

DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement"), is made and entered into by and between James F. Harasha and Rita F. Harasha, husband and wife ("Developer") and the **City of Columbia, Missouri**, a municipal corporation of the State of Missouri ("City") and will be effective the date of signature by the Party last executing this Agreement ("Effective Date"). The City and the Developer may hereinafter be collectively referred to as the Parties and individually as a Party.

RECITALS

WHEREAS, Developer holds title to approximately 143 acres of land currently located in the unincorporated area of Boone County legally described in the attached **Exhibit A** (the "Subject Property"); and

WHEREAS, the Subject Property is now located in the unincorporated area of Boone County, Missouri ("County"). On or about the 27th day of August, 2021, Developer filed with the City a request to enter into an Annexation Agreement with the City to allow for the construction of certain sanitary sewer extensions to the Subject Property; and

WHEREAS, Developer desires to develop the Subject Property in Boone County for residential uses, until such time that Subject Property is annexed into the City. The Annexation Agreement requests the Subject Property be divided into a single zoning district, to wit, PD, Planned Development at the time of annexation; and

WHEREAS, when fully developed, the Subject Property is anticipated to be subdivided and developed into approximately three hundred fifty (350) lots for single-family housing units, one (1) lot for twenty (20) multi-family housing units, and various

common lots as shown in the Richland Road Development Concept Layout attached as **Exhibit B**; and

WHEREAS, the parties desire to set forth responsibility for the construction and dedication of certain public improvements associated with development of the Subject Property in this Agreement, it being the intent of this agreement to provide milestones for which the construction of such public improvements shall occur;

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

1. **Contingencies.** This Agreement is contingent upon Developer's Annexation Agreement being entered into by the City.

2. **Agreement to Run with the Land.** The provisions of this Agreement will constitute covenants running with the entirety of the Subject Property and each and every part of the Subject Property, and will bind the current Developer and all of such successors and assigns.

3. **Developer's Obligations.**

a) **Payment Offset for Richland Road Intersection Improvements.** Developer shall pay the City one hundred eighty-eight thousand, ninety-seven dollars (\$188,097.00) as a contribution to intersection improvements to Richland Road. This Payment Offset may be made in three separate and equal payments of sixty-two thousand, six hundred ninety-nine dollars (\$62,699). The first Payment Offset must be submitted to the City before platting of the seventy-fifth (75th) lot on the Subject Property. The second Payment Offset must be submitted to the City before platting of the one hundredth (100th) lot on the Subject Property. The third and final Payment Offset must be submitted to the City before platting of the one hundred fiftieth (150th) lot on the Subject Property.

b) Notwithstanding anything in this Section 3 to the contrary, all payments shall be due no later than five (5) years from the date of approval of the first final plat on the Property.

4. **Construction and Bonding of Improvements.** Except as otherwise expressly indicated herein, all public improvements required under the regulations of the City or this Agreement must be constructed in accordance with the City's Street, Storm Sewer, and Sanitary Sewer Specifications and Standards, as may be amended, or any successor specifications and standards adopted by the City together with any final construction plans approved by the City prior to construction of such facilities. In connection with construction, the Developer shall be required to post bonds or other

security as required by the city code. Developer is responsible for obtaining all necessary easements to construct improvements related to Developer's Development of the Subject Property.

5. **Phasing Plan.** If any development of the Subject Property, including final platting, will be phased, then a plan which generally describes the sequence of development of the Subject Property ("**Phasing Plan**") must be submitted to the Director of Community Development ("**Director**") concurrently with the first application for a Final Plat on the Subject Property. The Phasing Plan shall become final and binding upon Developer upon approval of the first Final Plat on the Subject Property. Thereafter, development and platting of the Subject Property shall occur in the sequence established in the Phasing Plan. However, nothing contained in this paragraph shall be construed as precluding Developer from filing or developing more than one phase at a time. The Phasing Plan may not be amended except upon written approval of the Director, which shall not be unreasonably withheld. Once the Subject Property has been preliminary platted, no part of the Subject Property may be conveyed as a small area transfer or using a metes and bounds description. A conveyance of any part of the Subject Property may only occur after the Subject Property, or any applicable portion thereof, has been final platted in accordance with the City's Subdivision Regulations.

6. **Recording.** The City shall record this Agreement in the office of the Boone County Recorder of Deeds at the cost and expense of the Developer.

7. **Amendments.** Any amendment to this Agreement must be in writing and must be executed by the City and the Developer, and any future Developer of any part of the Subject Property who would otherwise be obligated to perform any of the requirements imposed upon the Developer by this Agreement. Oral modifications or amendments of this Agreement are 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 will the City have any liability in damages, costs or any other monetary liability to Developer or any affiliate of Developer, any person claiming through Developer, 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.** Developer will 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 Developer has assumed the defense) with counsel of Developer's choosing and the City and Developer

agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent the City and Developer in any such proceeding. In no event will the City have any liability to Developer 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 are 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 Developer elects not to assume such defense and costs, the City will have no obligation to defend or to assume the costs of defense of any such action.

10. **Notices.** All notices between the parties hereto must be in writing and must be sent by certified or registered mail, return receipt requested, by personal delivery against receipt or by overnight courier, will 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 must be addressed as follows:

If to the City:

City of Columbia
Attn: City Manager
701 E. Broadway
Columbia, MO 65205

If to Developer:

- Name -
- Address -
Columbia, MO 65201

Each party will 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. **Insurance.** Developer must provide, at its sole expense, and maintain during all times in which Developer 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 the City, with a rating by Best of not less than "A," that will protect the Developer, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by the Developer, its officers, directors, employees and agents, or any subcontractors of Developer. This liability insurance must include, but will not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Developer operations, products, services or use of automobiles, or construction

equipment. The amount of insurance required herein must 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 will be deemed to waive the City's sovereign immunity. An endorsement must be provided which states that the City is named as an additional insured and stating that the policy will 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 the City.

12. **Hold Harmless.** Developer at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the 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 Developer, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Developer may be liable, in the activities performed, or failed to be performed, by Developer under this Agreement or in the development of the Subject property, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. The indemnification, duty to defend and hold harmless obligations set forth in this Section will survive for a period of five (5) years from the date of expiration or termination of this Agreement.

13. **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.

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

15. **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.

16. **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. Nothing herein shall relieve Developer from complying with all applicable laws and requirements.

17. **Inspection.** Upon reasonable prior notice, the City may conduct such periodic inspections of the projects herein, including any applicable phase, as may be generally provided in the applicable law or regulation for inspection thereof in order to confirm compliance with the terms of this Agreement. The Developer shall not deny the City and its officers and employees the right to inspect, upon reasonable prior written request, all engineering plans, construction contracts or other documents pertaining to the construction of the public infrastructure on the Subject Property. Notwithstanding the foregoing, Developer shall not be required to produce documents for inspection if such documents are attorney-client privileged or contain confidential, proprietary information or if production would violate the rights of any third parties.

18. **Governing Law.** This Agreement will be construed according to the laws of the State of Missouri. The Parties will comply with all local, state, and federal laws and regulations relating to the performance of this Agreement.

19. **Venue.** Any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, must be instituted only in the Circuit Court of Boone County, Missouri.

20. **Entire Agreement.** This Agreement contains the entire and complete agreement between the City and the Developer with respect to the requirements imposed upon the Developer 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 Developer hereby acknowledges and agrees that this Agreement and provisions of the City's Code of Ordinances applicable to this Agreement constitute lawful exercises of the City's authority and police power.

[Remainder of page intentionally blank. Signature pages follow.]

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

CITY:
City of Columbia, Missouri

By: _____
John Glascock, City Manager

Date: _____

ATTEST:

Sheela Amin, City Clerk

Approved as to form:

Nancy Thompson, City Counselor/rgt

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
Richland Road Development Concept Layout