

DEVELOPMENT AGREEMENT

BETWEEN D & J REALTY HOLDINGS LLC
&
THE CITY OF INDEPENDENCE, MISSOURI

This Development Agreement (this “**Agreement**”) is made this ___ day of _____, 2021 by and between D & J Realty Holdings LLC (the “**Developer**”), and the City of Independence, Missouri, a municipal corporation (the “**City**”). The Developer and the City may collectively be referred to herein as the “**Parties**” or individually as a “**Party**”.

RECITALS

- A. The Developer is developing certain real property located in the City of Independence as a commercial development presently referred to as “Cargo Largo” a retail building at approximately 3232 S. Noland Road. (The “**Final Development Plan**”);
- B. The Developer submitted a preliminary development plan that was approved by the City Council on May 17, 2021 by Ordinance No. 19215, authorizing this Development Agreement.
- C. The Developer shall submit a Final Development Plan application to the City including approved and complete site development plans, technical studies, analysis, building plans, engineering plans, traffic studies, stormwater analysis, environmental analysis or any and all other technical studies deemed necessary by the City (the “**Engineering and Construction Plans**”). The Final Development Plan must be in substantial compliance with the approved preliminary development plan and the City’s Unified Development Ordinance section 14-703-06 prior to the execution of the Final Development Plan.
- D. The Developer will build or cause to be built a Final Development Plan comprised of a building with approximately 524,672 square feet of gross floor area, consistent with all City ordinances and in substantial conformance with the approved Final Development plan.
- E. In addition to and in conjunction with the Final Development Plan , the Developer will construct, or cause to be constructed certain roadway improvements, water line improvements, landscaping, lighting and sanitary sewer improvements identified on Exhibit A attached hereto and made a part hereof (The “**Improvements**”). The Final Development Plan and Improvements shall be built in accordance with the Engineering and Construction Plans to be approved by the appropriate City authorities pursuant to City ordinances and any other appropriate regulatory agency.

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the Parties covenant and agree upon all of the foregoing Improvements, which are made a part of this Agreement, and upon the following:

IMPROVEMENTS

1. **Construction of Weatherford Road.** The Developer hereby covenants to construct, or cause to be constructed, Weatherford Road (including connection to a multiuse trail and any other necessary improvements along that portion of existing Lynn Court) from 35th Street north to the existing Weatherford Road. During construction of the Final Development Plan, the Developer shall construct the roadway in a manner using compacted gravel base or other approved means that will accommodate fire department access and not damage the roadway surface prior to City dedication. The Developer shall complete, or cause the completion of, Weatherford Road in accordance with all City Codes and standards applicable to dedicated City Streets, and upon completion, the Developer will dedicate, or cause to be dedicated, the completed Weatherford Road on the completion of the Final Development Plan described herein.
2. **Construction of Lynn Court.** The Developer hereby covenants to construct, or cause to be constructed improvements at the intersection of the existing Lynn Court and 35th Street to enlarge the northeast corner curb radius to accommodate truck-turning movements and construct a westbound right-turn lane with approximately a 200-foot storage length, to tie into the second westbound lane currently terminating at an existing driveway. The Developer shall complete, or cause the completion of, the improvements at the intersection of Lynn Court and 35th Street in accordance with all City Codes and standards applicable to dedicated City Streets. Upon completion, the Developer will dedicate, or cause to be dedicated, the completed improvements at the intersection of Lynn Court and 35th Street on the completion of the Final Development Plan described herein.
3. **Construction of 33rd Street.** The Developer hereby covenants to construct, or cause to be constructed, 33rd Street from the end of an existing railroad crossing access from Noland Road west to Weatherford Road. Provide at the east end of 33rd Street, two outbound lanes in the eastbound direction and a fully functioning attenuated traffic signal installed and in operation prior to opening to the public. During construction of the Final Development Plan, the Developer shall construct the roadway in a manner using compacted gravel base or other approved means that will accommodate fire department access and not damage the roadway surface prior to City dedication. The Developer shall complete, or cause the completion of, 33rd Street in accordance with all City Codes and standards applicable to dedicated City Streets, and upon completion, the Developer will dedicate, or cause to be dedicated, the completed 33rd Street on the completion of the Final Development Plan described herein.
4. **Construction of Traffic Signal.** The Developer hereby covenants to construct, or cause to be constructed a fully actuated traffic signal at the intersection of 33rd Street and Noland Road that is coordinated with the other signals on the Noland Road corridor and provides railroad pre-emptive control. The traffic signal infrastructure will include an eastbound pre-signal. The Developer shall complete, or cause the completion of, the Traffic Signal in accordance with all City Codes and standards applicable to dedicated City Streets and shall be completed in accordance with all applicable railroad standards and review. Upon completion, the Developer will dedicate, or cause to be dedicated, the completed Traffic Signal on the completion of the Final Development Plan described herein.

5. **Construction of Noland Road Turn Lanes.** The Developer hereby covenants to construct, or cause to be constructed a northbound left-turn lane with a 200-foot storage length and a southbound right-turn lane with an appropriate storage length along Noland Road. The Developer shall complete, or cause the completion of, the Noland Road Turn Lanes in accordance with all City Codes and standards applicable to dedicated City Streets. Upon completion, the Developer will dedicate, or cause to be dedicated, the Noland Road Turn Lanes on the completion of the Final Development Plan described herein.
6. **Construction of Water Main.** The Developer hereby covenants to construct, or cause to be constructed eight inch (8”) and twelve-inch (12”) water mains around the proposed building site. The Developer shall complete, or cause the completion of, the water mains in accordance with all City Codes and standards applicable to dedicated City Infrastructure. Upon completion, the Developer will dedicate, or cause to be dedicated, the water mains on the completion of the Final Development Plan described herein.
7. **Construction of Sanitary Sewer Main.** The Developer hereby covenants to construct, or cause to be constructed an eight-inch (8”) sanitary sewer main on the west side of the proposed building site and to any required out lots. The Developer shall complete, or cause the completion of, the sanitary sewer main in accordance with all City Codes and standards applicable to dedicated City Infrastructure. Upon completion, the Developer will dedicate, or cause to be dedicated, the sanitary sewer main on the completion of the Final Development Plan described herein.

CONSTRUCTION PHASING

The Developer, through the services of their engineer and construction contractor, shall determine any rights-of-way, easements, or other real property transactions associated with third parties that will be necessary to obtain or enter into in order to complete design, engineer, and construction of the Final Development Plan. To the extent necessary, the Developer shall grant to the City, without compensation, all necessary rights-of-way and easements over property owned by Developer for maintaining the Improvements.

In order to remain sensitive to the overall needs of the Developer and the City during the construction of the Final Development Plan and the Improvements, it is reasonably agreed to phase the construction of both Weatherford Road and 33rd Street. It is mutually anticipated that Weatherford Road precede the construction of 33rd Street.

To allow access to the site during construction, both Weatherford Road and 33rd Street shall be constructed with a suitable base material to not damage the surface asphalt and provide Fire Department access for apparatus up to 80,000 lbs. with a minimum width of 20 feet. Repairs of the roadway base shall be the responsibility of the Developer. Acceptance of Weatherford Road and 33rd Street by the City shall occur only after the site nears substantial completion and after the installation of the final roadway surface asphalt.

Per the 2018, International Fire Code as adopted by the City, fire hydrants or some source of water supply for the purpose of fire protection shall be in place prior to the construction of the Final Development Plan and the Improvements.

The Developer seeks to construct the Final Development Plan and Improvements using economic incentives. In such case, this Agreement shall be made part of any economic incentive agreement or similar instrument, submitted to the City Council and any other applicable commission, for consideration, and when all appropriate actions have been taken to execute said economic incentive agreement or similar instrument. Disbursements from any economic incentives for construction of Improvements shall be subsequent to inspections by the City and final approval by the City and in accordance with any retainage per City Code for Improvements outlined herein unless otherwise set forth in an executed economic incentive agreement or similar instrument.

ENGINEERING AND CONSTRUCTION PLANS

The Parties agree that the Engineering and Construction Plans and the construction of the Final Development Plan and Improvements, and the contemplated uses and occupancies thereof, shall comply with all federal, state and City building, zoning, environmental, development or other codes or regulations, subject to modifications approved by the City pursuant to the City Ordinances or as required pursuant to any, zoning environmental, development or other regulations.

The Developer shall submit to the City, Engineering and Construction Plans for both the Final Development Plan, its buildings, landscaping, lighting, streets, utilities and Improvements for the purpose of reviewing and issuing applicable building and construction permits. Building and Construction Permits shall be issued after approval by the appropriate City authorities pursuant to City ordinances and any other appropriate regulatory agency.

The Developer shall notify the City at the start of construction for the Final Development Plan, its buildings, and Improvements. The City shall promptly begin conducting inspections to determine whether the work complies with the approved Engineering and Construction Plans and City Code. If the City determines that the work does not comply with the Engineering and Construction Plans and City Code, the City shall promptly compile a list of items to be completed or corrected. The Developer shall promptly complete all items on the list prior to the City releasing any final approval letters or Certificate of Occupancy.

PERMITTING AND FEES

All applicable construction permit fees, building fees, and utility fees or other like or similar charges will be assessed for the construction of the Final Development Plan and Improvements.

REMEDIES

The Parties 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 and/or seek damages for its breach. In the event of any action for breach of this Agreement, the prevailing party in such action shall be entitled to an award of their attorneys' fees and costs of suit.

NOTICE

All notices, requests and demands shall be in writing and shall be sent by registered or certified mail, return receipt requested, postage prepaid (in which case such notice shall be deemed given on the third business day after mailing), or by a nationally recognized overnight delivery service that provides proof of delivery, with charges prepaid (in which case such notice shall be deemed given on the next business day after deposit with such delivery service), addressed as follows:

If to the City:

Director of Community Development
City of Independence
City Hall
111 E. Maple Ave.
Independence, MO 64050

With a copy to:

City Counselor
City of Independence, Missouri
City Hall
111 E. Maple Ave.
Independence, MO 64050

If to the Developer:

D & J Realty Holdings LLC
13900 E. 35th Street
Independence, MO 64055

With a copy to:

GENERAL PROVISIONS

- (a) No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and Developer; nor will the waiver of any defect under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The failure of either Party to exercise any right under this Agreement will not constitute the approval of any wrongful act by the other Party.
- (b) The Parties to this Agreement may amend or modify this Agreement only by written instrument duly executed by the Parties.
- (c) No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.
- (d) This Agreement constitutes the entire Agreement between the Parties, and no statements, promises, or inducements that are not contained in this Agreement will be binding on the Parties. This Agreement may not be assigned to any other parties unless such assignment is approved in writing by both Parties.
- (e) If any part, term, or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other

part, term, or provision and the rights of the Parties will be construed as if the part, term, or provision was never part of this Agreement.

- (f) Nothing contained in this Agreement constitutes a waiver of the City’s sovereign immunity under any applicable state law.
- (g) This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.
- (h) This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the day and year first set forth above.

D & J REALTY HOLDING LLC
a Missouri Limited Liability Company

By: _____
D&J Realty Holdings LLC, Authorized Signatory

CITY OF INDEPENDENCE, MISSOURI

ATTEST:

City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

City Counselor

EXHIBITS

Exhibit A – Final Development Plan

Exhibit B – Traffic Study