residential housing structure on the Developer Tract generally in the manner shown on the depictions attached hereto as Exhibit B (the "**Site Plan**") to consist of a building not to exceed five (5) stories in height and containing a maximum of 182 dwelling units in a mix of one, two, three and/or four bedroom units (a maximum of 728 bedrooms) together with parking and related uses (the "**Project**"); and

WHEREAS, the existing use of the Developer Tract consists of _____ currently used as _____; and

WHEREAS, the Project to be constructed by Developer is a significant change of use from the existing use of the Developer Tract; and

WHEREAS, prior to issuance of a building permit to construct the Project, City and Developer desire to ensure adequate utilities and utility infrastructure exist to serve the intended use; and

WHEREAS, the City has conducted a survey of existing utility infrastructure within the overall downtown Columbia geographical area, which includes the Developer Tract; and

WHEREAS, inadequate water, fire protection, electric, storm water and sanitary sewer facilities exist to serve the proposed increase in use of the Developer Tract which will result from the Project construction; and

WHEREAS, the Developer desires to begin construction of the Project during the 1st calendar quarter of 2015 and to complete construction and open to residents on or before 3rd calendar quarter of 2016 (the "**Project Schedule**"); and

WHEREAS, it is critical for Developer to receive the assurances and protections provided by this Agreement in order to proceed with the acquisition of the Developer Tract and final design and construction of the Project in order to construct the Project according to the Project Schedule; and

WHEREAS, establishing the terms and conditions under which utilities will be provided to the Project will protect and benefit the health, safety, and general welfare of the City and is in the best interest of the public; and

NOW, THEREFORE, in consideration of the recitals set forth above, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Definitions**.

"**Affiliated Entity**" means a business entity in which the Developer has an ownership interest of at least 10% but less than 50%.

"**Applicable Law**" means those rules, regulations, official policies, standards and specifications, ordinances and resolutions which are controlled by the City and in force and effect on the Effective Date of this Agreement.

"**Commencement of Construction**" means the issuance of the building permit to authorize physical construction of the structure and shall not include demolition and grading activities on the site related to the Project prior to issuance of the building permit.

"**Construction Period**" means the period of time the Project is under construction. The Construction Period shall commence at such time as City issues the building permit the construct the Project and such construction shall proceed without unnecessary delay until completion of the project, which shall be evidenced by issuance of a certificate of occupancy by the City.

"**Governmental Authority**" or "**Governmental Authorities**" means any municipal governmental authority, including all executive, legislative and administrative departments and bodies thereof having jurisdiction over the Developer, the Developer Tract, or the Project.

"**Governmental Requirements**" means all laws, ordinances, statutes, executive orders, rules, zoning requirements and agreements of any Governmental Authority that are applicable to the acquisition, renovation, demolition, development, and construction of the Developer Tract and/or Project including, without limitation, all required permits, approvals and any rules, guidelines or restrictions enacted or imposed by any Governmental Authorities.

"**Term**" means (2) years from the Effective Date, or (ii) the date on which construction of the Project is completed following commencement of construction during the two (2) year period

following the Effective Date, so long as the Developer is continuously and diligently pursuing completion of such construction without unnecessary delay, provided that such Term shall not extend more than three (3) years from the Effective Date without the written consent of City.

2. **Project Development Contingency**. With respect to the use and development of the Project and the Developer Tract, the Developer's obligations in this Agreement are contingent upon approval of rezoning of the Developer Tract to a planned district with a development plan and conditions that are acceptable to Developer.

3. **Water System Improvements.** If the City, in its sole discretion determines it is necessary or desirable for the water service improvements set forth herein and depicted in Exhibit C attached hereto to be constructed to serve the Project (the "Water Infrastructure Improvements"), Developer shall and does hereby agree to design, construct and dedicate to the public the Water Infrastructure Improvements at its sole cost and expense in compliance with the requirements of the Applicable Law. City agrees to accept the dedication of the Water Infrastructure Improvements for maintenance upon completion of construction pursuant to the terms of this Agreement. Prior to Commencement of Construction, the Developer shall submit to the City's Water and Light Department for review and approval a complete set of engineered plans for the Water System Improvements. Said plans shall be prepared by a registered engineer authorized to perform such work and shall be designed in accordance with the Applicable Law. The Water Infrastructure Improvements shall be dedicated to the public prior to issuance of a certificate of occupancy to occupy the Project.

4. **Sanitary Sewer Improvements.** Developer hereby agrees to contribute $300,000 to the reconstruction and/or rehabilitation of the connecting sanitary sewer main depicted in Exhibit D attached hereto (the "Sanitary Sewer Infrastructure"). Subject to the public improvement process requirements set forth is Chapter 22 of the Columbia City Code, the City shall perform the construction and be responsible for all remaining costs of reconstruction of the Sanitary Sewer Infrastructure in excess of Developer's contribution. Payment for construction of the Sanitary Sewer Infrastructure shall be made by Developer to City prior to issuance of the building permit to construct the Project. Nothing contained herein shall prohibit City from requiring other developers or property owners to contribute to the cost of reconstruction of the Sanitary Sewer Infrastructure. Failure of City to construct or complete the Sanitary Sewer Infrastructure improvements prior to the end of the Construction Period shall not prevent Developer from obtaining a certificate of occupancy following construction of the Project.

5. **Electric System Improvements**. The parties acknowledge the City does not currently have the capacity in its electrical system to serve the completed Project and City will be required to construct system improvements to meet the service demands of the completed Project (the "**Electric System Improvements**"). City agrees to construct the Electric System Improvements to serve the Project and to provide interim temporary electric service to serve the Project as follows:

a. The Developer shall notify the City (as provided in Paragraph 13 hereof) and the City's Director of Water and Light at Columbia City Hall, 701 E. Broadway, Columbia, MO 65201, in writing, at least one (1) year prior to the first date electric service will need to be provided to residents of the completed Project (the "**Required Service Date**");
b. The notice provided by Developer to City shall include a riser diagram detailing the physical design and required capacity for electrical service to serve the completed Project on the Required Service Date;
c. City will cause the Electric System Improvements to be constructed or make contingent arrangements to ensure the service capacity will be available to serve the completed Project on the Required Service Date;
d. In the event the Project construction is not complete on the Required Service Date, Developer shall begin making payments to the City for the electrical service capacity reserved thirty days following the Required Service Date (the "Payment In Lieu of Service"). The Payment In Lieu of Service shall be for the prior month and calculated based on a capacity charge of $3/Kw-mth, utilizing the demands shown on the riser diagram submitted to the City in the one-year notice of the Required Service Date. Payments in Lieu of Service shall continue for each month, or part thereof, until Developer receives a certificate of occupancy to occupy the Project.

6. **Availability of Public Utility Services**. City and Developer acknowledge that the availability of public utility services of electricity, water, and sanitary sewer capacity is critical to the Project. The Developer has submitted to the City the projected load and flow demands for public utility services to be generated by the Project at the end of the Construction Period as set forth in Exhibit E hereto (the "**Utility Estimates**"). The City has reviewed the Utility Estimates and hereby commits that, in combination with the Developer commitments contained in this Agreement, the City will have adequate capacity to support the Project and the intended uses set forth herein by the end of the Construction Period and that if the Developer honors its commitments under this Agreement the City will not deny Developer the ability to connect to such essential public services to serve the Project at the end of the Construction Period. In no event shall the commitment of the City to reserve, construct or supply adequate capacity to support the Project extend beyond the Term of this Agreement, nor shall the City's commitment herein to provide public utility services be in excess of the Utility Estimates.

7. **Permit and Connection Fees.** In addition to the commitments of Developer contained herein, the Developer shall pay to the City, at the time and in the amount required by the Applicable Law, the standard connection and permit fees associated with connecting the Developer Tract to the utilities.

8. **No Conflicting Enactments**. During the Term the City will not impose on the Project or Developer Tract by action of the City Council any Governmental Requirement (to the extent that the City has authority with respect to a Governmental Requirement), ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a "City Regulation" and collectively the "City Regulations") that reduces the assurances

provided by this Agreement with respect to the availability of public utilities for the development, maintenance, and operation of the Project. Nothing contained herein shall prohibit the City from enacting a Governmental Requirement and imposing the same on the Project and Developer Tract for protection of the health, safety and welfare of the public in the same manner and to the same extent as imposed on the general public. During the Term, any change in the following shall not be effective as applied to the Developer Tract without the express agreement of Developer:

a. Change any land use designation or permitted use of the Development Tract in a manner not contemplated by this Agreement which would prohibit or limit the use of the Developer Tract for the Project as described in this Agreement;

b. Limit or control the availability of public utilities, services or facilities for the Project as described in this Agreement, unless such limitation is necessary to address health and safety issues created by the increase in capacity demanded by the Project which is in excess of the capacity contemplated herein;

c. Apply to the Project any City Regulation otherwise allowed by this Agreement that is not uniformly applied to all similar types of development projects and project sites within the Downtown Community Improvement District boundaries; and

d. Establish, enact, increase, or impose against the Project or Developer Tract any fees, taxes (including without limitation general, special and excise taxes), assessments or other monetary obligations other than those imposed and applied on all similar types of development projects and project sites within the Downtown Community Improvement District boundaries; provided however, if such additional fees, taxes, assessments or other monetary obligations related to the utility infrastructure improvements are imposed by City against the Developer Tract, the Developer shall have the right to claim a credit for any payments and construction enhancements made by Developer pursuant to this Agreement.

Nothing herein shall limit the City's authority to enact ordinances, resolutions, or otherwise pass laws or promulgate rules or regulations with regard to any matter, so long as same does not have the effect of limiting construction of the Project on the Developer Tract within the Term in substantially the same manner as set forth in this Agreement. City expressly retains the right to control and determine all matters relating to the public streets and rights of way without any regard to the impact such decisions may have on the Project or Developer Tract, including but not limited to the granting of right of use permits and/or street closures adjacent to the Developer Tract.

9. **Timing of Project Construction and Completion.** Subject to the following, the Developer shall endeavor in good faith and with reasonable diligence to proceed with and construct the Project during the Term and as described in this Agreement:

a. It is the intent of the Developer to complete construction of the Project by August 30, 2016. The timing, order and rate of development shall be in Developer's sole

discretion. It shall not be an event of default hereunder if the Project is not constructed during the Term; rather, this Agreement shall terminate in such case without any further action required by the Parties.

b. In no event shall a delay by Developer to complete construction of the Project according to the Project Schedule result in a refund or claim for refund of Developer's contribution for the construction of the Sanitary Sewer Improvements.

10. **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.

11. **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.

12. **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.

13. **Notices**. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing shall be considered delivered: (a) upon personal delivery to the party to whom the notice is directed; or (b) 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:	ACC OP Development LLC Attn: Chuck Carroll 12700 Hill Country Blvd., Ste. T-200 Austin, TX 78738
With a Copy to:	Robert Hollis Van Matre, Harrison, Hollis, Taylor, and Bacon, P.C. 1103 East Broadway Columbia, MO 65201
To City:	City of Columbia Attn: City Manager 701 East Broadway Columbia, MO 65201

With a Copy to: City of Columbia
Attn: City Counselor
701 E. Broadway
Columbia, MO 65201

14. **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.

15. **Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

16. **Jurisdiction and Venue.** Legal action concerning any dispute, claim or matter arising out of the Agreement shall be brought only in the Circuit Court of Boone County, Missouri.

17. **Severability or Partial Invalidity**. This Agreement is to be considered in its entirety and both parties acknowledge the assurances granted herein are dependent upon each other. If any provision of this Agreement is for any reason held to be invalid or unenforceable, such provision shall render the entire agreement invalid and unenforceable.

18. **Gender and Number.** Pronouns and any reference to a person or persons, wherever used herein, and of whatever gender, shall include natural persons, corporations, associations, partnerships and other entities of every kind and character, and the singular shall include the plural and vice versa, wherever and as often as may be appropriate.

19. **Failure or Delay to Enforce.** No failure to exercise or delay in exercising any right hereunder on the part of any Party to this Agreement shall operate as a waiver thereof, and no single or partial exercise of any right of such Party shall preclude any other or further exercise of such right or the exercise of any other right.

20. **Force Majeure.** In the event that either Party shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, riots, insurrection, the act, failure to act or default of the other Party, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

21. **Priority and Recording.** This Agreement shall be recorded in the Records of Boone County, Missouri with the intention that it will, in addition to the Parties hereto, govern in the future with respect to all subsequent owners of all or any portion of the property to which this Agreement applies as of the Effective Date unless and until this Agreement is amended or terminated in accordance with the terms hereof. Any party foreclosing any mortgage, deed of trust, lien or other encumbrance affecting the Developer Tract or part thereof or interest therein, and any party acquiring title to or any interest in any portion of the Developer Tract as a result of the foreclosure, shall acquire and hold such title or interest subject to the

provisions of this Agreement. Any transferee of any interest in any of the Developer Tract shall automatically be deemed, by acceptance of such interest, to have agreed to be bound by allf the provisions of this Agreement, and to have agreed to perform and do any and all things required to be done and performed hereunder by the owner of the interest so transferred.

22. **Binding Effect; Assignment.** This Agreement is not assignable by any party to a non-affiliated third party. Developer may assign its rights to an Affiliated Entity as defined herein, provided that (i) Developer shall remain jointly and severally liable with the assignee for the obligations contained in this Agreement; (ii) Developer, and any assignee by accepting assignment of this Agreement, expressly agrees to defend and indemnify City from any litigation arising out of the assignment; (iii) written notice of the assignment, including the name of the assignee, is provided to City at least fifteen (15) business days prior to the effective date of such assignment.

23. **Power of the City.** Notwithstanding anything set forth in this Agreement to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. All financial obligations of the City shall be subject to future appropriation of the City in accordance with Applicable Laws and Requirements. Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Requirements.

24. **Time.** Time is of the Essence in this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

25. **Sovereign Immunity.** Nothing in this Agreement shall constitute or be construed as a waiver of the City's governmental or official immunity or its officers or employees from liability or suit pursuant to Section 537.600 RSMo.

26. **Authorized Employees.** Developer acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Developer therefore covenants that it is not knowingly in violation of Section 285.530(1), RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on any project which is the subject of this Agreement, and that its employees are lawfully eligible to work in the United States. Developer will execute an Immigration Law Compliance Affidavit in substantially the same form as attached hereto in Exhibit G and will cause any person or entity performing work on the Infrastructure Project to confirm compliance with Section 285.530(1) and execute an Immigration Law Compliance Affidavit.

27. **Inspection.** The City may conduct such periodic inspections of the Project including any applicable phase as may be generally provided in the Applicable Law or for inspection thereof pursuant to comply with the terms of this Agreement. The Developer shall not deny the City and its officers, employees, agents and independent contractors the right to inspect, upon reasonable prior written request, all architectural, engineering, demolition, construction

and other contracts and documents pertaining to the construction of the Project or any applicable phase thereof.

28. **Entire Agreement; Amendment.** It is agreed and understood by the parties that this Agreement embodies the entire understanding and represents the full and final agreement among the parties with respect to the subject matter hereof and supersede any and all prior commitments, agreements, discussions, representations, and understandings, whether written or oral, relating to the subject matter hereof; that this Agreement may not be contradicted or varied by evidence of prior or contemporaneous written or oral agreements or discussions of the parties, or subsequent oral agreements or discussions of the parties; that there are no oral agreements among the parties, and no representations, agreements or promises not set forth herein have been made. Without limiting the foregoing, Developer acknowledges that: (i) no promise or commitment has been made to it by or on behalf of the City other than as set forth in this Agreement; and (ii) except as otherwise expressly provided herein, this Agreement supersedes and replaces any and all proposals, letters of intent and approval and commitment letters relating to the subject matter hereof, none of which shall be considered a part of this Agreement unless expressly incorporated into this Agreement. This Agreement shall be amended only in writing and effective when signed by the parties.

29. **Representatives Not Personally Liable.** No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

30. **Counterparts.** This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute but one and the same document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE TO FOLLOW]

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

City of Columbia ("City")

By: _____
Mike Matthes, City Manager

Attest:

By: _____
Sheela Amin, City Clerk

Approved as to form:

By: _____
Nancy Thompson, City Counselor

ACC OP Development LLC ("Developer")

By: _____
Chuck Carroll, Authorized Agent

State of Missouri)
) ss.
County of Boone)

On this _____ day of _____, 2014, before me personally appeared Mike Matthes, who, upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is an authorized agent for the **City of Columbia, Missouri** and that he has executed this document on behalf of said entity as the free act and deed of said entity, and that he is duly empowered by said entity to execute this document on said entity's behalf.

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

_____
_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

State of Missouri)
) ss.
County of Boone)

On this _____ day of _____, 2014, before me personally appeared **Chuck Carroll**, who upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is an authorized agent of **ACC OP Development LLC,** that he executed the foregoing on behalf of said company, as the free act and deed of said company, and pursuant to the authority vested in him to execute the foregoing by the company, that the foregoing is binding in all respects upon said company, and that said company is duly empowered to enter into the foregoing.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my seal the day and year first above written.

_____
_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

EXHIBIT A

Developer Tract

EXHIBIT B

Conceptual Site Plan

EXHIBIT C

Water System Improvements

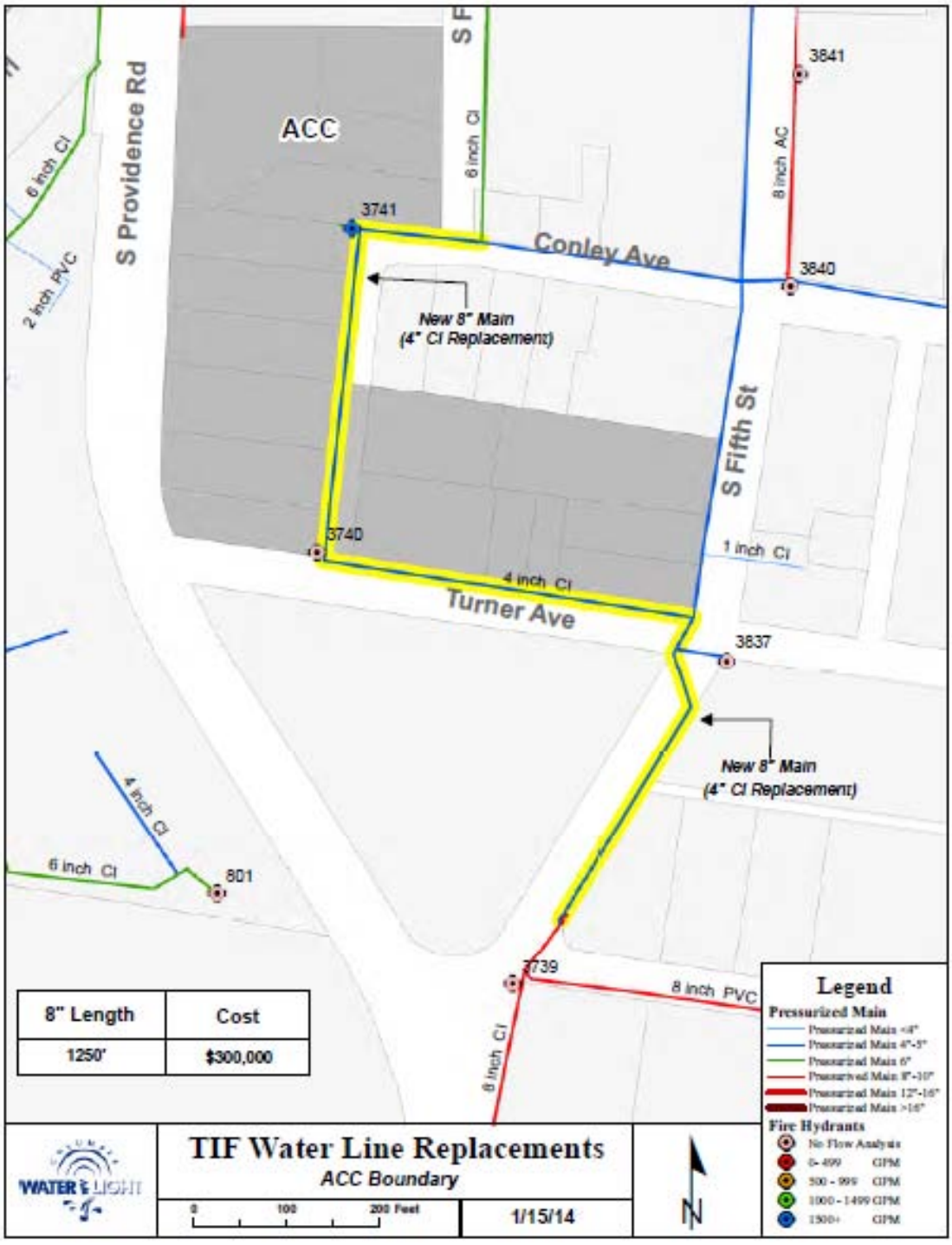


EXHIBIT D

Sanitary Sewer Improvements

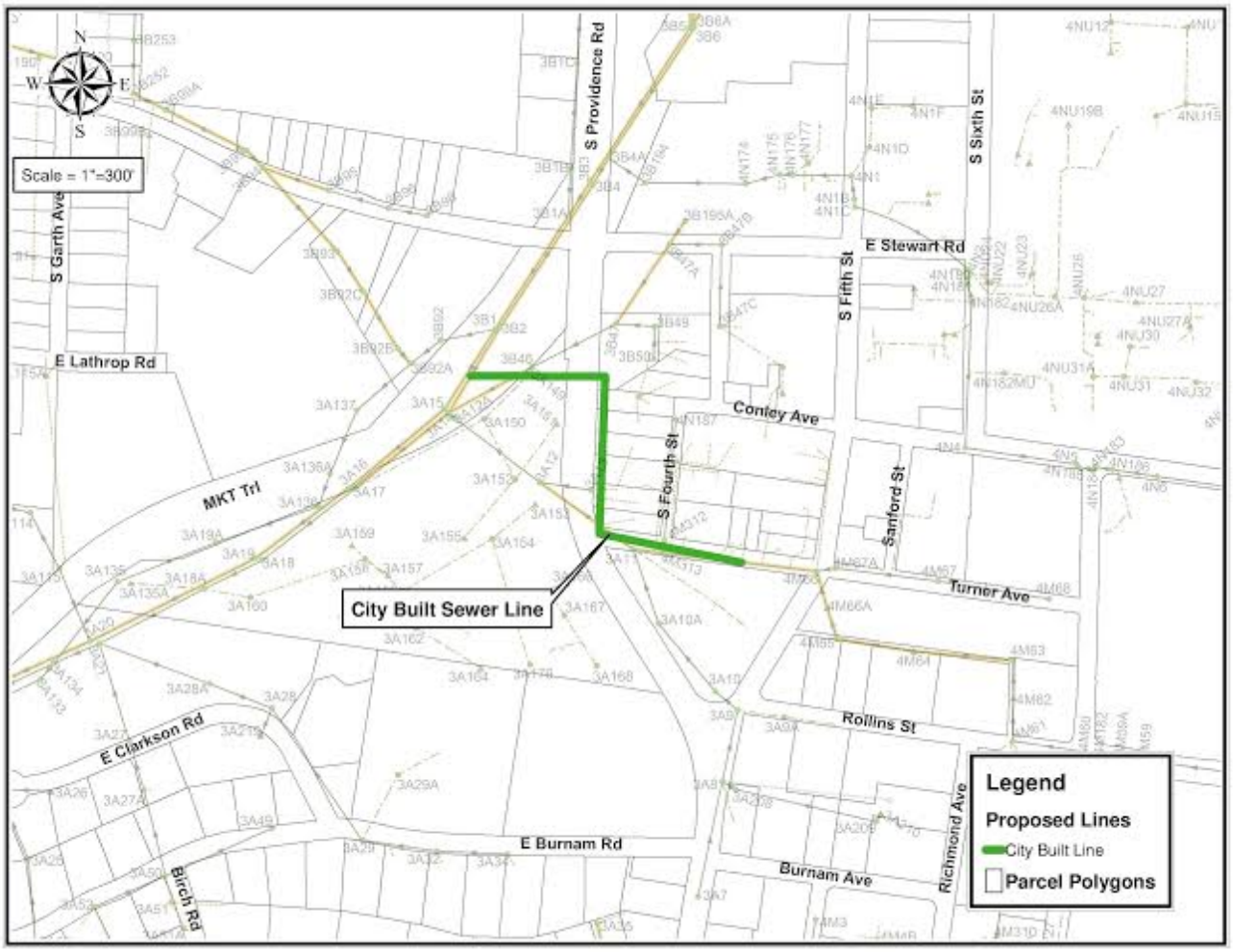


EXHIBIT E

Utilities Estimates

1. Plumbing Calculations

    a. Building #1

        i. Sanitary Sewer – 2344.00 DFU --> 10” sanitary pipe
        ii. Water - 1572.60 TSFU which equates to 278.7GPM --> 4” domestic water pipe
        iii. Fire --> Estimate 8” fire main
        iv. Minimum pressure at building in order to achieve 25psi at furthest fixture --> 74.25psi

    b. Building #2

        i. Sanitary Sewer – 2021.00 DFU --> 10” sanitary pipe :
        ii. Water - 1378.95 TSFU which equates to 255.5GPM --> 4” domestic water pipe
        iii. Fire --> Estimate 6” fire main
        iv. Minimum pressure at building in order to achieve 25psi at furthest fixture --> 66.95psi

2. Electrical Calculations

    a. Building #1

        i. Garage: (1) 800A 208V/3PH. SERVICE
        ii. House - (1) 800A 208V/3PH. SERVICE
        iii. Apartments - (2) 1600A 208V/3PH. METER CENTERS

    b. Building #2

        i. House - (1) 800A 208V/3PH. SERVICE
        ii. Community - (1) 800A 208V/3PH. SERVICE
        iii. Apartments - (2) 1600A 208V/3PH. METER CENTERS

Source: City Manager

Agenda Item No:

To: City Council
From: City Manager and Staff

Council Meeting Date: March 12, 2014

Re: Authorizing a Development Agreement with ACC OP Development, LLC for Provision of Utility Services by the City.

EXECUTIVE SUMMARY:

Staff has prepared for Council consideration a development agreement with ACC OP Development, LLC which documents the terms under which the City will provide utility services to their residential housing structure project as shown on Exhibit B of the agreement.

DISCUSSION:

Council is aware of a number of projects in the central city (downtown) area of Columbia that have been put on hold due to the inability of many utility infrastructure systems to support additional capacity. Over the past few weeks, staff has been evaluating ways by which projects could be given a green light to proceed. The project proposed by ACC has a rezoning application currently pending for a planned district along with site plan approval. ACC has not yet acquired the real estate for the project, which is contingent upon rezoning, site plan and development agreement approval by the City.

ACC's project has been placed on hold due to inadequate sewer capacity to serve their housing development comprising 718 beds, as well as improvements needed for water and electric systems. Following much discussion and negotiation, ACC has agreed to contribute $300,000 to fund a portion of the cost necessary for the reconstruction of the City's connecting sanitary sewer main shown in Exhibit D. This cost was derived based on an estimated $450,000 total cost of the sewer main project to be pro-rated based on the number of beds to be served by both the ACC and the proposed adjacent development by Collegiate Housing Partners, LLC (CHP). It should be noted that this agreement with ACC is not dependent on a similar proposed development agreement with CHP, and that their $300,000 contribution is in addition to standard connection and permit fees required to connect their development tract to the utilities. Additionally, if the water lines serving the ACC project site are determined to be inadequate by the Director of Water & Light, ACC will agree to construct and dedicate the water service improvements depicted in Exhibit C of the agreement at their sole expense, Finally, ACC will agree to make electric service capacity payments to the City should their project not be completed in the agreed upon timeframe.

ACC's $300,000 contribution for sanitary sewer improvements to be constructed by the City is in addition to standard connection and permit fees required to connect their development tract to the utilities.

FISCAL IMPACT:

All improvements described will be paid for by the developer.

VISION IMPACT:
http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php

6 Vision Statement: Downtown Columbia is a hip and vibrant district with a diversity of easily accessible businesses, residences, attractions and institutions; it is an exciting gathering place for all types of people.
6.2 Goal: Downtown Columbia will have a variety of safe housing options, including new and revitalized units, for all age groups and income levels with easy access to desirable amenities. Development and design guidelines will be instituted.

SUGGESTED COUNCIL ACTIONS:

Approval of the legislation authorizing the development agreement with ACC OP Development, LLC.

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	**Vision Implementation impact**	
Amount of budget amendment needed	$0.00	Fiscal Impact on any local political subdivision?	Yes	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 #	6.0
Operating/ Ongoing	$0.00	Requires add'l facilities?	Yes	Secondary Vision, Strategy and/or Goal Item #	6.2
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	