

DEVELOPMENT AGREEMENT BETWEEN
THE ABUNDANT LIFE BAPTIST CHURCH OF LEE'S SUMMIT, MISSOURI, AND
THE CITY OF LEE'S SUMMIT, MISSOURI FOR THE ABUNDANT LIFE BAPTIST
CHURCH DEVELOPMENT

THIS AGREEMENT ("Agreement") is made this 5th day of February, 2014, by and between the Abundant Life Baptist Church of Lee's Summit, Missouri, a Missouri non-profit corporation (the "Developer"), and the City of Lee's Summit, Missouri, a municipal corporation (the "City").

WHEREAS, on November 7, 2013, the City Council concluded a public hearing for Application #PL2013-072, for a preliminary development plan for the development of approximately 16.22 acres of land generally lying at or about 304 SW Persels, on property legally described in Exhibit A ("Property"), owned by the Developer, which will be developed as the Abundant Life Baptist Church ("Development") as shown in Exhibit B, a map of the preliminary development plan;

WHEREAS, following the public hearing for the Development, the Council voted to approve the application for the Development subject to the Developer entering into a development agreement with the City to provide for the certain Improvements, as defined below, necessary for the Development;

WHEREAS, in satisfaction of the City Council's condition of approval, the Developer and the City now desire to enter into this Agreement;

WHEREAS, the parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Development on the public services provided by the City and other public jurisdictions and on facilities that are constructed and maintained by the City and other public jurisdictions; and

WHEREAS, the parties have freely negotiated in good faith and this Agreement reflects the desires of the parties.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions. Words or terms not defined elsewhere in this Agreement shall have the following definitions:
 - A. "Developer" shall mean the Abundant Life Baptist Church of Lee's Summit, Missouri, a non-profit corporation, or its successors and assigns in the Property.

scheduled has been approved by the City Engineer. The City Engineer shall approve the construction schedule as presented or return the schedule with comments, to be resubmitted by the Developer until approved by the City Engineer. The construction schedule approved by the City Engineer shall be incorporated into this Agreement by addendum approved by the City Engineer, and no action of the City Council will be required to incorporate the construction schedule.

E. Design Phase. Within thirty (30) days of approval of the construction schedule by the City Engineer, the Developer shall meet with City staff regarding preliminary design of the Improvements to be constructed by the Developer pursuant to this Agreement and shall submit all preliminary design documents to the City for approval before proceeding with the construction of the Improvements. On the basis of such approved preliminary design documents, the Developer shall:

- (1) Prepare detailed drawings, plans, design data, estimates, and technical specifications to show the character and scope of the work to be performed by contractors for all Improvements ("**Plans**").
- (2) Furnish to the City Engineer copies of such Plans and other documents and design data as may be required to secure approval of such governmental authorities as may have jurisdiction over design criteria applicable to the Improvements.
- (3) Furnish the number of approval copies of the final Plans for the Improvements as the City may require.
- (4) Ensure that the Plans conform to federal and state laws and City ordinances and regulations.

All final Plans shall be presented to the City Engineer for approval and incorporated into this Agreement by addendum approved by the City Engineer, and no action of the City Council will be required to incorporate the final Plans into this Agreement.

F. Construction. The Developer will construct all the Improvements according to the approved Plans. The Developer shall maintain, at its sole cost and expense, the Improvements until such time as said Improvements are accepted by the Director of Public Works pursuant to Section 2.J of this Agreement. The Developer shall not do or permit others under it to do any work related to the construction of the Improvements until the Developer has paid for all required City and other governmental required permits and authorizations.

G. Right of Way Acquisition.

- (1) The Developer shall be responsible for acquiring or negotiating for the donation of all right-of-way or easements that are needed to construct the Improvements, including all necessary temporary construction easements.

- I. Inspections and Change Orders. The Developer agrees to permit City employees, agents and contractors to inspect, observe, and oversee the construction of all Improvements in order to ascertain and determine that the standards of the City have been met. The Developer shall obtain the City Engineer's approval of all change orders materially altering the design or specifications of the Improvements.
- J. Dedication. Upon completion, inspection and approval of the Improvements by the City, the Developer will dedicate the Improvements to the City, for its use, operation and maintenance. The City shall be under no obligation to accept the dedication or conveyance of any Improvements constructed pursuant to this Agreement until it has been inspected and approved to the satisfaction of the Director of Public Works. Upon written notice of the inspection and approval of the Director of Public Works, the Developer agrees to convey all the Improvements to the City free and clear of all liens and encumbrances or other obligations. Said conveyance shall be by appropriate document, and shall be sufficient, in the opinion of the City Attorney, to convey marketable title of record, as set forth in Title Standard 4 of the Missouri Bar.

3. **Timing of Issuance of Certificates of Occupancy.**

- A. The Developer may not receive a certificate of occupancy for any structure in the Development until a certificate of substantial completion has been given for the Improvements.
- B. The City of Lee's Summit's 2014-2019 Capital Improvement Plan provides for certain public improvements at the intersection of SW Jefferson and SW Persels Road that include, without limitation, a traffic signal control and turn lanes ("Jefferson & Persels Project"). The parties agree that the improvements to be constructed as part of the Jefferson and Persels Project are necessary in order for there to be adequate transportation infrastructure sufficient to meet the demand that will be generated by the Development. The Developer understands and agrees that it may not receive a certificate of occupancy for any structure in the Development until a certificate of substantial completion has been given for the Jefferson and Persels Project.

4. **Indemnification.**

- A. General Indemnity. The Developer shall indemnify, release, defend, be responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any act, error, or omission of the

- (2) Automobile Liability: Minimum \$2,000,000 combined single limit for bodily injury and property damage; applicable to owned, non-owned and hired automobiles.
- (3) Workers' Compensation: As required by state statute; if exempt, must submit letter stating the exemption; employer's liability \$1,000,000 each occurrence.
- (4) Umbrella/Excess Liability: An umbrella or excess liability policy in the minimum amount of \$2,000,000 each occurrence and aggregate; at least as broad as the underlying general liability, automobile liability and employer's liability.

The following endorsements shall attach to the policy:

- (1) The policy shall cover personal injury as well as bodily injury.
- (2) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (3) Broad form property damage liability shall be afforded.
- (4) The City shall be listed as an additional insured.
- (5) Standard form of cross-liability shall be afforded.
- (6) The policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity.

- C. Use of Contractors and Subcontractors. The Developer shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Section and the City's Design and Construction Manual. Said insurance shall be maintained in full force and effect until the completion of construction of the Improvements, and issuance of a Certificate of Substantial Completion by the City or MoDOT, as appropriate.
- D. Workers' Compensation. The Developer shall ensure that all contractors or subcontractors performing work for the Developer obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, the

reimburse the City for any damage, loss, costs, payments or expenses of any kind (including the City's reasonable attorney's fees) incurred or sustained by the City with regard to the failure of the Developer or any contractor or subcontractor to pay prevailing wages as required by law or this Agreement. The Developer shall submit sufficient information to the City's Director of Finance to allow City staff to verify that the Developer, and its contractors and subcontractors, have complied with prevailing wage laws and regulations.

8. **Remedies.** Each party to this Agreement agrees that if it fails to perform when due any act required by this Agreement to be performed, then, in addition to whatever other remedies are available to the non-defaulting parties hereto, the non-defaulting party shall have the right to enforce specific performance of this Agreement against the defaulting party, and such non-defaulting party shall, to the extent permitted by law, be entitled to its reasonable costs, attorneys' fees and court costs in connection with such enforcement.
9. **Rights and Remedies Non-Exclusive.** No right or remedy conferred upon or reserved to any party in this Agreement is intended to be exclusive of any rights or remedies, and each and every right and remedy shall be cumulative and shall be in addition to every right and remedy given now or hereafter existing at law or in equity.
10. **Non-Waiver.** No waiver of any condition or covenant contained in this Agreement or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
11. **Applicable Law.** This Agreement shall be governed by and construed according to the laws of the State of Missouri.
12. **Venue.** In the event this Agreement is litigated, venue shall be proper only in the Circuit Court of Jackson County, and the parties expressly waive any rights to venue inconsistent therewith.
13. **City Requirements and Prior Approval.** The Developer agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's Unified Development Ordinance, the Design and Construction Manual, and all planning or infrastructure requirements related to the development of the Property. The Developer acknowledges and agrees that the City is not, and shall not be, in any way liable for damages, losses or injuries that may be sustained as a result of the City's review and approval of any Plans or Plats of or relating to the Development, the Property or the Improvements, or as a result of the issuance of any approvals, permits, certificates or acceptances for the development or use of any portion of the Development, the Property or the Improvements. The Developer further acknowledges and agrees that the City's review and approval of any such Plans or Plats and the issuance of any such approvals, permits, certificates or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its successors, assigns, tenants, licensees or any third party, against damage or injury of any kind at any time. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which the

corporation, or entity to which any ownership interest in the Property is transferred after the date of execution of this Agreement.

21. **Entire Agreement.** This Agreement and the acts provided for herein is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all parties.
22. **Exhibits.** All Exhibits referenced in this Agreement are incorporated into this Agreement by such reference as if set forth in full in the text of this Agreement.
23. **Headings.** The paragraph headings contained herein are for convenience in reference and are not intended to modify, expand or limit the scope of any provision of the Agreement.
24. **Severability.** Any provision of this Agreement which is not enforceable according to law will be severed herefrom, and the remaining provisions shall be enforced to the fullest extent permitted by law.
25. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
26. **Notice.** Any notice required by this Agreement shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, and addressed as hereinafter specified.

Any notice to the City shall be addressed to:

City Manager
City Hall
220 SE Green Street
Lee's Summit, Missouri 64063

With a copy to:

City Attorney
City Hall
220 SE Green Street
Lee's Summit, Missouri 64063

Notary for City of Lee's Summit

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this 20th day of May, 2014, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. Arbo, the City Manager of the City of Lee's Summit, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who are personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Jina M. McPherson-Bellamy
NOTARY PUBLIC
Jina M. McPherson-Bellamy

My Commission Expires:

4/3/2016

[SEAL]



JINA M. MCPHERSON-BELLAMY
My Commission Expires
April 3, 2016
Jackson County
Commission #12479892

EXHIBIT A

LEGAL DESCRIPTION FOR PROPERTY

All of Lot 1, ABUNDANT LIFE BAPTIST CHURCH, All lots 1-4 of the Resurvey of Tracts 1 and 2, CLEARVIEW ACRES, and all that part of Tract 2, METRO ESTATES, all being subdivisions in the City of Lee's Summit, Jackson County, Missouri and being more particularly described as follows:

Beginning at the the Southeast corner of Lot 1, RESURVEY OF TRACTS 1 AND 2, CLEARVIEW ACRES, as recorded in Document No. 603260, said point being at the intersection of the North right of way line of SW Persels Road and the West right of way of SW Jefferson Street; thence North 02°32'32" West along said West right of way line, a distance of 443.47 feet to the Northeast corner of said Lot 4; thence North 87°48'17" West along the North line of said Lot 4, a distance of 202.30 feet to the Northwest corner of said Lot 4; thence North 02°24'43" West along the West lines of Lots 5-8 of said Resurvey, a distance of 332.72 feet to a point on the Southerly line of Tract 1, METRO ESTATES, as recorded in Document No. 1986 I 0700683; thence North 88°04'39" West along the South line of said Tract 1, a distance of 339.95 feet; thence North 02°32'32" West along the West line of said Tract 1, a distance of 303.63 feet; thence North 87°48'17" West, a distance of 280.69 feet; thence North 02°25'22" West, a distance of 221.34 feet to a point on the North line of said METRO ESTATES; thence North 88°06'24" West along said North line, a distance of 40.00 feet to the Northeast corner of Lot 10, CLEARVIEW ACRES, as recorded in Document No. 527685; thence South 02°25'22" West, along the East line of said Lot 10 and the West line of Lot 1, ABUNDANT LIFE BAPTIST CHURCH, LOT 1, as recorded in Document No. 2008E0128997, a distance of 1299.32 feet to a point on said North right of way line; thence South 87°48'17" East along said right of way line, a distance of 440.00 feet; thence North 02°25'13" East, a distance of 10.00 feet; thence South 87°48'17" East, a distance of 75.00 feet; thence South 02°25'13" West, a distance of 10.00 feet; thence South 87°48'17" East, a distance of 346.45 feet to the Point of Beginning.

The above described tract contains, 16.22 acres, more or less and is subject to all easements, restrictions, reservations, covenants, conditions and right of ways, recorded or unrecorded, if any.

#PL2013-072 PRELIM. DEV. PLAN
Abundant Life Baptist Church
Mantel Teter Architects, applicant

