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**SALE AND REDEVELOPMENT CONTRACT**

**between**

**LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY  
OF KANSAS CITY, MISSOURI**

**and**

**YANA PROPERTIES, LLC (dba BLUE NILE CONTRACTORS, INC.)**

**DATED \_\_\_\_\_, 2018**

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## **SALE AND REDEVELOPMENT CONTRACT**

This SALE AND REDEVELOPMENT CONTRACT ("**Contract**") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2018 (the "**Effective Date**"), by LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI, a public body corporate and politic organized under the laws of Missouri and the ordinances of the City of Kansas City, Missouri, and YANA PROPERTIES, LLC, a Missouri limited liability company (dba Blue Nile Contractors, Inc., a Missouri corporation).

### **RECITALS**

A. The Authority is a public body corporate and politic created by the LCRA Law and is transacting business and exercising the powers granted by the LCRA Law by virtue of Committee Substitute for Ordinance No. 16120, duly passed by the City Council on November 21, 1952.

B. The Redeveloper is a Missouri limited liability company with offices at 601 Spratley Street, Birmingham, Missouri 64161.

C. The Authority approved the Blue Valley Urban Renewal Plan on July 25, 1997, by Resolution 97-38 and determined that the portion of the City located within the Blue Valley Urban Renewal Area described in such Plan was blighted and insanitary.

D. The City Council approved the Blue Valley Urban Renewal Plan by Ordinance No. 980946 passed on August 27, 1998, as amended ("**Blue Valley Plan**"), the purpose of which is to eliminate and prevent the spread, development and recurrence of the blighted and insanitary conditions within the Blue Valley Urban Renewal Area.

E. The City owns property within the Blue Valley Urban Renewal Area, which property is legally described on the attached Exhibit A and as depicted in the Certificate of Survey and the Development Plan of improvements on the attached Exhibit B, but the City is retaining existing recorded rights-of-way and easements and further reserving necessary easements for the operation, maintenance and replacement of existing municipal facilities, including without limitation (i) the City's certain Right of Way interests held pursuant to the three instruments each recorded August 16, 1934, successively in Book B-3152, Page 325, and Book B-3152, Page 326, and Book B-3152, Page 328, all as related to the Blue River, which the City intends to continue to retain after the City transfers title to the Authority and an express reservation of those rights will be made in the Special Warranty Deed; (ii) the City's rights under the Easement for sewer purposes recorded on June 20, 1986, as Document No. K-720106, in Book K-1552, Page 945 which the City intends to continue to retain after the City transfers title to the Authority and an express reservation of those rights will be made in the Special Warranty Deed; (iii) such non-exclusive easement for ingress and egress as set forth in the instrument recorded June 20, 1986, as Document K-720106, in Book K-1552, Page 945 which the City intends to continue to retain after the City transfers title to the Authority and an express reservation of those rights will be made in the Special Warranty Deed; and such other easements as may need to be reserved for any existing water or sewer lines, including without limitation the water line that exists for which an easement of approximately the northerly 25 feet of the Property will be needed, the more specific legal description for which will be determined and reserved in the Special Warranty Deed ("**Property**").

F. The Redeveloper desires to acquire the Property plus other property adjacent to the Property to redevelop the site for its new corporate office and storage yard (“**Project**”).

G. Pursuant to Section 99.450 of the LCRA Law, the Authority caused to be published two times in a newspaper having a general circulation in its area of operation a request for proposals for redevelopment contract proposals; the Redeveloper submitted a timely proposal to the Authority to implement the Project; and the Authority selected the Redeveloper as the redeveloper to implement the Project and to authorize the Authority to negotiate such purchase agreements, development agreements, and such other agreements or documents as deemed necessary or desirable to implement the Project in accordance with Resolution No. 8-2-18 adopted by the Authority on August 22, 2018.

H. On August 30, 2018, the Council received and filed Communication No. 180636 which notified the City that the Authority selected the Redeveloper to integrate the Property into the Project consisting of a new corporate office and storage yard within the Blue Valley Urban Renewal Area.

I. By its Ordinance No. 180710 dated September 20, 2018, the City authorized the sale of the Property to the Authority for ultimate sale to the Redeveloper, as long as the Redeveloper (i) abides by federal and state regulations related to floodplains, and the municipal regulations related to floodplain management as contained in Chapter 28 of the Municipal Code of Ordinances, including without limitation, those prohibitions for floodways contained in Section 28-55 of such Chapter, including no encroachments, fill, new construction, substantial improvements and other development should be contemplated within the adopted regulatory floodway on the Property; (ii) implements a buffer including the planting and maintenance of trees as part of landscaping created as a part of the Project for the anticipated trail which is being constructed by the City for recreational purposes but also to provide access to maintain the re-channeled Blue River; (iii) agrees to restrict the continuation or renewal of any billboards licenses or leases, as a part of the acceptance of the deed from the Authority and will agree for itself, as the Redeveloper, and its successors and assigns, not to permit any future billboards on the Property and to cause the discontinuation of the existing billboard as soon as practical; (iv) accepts the City’s reservation of continued ingress and egress through the Property as needed by the City and/or the State of Missouri Department of Transportation to access the property retained by the City that lies to the south of Interstate I-70; (v) accepts the City’s further reservation of existing recorded rights-of-way and easements and the reservation of necessary easements for operation, maintenance and replacement of existing municipal utilities; (vi) enters into a Purchase and Development Agreement that pays consideration to the Authority in the amount of at least its transaction and administrative costs (including survey, environmental studies, legal and closing costs) for the transfer of the Property on or before the closing from the Redeveloper and grants the Authority enforceable assurances from the Redeveloper that the Project will be pursued with diligence and completed in a timely manner with a recovery of the Property upon the failure to complete the Project; (vii) agrees to timely completes the renovations and not to seek any tax incentives for the Project; and (viii) such other conditions to transfer of the Property as determined necessary by the Director of General Services in consultation with other departments, including the Water Services Department and the City Planning and Development Department, including, without limitation, requiring the Redeveloper or its predecessor in interest to grant on abutting real property an easement twenty-five feet in width for an existing 12 inch water line that lies southwesterly along the north right of way of Interstate 70, and northerly along the southern right of way of Highway 40, with such twenty-feet measured from

the rights of way, into the abutting property, which grant of easement will be contemporaneous with and a condition of the transfer by the City to the Authority and taking the Property subject to the Declaration executed by the City not to disturb certain areas of the Property potentially impacted by unidentified infill materials, which restrictions may be lifted with the consent of the City after a limited Phase II Environmental Studies Assessment to determine the soil condition on the tracts to be impacted by future development (collectively, the “*City Conditions*”).

J. The Property consists of 221,672 square feet, appraised at approximately \$0.60 per square foot, for an aggregate value of \$133,003.20, but the City approved the conveyance of the Property to the Authority for redevelopment within the Blue Valley Urban Renewal Area as authorized by Sections 99.580 and 99.590, RSMo, without consideration in lieu of the Redeveloper seeking tax incentives for the Project, subject to conditions recited herein including that the Authority enter into a development agreement with the Redeveloper to cause the commencement and timely completion of the redevelopment of the Property for a leasable office, shop and parts storage, with no less than 15,000 usable square feet, a façade enhancement, new roofing, paving and landscaping to retain 125 jobs.

K. Conveyance of the Property is further conditioned upon the following: (i) the City being able to convey the Property to the Authority free and clear of all leases, liens and encumbrances unacceptable to the Authority and the Redeveloper; (ii) the Authority receiving its transaction and administrative costs (including survey, environmental studies, legal and closing costs), for the transfer of the Property on or before closing from the Redeveloper; and (iii) the Authority receiving enforceable assurances from the Redeveloper that the Project will be pursued with diligence and completed in a timely manner and with a recovery of the Property upon failure to timely complete the Project.

L. The Authority and the City have entered into or will enter into the Purchase Agreement, pursuant to which the City will convey the Property to the Authority on the condition that the Authority convey the Property to the Redeveloper in support of the Project, as authorized by Sections 99.420(4) and 99.450(4), RSMo. As part of a simultaneous closing, the Authority is willing to accept title to the Property from the City and immediately convey the Property to the Redeveloper at such time as the Redeveloper is in a position to accept title to the Property and continue efforts to proceed with the Project.

M. The Authority on October 24, 2018, by its Resolution No. 10-\_\_-18, approved this Contract and authorized the undersigned to execute and deliver this Contract for and on behalf of the Authority.

N. The Redeveloper is not seeking tax abatement assistance from the Authority, and the Property is being disposed of by the Authority pursuant to the LCRA Law.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained in this Contract and other good and valuable mutual consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

## **ARTICLE I**

## **DEFINITIONS AND RULES OF CONSTRUCTION**

Section 1.01 Definitions. The following terms shall have the following meanings as used in this Contract:

**"Applicable Laws"** means all then applicable statutes, laws, rules, regulations, ordinances, executive orders, decrees, writs, judgments, orders and administrative and judicial opinions enacted, promulgated and/or issued by any federal, state, county, municipal or local governmental, quasi-governmental, administrative or judicial authority, body, agency, bureau, branch, department or tribunal.

**"Authority"** means the Land Clearance for Redevelopment Authority of Kansas City, Missouri, a public body corporate and politic created pursuant to the Authority Law, and its successors and assigns and any surviving, resulting or transferee entity.

**"Blue Valley Plan"** has the meaning set forth in the Recitals of this Contract.

**"Board"** means the Board of Commissioners of the Authority, which is the governing body of the Authority.

**"City"** means the City of Kansas City, Missouri, a constitutional charter city and political subdivision of the State, and its successors and assigns.

**"City Council"** means the City Council of the City, which is the governing body of the City.

**"Contract"** means this Sale and Redevelopment Contract, entered into by the Authority and the Redeveloper, as may be amended from time to time.

**"Costs of Sale"** means costs associated with conveyance of the Property to the Authority and conveyance of the Property to the Redeveloper and shall include charges to the Authority for acting as a closing agent in the conveyances; recording any documents to clear title encumbrances; any policy of owner's title insurance that the Authority or Redeveloper may obtain; and any other reasonable costs and expenses that the Authority has incurred with respect to the conveyances, including, but not limited to, reasonable professional costs and expenses for legal, title, survey, appraisal, environmental, engineering, and other related or customary professional services performed in connection with the conveyances contemplated by this Contract.

**"Cure Period"** means a period of thirty (30) days after written notice is given by a non-defaulting party to the defaulting party of an Event of Default, as defined in Article IX of this Contract, during which time the defaulting party may cure any such Event of Default.

**"Declaration"** means the Declaration executed by the City restricting use of a portion of the Property so as to not disturb potential, unidentified fill materials, which restrictions may be lifted with the consent of the City after a limited Phase II Environmental Studies Assessment is conducted to determine soil conditions and the impact of future development thereon.

**“Development Plan”** means the Development Plan approved by the City and attached (or an excerpt thereof) as Exhibit B showing the planned improvements and compliance with all applicable zoning regulations and other applicable federal and state regulations related to floodplains, and the municipal regulations related to floodplain management as contained in Chapter 28 of the Municipal Code of Ordinances, including without limitation, those prohibitions for floodways contained in Section 28-55 of such Chapter, including no encroachments, fill, new construction, substantial improvements and other development should be contemplated within the adopted regulatory floodway on the Property; and implements a buffer including the planting and maintenance of trees as part of landscaping created as a part of the Project for the anticipated trail which is being constructed by the City for recreational purposes but also to provide access to maintain the re-channeled Blue River; and with a notation and disclosure of the Declaration.

**“Environmental Law”** means any applicable federal, state or local law, regulation, order, decree, permit, authorization, opinion, common law relating to: (i) the protection, investigation or restoration of the environment, health, safety, or natural resources; (ii) the handling, use, presence, disposal, release, or threatened release of any Hazardous Substance; (iii) noise, odor, wetlands, pollution, or contamination; or (iv) standards of conduct concerning protection of human health (including, without limitation, employee health and safety), in each case as amended and as now or hereafter in effect.

**“Funding Agreement”** means the Funding Agreement dated June 18, 2018 between the Authority and the Redeveloper pursuant to which the Redeveloper agreed to pay all costs incurred by the Authority in connection with the transactions contemplated by this Contract, as such agreement may be amended.

**"Hazardous Substance"** means any material or substance that is: (A) oil or other petroleum products, (B) “hazardous wastes,” as defined by the Resource Conservation and Recovery Act, as amended, (RCRA), 42 U.S.C. § 6901 *et seq.*, or similar state or local law, ordinance, regulation, or order, (C) “hazardous substances,” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. § 9601 *et seq.*, or similar state or local law, ordinance, regulation, or order, (D) “hazardous materials,” as defined by the Hazardous Materials Transportation Act, as amended, (HMTA), 49 U.S.C. § 1802, or similar state or local law, ordinance, regulation, or order, (E) radioactive materials subject to the Atomic Energy Act, as amended, (AEA), 42 U.S.C. § 2014 *et seq.*, or similar state or local law, ordinance, regulation, or order, and (F) any other pollutant, contaminant, chemical, substance whose presence creates or could create a hazard to health or the environment or a violation of any Applicable Law or any federal, state, or local Environmental Law.

**"LCRA Law"** means the Land Clearance for Redevelopment Authority Law, Sections 99.300, *et. seq.*, as amended from time to time.

**"Project"** has the meaning set forth in the Recitals of this Contract.

**"Property"** has the meaning set forth in the Recitals of this Contract.

**"Purchase Agreement"** means the Purchase Agreement between the City and the Authority concerning the conveyance of the Property to the Authority in furtherance of the redevelopment of the Project.

**"Purchase Price"** has the meaning set forth in Section 3.01 of this Contract.

**"Redeveloper"** means Yana Properties, LLC, a Missouri limited liability company (dba Blue Nile Contractors, Inc., a Missouri corporation), or its successors or assigns.

**"Redevelopment Plan"** means the Redeveloper's plan attached to and incorporated into this Contract as Exhibit C, pursuant to which the Redeveloper will complete the Project.

**"State"** means the State of Missouri.

**"Transaction Document"** or **"Transaction Documents"** means this Contract, the Funding Agreement, the Purchase Agreement, the Declaration, the Redevelopment Plan, the Blue Valley Plan, the Special Warranty Deed, and any other document related to the Property.

**"Workable Program"** means The Workable Program of the Authority, and the Rules for the Implementation of The Workable Program of Authority, approved by the Board by Resolution Nos. 10-9-00 and 10-10-00 dated October 4, 2000, as amended from time-to-time.

Section 1.02 Other Defined Terms. Words and phrases that are not capitalized shall have the meaning, if any, given to such words or phrases in the LCRA Law. If not defined in the LCRA Law, such terms shall be given their plain and ordinary meaning.

Section 1.03 Headings. The headings and captions of this Contract are for convenience and reference only, and in no way define, limit or describe the scope or intent of this Contract or any provision of this Contract.

Section 1.04 Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular shall include the plural and vice versa, and words importing person shall include entities, associations and corporations, including public bodies, as well as natural persons.

Section 1.05 Conflicting Provisions. In the event of any conflict between the terms of this Contract and the Redevelopment Plan, the terms of this Contract shall prevail.

## **ARTICLE II**

### **ACQUISITION AND SALE OF THE PROPERTY**

The Authority is acquiring the Property from the City pursuant to the terms and conditions of the Purchase Agreement and transferring the Property to the Redeveloper pursuant to the terms and conditions of this Contract to eliminate blight within the Blue Valley Urban Renewal Area and to provide assistance to the Redeveloper in achieving that goal through development of the Project. Subject to the terms and provisions of this Contract, the Authority agrees to sell to the Redeveloper, and the Redeveloper agrees to purchase from the Authority, the

Property. The purchase and sale of the Property is subject to: (i) all easements, restrictions, covenants and reservations now of record affecting the Property and, to the extent not now of record, the Declaration and the City Conditions; (ii) this Contract; (iii) the Blue Valley Plan; (iv) such facts as an accurate survey and environmental assessment and other investigations would disclose; (v) all zoning laws, subdivision regulations, and all other laws, rules and regulations affecting the Property; (vi) the lien of any unpaid taxes and assessments of any type; and (vii) the Title Company's (defined below) standard printed exceptions agreed to by the Authority, Title Company and the Redeveloper (collectively, the "***Permitted Exceptions***").

### **ARTICLE III PURCHASE PRICE**

Section 3.01 Price. The Authority is selling the Property to the Redeveloper for a purchase price of One and no/100 Dollars (\$1.00) ("***Purchase Price***"), which term has been approved by the City and the Authority in recognition of the Redeveloper's plan to redevelop the Property and eliminate the blighting conditions found to exist on the Property and the Redeveloper's agreement to undertake the Project without any tax incentives.

Section 3.02 Payment. On the Closing Date (defined below), the Redeveloper shall pay to the Authority the Purchase Price and the Authority shall transfer the Purchase Price, minus the Costs of Sale and the Authority's reasonable administrative costs, to the City. Notwithstanding anything else in this Contract to the contrary, the Redeveloper shall pay the Authority's reasonable attorney's fees incurred in connection with the transactions contemplated by this Contract and the Funding Agreement and such fees shall be in addition to the Purchase Price.

### **ARTICLE IV TITLE COMMITMENT/POLICY CONDITION/INDEMNIFICATION/WARRANTIES**

Section 4.01 Commitment and Policy. On or before the Title Transfer Notice Date (as defined below), the Redeveloper shall obtain a title insurance commitment ("***Commitment***") from such title company to be designated by Redeveloper ("***Title Company***") which includes the Permitted Exceptions and provide a copy of the Commitment to the Authority. The Redeveloper shall pay on or before the Closing, the cost of the Commitment and, if the Redeveloper desires to obtain an owner's title insurance policy ("***Policy***"), the Redeveloper shall pay the premium for the Policy and any endorsements thereto.

#### Section 4.02 Survey and Environmental Assessment.

(a) The Redeveloper acknowledges that the City is causing the preparation of a Certificate of Survey ("***Survey***") by McClure Engineering Co. for the purpose of legally describing and depicting Tracts 1, 2, and 3, which together comprise the Property, to establish separate tax parcels for each tract and for reservation of certain City rights and imposition of certain requirements as part of the City Conditions.

(b) The Redeveloper acknowledges that the Authority, at the Redeveloper's sole cost, is causing the preparation of a Phase I Environmental Assessment Report ("***Phase I***") dated October 5, 2018, by Environmental Works, Inc. for the purpose of



identifying existing or threatened adverse environmental conditions affecting the Property.

Section 4.03 Objections. If the Commitment, Phase I, and/or the Survey reveal any exceptions to title or any matters affecting the Property objectionable to the Redeveloper ("**Objections**"), the Redeveloper shall notify the Authority in writing of such Objections within thirty (30) days after the Redeveloper's receipt of the last of the Commitment, Phase I, or the Survey ("**Objection Notice**"). In the Objection Notice, the Redeveloper shall specifically state (i) which exceptions or conditions are unacceptable, and (ii) the requested action to be taken by the Authority with regard to same. The Authority, within twenty (20) days after receipt of the Objection Notice shall advise the Redeveloper whether the Authority will correct any non-monetary Objections or what action the Authority will take, if any ("**Authority Response**"), in response to the Objection Notice; provided, however, that the Authority shall have no responsibility or obligation to cure any monetary Objection except for any monetary Objection arising from the Authority's ownership or use of the Property and expressly consented to by the Authority. In the event the Authority fails to respond or delivers notice to the Redeveloper that the Authority is unable or unwilling to satisfy the non-monetary Objections within the Title Correction Period, the Redeveloper shall advise the Authority, within ten (10) business days after receipt of the Authority Response or such date as the Authority Response was due ("**Redeveloper Title Response Period**"), that the Redeveloper either: (a) accepts title subject to the non-monetary Objections raised by the Redeveloper, or (b) terminates this Contract, whereupon this Contract shall be of no further force and effect as to the Property, except that the Redeveloper shall pay all costs payable by the Redeveloper under this Contract and the Funding Agreement up to and including the date of termination. In the event the Redeveloper fails to so notify the Authority prior to the end of the Redeveloper Title Response Period, then the Redeveloper shall be deemed to have accepted title and waived all non-monetary Objections. All non-monetary Objections accepted by the Redeveloper, plus any monetary Objections, shall be deemed Permitted Exceptions for purposes hereunder.

Section 4.04 Property Condition. The Authority makes no covenant, representation or warranty, either express or implied, including, without limitation, any implied warranty of condition or fitness for any particular purpose, or any representation or warranty relating to any existing conditions or defects, hidden, latent or otherwise, all such warranties being expressly WAIVED by the Redeveloper. The Redeveloper acknowledges having inspected the Property, having observed its physical characteristics and existing conditions, and having had the opportunity to conduct such investigation and study on and of the Property as it deems necessary. The Redeveloper further acknowledges and agrees that the Property is to be sold and conveyed to, and purchased and accepted by the Redeveloper, in its present condition, "AS IS", and the Redeveloper expressly assumes the risk that adverse physical characteristics and existing conditions may not have been revealed by its investigation.

Section 4.05 Indemnity. The Redeveloper indemnifies and agrees to protect, defend and hold harmless the Authority and the City and their respective commissioners, officials, officers, employees, agents, affiliates, successors and assigns, from and against all claims, liens, demands, losses, damages, costs, expenses, injuries to persons or property, liabilities, taxes, payments in lieu of taxes, assessments, fines, penalties, charges, administrative or judicial proceedings, orders, judgments, causes of action, remedial action requirements, and/or enforcement actions of any kind

(including, without limitation, attorney's fees and court or similar costs) directly or indirectly arising out of or attributable to in whole or in part:

(a) the material inaccuracy of any representation or the material breach of any representation, covenant or warranty of the Redeveloper contained in this Contract;

(b) the Redeveloper's acquisition, development, ownership, occupancy, possession, or use of the Property, unless directly caused by the gross negligence or willful misconduct of the Authority or the City;

(c) the failure on the part of the Redeveloper to perform, observe and/or comply with any covenant, obligation or duty to be performed, observed and/or complied with by the Redeveloper pursuant to the terms of this Contract or any other Transaction Document;

(d) any condition of, on or in the Property or any part thereof caused by any act or omission of the Redeveloper or the Redeveloper's agents, contractors, subcontractors, servants, employees, members, officers, directors, licensees or invitees or any other person or entity for whose acts or omissions the Redeveloper is otherwise responsible pursuant to Applicable Law;

(e) the performance or non-performance by Redeveloper of any Transaction Document, contract, agreement, obligation or undertaking entered into by the Redeveloper (whether as the agent of the Authority or otherwise) in connection with all or any part of the Project; and/or

(f) any act or omission of the Redeveloper or any of the Redeveloper's agents, contractors, subcontractors, servants, employees, members, officers, directors, licensees, or invitees, or any other person or entity for whose acts or omissions the Redeveloper is otherwise responsible pursuant to Applicable Law, including, without limitation, failure to pay prevailing wages or to provide payment and performance bonds to the extent, if any, required under Applicable Law.

#### Section 4.06 Environmental.

(a) The Redeveloper covenants that it shall not place or cause to be placed, nor permit any other person to place or cause to be placed, any Hazardous Substances on or about the Property above any *de minimis* non-reportable levels reasonably necessary to the Redeveloper's use of the Property.

(b) The Redeveloper indemnifies and agrees to protect, defend and hold harmless, the Authority and the Authority's officers, directors, commissioners, employees, agents, affiliates, successors and assigns (except to the extent intentionally and directly caused by any such indemnified party), from and against any and all claims, liens, demands, losses, damages, costs, expenses, liabilities, assessments, fines, penalties, charges, administrative or judicial proceedings, orders, judgments, causes of action, defects in title, remedial action requirements, and/or enforcement actions of any kind (including, without limitation, attorneys' fees and costs) directly or indirectly arising out of or attributable to, in

whole or in part, (i) the breach of the covenants of the Redeveloper contained in this Section 4.06, or (ii) the use, handling, generation, manufacture, production, storage, release, threatened release, discharge, treatment, removal, transport, decontamination, cleanup, disposal, and/or presence of Hazardous Substances on, under, from or about the Property, or (iii) any other activity carried on or undertaken on or off the Property, whether prior to or during the ownership of the Property by the Authority, and whether by the Redeveloper or any other predecessor in title or any employees, agents, contractors, or subcontractors of the Redeveloper or any other predecessor in title, or any third persons at any time occupying or present on the Property, in connection with the use, handling, generation, manufacture, production, storage, release, threatened release, discharge, treatment, removal, transport, decontamination, cleanup, disposal, and/or presence of any Hazardous Substance at any time located, transported or present on, under, from, to or about the Property, including without limitation: (A) all consequential damages; (B) the cost of any required or necessary repair, cleanup, or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (C) liability for personal injury or property damage arising under any statutory or common-law tort theory, including damages assessed for the maintenance of a public or private nuisance, response costs or for the carrying on of any abnormally dangerous activity.

(c) The foregoing indemnity obligation includes without limitation: (i) the costs of removal or remedial action incurred by the United States government or the State or response costs incurred by any other person, or damages from injury to, destruction of, or loss of natural resources, including the cost of assessing such injury, destruction or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), 42 U.S.C. §9601 *et seq.*; (ii) the clean-up costs, fines, damages or penalties incurred pursuant to any applicable provisions of State law; and (iii) the cost and expenses of abatement, correction or cleanup, fines, damages, response costs or penalties which arise from the provisions of any other Applicable Law.

(d) The foregoing indemnity shall further apply to any residual contamination on, under, from or about the Property, or affecting any natural resources, arising in connection with the use, handling, generation, manufacturing, production, storage, release, discharge, treatment, removal, transport, decontamination, cleanup, disposal, and/or presence of any such Hazardous Substance on, under, from or about the Property and irrespective of whether any of such activities were or will be undertaken in accordance with any Applicable Laws. This indemnity is intended to be operable under 42 U.S.C. Section 9607(e)(1), and any successor section thereof, and shall survive the termination of this Contract in all respects.

Section 4.06 Failure to Discharge Liabilities. The Redeveloper hereby indemnifies and agrees to hold harmless and defend the Authority from and against any and all loss, liability, damage, claim, fine, penalty, judgment, cost and expense of any nature whatsoever, including, without limitation, reasonable attorneys' fees, arising from or in connection with: (i) any transferee liability law; (ii) any payment or performance by the Authority to any third party in order to perform or discharge fully or partially any liability or obligation of the Redeveloper which the Authority shall have the option, but shall not be required, to perform or discharge if demand is made on the Authority therefor and threatened to be charged against the Property and the Redeveloper fails to defend against or perform or discharge the same or otherwise to provide

reasonable evidence to the Authority that the Redeveloper will comply with its indemnification obligations hereunder, at no cost or expense to the Authority; and/or (iii) any judgment or other circumstances pursuant to which the Authority may be held liable or accountable for, or the Property required hereunder may be charged in respect of, any liability or obligation of the Redeveloper.

Section 4.07 Enforcement Expenses; Survival of Indemnification Obligations. The indemnity obligations contained in this Contract include within them all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in enforcing any right to indemnity contained in this Contract. All indemnification obligations of the Redeveloper under this Article IV shall survive the termination of this Contract.

Section 4.08 The Redeveloper's Warranties. The Redeveloper represents, warrants and covenants to Seller, that:

- (a) the Redeveloper is a Missouri limited liability company in good standing and is authorized to conduct business in the state;
- (b) the Redeveloper has the requisite power and authority to enter into this Contract;
- (c) there is no default by the Redeveloper under this Contract;
- (d) neither the execution and delivery of this Contract, nor the fulfillment of or compliance with the terms and conditions of this Contract, nor the consummation of the transactions contemplated by this Contract, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Redeveloper is now a party or by which the Redeveloper is bound;
- (e) to the actual knowledge of Redeveloper, there is no action, threatened or pending, against the Redeveloper which would prevent or impair the Authority's or the Redeveloper's performance hereunder;
- (f) the Redeveloper shall develop and use the Property only as permitted and/or required by the Project, the Blue Valley Plan, and the Redevelopment Plan; provided, however, as noted in paragraph (g) below, the Project is not being developed as a specific project plan within the Blue Valley Plan and no tax abatement is granted under this Contract;
- (g) the Redeveloper shall not seek tax abatement assistance from the Authority or any tax incentives from the City or other City development agency and will develop and use the Property and the Project in compliance with this Contract; and
- (h) the conveyance of the Property in support of the Project will advance the purposes of the LCRA Law.

Section 4.09 The Authority's Warranties.

(a) The Authority is a public body corporate and politic duly organized under the laws of the State and ordinances of the City and has corporate power to enter into this Contract. The Board has duly authorized the negotiation, execution and delivery of this Contract.

(b) No commissioner of the Authority or any other officer of the Authority has any conflicting interest (financial, employment or otherwise) in the Redeveloper, the Project or the transactions contemplated by this Contract.

Section 4.10 Survival of Representations, Warranties and Covenants. All representations, covenants and warranties of the Redeveloper and the Authority contained in this Contract, in any certificate or other instrument delivered by the Redeveloper or the Authority pursuant to this Contract, or otherwise made in conjunction with the Project, shall survive the execution and delivery of this Contract.

## **ARTICLE V CLOSING PROCEDURE**

Section 5.01 Closing Date. The closing of the sale of the Property ("**Closing**") shall occur on a date that is not less than thirty (30) days after the date ("**Title Transfer Notice Date**") of a written notice ("**Title Transfer Notice**") from the Redeveloper to the Authority and the City requesting that the City convey the Property to the Authority pursuant to the terms and conditions of the Purchase Agreement and that the Authority immediately convey the Property to the Redeveloper pursuant to the terms and conditions of this Contract, or such other date to which the parties mutually agree ("**Closing Date**"), at the office of the Title Company or another place agreed upon by the Authority and the Redeveloper. The conveyance of the Property from the City to the Authority and the conveyance of the Property from the Authority to the Redeveloper shall occur on the Closing Date. The Title Transfer Notice shall also: (a) specify the Closing Date, provided, however, that in no event shall the Closing Date be later than \_\_\_\_\_, 201\_ unless the Authority, the City and Redeveloper agree on a later date; (b) include a statement that the Redeveloper has satisfied the conditions precedent to the transfer of the Property under this Contract; and (c) include a copy of the Commitment. The Closing shall take place through escrow with the Title Company. Notwithstanding the foregoing, Closing is contingent upon the occurrence or satisfaction of the following obligations of the Authority and Redeveloper, unless any such obligation is waived by the proper party:

(a) Authority's Obligations at Closing. Subject to the terms, conditions, and provisions hereof, and contemporaneously with the performance by Redeveloper of its obligations set forth herein, the Authority shall do the following at or before Closing:

(i) Deliver to the Title Company a standard owner's affidavit in a form reasonably acceptable to the Authority and the Title Company. The parties acknowledge that the Title Company may also require an owner's affidavit from the City as to that portion of the Property owned by the City and transferred to the Authority as contemplated herein.

(ii) Execute and deliver to the Title Company a Special Warranty Deed ("**Special Warranty Deed**") conveying the Property to the Redeveloper, subject

only to the Permitted Exceptions (including, without limitation, the Declaration and the City Conditions), in substantially the form attached hereto as Exhibit D. Notwithstanding the foregoing, the Authority's obligation to transfer the Property to the Redeveloper is expressly conditioned upon the City first transferring title to the Property to the Authority for ultimate transfer to the Redeveloper pursuant to the terms and conditions of this Contract.

(iii) Deliver to the Title Company the Settlement Statement prepared by the Title Company and executed by the Authority.

(iv) Deliver to the Title Company a certification in a form reasonably acceptable to the Authority certifying that the Authority is not a "foreign person", pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended.

(v) Deliver such further documentation as is reasonably requested by the Title Company and/or Redeveloper, and in a form reasonably acceptable to the Parties, to effectuate the provisions of this Contract, including, without limitation, those items necessary to satisfy the Objections as provided in this Contract.

(b) Redeveloper's Obligations at Closing. Subject to the terms, conditions, and provisions hereof, and contemporaneously with the performance by the Authority of its obligations set forth above, Redeveloper shall do the following at or before Closing:

(i) An electronic wire transfer of funds in the amount of the balance of the cash portion of the Purchase Price, the amount of the Closing Costs, and such other costs payable by Redeveloper under this Contract and the Funding Agreement.

(ii) The Settlement Statement prepared by the Title Company and executed by Redeveloper.

(iii) Deliver to the Title Company a Certificate of Value as required by the Jackson County, Missouri recorder's office.

(iv) All other documents reasonably required by the Title Company to satisfy the remainder of its requirements described in the Commitment.

(v) Deliver such further documentation as is reasonably requested by the Title Company and/or the Authority, and in a form reasonably acceptable to the Parties, to effectuate the provisions of this Contract.

Section 5.03 Utilities. The Redeveloper shall take all action necessary to transfer the utility service of the Property, if any, from the City or the Authority to the Redeveloper on the Closing Date.

Section 5.04 Costs of Sale and Authority Legal Fees. All Costs of Sale shall be borne by the Redeveloper, including but not limited to the cost of the Policy and costs to record the Special

Warranty Deed. The Redeveloper shall pay for the Authority's reasonable legal fees and closing costs incurred in connection with the conveyance of the Property by the City to the Authority and with the conveyance of the Property by the Authority to the Redeveloper.

Section 5.05 Possession. Possession of the Property shall be delivered to the Redeveloper on the recording of the Special Warranty Deed.

Section 5.06 Prorations of Expenses and Taxes for the Property. The expenses and obligations set forth below shall be prorated as of the Closing Date with respect to the Property, with the City or Authority being responsible for that portion arising prior thereto and the Redeveloper being responsible for that portion arising subsequent thereto. The following expenses and obligations shall be prorated:

(a) all real and personal property taxes and assessments, general and special, shall be prorated on the basis of the number of days of the relevant tax year or period which have elapsed through the Closing Date; provided, however, that the parties acknowledge that the Property is currently owned by the City and exempt from taxation; and

(b) all expenses and obligations with regard to utilities, including, without limitation, gas, electricity, water, telephone, sanitary sewer and storm sewer, shall be prorated on the basis of the number of days of the relevant tax year or period which have elapsed through the Closing Date.

## **ARTICLE VI BROKERAGE**

Each party warrants and represents that it has not dealt with any agent or broker in connection with the transactions contemplated by this Contract, and each party agrees to indemnify and hold harmless the other from and against all liability and expense incurred by the other as a result of a breach of this representation.

## **ARTICLE VII RESTRICTIONS ON USE/CONDITIONS TO PARTIES' OBLIGATIONS**

Section 7.01 Use Restrictions.

(a) The Redeveloper covenants and agrees for itself and its successors and assigns and every successor in interest to all or any part of the Property, that the Redeveloper and such successors and assigns shall:

(1) devote all uses of the Property in accordance with and subject to the provisions regarding use of the Property in the Redevelopment Plan, as described in Exhibit C and the Declaration; and

(2) not discriminate on the basis of race, color, religion, sexual orientation, family status, handicap, sex or natural origin in the sale, lease or rental or in the use or occupancy of all or any part of the Property.

(b) It is intended and agreed that the covenants provided in (a)(1) of this Section shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by: the Authority, its successors and assigns, the City, any successor in interest in the Property or any part of the Property, for the term specified in the Declaration, and in regard to the use restriction provided in subsection (a)(2) of this Section against the Redeveloper, its successors and assigns, and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

Section 7.02 Conditions to the Authority's Obligations. Unless waived by the Authority, all obligations of the Authority under this Contract are subject to the following conditions precedent:

(a) The Redeveloper's representations and warranties contained in this Contract shall be true at the time such performance by the Redeveloper is due as though such representations and warranties were made at such time and as if made with respect to events and transactions which have occurred since the Effective Date and prior to the date such performance by the Redeveloper is due;

(b) The Redeveloper shall have performed and completed all of its obligations and shall have complied with all of its agreements and conditions required by Transaction Documents to be performed or complied with by it on or before the date such performance by the Redeveloper is due;

(c) The Authority has received the Title Transfer Notice from the Redeveloper at least thirty (30) days prior to the Closing Date indicating that the Redeveloper is ready, willing and able to accept title to the Property;

(d) The Authority has received from the City a deed to the Property pursuant to the terms and conditions of the Purchase Agreement, which deed shall be recorded immediately prior to the Special Warranty Deed on the Closing Date; and

(e) The Redeveloper (or its affiliate(s)) has acquired title to all other property necessary for construction of the Project.

Section 7.03 Conditions to the Redeveloper's Obligations. Unless waived by the Redeveloper, all obligations of the Redeveloper under this Contract are subject to the following conditions precedent:

(a) The Authority's representations and warranties contained in this Contract shall be true at the time such performance by the Authority is due as though such representations and warranties were made at such time and as if made with respect to events and transactions which have occurred since the Effective Date and prior to the date such performance by the Authority is due;



(b) The Authority shall have performed and completed all of its obligations and shall have complied with all of its agreements and conditions required by this Contract to be performed or complied with by it on or before the date such performance by the Authority is due.

Section 7.04 Operation and Maintenance of Project. Redeveloper and its successors and assigns shall operate and maintain the Property as part of the Project in a good state of repair and attractive appearance.

## **ARTICLE VIII REDEVELOPMENT PLAN & CONSTRUCTION OF THE PROJECT; CONVEYANCE RESTRICTION & CONDITION**

Section 8.01 Redevelopment Plan. The Redeveloper shall redevelop the Property in accordance with the terms and provision of this Contract and the Redevelopment Plan described on Exhibit C, which contains a narrative description of the Redevelopment Plan for the Property, and which describes the nature and character of the proposed improvements, together with general plans sufficiently complete to indicate the general size, shape, placement and type of construction of the planned improvements to be constructed on the land.

Section 8.02 Modifications. The Redeveloper shall diligently pursue completion of the Property improvements in conformance with the Redevelopment Plan as it may be modified, subject to prior approval of the Authority.

Section 8.03 Construction. The Redeveloper shall construct such improvements on the Property as part of the Project in accordance with this Contract and

(a) The Redeveloper shall commence construction of the Project no later than \_\_\_\_\_, 2018 (“**Commencement Date**”), and complete the Project the Completion Date shall be no later than \_\_\_\_\_, 20\_\_ (“**Completion Date**”), subject to extensions granted pursuant to Section 8.04. The limitation of time for commencement and completion may be extended by written agreement between the parties. The period from the Commencement Date to the Completion Date is the “**Construction Period**”.

(b) The Redeveloper agrees that it will enter into the necessary contracts with contractors for the Project and cause those contracts to provide that all work performed under such contracts shall be in accordance with the Redevelopment Plan, this Contract and the Blue Valley Plan.

Section 8.04 Extensions Due to Force Majeure Conditions. The time limit for the Completion Date may be extended due to any Force Majeure Condition if the Redeveloper notifies the Authority of the existence of such condition reasonably promptly after first becoming aware of such condition. The extension of time for the Completion Date shall be for the period of any delay or delays caused or resulting from any Force Majeure Condition; provided, however, the Redeveloper must notify the Authority of the existence of such delaying event within forty five (45) days after the commencement of such Force Majeure Condition, which

notice to the Authority shall include documentation or other information reasonably necessary to establish the existence of the delaying event and an estimate of the approximate period of delay to be created by that event. The Redeveloper's failure to provide such notice and documentation shall eliminate the waiver of default due to such delaying event created in this Section.

Section 8.05 Completion Certificate. On or near the Completion Date, the Redeveloper shall send a written request to the Authority for a Completion Certificate. The Completion Certificate shall be a conclusive determination of the Redeveloper's satisfaction and termination of the covenants in this Contract regarding completion of the Project within the dates for commencement and completion set forth in this Contract and in accordance with the Blue Valley Plan, the Redevelopment Plan and this Contract. The Completion Certificate shall be in recordable form. If the Authority fails or refuses to provide the Completion Certificate after receiving a written notice requesting such certificate, the Authority shall, within thirty (30) days of receiving such request, provide the Redeveloper with a written statement indicating in reasonable detail how the Redeveloper has failed to complete the Project in conformity with the Blue Valley Plan, the Redevelopment Plan, and/or this Contract and the measures or acts necessary, in the opinion of the Authority, for the Redeveloper to take or perform in order to obtain a Completion Certificate.

Section 8.06 Conveyance Restriction. Redeveloper covenants and agrees to and for the benefit of the Authority that:

(a) During the period commencing on the date the Special Warranty Deed is recorded and expiring on the earlier of the Completion Date, the date the Authority exercises its repurchase right under Section 8.06, or the date the Authority assigns Redeveloper's development rights to the Substitute Developer under Section 8.07 below (the "***Restriction Period***"), the Redeveloper shall not, and shall not attempt to, sell, transfer, convey, assign, pledge, mortgage, encumber or otherwise dispose of any legal or beneficial interest of whatsoever nature or description in or to all or any part of the Property without the prior written consent of the Authority, which consent may be denied or conditioned, in the sole and absolute discretion of the Authority (the "***Conveyance Restriction***"); provided, however, that:

i. the Authority's exercise of its repurchase right under Section 8.06 below and Redeveloper's transfer of title to all or any portion of the Property to the Authority shall not constitute a violation of the Conveyance Restriction;

ii. The execution of a special warranty deed, in a form substantially similar to the Special Warranty Deed, transferring the Property to Redeveloper and/or the recording of the Special Warranty Deed shall not constitute a violation of the Conveyance Restriction; and

iii. Redeveloper may encumber the Property without the Authority's prior consent to finance the construction of the Project.

(b) Any act by Redeveloper during the Restriction Period in violation of the Conveyance Restriction shall be void and of no force or effect and shall convey no right, title or interest in or to the Property to any purported transferee.

**Section 8.06 Completion of Project; Repurchase Right:** The Redeveloper agrees to complete the Project no later than the Completion Date, subject to Section 8.04 (the “**Condition**”). For the purposes of this Contract, the Commencement Date shall mean the date when (i) the Redeveloper has secured all necessary permits to construct the Project (the “**Permits**”), and (ii) the Redeveloper has commenced excavation and placed, assembled or installed the materials, equipment or facilities which will make up part of the Project. The parties acknowledge that the Redeveloper must receive all Permits prior to commencing the Project. The Redeveloper hereby agrees to diligently pursue and obtain all Permits prior to the Commencement Date, and the Authority agrees to cooperate with Redeveloper in securing the same. Notwithstanding anything contained herein to the contrary, in the event that the Redeveloper has diligently pursued the issuance of all Permits prior to the Commencement Date, but the Redeveloper has not received any or all of the Permits by such date, the Commencement Date will be extended for a reasonable period of time, as determined by the Authority, in coordination with the City, to permit the Redeveloper additional time to obtain such permits, but not to exceed sixty (60) days in the aggregate (the “**Commencement Date Extension**”). Upon the Redeveloper exercising the Commencement Date Extension, the “Commencement Date” shall mean the initial Commencement Date, as extended by the Commencement Date Extension. If the Redeveloper commences construction in accordance with this Contract on or before the Commencement Date, the Authority, upon written request by the Redeveloper, agrees to acknowledge in writing the Redeveloper’s satisfaction of the construction commencement obligation.

A violation of the Condition shall be deemed to have occurred if the Redeveloper has not completed construction of the Project on or before the Completion Date, then, at any time prior to the date that is ninety (90) days after the Completion Date, the Authority may, upon written notice to the Redeveloper, repurchase the Property and require that the Redeveloper convey the Property to the Authority in an amount equal to the amount for which Redeveloper acquired the Property from the Authority.

If the Authority exercises its acquisition right pursuant to this Section 8.06 then the Redeveloper shall convey the Property to the Authority within twenty (20) days after such exercise. At the closing, the Redeveloper shall execute and deliver closing documents to the Authority that are in form and substance reasonably acceptable to the Authority conveying merchantable fee simple title to the Property back to the Authority, free and clear of any and all liens, judgments, tenancies or encumbrances, known or unknown, accruing against all or any portion of the Property during the term of ownership of the Redeveloper (or its successors and assigns) or as a result of the negligence or inaction of the Redeveloper (or its successors or assigns), unless such obligation or encumbrance is waived in writing by the Authority in its sole discretion; provided however, that (i) the special warranty deed, in a form reasonably satisfactory to the Authority and consistent with the terms of this Contract, shall be subject only to: (A) the exceptions to which the Redeveloper’s title was subject when it acquired the property from the Authority; (B) encumbrances (other than monetary liens) that are placed of record in connection with the financing and development of the Project and waived by the Authority; and (C) the current real estate taxes and assessments not delinquent, and (ii) real estate taxes and assessments shall be prorated in the manner customary for commercial transactions in the City. The Redeveloper shall use funds of the Redeveloper (general funds or Project loan funds) to release any deed of trust or financing instrument encumbering all or any portion of the Property placed

of record by the Redeveloper in connection with the development of the Project. The Redeveloper shall pay all closing costs in connection with the recording of the special warranty deed conveying the property from the Redeveloper to the Authority, including, without limitation, reasonable attorney's fees incurred by the Authority. The Parties agree that the consideration for the re-conveyance of the Property as described herein is fair and sufficient.

Section 8.07 Substitute Developer. If the Authority reacquires the Property pursuant to Section 8.06, then the Redeveloper shall have no further development rights in connection with the Project or the Property and the Authority (or any other such appropriate authority) may assign the Redeveloper's development rights to the Project and to the Property to another developer of the Authority's (or any other such appropriate authority's) choosing (the "*Substitute Developer*").

Section 8.08 Termination of the Conveyance Restriction and the Condition. The Condition and the Conveyance Restriction shall terminate and cease to be of any further force or effect upon the earlier to occur of: (a) the date the Authority exercises its repurchase right under Section 8.06 above; (b) the date the Authority assigns Redeveloper's development rights to the Substitute Developer under Section 8.07 above; or (c) the Completion Date, provided that the Redeveloper has completed the Project by the Completion Date. If the Redeveloper has not completed the Project by the Completion Date, then the Conveyance Restriction and the Condition shall remain in effect pending the Authority's exercise of its rights and remedies hereunder.

Section 8.09 Material Inducement. The Redeveloper acknowledges that the Redeveloper's agreement to the Condition and the establishment of the Conveyance Restriction of record is a material inducement to the Authority, but for which the Authority would not have entered into this Contract.

## **ARTICLE IX DEFAULT AND TERMINATION**

Section 9.01 Events of Default. The following shall be "Events of Default" under this Contract and the terms "Events of Default" and "Default" shall mean, whenever they are used in this Contract, any one or more of the following events:

(a) Failure by the Redeveloper, or its representatives, successors and assigns, to observe and perform any term, covenant, condition or agreement on their part to be observed or performed under this Contract and such Event of Default is continuing after expiration of the Cure Period (except with respect to a violation of the Condition).

(b) The filing by the Redeveloper of a voluntary petition in bankruptcy, or failure by Redeveloper to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of the Redeveloper to carry on its operation, or adjudication of the Redeveloper as a bankrupt, or assignment by the Redeveloper for the benefit of creditors, or the entry by the Redeveloper into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Redeveloper in any proceedings whether voluntary or involuntary instituted under the provisions of the federal bankruptcy laws, as amended, or under any similar acts which may hereafter be enacted.

(c) Failure by the Redeveloper, or its successors or assigns, to satisfy the Condition prior to the end of the Construction Period.

(d) Failure by the Redeveloper, or its successors or assigns, to satisfactorily complete the redevelopment of the Property pursuant to this Contract or the failure by the Redeveloper, or its successors or assigns, to operate and properly maintain the Property pursuant to this Contract.

(e) The failure of the Redeveloper to complete the Project prior to or on the Completion Date of \_\_\_\_\_, 20\_\_, unless such date shall be extended by the period of time equal to delays caused by any Force Majeure Conditions, as provided in Section 8.04.

**Section 9.02 Authority's Remedies.** If, on the Closing Date, the Authority has performed its obligations under this Contract, but the Redeveloper has failed to perform the Redeveloper's obligations under this Contract, the Authority shall give written notice to the Redeveloper of the nature of the Redeveloper's default(s) ("**Notice of Redeveloper's Default**"). If, on or before the fifth (5<sup>th</sup>) day following the giving of the Notice of Redeveloper's Default, the Redeveloper has not cured the Redeveloper's default(s), the Authority shall have the following rights:

(a) exercise its rights, in its sole discretion, to reacquire the Property and to select a Substitute Developer as provided in this Contract upon a violation by the Redeveloper of the Condition, and

(b) exercise all rights and remedies available in law or in equity, including, without limitation, specific performance, damages, and injunctive relief.

**Section 9.03 No Waiver.** No delay or omission of the Authority to exercise any right or remedy occurring upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence in such Event of Default. Every right and remedy given by this Article or by law to the Authority may be exercised from time to time and as often as may be deemed expedient by the Authority. No waiver of any breach of any covenant or agreement contained in this Contract shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement. In case of a breach by the Redeveloper of any covenant, agreement or undertaking by the Redeveloper, the Authority may nevertheless accept from the Redeveloper any payment or payments made under this Contract without in any way waiving the right of the Authority to exercise any of its rights and remedies provided for in this Contract with respect to any such default or defaults of the Redeveloper which were in existence at the time such payment or payments were accepted by the Authority.

**Section 9.04 Rights and Remedies Cumulative.** The rights and remedies reserved by the Authority in this Contract and those provided by law shall be construed as cumulative and continuing rights and may be exercised concurrently or alternatively. No one of them shall be exhausted by the exercise of such option on one or more occasions.

## **ARTICLE X NON-MERGER CLAUSE**

All of the terms, covenants, representations, warranties, restrictions and provisions of this Contract, which by their terms involve a performance of any act or obligation after delivery of the Special Warranty Deed to the Redeveloper, shall survive Closing and delivery of the Special Warranty Deed to the Redeveloper; it being intended that no provision of this Contract shall be deemed to be merged into the Special Warranty Deed used by the Authority to convey the Property to the Redeveloper, and such conveyance shall not be deemed to affect or impair the rights of the Authority or obligations of the Redeveloper under this Contract.

## **ARTICLE XI RISK OF LOSS AND INSURANCE**

Section 11.01 Risk of Loss After Closing Date. So long as the Redeveloper owns the Property, all risk of loss with respect to the Property and any improvements thereon shall be borne by the Redeveloper. The Redeveloper shall, at its expense, maintain or cause to be maintained a policy of all risk casualty insurance insuring the Property and any improvements thereon owned by Redeveloper.

Section 11.02 Release. Anything in this Contract to the contrary notwithstanding, it is agreed that each party hereby releases the other from any claim, demand or cause of action arising out of any loss or damage to the Property caused by a peril insurable pursuant to an all risk casualty insurance policy in standard form available in the State.

## **ARTICLE XII COMPLIANCE WITH APPLICABLE LAWS**

The Redeveloper shall, at its sole cost and expense, comply with all Applicable Laws. The Redeveloper shall also comply with the requirements, rules and regulations of all insurers under the policies required to be carried under this Contract. The Redeveloper shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Redeveloper to comply with the provisions of this Article. Notwithstanding any provision contained in this Article, however, the Redeveloper shall have the right, at its sole cost and expense, to contest or review, by legal or other appropriate procedures, the validity or legality of any such Applicable Laws, or any such requirement, rule or regulation of an insurer, and during such contest or review the Redeveloper may refrain from complying therewith to the extent such noncompliance is expressly permitted by law and provided that such noncompliance does not result in adverse action being taken against the Property, the Project, the Authority, or the City.

## **ARTICLE XIII LIENS**

The Redeveloper shall not do or suffer anything to be done by any person or entity whereby all or any part of the Property may be encumbered by any mechanics' or other similar lien while the Redeveloper is the owner of the Property. Whenever and as often as any mechanics' or other similar lien is filed against all or any part of the Property purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Property or the

Project, the Redeveloper shall discharge the same of record within thirty (30) days after the date of filing. If the Redeveloper fails to do so, then the Authority may, but shall not be obligated to, take such action and pay such amounts on account of the Redeveloper as may be necessary in order to cause such lien to be discharged of record.

## **ARTICLE XIV ASSIGNMENT**

Section 14.01 Successors and Assigns. This Contract shall be binding upon and shall inure to the benefit of the Redeveloper and its successors and assigns, and any subsequent purchaser of the Property (provided, however, that this provision shall not be deemed to permit an assignment of this Contract except as specifically provided in this Article), and the term "Redeveloper" as used in this Contract shall be deemed to include such successors and assigns.

Section 14.02 General Assignments. The Redeveloper shall not assign or otherwise transfer this Contract without the prior written consent of the Authority, which consent may be granted, denied or conditioned in the sole discretion of the Authority. The Redeveloper may assign this Contract to an affiliated entity controlled by, controlling or under common control with the Redeveloper with the prior written consent of the Authority, which consent shall not be unreasonably withheld, conditioned or delayed. The Authority shall have the right to assign or otherwise transfer this Contract to the City, or to any successor entity created by the City to perform the same functions as the Authority and upon such assignment or other transfer, this Contract shall be binding upon and shall inure to the benefit of the City or to any such successor entity.

## **ARTICLE XV EQUAL EMPLOYMENT OPPORTUNITY**

Section 15.01 Equal Employment Opportunity During Performance of this Contract. During the performance of this Contract, the Redeveloper agrees, for itself and its successors and assigns, as follows:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, sexual orientation, family status, handicap, sex, or national origin. The Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sexual orientation, family status, handicap, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth the provisions of this nondiscrimination clause.

(b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sexual orientation, family status, handicap, sex or national origin.

(c) The Redeveloper will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Redeveloper's commitments under Section 202 of Executive Order 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Redeveloper will comply with all provisions of the Executive Order, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Redeveloper will furnish all information and reports required by the Executive Order, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the Authority and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Redeveloper's non-compliance with the non-discrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Redeveloper may be declared ineligible for further government contracts and/or federally assisted construction contracts in accordance with the procedures authorized in the Executive Order, and such other sanctions may be imposed and remedies invoke as provided in the Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

Section 15.02 Inclusion of Equal Employment Opportunity Provisions in Contracts. The Redeveloper agrees, for itself and its successors and assigns, that it will include the provisions listed in Section 12.01 in every contract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, so that such provision will be binding upon each contractor or vendor that does business with the Redeveloper in conjunction with the Project, as well as those contractor's subcontractors. For the purpose of including the provisions of Section 12.01 in any construction contract or purchase order, the terms "Authority", "Redeveloper" and "Contract" may be changed to appropriately reflect the name or designation of the parties to such contract or purchase order.

Section 15.03 Modification of Requirements. Upon the issuance of additional or conflicting rules, regulations, or orders of the Secretary of Labor pursuant to section 204 of the Executive Order, the requirements of this Article shall automatically be amended to conform and comply with such changes.

Section 12.04 Determination of Compliance. For the sole purpose of determining the Redeveloper's compliance with the provisions of this Article, the Authority and its duly appointed agents shall be permitted, at reasonable times, and after three (3) days prior notice to the Redeveloper, to examine the books and records of the Redeveloper.



## **ARTICLE XI AMERICANS WITH DISABILITIES ACT**

The Redeveloper shall comply with the provisions of the Americans with Disabilities Act (“*ADA*”), 42 U.S.C.A Section 1201, *et seq.*, as amended from time to time, and regulations promulgated under the ADA, including, without limitation, 28 C.F.R. Part 35 and 29 C.F.R. Part 1630.

## **ARTICLE XVII Reserved.**

## **ARTICLE XVIII MISCELLANEOUS PROVISIONS**

Section 18.01 Amendments. This Contract may not be amended, modified, terminated or waived orally, but only by a writing signed by the party against whom any such amendment, modification, termination or waiver is sought.

Section 18.02 No Oral Agreements. This Contract, together with all exhibits referred to in this Contract, contain all the oral and written agreements, representations and arrangements between the parties, and any rights which the parties may have under any previous contracts or oral arrangements are hereby canceled and terminated and no representations or warranties are made or implied, other than those set forth in this Contract.

Section 18.03 Binding Effect. This Contract shall inure to the benefit of and shall be binding upon the Authority and its successors and assigns and the Redeveloper and its permitted successors and assigns.

Section 18.04 Severability. The provisions of this Contract are severable. In the event that any provision of this Contract is held to be invalid, illegal or unenforceable to any extent, then the remaining provisions of this Contract, and the portion of the offending provision (or any application of such provision) which is not invalid, illegal or unenforceable shall remain in full force and effect.

Section 18.05 Conflict of Interest. No commissioner, officer or employee of the Authority shall have any personal interest, direct or indirect, in the Project, the Property or this Contract, nor shall any such commissioner, officer or employee participate in any decision relating to the Project, the Property or this Contract which affects his personal interest or the interest of any corporation, partnership or association in which he is directly or indirectly interested.

Section 18.06 Execution of Counterparts. This Contract may be executed in two (2) or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

Section 18.07 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State without regard to conflict of laws.

Section 18.08 Notices. Any notice, approval, request or consent required by or permitted under this Contract shall be in writing and mailed by United States registered or certified mail, postage prepaid, return receipt requested, or delivered by hand, and addressed as follows:

To Authority: Land Clearance for Redevelopment  
Authority of Kansas City, Missouri  
Attention: Executive Director  
1100 Walnut, Suite 1700  
Kansas City, Missouri 64106

With a copy to: Rouse Frets White Goss, a Professional Corporation  
Attention: Brian E. Engel  
4510 Belleview, Suite 300  
Kansas City, Missouri 64111

To Redeveloper: Yana Properties, LLC  
Attention: Henok Tekeste  
601 Spratley Street  
Birmingham, Missouri 64161

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days prior written notice thereof.

All notices given by mail shall be effective upon the earlier of the date of receipt or the second (2<sup>nd</sup>) business day after deposit in the United States mail in the manner prescribed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address for which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

Section 18.09 Recording. This Contract or a memorandum of this Contract shall be recorded by the Redeveloper, from time to time, in the office of the Director of Records of Jackson County, Missouri, at Kansas City. The Redeveloper shall pay the costs of recording the Contract or memoranda.

Section 18.10 Further Assurances. The Redeveloper will do, execute, acknowledge and deliver such further acts, instruments, financing statements and assurances as the Authority may reasonably require for accomplishing the purposes of this Contract.

Section 18.11 Access to Project and Inspection. The Authority and its duly appointed agents shall have the right, at all reasonable times, to enter upon the Property and to examine and inspect the Project. The Redeveloper covenants to execute, acknowledge and deliver all such further documents and do all such other acts and things as may be reasonably necessary to grant to the Authority such right of entry.

Section 18.12 Recitals and Exhibits. The Recitals and the exhibits attached to this Contract are incorporated and made a part of this Contract as if fully set forth herein.

Section 18.13 TIME IS OF THE ESSENCE OF THIS CONTRACT.

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the Redeveloper has caused this Contract to be executed in its name with its seal affixed and attested by its duly authorized officers. The Authority has caused this Contract to be executed in its name with its seal affixed and attested by its duly authorized officers. All of the above occurred as of the date first above written.

**YANA PROPERTIES, LLC**

By: \_\_\_\_\_,  
\_\_\_\_\_, Managing Member

"REDEVELOPER"

STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF JACKSON    )

On this \_\_\_\_ day of \_\_\_\_\_ 2018, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn/affirmed did say that he is the Managing Member of YANA PROPERTIES, LLC, a Missouri limited liability company, and that said instrument was signed in behalf of said Missouri limited liability company by authority of its members, and he acknowledged said instrument to be the free act and deed of said Missouri limited liability company.

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

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed Name)

My Commission Expires:  
\_\_\_\_\_

[Seal]

**LAND CLEARANCE FOR REDEVELOPMENT  
AUTHORITY OF KANSAS CITY, MISSOURI**

By: \_\_\_\_\_  
Steven D. Hamilton, Chairman

ATTEST:

\_\_\_\_\_  
Greg Flisram, Secretary

"AUTHORITY"

STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF JACKSON    )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2018, before me appeared Steven D. Hamilton, to me personally known, who, being by me duly sworn, did say that he is the Chairman of Land Clearance for Redevelopment Authority of Kansas City, Missouri, a public body corporate and politic, and that the seal affixed to the foregoing instrument is the seal of said entity and that said instrument was signed on behalf of said Authority by the authority of its Board of Commissioners, and he acknowledged said instrument to be the free act and deed of said Authority.

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

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed Name)

My Commission Expires:  
\_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

OVERALL SURVEYOR'S SUGGESTED LEGAL DESCRIPTION FOR TRACTS 1, 2 AND 3:

ALL THAT PART OF THE SOUTH 625 FEET OF LOT 5, COMMISSIONERS PLAT NO. 2 OF LEVI OWINGS ESTATE, LYING SOUTH OF U.S. HIGHWAY 40 CUT-OFF, EAST OF INTERSTATE I-70 AND WEST OF THE WEST BANK OF BIG BLUE RIVER, AND ALL THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 49 NORTH, RANGE 33 WEST, LYING NORTH OF INTERSTATE I-70 AND WEST OF THE WEST BANK OF BIG BLUE RIVER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 13; THENCE S 87° 53' 52" E, ALONG THE SOUTH LINE OF SAID SECTION 13, A DISTANCE OF 936.71 FEET TO THE POINT OF BEGINNING; THENCE N 02° 06' 08" E (N 0° 00' E, Deed), A DISTANCE OF 90.00 FEET; THENCE N 51° 14' 22" W (N 53° 20' 30" W, Deed), A DISTANCE OF 259.10 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF U.S. HIGHWAY 40 CUT-OFF; THENCE THE FOLLOWING COURSES AND DISTANCES ALONG SAID RIGHT OF WAY LINE; THENCE N 70° 27' 08" E (N 68° 21' E, Deed), A DISTANCE OF 345.00 FEET; THENCE S 19° 32' 52" E (S 21° 39' E, Deed), A DISTANCE OF 10 FEET; THENCE N 70° 27' 08" E, (N 68° 21' E, Deed), A DISTANCE OF 143.37 FEET; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE, ALONG A CURVE TO THE RIGHT, HAVING AN INITIAL TANGENT BEARING OF S 21° 14' 16" E, A RADIUS OF 275 FEET, A CENTRAL ANGLE OF 32° 57' 09" AND AN ARC DISTANCE OF 158.16 FEET; THENCE TANGENT TO THE LAST DESCRIBED COURSE, S 11° 42' 52" W, A DISTANCE OF 21.48 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 365 FEET, A CENTRAL ANGLE OF 38° 54' 15" AND AN ARC DISTANCE OF 247.84 FEET TO A POINT ON THE SOUTH LINE OF SAID NORTHWEST QUARTER; THENCE S 87° 53' 52" E, ALONG SAID SOUTH LINE, A DISTANCE OF 9.00 FEET; THENCE DEPARTING SAID SOUTH LINE, S 15° 07' 02" E, A DISTANCE OF 194.97 FEET; THENCE S 00° 54' 25" W, A DISTANCE OF 216.49 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF INTERSTATE I-70; THENCE THE FOLLOWING COURSES AND DISTANCES; THENCE N 59° 28' 45" W, DISTANCE OF 113.85 FEET, THENCE N 32° 38' 04" W, A DISTANCE OF 112.18 FEET; THENCE N 59° 22' 52" W, A DISTANCE OF 274.29 FEET; THENCE N 02° 12' 12" E, A DISTANCE OF 125.35 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 13; THENCE DEPARTING THE NORTH RIGHT OF WAY LINE OF INTERSTATE I-70 AND ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, S 87° 53' 52" E, A

DISTANCE OF 27.25 FEET TO THE POINT OF BEGINNING. ALL THE ABOVE TRACTS 1, 2 AND 3 ARE SUBJECT TO THAT PART IN 31ST STREET.

## **EXHIBIT B**

### **SURVEY OF THE PROPERTY AND DEVELOPMENT PLAN OF IMPROVEMENTS**



## **EXHIBIT C**

### **REDEVELOPMENT PLAN**

Acquisition of the Property and other property adjacent to the Property to redevelop the site for the Redeveloper's new corporate office and storage yard for a leasable office, shop and parts storage, with no less than 15,000 usable square feet, a façade enhancement, new roofing, paving and landscaping to retain 125 jobs, all in accordance with the Blue Valley Urban Renewal Plan, the Development Plan attached as Exhibit B, and the Sale and Redevelopment Contract.

## EXHIBIT D

### FORM OF SPECIAL WARRANTY DEED

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Document Title:	Special Warranty Deed
Document Date:	_____, 2018
Grantor Name:	Land Clearance for Redevelopment Authority of Kansas City, Missouri
Grantee Name:	Yana Properties, LLC
Statutory Address:	601 Spratley Street, Birmingham, Missouri 64161
Legal Description:	See attached <u>Exhibit A</u> (Page 4)
Reference Book and Page:	n/a

### **SPECIAL WARRANTY DEED**

THIS INDENTURE ("Deed"), made on the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Land Clearance for Redevelopment Authority of Kansas City, Missouri, a public body corporate and politic ("Grantor"), and Yana Properties, LLC, a Missouri limited liability company ("Grantee"), whose mailing address is 601 Spratley Street, Birmingham, Missouri 64161.

WITNESSETH, THAT Grantor, in consideration of the sum of One Dollar (\$1.00), to Grantor paid by Grantee (receipt of which is acknowledged) does by these presents SELL AND CONVEY unto the Grantee and the Grantee's successors and assigns the following described tracts, lots or parcels of land ("Property"), lying, being and situate in the County of Jackson and State of Missouri legally described on the attached Exhibit A.

Subject to: (a) restrictions, encumbrances, easements, covenants and reservations now of record affecting the Property, including, without limitations the rights and interests reserved by the City of Kansas City, Missouri, as stated in the Special Warranty Deed dated \_\_\_\_\_, 2018, and recorded as Document No. 2018E\_\_\_\_\_ immediately prior to the recording of this Deed; (b) such facts that an accurate survey and environmental assessment and other investigations would disclose; (c) all zoning laws and subdivision regulations and all other laws, rules and regulations affecting the Property; and (d) the liens of unpaid taxes and assessments of any type occurring after the date of this Deed (collectively, the "Permitted Exceptions" as shown on the attached Exhibit B).

TO HAVE AND TO HOLD the Property, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in any wise appertaining unto the Grantee and unto Grantee's successors and assigns forever; the Grantor covenants that the Property is free and clear from any encumbrance done or suffered by the Grantor, except as provided above; and that the Grantor will warrant and defend the title to the Property unto the Grantee and unto the Grantee's successors and assigns forever, against the lawful claims and demands of all persons claiming under the Grantor.

IN WITNESS WHEREOF, Grantor has executed this deed the day and year above written.

Seal]

**LAND CLEARANCE FOR REDEVELOPMENT  
AUTHORITY OF KANSAS CITY, MISSOURI**

By: \_\_\_\_\_  
Steven D. Hamilton, Chairman

ATTEST:

\_\_\_\_\_  
Greg Flisram, Secretary

“GRANTOR”

STATE OF MISSOURI       )  
  ) ss.  
COUNTY OF JACKSON       )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me appeared Steven D. Hamilton, to me personally known, who, being by me duly sworn, did say that he is the Chairman of Land Clearance for Redevelopment Authority of Kansas City, Missouri, a public body corporate and politic, and that the seal affixed to the foregoing instrument is the seal of said entity and that said instrument was signed on behalf of said Authority by the authority of its Board of Commissioners, and he acknowledged said instrument to be the free act and deed of said Authority.

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

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed Name)

My Commission Expires:

\_\_\_\_\_

Exhibit A  
Legal Description

OVERALL SURVEYOR'S SUGGESTED LEGAL DESCRIPTION FOR TRACTS 1, 2 AND 3:

ALL THAT PART OF THE SOUTH 625 FEET OF LOT 5, COMMISSIONERS PLAT NO. 2 OF LEVI OWINGS ESTATE, LYING SOUTH OF U.S. HIGHWAY 40 CUT-OFF, EAST OF INTERSTATE I-70 AND WEST OF THE WEST BANK OF BIG BLUE RIVER, AND ALL THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 49 NORTH, RANGE 33 WEST, LYING NORTH OF INTERSTATE I-70 AND WEST OF THE WEST BANK OF BIG BLUE RIVER DESCRIBED AS FOLLOWS:

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Exhibit B

Permitted Exceptions