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**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Charles Renner
Husch Blackwell, LLP
4801 Main Street, Ste. 1000
Kansas City, Missouri 64112

Title of Document: **Public Access Easement and Maintenance Agreement**

Grantor: **West Bottoms – Propco Master, LLC, a Delaware
limited liability company**

Grantee: **The City of Kansas City, Missouri**

Date of Document: _____, 2024

Grantee's Mailing Address: **1215 Union Ave., Kansas City, MO 64101**

Statutory Recording Reference, if any: N/A

Legal Description: **See Exhibit A attached hereto**

This cover page is attached solely for the purpose of complying with the requirements stated in §§ 59.310.2; 59.313.2 R.S.Mo. 2001 of the Missouri Recording Act. The information provided on this cover page shall not be construed as either modifying or supplementing the substantive provisions of the attached instrument. In the event of a conflict between the provisions of the attached instrument and the provisions of this cover page, the attached instrument shall prevail and control.

PUBLIC ACCESS EASEMENT AND MAINTENANCE AGREEMENT

THIS PUBLIC ACCESS EASEMENT AND MAINTENANCE AGREEMENT (this “**Agreement**”) is dated the ____ day of _____, 2024 (the “**Effective Date**”), by and between West Bottoms – Propco Master, LLC, a Delaware limited liability company (“**Grantor**”), and the City of Kansas City, Missouri, a constitutionally chartered municipal corporation of the State of Missouri (“**Grantee**”) (Grantor and Grantee each a “**Party**” and, collectively, the “**Parties**”).

RECITALS

WHEREAS, Grantor is the fee simple owner of that certain real property legally described on **Exhibit “A”** attached hereto and made a part hereof by this reference (the “**Property**”); and

WHEREAS, Grantor and Grantee desire to enter into this Agreement to, inter alia, provide for a non-exclusive public access easement over that certain portion of the Property consisting of an alley more particularly described on **Exhibit “B”** attached hereto and as depicted on **Exhibit “C”** attached hereto (the “**Easement Property**”).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Grant of Easement.**

A. Grantor hereby establishes and creates for the benefit of the public a perpetual, non-exclusive easement over, on and across the Easement Property for the purpose of vehicular and pedestrian ingress and egress to and from the alley between Union Avenue and 11th Street with an entrance from Santa Fe Street (the “**Public Access Easement**”).

B. Grantor grants and conveys to Grantee a perpetual, non-exclusive easement over, on and across the Easement Property for the purpose of constructing, maintaining, repairing, replacing, installing, and removing any public utilities located within the Easement Property. Grantee shall, as soon as practicable after installation of any public utilities and after all subsequent alterations or repairs thereto or removal thereof, restore the surfaces of the Easement Property to substantially the same condition such surfaces were in prior to such activities. The Parties acknowledge that the vacation of the Property is contingent upon this Public Access Easement remaining in full force and effect. Should this Easement be terminated or revoked at any time, Grantor hereby consents to a reasonably located public alley right of way dedication containing a width and connection points consistent with the public alley vacated by Ordinance No. _____.

2. **Maintenance of Easement Property.**

A. Upon the terms and subject to the conditions contained in this Agreement, Grantor shall maintain the existing alley improvements located on the Easement Property (the “**Access Drive**”) in good repair and condition at Grantor’s sole cost and expense. If Grantor fails to maintain the Access Drive in the condition required by this Agreement, Grantee may provide Grantor with a written notice setting forth the maintenance or repair work that Grantee reasonably determines has not been done. If Grantor does not commence such maintenance or repair work within sixty (60) days from the date of receipt of the aforesaid written notice, and such failure to commence such maintenance or repair work is not as a result of causes beyond Grantor’s reasonable control, then Grantee may, after the sixty (60) day written notice to Grantor, perform such work and shall be reimbursed by Grantor for all reasonable costs incurred in performing such work.

B. Grantor hereby grants and conveys to Grantee a perpetual easement to enter upon and access their respective portions of the Easement Property for the purpose of accessing, inspecting, repairing, maintaining, and replacing its infrastructure within or near the Access Drive.

C. Grantor shall indemnify and defend Grantee from and against any and all claims, actions, liability and expenses (including reasonable attorney fees) arising from or out of the failure of Grantor to maintain and repair the Access Drive, except to the extent such claims arise from or relate to the gross negligence or intentionally malicious acts of an indemnified party.

3. **Amendment.** This Agreement and any provision herein contained may be terminated, extended, modified or amended only with the express written consent of the Parties.

4. **Default and Remedies.** The Parties agree that the provisions of this Agreement will be enforced as follows:

A. **Injunctive Relief.** In the event of any violation or threatened violation by either Party of any of the provisions of this Agreement, in addition to the right to collect damages and other remedies available at law or equity, each Party will have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, written notice of the violation will be given to the Party claimed to have committed such violation.

B. **Force Majeure.** If performance of any action by any Party is prevented or delayed by act of God, war, labor disputes or other cause beyond the reasonable control of such Party, the time for the performance of such action will be extended for the period that such action is delayed or prevented by such cause beyond the control of such Party.

C. **Notice of Default.** A Party will not be in default under this Agreement unless the Party has received written notice specifying the nature of such default and has failed to cure or commence appropriate action to cure such default within the times herein provided.

D. **Right of Reversion.** In the event Grantor fails to cure such default, Grantee may revoke the conditional vacation set forth in Ordinance No. _____ and the

Property shall revert to a public alley, as defined in Section 88-810-070 of the Kansas City Code of Ordinances.

5. **Miscellaneous.** The Parties further agree as follows:

A. **Notices.** All notices, statements, demands, approvals and other communications given pursuant to this Agreement will be in writing and shall be served either personally or by certified mail, or by any other delivery service which obtains a receipt for delivery unless any such notice required by law and such law provides a different form of delivery or service. Any such notice or demand served personally shall be delivered to the Party being served (provided that such notice may be delivered to the receptionist or any other person apparently in charge of such Party's office at its address hereinafter set forth), and shall be deemed complete upon the day of actual or attempted delivery, as shown by an affidavit of the person so delivering such notice. Any notice so served by certified mail shall be deposited in the United States Mail with postage thereon fully prepaid and addressed to the party or parties so to be served at its address hereinafter stated and service of any such notice by Certified Mail shall be deemed complete on the date of actual or attempted delivery as shown by the Certified Mail receipt. Service of any such notice by another delivery service shall be deemed complete upon the date of actual or attempted delivery as shown on the receipt obtained by such delivery service.

Notices to the Grantor shall be addressed to:

Minnie Bellomo
SomeraRoad, Inc.
One Hanover Square
New York, New York 10004
Telephone: 646-880-6128
Email: minnie@someraroadinc.com

with a copy to:

Charles Renner
Husch Blackwell LLP
4801 Main Street, Ste. 1000
Kansas City, MO 64112
Email: Charles.Renner@huschblackwell.com

Notices to the Grantee shall be addressed to:

Office of City Manager
City of Kansas City, Missouri
Attn: City Manager
414 East 12th Street, 29th Floor
Kansas City, Missouri 64106

with a copy to:

Law Department
City of Kansas City, Missouri
Attn: City Attorney
414 East 12th Street, 28th Floor
Kansas City, Missouri 64106

B. **Attorneys' Fees.** If either Party institutes any action or proceeding against the other Party relating to the provisions of this Agreement or any default hereunder, each Party shall bear its own expenses incurred.

C. **Waiver of Default.** No waiver of any default by any Party will be implied from the failure by any other Party to take any action in respect of such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. The rights and remedies provided by this Agreement are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Party might otherwise have by virtue of a default under this Agreement and the exercise of any right or remedy by any Party will not impair such Party's standing to exercise any other right or remedy.

D. **Governing Law; Severability.** This Agreement will be construed in accordance with the laws of the State of Missouri. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall not be otherwise affected, impaired or invalidated.

E. **Binding Effect.** The provisions of this Agreement will be binding on the Parties hereto and their respective successors, assigns and mortgagees to the extent herein provided.

F. **Counterparts.** This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument. A signed copy of this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

G. **Further Cooperation.** Each Party agrees to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed intent and purpose of this Agreement. This Agreement will be recorded in the office of the Recorder of Deeds for Jackson County, Missouri.

H. **Temporary Easement Closure.** Grantor and Grantee agree and acknowledge that Grantor shall have the authority to temporarily close the Public Access Easement, in full or in part, for a reasonable amount of time to effectuate construction works, events, or any other lawful purpose, in accordance with all permitting requirements.

I. **No Waiver of Sovereign Immunity.** In no event shall the language in this Public Access Easement constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions and by law.

[Signature pages follow]

IN WITNESS WHEREOF, this instrument has been executed effective as of the date first above written.

GRANTOR:

West Bottoms – Propco Master, LLC, a Delaware limited liability company

By: _____

Name: Fergus Campbell

Title: Authorized Signatory

STATE OF _____ §

§

COUNTY OF _____ §

The foregoing instrument was ACKNOWLEDGED before me this _____ day of _____, 2024, by Fergus Campbell, the Authorized Signatory of West Bottoms – Propco Master, LLC, a Delaware limited liability company, on behalf of said company.

[S E A L]

My Commission Expires:

Notary Public, State of _____

Printed Name of Notary Public

IN WITNESS WHEREOF, this instrument has been executed effective as of the date first above written.

GRANTEE:

ATTESTATION BY CITY CLERK:

CITY OF KANSAS CITY, MISSOURI,

City Clerk

By: _____
Director of City Planning and Development

Approved as to form:

Assistant City Attorney

STATE OF MISSOURI)
) SS
COUNTY OF _____)

BE IT REMEMBERED that on this ___ day of _____, 2024, before me, the undersigned, a notary public in and for the county and state aforesaid, came _____, Director of City Planning and Development, of Kansas City, Missouri, a constitutionally chartered municipal corporation of the State of Missouri, who is personally known to me to be the same persons who executed, as officials, the within instrument on behalf of Kansas City, Missouri, and such persons duly acknowledge the execution of the same to be the act and deed of said Kansas City, Missouri.

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: _____

EXHIBIT A

Tract 1:

LOT 10, EXCEPT THE WEST 6 FEET THEREOF, AND LOTS 11, 12, 13, 14, 15 AND 16, BLOCK 43, TURNER & CO'S ADDITION, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI.

Tract 2:

ALL THAT PART OF THE SOUTH 1/2 OF BLOCK 43, TURNER & CO'S ADDITION TO THE CITY OF KANSAS, NOW KANSAS CITY, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, ACCORDING TO THE RECORD PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 32, IN SAID BLOCK 43, WHICH CORNER IS THE INTERSECTION OF THE EAST LINE OF MULBERRY STREET WITH THE NORTH LINE OF 11TH STREET, AS SAID STREETS ARE NOW LOCATED AND ESTABLISHED; THENCE EAST, ALONG THE NORTH LINE OF SAID 11TH STREET, A DISTANCE OF 192.21 FEET, MORE OR LESS, TO A POINT MARKING THE CENTER, EAST AND WEST, OF THE SOUTH LINE OF SAID BLOCK 43; THENCE NORTHEASTERLY 201.35 FEET, MORE OR LESS, TO A POINT IN THE WEST LINE OF SANTA FE STREET, AS NOW LOCATED AND ESTABLISHED, WHICH IS 60 FEET NORTH OF THE NORTH LINE OF SAID 11TH STREET; THENCE NORTH, ALONG THE WEST LINE OF SAID SANTA FE STREET, A DISTANCE OF 58.69 FEET, MORE OR LESS, TO A POINT WHICH IS 2 FEET SOUTH OF THE NORTHEAST CORNER OF LOT 17 OF SAID BLOCK 43, SAID POINT BEING ON THE SOUTH LINE OF THE ALLEY; THENCE WEST, ALONG THE SOUTH LINE OF SAID ALLEY, SAID LINE BEING 2 FEET SOUTH OF THE NORTH LINE OF LOTS 17 THROUGH 32, INCLUSIVE, OF BLOCK 43, TO A POINT ON THE WEST LINE OF SAID BLOCK 43, SAID POINT BEING ALSO ON THE EAST LINE OF MULBERRY STREET; THENCE SOUTH, ALONG THE EAST LINE OF MULBERRY STREET 119.12 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXHIBIT B

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 49 N, RANGE 33 W; THENCE N 01°55'34" E ALONG THE EAST LINE OF THE NW¼ OF SAID SECTION, A DISTANCE OF 557.93 FEET; THENCE N 87°51'17" W, A DISTANCE 202.62 FEET TO THE POINT OF BEGINNING; THENCE S 02°08'43" W, A DISTANCE 10.00 FEET; THENCE N 87°54'01" W, A DISTANCE OF 162.26 FEET; THENCE N 02°05'59" E, A DISTANCE OF 10.00 FEET; THENCE S 87°54'01" E, A DISTANCE OF 162.26 FEET TO THE POINT OF BEGINNING. CONTAINING 1622.60 SQUARE FEET OF LAND MORE OR LESS.

EXHIBIT C

