

**RESTATED LEASE  
AND ACQUISITION AGREEMENT**

This RESTATED LEASE AND ACQUISITION AGREEMENT (this "Agreement") is entered into this 28 day of April, 2017 (the "Effective Date"), by and between the City of Kansas City, Missouri (the "City" or "Landlord") and Swope Community Builders, a Missouri not-for-profit corporation ("SCB" or "Tenant").

**RECITALS**

WHEREAS, the City Council approved the East Village Tax Increment Financing Plan ("TIF Plan") on May 4, 2006, by Ordinance No. 060455; and

WHEREAS, on March 8, 2006, the City, East Village, LLC ("East Village") and J.E. Dunn Construction Company, Inc. ("Dunn") entered into a Memorandum of Understanding that provided for, among other things, the acquisition by East Village of certain properties owned by Dunn within the area encompassed by the TIF Plan; and

WHEREAS, in coordination with the implementation of Project Area 1 of the TIF Plan, whereby Dunn's current headquarters and the adjoining parking garage were constructed, the City agreed that it would acquire those certain properties owned by Dunn in the event that East Village elected not to, all pursuant to the terms of a Funding and Acquisition Agreement between the City, Dunn and the Tax Increment Financing Commission of Kansas City, Missouri ("Commission"), dated December 28, 2006, as subsequently amended by that certain First Amendment of Funding and Acquisition Agreement, dated December 12, 2007 (collectively, the "Funding Agreement"); and

WHEREAS, the City subsequently acquired certain property, including but not limited to, Block 66 and a portion of Block 65 within the East Village Planning Area from Dunn; and

WHEREAS, as the City began to acquire the Dunn and other properties within the TIF Plan area, various entities desired to establish a framework for how that property would be conveyed from City, and additional properties acquired, so as to best coordinate efforts to redevelop the balance of the TIF Plan area; and

WHEREAS, the City, Commission, East Village, SCB, and the Planned Industrial Expansion Authority of Kansas City, Missouri (the "PIEA"), are parties to that certain Funding and Acquisition Agreement, dated as of August 25, 2010 (the "Original Funding Agreement"), as amended by that certain First Amendment to Funding and Acquisition Agreement, dated as of July 1<sup>st</sup>, 2011 (the "First Funding Amendment"), that certain Second Amendment to Funding and Acquisition Agreement, dated as of September 9, 2012 (the "Second Funding"); and

Amendment") and that certain Third Amendment to Funding and Acquisition Agreement, dated as of October 1, 2013 (the "Third Funding Amendment"); the Original Funding Agreement, as amended by the First Funding Amendment, Second Funding Amendment and Third Funding Amendment is hereinafter referred to as the "Funding Agreement"); and

WHEREAS, that Funding Agreement established the framework and phasing for the acquisition of various parcels within the TIF Plan area; and

WHEREAS, the City and SCB are parties to that certain Lease Agreement, dated as of September 13, 2010 (the "Original Lease"), as amended by that certain First Amendment to Lease Agreement, dated as of May 9, 2011 (the "First Lease Amendment"), and that certain Second Amendment to Lease Agreement, dated as of October 1, 2013 (the "Second Lease Amendment"); the Original Lease, as amended by the First Lease Amendment and Second Lease Amendment is hereinafter referred to as the "Lease Agreement"); and

WHEREAS, that Lease Agreement established the framework for leasing properties owned or subsequently acquired by the City to SCB to be held until such time as SCB elected to purchase the same in furtherance of their redevelopment; and

WHEREAS, the provisions of the Funding Agreement are no longer relevant as they have either been fully performed, or are no longer applicable, or have otherwise been addressed in this Agreement, such that the Funding Agreement has been terminated by the parties thereto by that certain Termination and Release of Funding and Acquisition Agreement, executed of even date herewith; and

WHEREAS, the provisions of the Lease Agreement are no longer relevant as they have either been fully performed, or are no longer applicable, or have otherwise been addressed in Article I of this Agreement, such that the Lease Agreement has been terminated by the parties thereto by that certain Termination and Release of Lease Agreement executed by the City and SCB of even date herewith, but prior hereto (the "Lease Termination") and is of no further force and effect, provided the Lease Agreement is otherwise replaced in its entirety by this Agreement and that no provisions set forth in the Lease Agreement in effect prior to the effective date of this Agreement shall be binding upon SCB, or its successors and assigns, from and after the execution of this Agreement and the Lease Termination; and

WHEREAS, while additional projects within the East Village TIF will not be activated due to the fact that more than ten years have lapsed since the TIF Plan was approved by ordinance, the City nevertheless deems it advisable that SCB continue in its ongoing efforts to assemble and hold property in a manner that will be conducive to its future redevelopment and the City and Tenant will

work with various Economic Development Agencies (as defined herein) to facilitate such future redevelopment (as provided in Article II below);

NOW, THEREFORE, in consideration of the foregoing and the respective terms and conditions contained herein and intending to be legally bound, the parties agree as follows:

## **ARTICLE I LEASEHOLD**

### **Section 1. BASIC LEASE PROVISIONS.**

(a) **Landlord:** The City of Kansas City, Missouri, a constitutionally chartered municipal corporation existing under the laws of the State of Missouri.

(b) **Tenant:** Swope Community Builders, a Missouri not-for-profit corporation, or its successors and assigns.

(c) **Premises:** All of the parcels and any improvements located thereon as described on Exhibit A attached hereto and incorporated herein by reference, subject to any building lines, easements, restrictions and conditions of record, if any, and to any zoning law or ordinance affecting the property described therein. In the event the City acquires any other parcels within the East Village Project Area (as shown on Exhibit A-1), then such property owned by the City shall, at Tenant's option, be subject to the terms and conditions of Article I of this Agreement and the parties shall execute an amendment to this Agreement to include such after-acquired property.

(d) **Commencement Date:** The Effective Date.

(e) **Expiration Date:** The date which is ten (10) years from the Commencement Date.

(f) **Term:** The duration of the leasehold estate granted by Article I of this Agreement, beginning on the Commencement Date and ending on the Expiration Date, unless terminated earlier or extended further as provided in this Article I.

(g) **Permitted Use:** Any lawful use, subject to the terms and conditions of this Agreement.

(h) **Base Rent:** The sum of Ten Dollars (\$10.00) paid on the Commencement Date and annually on each anniversary thereafter until the last of the Term shall have expired for the parcels identified in Exhibit A.

(i) **Security Deposit:** Waived.

## **Section 2. GRANT OF LEASE.**

**2.1 Demise.** Subject to the terms, covenants, conditions and provisions of Article I of this Agreement, Landlord leases to Tenant and Tenant leases from Landlord the Premises, for the Term.

**2.2 Condition of Premises.** Tenant agrees to accept the Premises and the systems and equipment serving the same, if any, "as is," without any agreements, representations, understandings or obligations on the part of Landlord to perform any alterations, repairs or improvements thereto, except as otherwise provided herein.

**2.3 Future Expansion of Premises.** This Article I, unless it shall have otherwise been terminated as a result of an Article I Default as provided in Section 11 of this Agreement, shall be deemed amended at such time as SCB shall tender to City its written notice that it has identified a viable project on Block 100, to include Block 100, East Village Planning Area, legally described as follows:

All of Block 24, CONTINUATION OF SMART'S ADDITION NO. 3 and all of Block 13, PEERY PLACE, both subdivision in Kansas City, Jackson County, Missouri, together with the vacated North-South alley East of and adjoining said Block 24 and West of and adjoining said Block 13, and the vacated East-West alley South of and adjoining Lot 70, Block 24, except that part now in 12<sup>th</sup> Street ("Added Property")

within the Premises; provided, however, SCB shall not tender such written notice prior to May 1, 2021, and any written notice tendered in contravention of this provision shall be deemed ineffective. Notwithstanding anything herein to the contrary, including, without limitation, the definitions provided in Section 1, the parties specifically intend that SCB's leasehold interest in Block 100 may continue for up to ten years; therefore, the Commencement Date, Expiration Date and Term of this Agreement, as well as any other date calculated under this Agreement by reference to such times shall, with respect to such Added Property, be determined solely by reference to the date that SCB shall have tendered its written notice in compliance with this section.

## **Section 3. RENT.**

**3.1 Base Rent.** Commencing on the Commencement Date and continuing throughout the Term, Tenant agrees to pay Landlord the Base Rent, which shall be paid in lawful money of the United States of America, without demand or notice, and tendered to such person or place as Landlord shall designate in writing, or in the absence of such designation, to:

City of Kansas City, MO  
Attn: Director of Finance  
414 E. 12<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Kansas City, MO 64106

No receipt by Landlord of an amount less than the Base Rent due will be deemed to be anything other than payment "on account," nor will any endorsement or statement on any check or any accompanying letter effect or evidence an accord or satisfaction or any amendment to the terms of this Agreement. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any right of Landlord.

**3.2 Additional Rent.** Commencing on the Commencement Date and continuing throughout the Term, Tenant agrees to pay the following (in the manner described below), to the entities whom the same is due:

(a) **Utilities.** To the extent Tenant contracts with any utility providers for services to the Premises, then Tenant shall be responsible for payment of such utilities.

(b) **Expenses.** Tenant shall only be responsible to maintain the Premises in their current condition and shall not be required to replace or otherwise upgrade the Premises, it being the intention of the parties that the Premises be minimally maintained until redevelopment opportunities occur for Tenant to exercise its Option to Purchase.

(c) **Taxes.** Tenant shall pay all ad valorem real and personal property taxes and assessments, special or otherwise, levied upon or with respect to the Premises, the personal property used in operating the Premises, and the rents and additional charges payable by tenants of the Premises, as imposed by any taxing authority having jurisdiction; all taxes, levies, and charges which may be assessed, levied or imposed in replacement of, or in addition to, all or any part of ad valorem real or personal property taxes or assessments as revenue sources, and which in whole or in part are measured or calculated by or based upon the Premises, the leasehold estate or the tenants of the Premises, or the rents and other charges payable by such tenants; capital and place-of-business taxes, and other similar taxes assessed relating to the Premises. Notwithstanding the foregoing, the parties anticipate that, by reason of the Landlord's ownership of the Premises, the Premises shall not be subject to ad valorem taxes. If any assertion is made by any governmental authority that the Premises are subject to ad valorem taxes, Tenant shall have the right to seek tax abatement for the Premises or any portion thereof, or to otherwise appeal or challenge such assertion, and Landlord shall cooperate with Tenant in any such challenge or request for tax abatement. Landlord does not in any way warrant or represent that the Premises shall not be subject to ad valorem taxes or shall be entitled to tax abatement.

#### **Section 4. USE AND OCCUPANCY.**

(a) Tenant agrees to use the Premises in a safe and careful manner, and to comply, at Tenant's expense, with any and all present or future federal,

state or local laws, statutes, ordinances, rules, regulations or orders of any and all governmental or quasi-governmental authorities having jurisdiction ("Law") as the same are applicable to Tenant's use of the Premises; provided Tenant shall only be responsible to maintain the Premises in their current condition and shall not be required to replace or otherwise upgrade the Premises, it being the intention of the parties that the Premises be minimally maintained until redevelopment opportunities occur for Tenant to exercise its Option to Purchase. In the event that any party desires to utilize the Premises, or any portion thereof, for surface parking, Tenant shall be permitted to allow the same on a temporary basis in compliance with all applicable Law.

(b) Tenant agrees that, during the Term, Tenant will comply with all Law governing Tenant's use, removal, storage, disposal or transport of any substances, chemicals or materials declared to be, or regulated as, hazardous or toxic under any applicable Law ("Hazardous Substances") required by the acts or omissions of Tenant. No Hazardous Substances will be stored, used, released, produced, processed or disposed in, on or about, or transported to or from, the Premises by Tenant or its subtenants, or any of their respective agents, employees, or contractors except in accordance with all Law. Tenant, at its expense, will take all action necessary to restore the Premises to the condition existing prior to the introduction of Tenant's Hazardous Substances to the extent required by any governmental authority in order to comply with applicable Law. Such action may include, without limitation, the investigation of the environmental condition of the Premises, the preparation of remediation plans or feasibility studies and the performance of cleanup, remediation, removal or restoration work. Tenant will obtain Landlord's written approval before undertaking any action required by this paragraph, which approval will not be unreasonably withheld so long as the proposed actions will not have an avoidable material and adverse effect. Notwithstanding the above, Tenant shall not be required to remediate any Hazardous Substances which exist on the Premises on or before the Effective Date, or migrate to the Premises through no fault of Tenant, and shall have no liability to the City with respect to any such Hazardous Substances on the Premises existing as of the Effective Date; provided however, the foregoing clause shall be applicable only during the term of this Article I and solely with respect to the portion of the Premises under lease by Tenant and shall not be construed to relieve any obligation of Tenant or its successor or assignee with respect to cleanup, remediation, removal or restoration work for any portion of the Premises acquired by Tenant or its successor or assignee pursuant to the Purchase Option as provided in Section 5 of this Agreement.

## **Section 5. OPTION TO PURCHASE.**

**5.1 Tenant's Option to Purchase.** At any time during the Term, and for a period of one hundred eighty (180) days thereafter (provided this Agreement is not terminated as a result of Tenant's failure to pay any sum due under Section

3), Tenant shall have the right and option to purchase the Premises, or any part thereof (the "Purchase Option"), for a purchase price determined as follows:

(a) The purchase price for the portion of the Premises identified as "Block 66" on Exhibit A shall be Two Hundred Thousand Dollars (\$200,000.00). As to the remainder of the Premises, in the event Tenant exercises the Purchase Option, then the purchase price for the applicable portion of the Premises contained in the Purchase Option shall be the lesser of: (i) fair market value of such portion of the Premises, or (ii) the value of such portion of the Premises contained in the development financial pro forma for the redevelopment prepared by Tenant, but subject to the aggregate cap on the purchase price set forth in subsection (b) below. In the event of a dispute between the City and Tenant with respect to the Premises or any portion thereof, then either party may initiate the appraisal mechanism set forth in subsection (c) below.

(b) Second, Landlord and Tenant agree that the total purchase price for the entirety of the Premises shall not exceed Five Million Four Hundred Thousand Dollars (\$5,400,000.00) in the aggregate, except as provided in Section 15.6; provided such cap shall also include the Block 99 and Block 100 properties (as referenced within this Agreement, including Section 15.2(b) and Section 2.3 herein). If at any time the exercise of the Purchase Option would result in an aggregate purchase price exceeding such limitation, then the total purchase price for the remaining portion of the Premises not already acquired and subject to any future exercise of the Purchase Option shall be adjusted as necessary so as not to collectively exceed such cap, and shall be allocated among the portion of the Premises subject to the exercise of the Purchase Option as Landlord and Tenant agree.

(c) In connection with the determination of the purchase price under the Purchase Option (the "Purchase Option Price") pursuant to Section 5.1(a) of the Agreement, the parties will attempt in good faith to agree upon the Purchase Option Price upon the terms and conditions set forth therein. If the parties fail to agree within ten (10) days, then either party shall be entitled to give notice to the other electing to have the Purchase Option Price selected by an appraiser as provided in this section. Upon delivery and receipt of such notice, the parties will within seven (7) days thereafter mutually appoint an appraiser who will select (in the manner set forth below) the Purchase Option Price (the "Deciding Appraiser"). The Deciding Appraiser must have at least ten (10) years of full-time commercial appraisal experience with projects comparable to the Premises and be a member of the American Institute of Real Estate Appraisers or a similar appraisal association. The Deciding Appraiser may not have any material financial or business interest in common with either of the parties. If City and Tenant are not able to agree upon a Deciding Appraiser within such seven (7) days, each party will within five (5) days thereafter separately select an appraiser meeting the criteria set forth above, which two appraisers will, within seven (7) days of their selection, mutually appoint a third appraiser meeting the criteria set

forth above to be the Deciding Appraiser. Within seven (7) days of the appointment (by either method) of the Deciding Appraiser, City and Tenant will submit to the Deciding Appraiser their respective determinations of Purchase Option Price and any related information. Within twenty-one (21) days of such appointment of the Deciding Appraiser, the Deciding Appraiser will review each party's submittal (and such other information as the Deciding Appraiser deems necessary) and will determine the Purchase Option Price (which may be no greater than the highest proposed Purchase Option Price or less than the lowest proposed Purchase Option Price by the parties); but subject to the aggregate cap on purchase price as set forth in Section 5.1(b). Any determination of Purchase Option Price made by the Deciding Appraiser in violation of the provisions of this section shall be beyond the scope of authority of the Deciding Appraiser and shall be null and void. If the determination of Purchase Option Price is made by a Deciding Appraiser, City and Tenant will each pay, directly to the Deciding Appraiser, one-half (½) of all fees, costs and expenses of the Deciding Appraiser. City and Tenant will each separately pay all costs, fees and expenses of their respective additional appraiser (if any) used to determine the Deciding Appraiser.

(d) Tenant may exercise the Purchase Option by timely notifying Landlord, which notice shall specify the portion or portions of the Premises being purchased, the date, time and place of closing, which date shall be at least sixty (60) days after the notice is given (the "Closing Date").

**5.2 Inspections; Conditions of Premises.** At all times during the Term of the Agreement, Tenant's employees, advisors and consultants may conduct such inspections, examinations, tests, assessments, studies, analyses and investigations of the Premises (collectively, "Investigations") as it deems reasonably necessary or desirable to satisfy itself with the condition of the Premises. Such Investigations may, but need not include, an independent Phase I environmental audit or investigation of the Premises and the right to conduct such test borings for water or soil samples or to conduct such other examinations or testing as Tenant deems reasonably advisable, provided however that Landlord and/or Landlord's designee shall have the right to be present for such Investigations. Tenant will repair any and all damage caused by its Investigations, will indemnify and hold the City and/or Economic Development Agencies (as later defined herein) harmless from and against any and all claims arising from or by reason of Tenant's Investigations, whether such claims arise prior to or after the Closing Date. In the event such Investigations disclose conditions, which were not caused by Tenant, that are unsatisfactory to Tenant, and Tenant so notifies the City in writing on or before the Closing Date, then Tenant shall have no obligation to acquire the Premises, which is the subject of the unsatisfactory conditions. Upon reasonable request by Tenant, City hereby agrees to provide Tenant with copies of all soil reports, environmental reports, surveys, and other third party reports in the City's possession with respect to the Premises.



**5.3 Commitment and Title Policy.** Tenant may, in its sole discretion and at its sole cost, obtain a commitment for title insurance ("Commitment") issued by a selected title company ("Title Company") regarding the Premises. Pursuant to the Commitment, the Title Company shall agree to issue to Tenant an owner's policy of title insurance in an amount acceptable to Tenant in its discretion ("Title Policy"). The Title Policy must insure that fee simple title to the Premises is vested in Tenant at the Closing Date, subject only to the Permitted Exceptions. In Tenant's sole discretion and at its sole cost, Tenant may obtain a current ALTA survey of the Premises ("Survey"). Landlord hereby agrees not to further encumber the Premises and/or Block 100 and Block 99 during the Term and prior to the Closing Date.

**5.4 Title Defects.** Within ten (10) days after Tenant's receipt of the Commitment and the Survey, and in no event less than thirty (30) days prior to the Closing Date, Tenant shall notify Landlord in writing of any liens, defects, charges, claims, actions, encumbrances or title exceptions of any kind whatsoever or other title matters set forth in the Commitment, or the exception documents provided in connection therewith and any items shown on the Survey that Tenant finds objectionable, and Landlord shall use its reasonable efforts to remove or cure such objections prior to the Closing Date. In the event that Landlord is unable to remove or cure such objections prior to the Closing Date, Tenant may elect to either acquire title to the Premises in such condition as Landlord is able to deliver, or Tenant can elect to rescind the exercise of the Purchase Option with respect to the Premises, in which case (a) neither Landlord nor Tenant shall have any further obligations with respect to such Premises, (b) this Agreement shall be deemed to be terminated with respect to such Premises, and (c) this Agreement shall otherwise remain in full force and effect except as terminated with respect to such Premises. Any exception from coverage listed in the Commitment, or other item disclosed by the Surveys and not timely objected to by Tenant, or initially objected to but later accepted by Tenant, shall be deemed a "Permitted Exception".

**5.5 Partial Exercise of Purchase Option.** In the event that Tenant exercises only a portion of its Purchase Option by exercising the rights in Section 5.1 above, then Landlord hereby understands and agrees that Tenant shall retain a Purchase Option on the balance of the Premises for the remaining Term and for a period of one hundred eighty (180) days thereafter (provided this Agreement is not terminated as a result of Tenant's failure to pay any sum due under Section 3).

**5.6 Quality of Title.** If Tenant exercises its Purchase Option (or any portion thereof), then Landlord shall and covenants and agrees to transfer and convey the relevant portion of the Premises to Tenant on the Closing Date free and clear of all liens and encumbrances whatsoever except for (i) those Permitted Exceptions, (ii) those matters to which the title became subject to with Tenant's written consent, or which resulted from any failure of Tenant to perform any of its

agreements or obligations under this Agreement, and (iii) taxes and assessments, general and special, for the then current year, if any.

**5.7 Closing of Purchase.** On the Closing Date Landlord shall deliver to Tenant, or cause to be delivered to Tenant, a special warranty deed, properly executed and conveying the relevant portion of the Premises to Tenant. Tenant shall, then and there, after taking into account any applicable adjustments, prorations and credits, pay the amount described in Section 5.1. Except as otherwise provided herein, closing costs shall be apportioned between the parties to the closing as is customary in the City of Kansas City, Missouri.

**5.8 Survival.** The terms of this Section 5 shall survive expiration or termination of this Agreement (provided this Agreement is not terminated as a result of Tenant's failure to pay any sum due under Section 3).

**5.9 Tenant's Obligations with Respect to Environmental Conditions.** For purposes of this section 5.9, Hazardous Material means any substance, the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy, or common law; or which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant, or contaminant under any federal, state, or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.). If Tenant shall elect to acquire any portion or portions of the Property pursuant to the Purchase Option granted herein, Tenant shall, with respect to such acquisitions, defend, indemnify and hold harmless Landlord from and against all costs or claims arising out of or related to the environmental conditions including but not limited to the presence, suspected presence, release or suspected release of any Hazardous Material of any kind, whether into the air, soil, surface water, groundwater, pavement, structures, fixtures, equipment, tanks, containers of the portion or portions of the Property so acquired, and without limiting the foregoing, shall not assert any claim against Landlord for cost recovery or contribution. Tenant unconditionally releases Landlord from and against any and all liability to Tenant, both known and unknown, present and future, for environmental damages to Tenant arising out of any violation of any environmental requirement(s) or the presence of Hazardous Material on, under, or about the Premises, whether or not caused by the negligence of Landlord. This obligation shall not restrict or impair any obligations arising under Section 35 of this Agreement.

**5.10 City's Option to Re-Purchase.** Landlord has granted this Purchase Option to Tenant in consideration of and in reliance on Tenant's desire to develop the Premises, subject to market terms and conditions. In the event that Tenant has exercised its Purchase Option with respect to all or any portion of the Premises (the "Tenant-Owned Parcels") and Tenant has not (i) commenced design and/or

construction of a project on the Tenant-Owned Parcels, (ii) is not currently negotiating with a potential user, tenant or buyer of a Tenant-Owned Parcel and/or (iii) has not otherwise made a commitment to a third party with respect to a build-to-suit or other opportunity as to the Tenant-Owned Parcels, then Landlord shall have the option, in its sole discretion, but after at least 60 days prior notice, to exercise an option to repurchase the Tenant-Owned Parcels for a sum equal to the purchase price (plus interest) paid for such portion of the Premises, plus all out-of-pocket fees, costs and expenses incurred by Tenant with respect to the applicable Tenant Owned Parcels being repurchased by City hereunder, provided however, with respect to any exercise to repurchase exercised by the City as to Block 66, the total purchase price shall be deemed to be \$1,500,000.00 plus all out-of-pocket fees, costs and expenses incurred by Tenant with respect to Block 66. Notwithstanding the above, in the event Tenant has not commenced construction on any Tenant-Owned Parcels acquired by Tenant hereunder within ten (10) years from the Effective Date of this Agreement, then the City shall have the option (but not the obligation) to re-purchase such Tenant-Owned Parcels pursuant to the terms of this Section 5.10 upon at least 60 days prior notice (unless otherwise agreed to by the parties in writing). The City shall not have the option to re-purchase any Tenant-Owned Parcels if Tenant commences design or construction activities within said 60-day notice period. Such possibility of a re-purchase option may be reflected in the memorandum filed of record, but will not be regarded as a lien or encumbrance for purposes of Section 5.4 of this Agreement. Notwithstanding the above, in no event may City exercise such option to re-purchase in an effort to compete with the Tenant on same project - it being the intention of the parties that the Tenant shall have exclusive development rights with respect to the Premises during the term of this Agreement. In the event Tenant acquires property from any party other than the City within the East Village Project Area, and the City desires to acquire the same from Tenant in connection with a potential development project, then the parties agree to negotiate a purchase contract in connection therewith upon terms and conditions mutually agreeable to the parties, provided the purchase price shall be the greater of: (i) fair market value or (ii) the purchase price for such property, all transaction costs in connection therewith, and a commercially reasonable profit to the Tenant, as seller. In the event the parties fail to reach agreement on a purchase contract for any reason, Tenant shall not be obligated to sell such other property to the City. Notwithstanding anything to the contrary set forth in this Section 5.9 or this Agreement to the contrary, in the event Tenant sells any property within the East Village Project Area to a third party not otherwise affiliated with Tenant, then the City's right to re-purchase shall be terminated and of no force and effect - it being acknowledged by the parties that this re-purchase option by the City is personal between the City and Tenant.

## **Section 6. MODIFICATIONS TO PREMISES.**

**6.1 Repairs to Premises.** Tenant shall use reasonable business management practices to maintain the Premises in a safe condition, in accordance

with all applicable Law; provided Tenant shall only be responsible to maintain the Premises in their current condition and shall not be required to replace or otherwise upgrade the Premises, it being the intention of the parties that the Premises be minimally maintained until redevelopment opportunities occur for Tenant to exercise its Purchase Option.

**6.2 Alterations by Tenant.** Tenant may from time to time, at its own expense, make changes, additions and improvements to the Premises to better adapt the same to its business, provided that any such change, addition or improvement will comply with all applicable Law. Tenant will maintain, or will cause the persons performing any such work to maintain, worker's compensation insurance and public liability and property damage insurance (with Landlord named as an additional insured), in amounts required by Law or reasonably required by City, which insurance will remain in effect during the entire period in which the work will be carried out. If requested by Landlord, Tenant will deliver Landlord proof of all such insurance. Tenant will promptly pay, when due, the cost of all such work and, upon completion and upon request from Landlord, Tenant will deliver to Landlord, to the extent not previously received by Landlord, evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services or materials. All changes, additions and improvements will remain Landlord's property upon termination of this Agreement (except for those portions of the Premises on which Tenant has exercised its Purchase Option).

**6.3 Liens.** Tenant agrees to pay, prior to delinquency, all costs for work, services or materials furnished to Tenant for the Premises, the nonpayment of which could result in any lien against the Premises. Tenant will keep title to the Premises free and clear of any such lien. Tenant will immediately notify Landlord of the filing of any such lien or any pending claims proceedings relating to any such lien and will indemnify and hold Landlord harmless from and against all loss, damages and expenses (including reasonable attorneys' fees) suffered or incurred by Landlord as a result of such lien, claims and proceedings. In case any such lien attaches, Tenant agrees to cause it to be immediately released and removed of record (failing which Landlord may do so at Tenant's sole expense).

**6.4 Personal Property.** Tenant may install in the Premises its personal property (including Tenant's trade fixtures) in a proper manner. Any such personal property installed in the Premises by Tenant will be removed by Tenant at the end of the Term (except for those portions of the Premises on which Tenant has exercised its Purchase Option).

## **Section 7. PRESERVATION OF PREMISES.**

**7.1 Tenant's Insurance.** During the Term, Tenant will provide and keep in force the following insurance, in addition to any additional insurance which may be required pursuant to Article III of this Agreement:

(a) commercial general liability insurance relating to Tenant's business (carried on, in or from the Premises) and Tenant's use and occupancy, for personal and bodily injury and death, and damage to others' property, with limits of not less than \$2,000,000 for any one accident or occurrence;

(b) all risk or fire insurance (including standard extended endorsement perils, leakage from fire protective devices and other water damage) covering the Premises in amounts sufficient to prevent Tenant from becoming a coinsurer, subject to a reasonable deductible amount; and

(c) worker's compensation and employer's liability insurance in any amounts required for Tenant to comply with applicable Law.

Landlord will be named as an additional insured in the policy described in Section 7.1(a), which will include cross liability and severability of interests clauses and will be on an "occurrence" (and not a "claims made") form. Tenant's insurance policies will be written by insurers that are rated A-IX or better by Best's Rating Guide and licensed in Missouri, will be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry, and will otherwise be upon such terms and conditions as Landlord from time to time reasonably requires. Upon request from Landlord, Tenant will provide to Landlord copies of either current policies or certificates, or other proofs, as may be reasonably required to establish Tenant's insurance coverage in effect from time to time and payment of premiums. If Tenant fails to insure or pay premiums, or to file satisfactory proof as required, Landlord may, upon ten (10) days' notice, procure such insurance and recover from Tenant on demand any premiums paid.

**7.2 Damage or Destruction – Total.** In case of damage by fire or other casualty to the Premises, or any portion thereof, if the damage is so extensive as to amount to practically the total destruction of the Premises (or portion thereof), then Tenant shall take such actions as shall be necessary to render the Premises in safe and clean condition and in all cases compliant with Law. Also, neither the Base Rent payable by Tenant nor any of Tenant's other obligations under any provision of this Agreement shall be affected by any damage to or destruction of the Premises by any cause whatsoever.

**7.3 Damage or Destruction – Partial.** In case of damage by fire or other casualty to the Premises, or any portion thereof, if the damage is not so extensive as to amount to practically the total destruction of the Premises (or that portion thereof), then Tenant shall take such actions as shall be necessary to render the Premises in safe and clean condition and in all cases compliant with Law.

**7.4 Application of Insurance Proceeds.** In all cases where Tenant shall elect to repair and/or restore the Premises as set forth herein, Tenant shall be entitled to all insurance proceeds resulting from such casualty and Landlord hereby agrees to cooperate with Tenant to obtain access to all such insurance proceeds. Landlord also agrees that Tenant's obligations to repair hereunder shall be limited to the extent of any available insurance proceeds. However, if Tenant elects not to repair or restore as set forth in Section 7.2 or Section 7.3 above, or if the available insurance proceeds shall exceed the cost of any repairs or restoration undertaken by Tenant, then Tenant may use such proceeds to exercise the Purchase Option (or portions thereof) to the extent of the available insurance proceeds. In no event shall Tenant's restoration obligation exceed the amount of insurance proceeds paid to it pursuant to this Agreement.

### **Section 8. WAIVERS AND INDEMNITIES.**

**8.1 Waiver of Subrogation.** Landlord waives any and all rights of recovery against Tenant for or arising out of damage to, or destruction of the Premises or any of Landlord's property, unless the result of the willful misconduct of Tenant. Tenant waives any and all rights of recovery against Landlord for or arising out of damage to or destruction of the Premises or any of Tenant's property, unless the result of the willful misconduct of Landlord.

**8.2 Tenant's Indemnity.** Subject to Section 8.1 and except to the extent caused by the willful or negligent act or omission or breach of this Agreement by Landlord or its agents or employees, Tenant will indemnify and hold Landlord harmless from and against any and all liability, loss, claims, demands, damages or expenses (including reasonable attorneys' fees) due to or arising out of any accident or occurrence by Tenant or its agents, employee or invitees on or about the Premises during the term of this Agreement (including, without limitation, accidents or occurrences resulting in injury, death, property damage or theft). Tenant's obligations under this Section 8.2 will survive the expiration or early termination of the Term.

### **Section 9. CONDEMNATION.**

**9.1 Full Taking.** If all or substantially all of the Premises are taken for any public or quasi-public use under any applicable Law or by right of eminent domain, or are sold to the condemning authority in lieu of condemnation, then the Term will terminate as of the date when the condemning authority takes physical possession of the Premises, and the obligations of both parties hereunder with respect to the Premises shall thereafter be of no further force and effect.

**9.2 Partial Taking.** Landlord shall have no right to terminate this Agreement in the event of any partial taking. If over thirty percent (30%) of the Premises is thus taken or sold, or if Tenant's access or parking are materially adversely affected, then Tenant may terminate this Agreement. Such termination

by Tenant must be exercised by written notice to Landlord given not later than 180 days after Tenant is notified of the taking of the Premises. If Tenant does not elect to terminate this Agreement, Tenant will have the right, but not the obligation, at Tenant's sole expense, to promptly restore and reconstruct the Premises or any part thereof to the extent Tenant determines such restoration and reconstruction to be desirable. In no event shall the Base Rent as provided in Section 3.1 be abated, in whole or in part, in the event of a partial taking.

**9.3 Awards.** As between the parties to this Agreement, Tenant shall have the right to apply any condemnation award for any partial taking to restore the Premises to usable condition. To the extent not so used by Tenant, all such awards shall be paid to Landlord. Additionally, Tenant may assert a claim in a separate proceeding against the condemning authority for any damages resulting from the taking of Tenant's trade fixtures or personal property, or for moving expenses, business relocation expenses or damages to Tenant's business incurred as a result of such condemnation.

#### **Section 10. END OF TERM.**

**10.1 Surrender.** Upon the expiration or other termination of the Term (except for those portions of the Premises on which Tenant has exercised its Purchase Option), the parties hereby agree that Tenant will immediately vacate and surrender possession of the Premises and remove all of Tenant's trade fixtures, office furniture, office equipment and other personal property. Tenant will pay Landlord on demand the actual cost of repairing any damage to the Premises caused by the installation or removal of any such items. Any of Tenant's property remaining in the Premises after expiration or other termination of the Term will be conclusively deemed to have been abandoned by Tenant and may be appropriated, stored, sold, destroyed or otherwise disposed of by Landlord without notice or obligation to account to or compensate Tenant.

**10.2 Holding Over.** Tenant understands that it does not have the right to hold over at any time and Landlord may exercise any and all available remedies at law or in equity to recover possession of the Premises. If Tenant holds over after the Expiration Date, Tenant will be deemed a tenant at sufferance, at a daily Base Rent, payable in advance, equal to 150% of the fair market rent as determined by an appraiser selected by Landlord, and Tenant will be bound by all of the other terms, covenants and agreements of this Article I as the same may apply to a tenancy at sufferance.

#### **Section 11. TENANT'S DEFAULT AND LANDLORD'S REMEDIES.**

**11.1 Tenant Default.** Each of the following events will constitute a material breach by Tenant and an "Article I Default" under this Article I:

(a) **Failure to Pay.** Tenant fails to pay Base Rent, Additional Rent or any other sums payable by Tenant under the terms of this Agreement when due, and if such failure continues for 5 days after written notice of such failure from Landlord.

(b) **Failure to Perform Other Obligations.** Tenant breaches or fails to comply with any other provision of this Article I applicable to Tenant, and such breach or noncompliance continues for a period of 60 days after notice by Landlord to Tenant; or, if such breach or noncompliance cannot be reasonably cured within such 60-day period, Tenant does not in good faith commence to cure such breach or noncompliance within such 60-day period or does not diligently pursue the same to completion. For purposes of this Section 11.1, financial inability will not be deemed a reasonable ground for failure to immediately cure any breach of, or failure to comply with, the provisions of this Article I.

(c) **Execution and Attachment Against Tenant.** Tenant's interest under this Article I or in the Premises is taken upon execution or by other process of law directed against Tenant, or is subject to any attachment by any creditor or claimant against Tenant and such attachment is not discharged or disposed of within 60 days after levy.

(d) **Bankruptcy or Related Proceedings.** Tenant files a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency Law, or voluntarily takes advantage of any such Law by answer or otherwise, or dissolves or makes an assignment for the benefit of creditors, or involuntary proceedings under any such Law or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for the Premises or for all or substantially all of Tenant's property, and such proceedings are not dismissed or such receivership or trusteeship vacated within 60 days after such institution or appointment.

(e) **Intentionally deleted.**

**11.2 Remedies.** If any Article I Default under this Article I occurs, Landlord will have the right, at Landlord's election, then or at any later time, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Agreement or otherwise available to Landlord at law or in equity.

(a) **Cure by Landlord.** Landlord may, at Landlord's option, but without obligation to do so, and without releasing Tenant from any obligations under this Article I, make any payment or take any action as Landlord deems necessary or desirable to cure any Article I Default of Tenant in such manner and to such extent as Landlord deems reasonably necessary. Landlord may do so without additional demand on, or additional written notice to, Tenant and without giving



Tenant an additional opportunity to cure such Article I Default. Tenant covenants and agrees to pay Landlord, upon demand, all advances, costs and expenses of Landlord in connection with making any such payment or taking any such action, including reasonable attorney's fees, together with interest, from the date of payment of any such advances, costs and reasonable expenses by Landlord.

(b) Termination of Article I and Damages. Landlord may terminate this Article I, effective at such time as may be specified by written notice to Tenant, and demand (and, if such demand is refused) recover possession of the Premises from Tenant. Tenant will remain liable to Landlord for damages in an amount equal to all sums which would have been owing by Tenant for the balance of the Term had this Article I not been terminated, less the net proceeds, if any, of any reletting of the Premises by Landlord subsequent to such termination, after deducting all Landlord's expenses in connection with such recovery of possession or reletting.

(c) Repossession and Reletting. Landlord may reenter and take possession of all or any part of the Premises, without additional demand or notice, and repossess the same and expel Tenant and any party claiming by, through or under Tenant, and remove the effects of both using such force for such purposes as may be necessary, without being liable for prosecution for such action or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Base Rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Premises by Landlord will be construed as an election by Landlord to terminate this Article I unless a written notice of such intention is given to Tenant. No notice from Landlord or notice given under a forcible entry and detainer statute or similar Law will constitute an election by Landlord to terminate this Article I unless such notice specifically so states. Landlord reserves the right, following any reentry or reletting, to exercise its right to terminate this Article I by giving Tenant such written notice, in which event the Agreement will terminate as specified in such notice. After recovering possession of the Premises, Landlord shall use reasonable efforts to relet all or any part of the Premises for Tenant's account for such term or terms and on such conditions and other terms as Landlord, in its discretion, determines. Landlord may make such reasonable repairs, alterations or improvements as Landlord reasonably considers appropriate to accomplish such reletting, and Tenant will reimburse Landlord upon demand for all reasonable costs and expenses, including attorneys' fees, which Landlord may incur in connection with such reletting. Landlord may collect and receive the rents for such reletting but Landlord will in no way be responsible or liable for any failure to relet the Premises or for any inability to collect any rent due upon such reletting. Regardless of Landlord's recovery of possession of the Premises, Tenant will continue to timely pay all sums due under this Article I which would be payable if such repossession had not occurred, less a credit for the net amounts, if any, actually received by Landlord through any reletting of the Premises.

(d) **Bankruptcy Relief.** Nothing contained in this Article I will limit or prejudice Landlord's right to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding, an amount equal to the maximum allowable by any Law governing such proceeding in effect at the time when such damages are to be proved, whether or not such amount be greater, equal or less than the amounts recoverable, either as damages or Base Rent, under this Article I.

## **Section 12. LANDLORD'S DEFAULT AND TENANT'S REMEDIES.**

**12.1 Landlord Default.** If Tenant believes that Landlord has breached or failed to comply with any provision of this Article I applicable to Landlord, Tenant will give written notice to Landlord describing the alleged breach or noncompliance. Landlord will not be deemed in default under this Agreement if Landlord cures the breach or noncompliance within 30 days after receipt of Tenant's notice or, if the same cannot reasonably be cured within such 30-day period, if Landlord in good faith commences to cure such breach or noncompliance within such period and then diligently pursues the cure to completion.

**12.2 Remedies.** If Landlord breaches or fails to comply with any provision of this Article I applicable to Landlord, and such breach or noncompliance is not cured within the period of time described in Section 12.1, then Tenant shall have all rights and remedies available at law, in equity or hereunder, including, without limitation, specific performance, and all of Tenant's remedies shall be cumulative.

## **Section 13. INTENTIONALLY DELETED**

## **ARTICLE II ADDITIONAL ACQUISITIONS**

### **Section 14. EXISTING PLAN AREAS.**

**14.1 PIEA/LCRA.** The Premises leased to Tenant and subject to its Purchase Option as provided in Article I of this Agreement, and the properties that may be acquired by City, or on City's behalf, and conveyed to Tenant pursuant to the provisions of this Article II, are collectively located within the boundaries of one or more of the Planned Industrial Expansion Authority of Kansas City, Missouri's ("PIEA") East Downtown Planning Area as approved by the City Council by Ordinance No. 040180, As Amended, (the "PIEA Plan Area") and the Land Clearance for Redevelopment Authority of Kansas City, Missouri's ("LCRA") Eastside Urban Renewal Area as approved by the City Council by Ordinance No. 22763 and/or South Humboldt Urban Renewal Area, as approved by the City Council by Ordinance No. 20734 (collectively, the "LCRA Urban

**Renewal Areas**”). Notwithstanding anything to the contrary in this Agreement, in the event that Tenant seeks to utilize any tax incentives available under the existing PIRA Plan Area or the LCRA Urban Renewal Areas, the PIRA or LCRA, as applicable, shall be the agency with oversight over the redevelopment activities with respect to such parcel(s), and such redevelopment shall be subject to the terms of the redevelopment agreement as Tenant may execute with such agency or agencies. The availability of incentives shall, in every instance, be subjected to such application and approval processes as may be implemented consistent with the City’s economic incentive policies (“**AdvanceKC**”) as the same are administered by the Economic Development Corporation of Kansas City, Missouri (the “**EDC**”) and the respective agency or agencies.

**14.2 TIF.** The parties are aware that the Premises leased to Tenant and subject to its Purchase Option as provided in Article I of this Agreement, and the properties that may be acquired by City, or on City’s behalf, and conveyed to Tenant pursuant to the provisions of this Article II, are located, in whole or in part, within the boundaries of the East Village Tax Increment Financing Plan as approved by the City Council on May 4, 2006, by Ordinance No. 060455 (the “**TIF Plan**”), but the parties acknowledge that their development shall not be governed by, nor benefit from, such TIF Plan as more than ten years have lapsed since the TIF Plan’s approval without the relevant projects thereunder having been approved by the City Council, such that the TIF Plan is of no force and effect with respect to any matter to be undertaken pursuant to this Agreement.

**14.3 Other Incentives.** Tenant shall not be restricted to the provisions of the aforementioned PIRA Plan Area or the LCRA Plan Areas in its redevelopment activities. In the event that Tenant shall elect to make application for economic development incentives under any other provision of Law however, the availability of incentives shall, in every instance, be subjected to such application, approval processes and agreements as may be implemented consistent with AdvanceKC as the same are administered by the EDC or the relevant economic development agency, including but not limited to the PIRA, LCRA, TIF Commission, Kansas City Chapter 353 Advisory Board, Downtown Economic Stimulus Authority, Enhanced Enterprise Zone Board, Industrial Development Authority or Port Authority of Kansas City, Missouri (collectively, the “**Economic Development Agencies**”)

**14.4 City Funds.** The City hereby agrees to contribute funds in the approximate amount \$1,200,000 to Tenant for the use by Tenant of any of its obligations or rights under this Agreement and/or the acquisition, maintenance, repair or other fees, costs and expenses related to the East Village Project Area. City and Tenant shall confer as to the particular uses of the City Funds, with the primary objective being blight remediation and dangerous building demolition.

**14.5 Exclusivity of Tenant as Developer.** The City hereby agrees that, as between the City and Tenant, the Tenant shall have the exclusive development

rights within the East Village Project Area. Further, the City shall use commercially reasonable efforts to notify the Economic Development Agencies of the existence of this Agreement and the intent of the parties that Tenant is the exclusive developer within the East Village Project Area (and will provide Developer with copies of such notices) and the City will not support any other developer within such East Village Project Area during the term of this Agreement. Notwithstanding the foregoing, Tenant acknowledges that the City does not ultimately control and is not liable under this Agreement for any actions taken, or not taken, by the Economic Development Agencies.

#### **Section 15. ACQUISITION STRATEGIES.**

**15.1. General.** SCB (as of the date of this Agreement), as well as persons and entities not parties to this Agreement (such as the LCRA), currently hold title to certain parcel(s) located within Block 49, Block 50, Block 82, Block 83 and Block 99 of the East Village Planning Area, all of which SCB and City believe the acquisition of which is essential to the comprehensive redevelopment of the East Village Project Area (as described on Exhibit A-1 attached hereto) and the elimination of the blighting conditions which continue to exist within the area (such properties are collectively deemed the "Property to be Acquired"). The Property to be Acquired hereunder will be located in the East Village Project Area.

**15.2 Blocks 50 and 99.** The City shall have a role, as delineated and limited elsewhere in this Agreement, with respect to Tenant's acquisition of certain parcels located within Block 49, Block 82 and Block 83. The acquisition by Tenant of parcels within Block 50 and Block 99 shall occur, if at all, as follows:

- (a) **Block 50, East Village Planning Area** – SCB shall use commercially reasonable efforts to acquire the entirety of Block 50 from the current owner(s) thereof, at its sole cost and expense; provided all terms and conditions, including purchase price and condition of the property, must be acceptable to Tenant in its sole discretion. The final purchase price and the terms thereof shall be subject to the agreement of the respective parties to such transfer. The failure of SCB to acquire and close on the purchase of Block 50 shall not constitute a material breach of Article II Agreement.
- (b) **Block 99, East Village Planning Area** – SCB shall use commercially reasonable efforts to acquire the entirety of Block 99 from the current owner(s) thereof, at its sole cost and expense (provided all terms and conditions, including purchase price and condition of the property, must be acceptable to Tenant in its sole discretion), with the exception of that portion of Block 99 which is currently owned by the City of Kansas City, Missouri, and which shall continue to be owned by the City, and is legally described as Lots 53, 54, 55 and 56, Block 18, SMART'S ADDITION NO. 3, sometimes known and

designated as SMART'S 3<sup>RD</sup> or as SMART'S THIRD ADDITION, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, together with all that part of the west ½ of vacated alley lying east of and adjacent to, as vacated by Ordinance No. 47741 recorded June 6, 1977, as Document No. K-329507 in Book K-758, Page 836, except that part now in 12<sup>th</sup> Street (the "KCPD Lot"). In the event that Tenant has acquired the remainder of Block 99 and desires to acquire the KCPD Lot, then the City will use best efforts to include the KCPD Lot as part of the Premises leased by Tenant hereunder and will be subject to the Purchase Option (including all terms under this Agreement related thereto), but only after the City identifies an alternative parking location related to such displaced parking spaces. Notwithstanding the foregoing, SCB's inability to procure Block 99, or any portion thereof, shall not constitute a breach of this Agreement, nor shall it impair, in any manner, the parties rights, obligations and interests with respect to this Agreement.

15.3 **Block 49.** The acquisition of parcels within Block 49 and not otherwise leased to SCB as part of the Premises pursuant to Article I of this Agreement shall occur, as follows:

- (a) **Block 49, East Village Planning Area** – SCB currently owns a parcel located within Block 49 and legally described as follows: 817 Cherry & 600-06 E. 9<sup>th</sup> Street, Himmelstein-Rabicoff Park Lot 2 (the "Blackstone"). In the event that SCB shall elect to assign its interests under this Agreement to any other person or entity in accordance with Section 36 of this Agreement, then in consideration of this Agreement and the City's having agreed to material revisions to the terms thereof, and in order to ensure that Block 49 otherwise remains intact for its common redevelopment, SCB shall, within 150 days of such assignment, transfer title to the Blackstone to such assignee, or an entity affiliated with such assignee for a sum not to exceed \$350,000.00.

The balance of the parcels in Block 49 are currently owned by third parties including, but not limited to, the LCRA. In the event that sufficient funds are appropriated by the City Council for such purposes, and SCB shall have (i) submitted to City a proposed redevelopment plan and budget for costs to redevelop Block 49, (ii) demonstrated to the City Manager's reasonable satisfaction the financial capacity to fully fund the same and (iii) requested the acquisition of one or more of such parcels, City may elect to acquire such parcel(s) using such processes as City may determine to be appropriate, in its sole discretion, and to cause such parcel(s) to be conveyed to SCB. In consideration of the costs to be incurred by SCB, or its assignee, with respect to the remediation or demolition of the Blackstone in the redevelopment of Block 49, the City shall cause

such parcels to be conveyed for nominal consideration, which amount shall be mutually agreed upon by City and SCB and memorialized as an addendum to this Agreement at a future date. Notwithstanding the foregoing, in the event that the City Council shall elect not to appropriate funds for such purposes, or to appropriate funds in an amount which is determined to be insufficient to acquire the entirety of the parcel(s) requested by SCB to be acquired, then SCB may elect, in its sole discretion, to cover any unfunded costs, which amount shall be mutually agreed upon by City and SCB and memorialized as an addendum to this Agreement at a future date.

**15.4 Block 82.** The acquisition of parcels within Block 82 and not otherwise leased to SCB as part of the Premises pursuant to Article I of this Agreement shall occur, as follows:

- (a) **Block 82, East Village Planning Area** – Those parcels within Block 82 not otherwise leased to SCB as part of the Premises pursuant to Article I of this Agreement are currently owned by third parties. In the event that SCB shall have (i) submitted to City a proposed redevelopment plan and budget for costs to redevelop Block 82, (ii) demonstrated to the City Manager's reasonable satisfaction the financial capacity to fully fund the same, (iii) requested the acquisition of one or more of such parcels, and (iv) committed sufficient funds for the acquisition(s) as provided in subsection (b), which commitment shall be memorialized as an addendum to this Agreement at a future date, City may elect to acquire such parcel(s) using such processes as City may determine to be appropriate, in its sole discretion, and to cause such parcel(s) to be conveyed to SCB.
- (b) Notwithstanding anything in subsection (a) to the contrary, the City's obligation to acquire or seek to acquire any parcel in Block 82, whether voluntary or through condemnation proceeding, should the latter be authorized by the City Council, shall be conditioned on SCB's payments of all costs and expenses incurred, including but not limited to, the purchase price or satisfaction of any judgment and other amounts determined to be due pursuant to any judgment or order entered or issued with respect to any condemnation proceedings, and the failure to pay any of the foregoing in its entirety shall relieve the City from any obligation arising under this Section 15.4.

**15.5 Block 83.** The acquisition of parcels within Block 83 shall occur, as follows:

(a) **Block 83, East Village Planning Area** – Those parcels within Block 83 are currently owned by third parties. In the event that SCB shall have (i) submitted to City a proposed redevelopment plan and budget for costs to redevelop Block 83, (ii) demonstrated to the City Manager's reasonable satisfaction the financial capacity to fully fund the same, (iii) requested the acquisition of one or more of such parcels, and (iv) committed sufficient funds for the acquisition(s) as provided in subsection (b), which commitment shall be memorialized as an addendum to this Agreement at a future date, City may elect to acquire such parcel(s) using such processes as City may determine to be appropriate, in its sole discretion, and to cause such parcel(s) to be conveyed to SCB. Notwithstanding the foregoing, SCB shall not request the acquisition of, nor shall City seek to acquire, the parcel owned by Della Lamb Community Services as of the date of this Agreement so long as such property is owned by Della Lamb Community Services or an affiliate.

(b) Notwithstanding anything in subsection (a) to the contrary, the City's obligation to acquire or seek to acquire any parcel in Block 83, whether voluntary or through condemnation proceeding, should the latter be authorized by the City Council, shall be conditioned on SCB's payments of all costs and expenses incurred, including but not limited to, the purchase price or satisfaction of any judgment and other amounts determined to be due pursuant to any judgment or order entered or issued with respect to any condemnation proceedings, and the failure to pay any of the foregoing in its entirety shall relieve the City from any obligation arising under this Section 15.5.

**15.6 Condemnation proceedings.** With respect to any portion of the East Village Project Area, including any Property to be Acquired and any parcels located in Block 49, Block 82, Block 83 and/or Block 99 (to the extent not owned by the City), and upon request by Tenant, the City may elect to consider using condemnation proceedings, subject to the authorization of the City Council, in the event that the properties cannot otherwise be acquired upon commercially reasonable terms and conditions. The consideration and utilization of condemnation proceedings shall, in every instance, be conducted in full compliance with all applicable Law, including but not limited to City Ordinance § 74-101, *et seq.* which permits the City to reclaim blighted, substandard, or insanitary property by condemnation for clearance, replanning, reconstruction, redevelopment and rehabilitation in accord with Section 21, Article VI, of the Missouri Constitution. In the event the City acquires any property within the East Village Project Area via condemnation or otherwise, then such property will be

included as part of the Premises leased by Tenant hereunder and shall be subject to the Purchase Option. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, no expenses incurred by Tenant in funding the City's acquisition of any additional properties not identified in Exhibit A as it exists as of the Effective Date, whether through condemnation or otherwise, shall be credited towards the financial limitation of Section 5.1(b) of this Agreement.

**15.7 Transfer of Property to be Acquired.** With respect to any portion of the Property to be Acquired and located in Block 49, 82 or Block 83, the following general procedures shall govern with respect to the transfer of title from City to SCB:

(a) **Inspections; Conditions of Premises.** SCB's employees, advisors and consultants may conduct such Investigations of the Property to be acquired as it deems reasonably necessary or desirable to satisfy itself with the condition of the Property to be Acquired. Such Investigations may, but need not include, an independent Phase I environmental audit or investigation of the Property to be Acquired and the right to conduct such test borings for water or soil samples or to conduct such other examinations or testing as SCB deems reasonably advisable, provided however that City and/or City's designee shall have the right to be present for such Investigations. SCB will repair any and all damage caused by its Investigations, will indemnify and hold the City and/or Economic Development Agencies harmless from and against any and all claims arising from or by reason of SCB's Investigations, whether such claims arise prior to or after the closing of the purchase. In the event such Investigations disclose conditions, which were not caused by SCB, that are unsatisfactory to SCB, and SCB so notifies the City in writing on or before the closing of the purchase, then SCB shall have no obligation to acquire the Property to be acquired, which is the subject of the unsatisfactory conditions, provided however that SCB shall not be entitled to a refund or credit, of any kind, for those sums paid or to be paid by SCB pursuant to Section 15.3(a), Section 15.4(b) or Section 15.5(b).

(b) SCB may, in its sole discretion and at its sole cost, obtain a Commitment issued by Title Company regarding the Property to be Acquired. Pursuant to the Commitment, the Title Company shall agree to issue to SCB a Title Policy in an amount acceptable to SCB in its discretion. The Title Policy must insure that fee simple title to the Property to be Acquired is vested in SCB at the closing of the purchase, subject only to the Permitted Exceptions. In SCB's sole discretion and at its sole cost, SCB may obtain a current Survey. City hereby agrees not to further encumber the Property to be acquired during the period between its acquisition of the same and their transfer to SCB.

(c) Within ten (10) days after SCB's receipt of the Commitment and the Survey, and in no event less than thirty (30) days prior to the closing of the purchase, SCB shall notify City in writing of any liens, defects, charges, claims, actions, encumbrances or title exceptions of any kind whatsoever or other title



matters set forth in the Commitment, or the exception documents provided in connection therewith and any items shown on the Survey that SCB finds objectionable, and City shall use its reasonable efforts to remove or cure such objections prior to the closing of the purchase. In the event that City is unable to remove or cure such objections prior to the closing of the purchase, SCB may elect to either acquire title to the Property to be acquired in such condition as City is able to deliver, or SCB can elect to terminate its efforts to acquire the same, in which case (a) neither City nor SCB shall have any further obligations with respect to such Property to be acquired, (b) this Agreement shall be deemed to be terminated with respect to such Property to be acquired, and (c) this Agreement shall otherwise remain in full force and effect except as terminated with respect to such Property to be acquired, provided however that SCB shall not be entitled to a refund or credit, of any kind, for those sums paid or to be paid by SCB pursuant to Section 15.3(a), Section 15.4(b) or Section 15.5(b). Any exception from coverage listed in the Commitment, or other item disclosed by the Surveys and not timely objected to by SCB, or initially objected to but later accepted by SCB, shall be deemed a Permitted Exception.

(d) City shall and covenants and agrees to transfer and convey the relevant portion of the Property to be acquired to SCB, free and clear of all liens and encumbrances whatsoever except for (i) those Permitted Exceptions, (ii) those matters to which the title became subject to with SCB's written consent, or which resulted from any failure of SCB to perform any of its agreements or obligations under this Agreement, and (iii) taxes and assessments, general and special, for the then current year, if any.

(e) City shall deliver to SCB, or cause to be delivered to SCB, a special warranty deed, properly executed and conveying the relevant portion of the Property to be acquired to SCB. All reasonable and customary closing costs shall be paid in full by Tenant.

**15.8 Redevelopment of Premises.** It is the intent of Tenant to explore development and redevelopment opportunities within the East Village Project Area, including the Premises. Although this Agreement does not contain specific development obligations of Tenant, the City has the right to repurchase the Premises acquired by Tenant hereunder pursuant to the terms and conditions set forth in Section 5.9 above, including, without limitation, the failure of Tenant to commence construction on the Tenant-Owned Parcels within ten (10) years from the effective date of this Agreement.

**15.9 Expiration of City's obligation to assist in acquisition.** Notwithstanding anything to the contrary in this Agreement, City's obligations with respect to property acquisitions under Section 15.3, 15.4 and 15.5 shall expire contemporaneous to the last Expiration Date as determined pursuant to Article I.

**Section 16. TENANT'S DEFAULT AND LANDLORD'S REMEDIES.**

**16.1 Tenant Default.** Each of the following events will constitute a material breach by Tenant and an "Article II Default" under this Article II:

- (a) Failure to Perform Obligations.** SCB breaches or fails to comply with any other provision of this Article II applicable to SCB, and such breach or noncompliance continues for a period of 60 days after notice by City to SCB; or, if such breach or noncompliance cannot be reasonably cured within such 60-day period, SCB does not in good faith commence to cure such breach or noncompliance within such 60-day period or does not diligently pursue the same to completion. For purposes of this Section 16.1, financial inability will not be deemed a reasonable ground for failure to immediately cure any breach of, or failure to comply with, the provisions of this Article II.
- (b) Execution and Attachment Against SCB.** SCB's interest under this Article II or in the Property to be Acquired is taken upon execution or by other process of law directed against SCB, or is subject to any attachment by any creditor or claimant against SCB and such attachment is not discharged or disposed of within 60 days after levy.
- (c) Bankruptcy or Related Proceedings.** SCB files a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency Law, or voluntarily takes advantage of any such Law by answer or otherwise, or dissolves or makes an assignment for the benefit of creditors, or involuntary proceedings under any such Law or for the dissolution of SCB are instituted against SCB, or a receiver or trustee is appointed for the Property to be Acquired or for all or substantially all of SCB's property, and such proceedings are not dismissed or such receivership or trusteeship vacated within 60 days after such institution or appointment.

**16.2 Remedies.** If any Article II Default occurs, City will have the right, at City's election, then or at any later time, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Agreement or otherwise available to City at law or in equity.

- (a) Cure by City.** City may, at City's option, but without obligation to do so, and without releasing SCB from any obligations under this Article II, make any payment or take any action as City deems necessary or desirable to cure any Article II Default of SCB in such manner and to such extent as City deems reasonably necessary. City may do so without additional demand on, or additional written notice to, SCB and

without giving SCB an additional opportunity to cure such Article II Default. SCB covenants and agrees to pay City, upon demand, all advances, costs and expenses of City in connection with making any such payment or taking any such action, including reasonable attorney's fees, together with interest, from the date of payment of any such advances, costs and reasonable expenses by City.

- (b) **Termination of Article II and Damages.** City may terminate this Article II, effective at such time as may be specified by written notice to SCB, and demand (and, if such demand is refused) re-purchase (as provided in Section 15.8 above) of the Property to be Acquired from SCB to the extent such property is located within Block 49, Block 82 or Block 83.
- (c) **Bankruptcy Relief.** Nothing contained in this Article II will limit or prejudice City's right to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding, an amount equal to the maximum allowable by any Law governing such proceeding in effect at the time when such damages are to be proved, whether or not such amount be greater, equal or less than the amounts recoverable under this Article II.

#### **Section 17. CITY'S DEFAULT AND SCB'S REMEDIES.**

**17.1 City's Default.** If SCB believes that City has breached or failed to comply with any provision of this Article II applicable to City, SCB will give written notice to City describing the alleged breach or noncompliance. City will not be deemed in default under this Article II if City cures the breach or noncompliance within 30 days after receipt of SCB's notice or, if the same cannot reasonably be cured within such 30-day period, if City in good faith commences to cure such breach or noncompliance within such period and then diligently pursues the cure to completion.

**17.2 Remedies.** If City breaches or fails to comply with any provision of this Article II applicable to City, and such breach or noncompliance is not cured within the period of time described in Section 17.1, then SCB shall have all rights and remedies available at law, in equity or hereunder, and all of SCB's remedies shall be cumulative.

### **ARTICLE 3 MISCELLANEOUS**

#### **Section 18. SCB'S REPRESENTATIONS AND WARRANTIES.**

**18.1 Organization/Authorization.** SCB hereby represents and warrants to the City, as follows as of the Effective Date:

(a) SCB is a Missouri corporation validly existing under the laws of the State of Missouri, has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder, and by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers;

(b) To the knowledge of SCB, there is no action, threatened or pending, against SCB which would prevent or impair SCB's performance hereunder.

SCB represents and warrants to the City that the foregoing items are accurate and complete as of the Effective Date and agrees, that upon closing any transaction contemplated by this Agreement, SCB shall confirm that the foregoing items shall be accurate, true and complete as of the Closing Date of any such transaction.

#### **Section 19. CITY'S REPRESENTATIONS AND WARRANTIES.**

**19.1 Organization/Authorization.** City hereby represents and warrants to SCB, as follows as of the Effective Date:

(a) The City is a constitutionally chartered city validly existing under the laws of the State of Missouri, has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder, and by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) To the knowledge of City, there is no action, threatened or pending, against City which would prevent or impair City's performance hereunder.

City represents and warrants to SCB that the foregoing items are accurate and complete as of the Effective Date and agrees, that upon closing any transaction contemplated by this Agreement, City shall confirm that the foregoing items shall be accurate, true and complete as of the Closing Date of any such transaction.

#### **Section 20. COVENANTS OF SCB.**

**20.1 Non-Discrimination.** SCB shall comply, and cause its contractors and subcontractors to comply, with the provisions of Chapter 3, Divisions 2 and 3, of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto, to the extent the same are applicable with

respect to any financial incentive extended by the City or any Economic Development Agencies. SCB, and its contractors and subcontractors, shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry or national origin, sex, disability, age, sexual orientation or gender identity in a manner prohibited by Chapter 38 of City's Code. City has the right to take action as directed by City's Human Relations Department to enforce this provision. If SCB, or its contractors and subcontractors fail, refuse or neglect to abide by the provisions of this Section, then such failure shall be deemed a default under this Agreement.

**20.2 Gratuity.** SCB has not and will not offer or give any employee or officer of the City a gratuity or an offer of employment in connection with any decision or recommendation relating to the procurement process or the award or administration of this Agreement.

**20.3 Brokerage Fee.** SCB has not employed or retained any person or agency to solicit or secure this Agreement upon an agreement for a commission, percentage, brokerage or contingent fee, except bona fide employees.

**20.4 Financial Interest.** SCB certifies to the City that, to the best of SCB's knowledge, no officer or employee of the City has, or will have, a direct or indirect financial or personal interest in this Agreement, and no officer or employee of the City, or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment with SCB.

## **Section 21. AMENDMENTS.**

The terms, conditions, and provisions of this Agreement cannot be modified, amended, or eliminated, except by written agreement between City and SCB.

## **Section 22. NOTICES.**

Any notice required or otherwise made pursuant to this Agreement shall be deemed to be given if it is in writing and if it is either: (i) sent via overnight courier (such as Federal Express or UPS), (ii) mailed by United States registered or certified mail, postage prepaid, return receipt requested, (iii) delivered by hand or (iv) e-mail delivery with appropriate confirmation provided such e-mail delivery is immediately followed by a duplicate delivery through one of the aforementioned means (provided notice shall be deemed received upon delivery of such e-mail and not upon receipt by other means), and addressed as follows:

**If to Landlord:** City of Kansas City, MO  
Attn: City Manager  
414 E. 12th Street, 29th Floor  
Kansas City, MO 64106  
E-mail: [troy.schulte@kcmo.org](mailto:troy.schulte@kcmo.org)

**With a copy to:** City of Kansas City, MO  
Attn: City Attorney  
414 E. 12th Street, 23rd Floor  
Kansas City, MO 64106  
E-mail: [brian.rabineau@kcmo.org](mailto:brian.rabineau@kcmo.org)

**If to Tenant:** Swope Community Builders  
Attn: Robert Pearson  
4401 Blue Parkway, Suite 270  
Kansas City, MO 64130  
E-mail: [rpearson@swopecommunity.org](mailto:rpearson@swopecommunity.org)

**With a copy to:** Stinson Leonard Street LLP  
Attn: Dave Frantze  
1201 Walnut Street, Suite 2900  
Kansas City, MO 64106  
E-mail: [david.frantze@stinson.com](mailto:david.frantze@stinson.com)

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 notice thereof.

All notices shall be effective upon being deposited in the United States mail in the manner prescribed in this Section; however, the time period in which a response to any such notice must be given shall commence to run from the date of receipt by the addressee thereof as shown on the return receipt for the notice. The deadline for performance or cure given in any notice shall be deemed to be 11:59 p.m. on the date designated in such notice. Rejection or other refusal to accept or the inability to deliver because of changed address for which notice was not given, shall be deemed to be receipt of notice as of the date of such rejection, refusal or inability to deliver.

### **Section 23. ESTOPPEL CERTIFICATES.**

City and SCB, at any time and from time to time, upon not less than ten (10) business days prior written notice from the other party hereto, or to a person designated by such party, such as a tenant or a mortgagee, shall execute, acknowledge, and deliver to the party requesting such statement, a statement in reasonably acceptable form to the requesting party certifying, among other matters, that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and

stating the modifications), stating whether or not, to the best knowledge of the signer of such certificate, City or SCB is in breach and/or default in performance of any covenant, agreement, or condition contained in this Agreement and, if so, specifying each such breach and/or default of which the signer may have knowledge, and any other factual matters reasonably requested in such estoppel certificate, it being intended that any such statement delivered hereunder may be relied upon by the party requesting such statement and/or any person not a party to this Agreement (if such other person is identified at the time such certificate was requested).

#### **Section 24. FORCE MAJEURE.**

For the purpose of provisions of this Agreement in which force majeure matters are specifically called out, neither City nor SCB, as the case may be, nor any successor in interest, shall be considered in breach of or default in any of its obligations, including, but not limited to, the beginning and completion of construction, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to causes beyond its control, including but not restricted to, strikes, lockouts, actions of labor unions, riots, storms, floods, litigation, explosions, acts of God or of the public enemy, acts of government, insurrection, mob violence, civil commotion, sabotage, malicious mischief, vandalism, inability (notwithstanding good faith and diligent efforts) to procure, or general shortage of, labor, equipment, facilities, materials, or supplies in the open market, defaults of independent contractors or subcontractors (provided that remedies are being diligently pursued against the same), failures of transportation, fires, other casualties, epidemics, quarantine restrictions, freight embargoes, severe weather, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals, or delays of subcontractors due to such causes, it being the purpose and intent of this Section that in the event of the occurrence of any such enforced delays, the time or times for the performance of the covenants, provisions, and agreements of this Agreement shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay). The affected party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; and provided further, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected party, and the affected party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to the affected party. Notwithstanding the above, (a) SCB may not rely on its own acts or omissions as grounds for delay in its performance, (b) City may not rely on its own acts or omissions or the acts or omissions of the City's instrumentalities and agencies as grounds for delay in its performance, and (c) the absence of immediately available funds shall not be grounds for delay.

**Section 25. FURTHER AGREEMENTS.**

City and SCB agree to negotiate in good faith and execute such further agreements as are reasonably necessary to effectuate the intent and covenants of this Agreement, including but not limited to easement (permanent, temporary and construction) agreements, license agreements, recording memoranda, covenants and restrictions, joint usage agreements and agreements between SCB and City and/or the Economic Development Agencies.

**Section 26. GOOD FAITH AND FURTHER ASSURANCES.**

The parties agree to use and exercise good faith in connection with the implementation of all the terms and provisions of this Agreement, including attending all meetings of the City Council at which time the transactions contemplated by this Agreement are considered. The parties hereto acknowledge that further actions will be required in order to effectuate the intent of this Agreement. Therefore, at any time and from time to time, upon request by either party the other will cooperate fully in all hearings or meetings necessary, deliver further instruments and documents, and take further action necessary to effectuate the intent of this Agreement.

**Section 27. PARTIES TO THE AGREEMENT.**

The parties to this Agreement are stated in the first paragraph of page 1 of this Agreement. No other individual or entity is a party to this Agreement, and this is not an agreement for the benefit of any third party. This Agreement shall be binding upon the successors and assigns of City and SCB, however, this provision shall not be deemed to permit assignment of this Agreement, except as agreed elsewhere in this Agreement.

**Section 28. TIME IS OF THE ESSENCE.**

Time and exact performance is of the essence under this Agreement.

**Section 29. SURVIVAL.**

All obligations and other terms of this Agreement shall survive the closing of any transaction hereunder as to a portion of the Premises pursuant to Article I and the Property to be Acquired pursuant to Article II and the delivery of deed(s) to all or such portions of the same to Tenant. Furthermore, and notwithstanding anything in this Agreement to the contrary or the termination of this Agreement, all of the parties' warranties and representations, and Tenant's obligation to indemnify the City pursuant to express terms and provisions of this Agreement shall survive and be of full force and effect forever after the date of this Agreement.



**Section 30. PARTIAL INVALIDITY/GOVERNING LAW.**

If any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

**Section 31. COMPLETE AGREEMENT;MODIFICATION.**

All of the representations and obligations of the parties are contained in this Agreement and no modification, waiver or amendment of this Agreement will be binding upon a party unless in writing signed by such party.

**Section 32. WAIVER.**

No waiver of any provision of this Agreement will be implied by any failure of a party to enforce any remedy upon the violation of such provision, even if such violation is continued or repeat subsequently. No express waiver will affect any provision other than the one specified in such waiver, and only for the time and in the manner specifically stated.

**Section 33. CAPTIONS.**

The captions of sections are for convenience only and will not be deemed to limit, construe, affect or alter the meaning of such sections.

**Section 34. INSURANCE.**

At its own expense, SCB shall procure and maintain in effect throughout the duration of this Agreement, insurance coverage not less than the types and amounts specified in this Section. Policies containing a Self-Insured Retention (except for reasonable deductible amounts) are unacceptable.

- (1) Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
  - (a) Severability of Interests Coverage applying to Additional Insureds.
  - (b) Contractual Liability.
  - (c) Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$1,000,000.
  - (d) No Contractual Liability Limitation Endorsement.

(e) **Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.**

(2) **Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:**

**Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:**

**\$500,000 disease-policy limit  
\$100,000 disease-each employee**

The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to City. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the all activities related to this Agreement. SCB shall provide to City at execution of this Agreement a certificate of insurance showing all required endorsements and additional insureds. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Missouri to do business in Missouri. Regardless of any approval by City, it is the responsibility of SCB to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of SCB's failure to maintain the required insurance in effect, City may order SCB to immediately procure the insurance coverage required, and upon ten (10) days' notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

#### **Section 35. INDEMNIFICATION.**

For purposes of this Section 35 only, the following terms shall have the following meanings:

- (a) **Claims means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by City in the enforcement of this indemnity obligation.**
- (b) **Tenant's Agents means Tenant's officers, employees, sub-consultants, subcontractors, successors, assigns, invitees and other agents.**

Tenant shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Agreement caused in whole or in part by Tenant or Tenant's Agents, unless caused by the negligence or willful misconduct of the City. Tenant is not obligated under this section to indemnify City for the willful acts or negligence of City. Tenant's obligations

under this Section with respect to indemnification for acts or omissions, including negligence of City, shall be limited to the coverage and limits of General Liability insurance that Tenant is required to procure and maintain under this Agreement.

#### **SECTION 36. ASSIGNMENT.**

This Agreement may be assigned, in whole or in part, by SCB to such person or entity as SCB may elect, subject only to the written consent of the City Manager (provided that, such restriction shall not apply to an assignment, in whole or in part, to any parent, subsidiary or affiliate of SCB or any of its subsidiaries or to any developer in a so-called sale/leaseback or similar transaction with SCB, its parent or its affiliates). This Agreement may not be assigned, in whole or in part, by City unless otherwise agreed to by the parties in writing. Notwithstanding the foregoing, no assignment by SCB hereunder shall become effective until such time as SCB shall provide to City a fully executed copy of any agreement made by SCB with its assignee as it relates to such assignment, and provided further that SCB shall not be relieved of any obligations arising under this Agreement unless and until such time as SCB's assignee shall have obligated itself, in writing, to assume such obligations.

#### **Section 37. ROLE OF ECONOMIC DEVELOPMENT AGENCIES.**

The parties to this Agreement anticipate that the participation of one or more Economic Development Agencies may be necessary or appropriate for the purpose of delivering to SCB title to any portion of the Premises leased pursuant to Article I of this Agreement, or any portion of the Property to be Acquired in Block 49, Block 82 or Block 83 pursuant to Article II of this Agreement. The parties shall confer in good faith as to the process to be utilized for each such transaction. Tenant and City shall mutually cooperate with the Economic Development Agencies for the purpose of completing such transactions. The parties acknowledge that the procedures set forth in this Agreement with respect to any closing may need to be adjusted for purposes of incorporating a role for the selected Economic Development Agencies and agree to work cooperatively and in good faith to implement such modifications as may be warranted.

[REMAINDER OF PAGE LEFT BLANK.  
SIGNATURE PAGES FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Restated Lease and Acquisition Agreement to be executed as of the date first above written.

CITY OF KANSAS CITY, MISSOURI

By: *Thom M. Schulte*  
Name: THOM M. SCHULTE  
Title: CITY MANAGER

Approved as to form and legality:

*[Signature]*  
Brian T. Rabineau  
Assistant City Attorney

STATE OF Missouri )  
) SS.  
COUNTY OF Jackson )

On this 10 day of April, 2017, before me, the undersigned, a Notary Public, appeared THOM M. SCHULTE, to me personally known, who, being by me duly sworn, did say that he/she is CITY MANAGER of the CITY OF KANSAS CITY, MISSOURI, a constitutional charter city, and that the seal affixed to the foregoing instrument is the official seal of said city, and that said instrument was signed and sealed on behalf of said city by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free 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.

*Terrie L. Smdt*  
Notary Public

My Commission Expires:

JAN 12 2018



**SWOPE COMMUNITY BUILDERS**, a Missouri  
not-for-profit corporation

By:   
Name: MOHAMED A. QURESHI  
Title: PRESIDENT / CEO

STATE OF Missouri )  
 ) SS.  
COUNTY OF Jackson )

On this 11<sup>th</sup> day of April, 2017, before me, a Notary Public in and for said State, personally appeared Mohamed A. Qureshi, as President/CEO of SWOPE COMMUNITY BUILDERS, a Missouri not-for-profit corporation, personally known by me to be the person who executed the foregoing instrument on behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated and as the free act and deed of said corporation.

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

  
Notary Public

My Commission Expires:

July 21, 2017

JANET C. BRISCOE  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Platte County  
My Commission Expires July 21, 2017  
Commission # 13484663

**Exhibit A**

**Partial Block 49, East Village Planning Area, legally described as follows:**

Lot C and the East 9 feet of Lot B, Resurvey of Lots 4, 5, 6, 7, 8 and 9, Block 2, M.M. EVANS 1<sup>st</sup> ADDITION, a subdivision in Kansas City, Jackson County, Missouri, together with the South ½ of the vacated alley lying North of and adjacent thereto.

**Block 66, East Village Planning Area, legally described as follows:**

Lots 97 thru 101, both inclusive, and the West ½ of the vacated alley lying East of and adjoining said premises, Block 22, CONTINUATION OF SMART'S ADDITION NO. 3, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof; and

Lots 7 thru 15, both inclusive, and the vacated South 5.25 feet of 9<sup>th</sup> Street, lying North of and adjoining said premises, Block 5, PEERY PLACE, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof; and

Lots 102 thru 104, both inclusive, and the West ½ of the vacated alley lying East of and adjoining said premises, Block 22, CONTINUATION OF SMART'S ADDITION NO. 3, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof; and

Lots 1 thru 6, both inclusive, Block 5, PEERY PLACE, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof.

**Partial Block 82, East Village Planning Area, legally described as follows:**

The South 24 feet of Lot 46 and all of Lots 47 and 48, Block 17, SMART'S ADDITION NO. 3, sometimes known and designated as SMART'S 3<sup>RD</sup> or as SMART'S THIRD ADDITION, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof.

**Exhibit A-1**

**East Village Project Area**