

LEASE AGREEMENT

BETWEEN

**THE CITY OF LEE'S SUMMIT, MISSOURI,
as Lessor**

and

**DTLS APARTMENTS, LLC,
as Lessee**

For the

2ND AND DOUGLAS LCRA REDEVELOPMENT PLAN

_____, 2020

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of _____, 2020 (the “Lease”), is between the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, as lessor (the “City”), and **DTLS APARTMENTS, LLC**, a limited liability company organized and existing under the laws of the State of Missouri, as lessee (the “Company”);

RECITALS:

1. The Land Clearance for Redevelopment Authority of the City (the “**LCRA**”) is authorized under Section 99.400 to 99.715 of the Revised Statutes of Missouri, as amended (the “**LCRA Act**” or the “**Act**”), to recommend approval of redevelopment plans, to purchase, acquire and lease real and personal property in blighted areas for the purpose of facilitating redevelopment upon such terms and conditions as the LCRA shall deem advisable, and to delegate to the City all of the authority, powers and functions of the LCRA as granted by the LCRA Act with respect to the planning and undertaking of a redevelopment plan.

2. The LCRA adopted Resolution 2019-01 on February 27, 2019, which recommended approval of the 2nd and Douglas LCRA Redevelopment Plan (the “**LCRA Plan**”) and which delegated to the City all of the authority, powers and functions of the LCRA as granted to the LCRA under the LCRA Act with respect to the planning and undertaking of the LCRA Plan and the land clearance project authorized therein within the Redevelopment Area, and the City was thereby authorized to carry out and perform such authority, powers and functions for the LCRA.

3. Pursuant to the LCRA Act, the City Council passed Ordinance No. 8628 (the “**Ordinance**”) on May 7, 2019, approving the LCRA Plan for the purpose of facilitating the redevelopment of certain real property in the City (the “**Project Site**,” as more fully described on **Exhibit A** hereto), including the demolition of existing structures, the preservation of certain existing structures, and the construction of new structures on the Project Site (the “**Project Improvements**” as more fully described on **Exhibit B** hereto).

4. Pursuant to the Ordinance, and Ordinance No. ___ which was adopted by the City Council on December 10, 2019 to approve this Lease, the City is authorized to enter into this Lease for the purpose of leasing property to the Company to facilitate the construction of the Project Improvements, and lease the Project Site and the Project Improvements as they may at any time exist until the termination of this Lease (collectively, the “**Project**”), to the Company in consideration of rental payments by the Company.

5. The City and Company entered into a Redevelopment Contract dated December 10, 2019 (the “**Redevelopment Contract**”), for the purpose of implementing the LCRA Plan and the 2nd and Douglas Tax Increment Financing Plan.

6. Pursuant to the foregoing, the City desires to lease the Project to the Company and the Company desires to lease the Project from the City, for the rentals and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the City and the Company do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease and the words and terms defined in the Redevelopment Contract which definitions are hereby incorporated herein by reference, the following words and terms as used in this Lease shall have the following meanings:

“Additional Rent” means the additional rental described in **Sections 5.2** and **6.2** of this Lease.

“Basic Rent” means the rental described in **Section 5.1** of this Lease.

“Company” means DTLS Apartments, LLC, a Missouri limited liability company, and its successors or assigns.

“Environmental Law” means and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, any other “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials, as now or at any time hereafter in effect.

“Full Insurable Value” means the actual replacement cost of the Project less physical depreciation as determined in accordance with **Section 7.2** hereof.

“Lease Term” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** hereof.

“Lender” means any person who from time to time has made a loan to Company which is secured by a Mortgage.

“Mortgage” means any mortgage or deed of trust (together with all related loan documents and security agreements) relating to the Project permitted pursuant to the provisions of **Section 10.4** hereof.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees and any extraordinary expenses of the City) incurred in the collection of such gross proceeds.

“Permitted Encumbrances” means, as of any particular time, as the same may encumber the Project Site, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) this Lease, (c) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the City, (d) such minor defects, irregularities, encumbrances, easements, mechanic’s liens, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project Site and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the City, (e) any Mortgage, (f) any assignment of leases and rents or similar assignment delivered by the Company in favor of a Lender in connection with

any Mortgage (delivered pursuant to **Section 10.4(b)** of this Lease), and (g) any encumbrance noted in a title report.

“Plans and Specifications” means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time prior to the Completion Date, the same being duly certified by the Company, and on file with the Company, or with the architect/engineers retained by the Company for the Project, and which shall be available for reasonable inspection by the City and its duly appointed representatives.

“Project Site” means the real property upon which the property comprising the Project is located as more fully described in **Exhibit A**.

“Related Entity” means any entity in which the ownership or membership of such entity is controlled by the Company or the owners of a majority of the interests in the Company. For purposes hereof, “control” shall mean the power to direct or cause the direction of the management or policies of such entity.

Section 1.2. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers;

(b) As of the date of delivery hereof, the City has acquired the Project Site and agrees to construct and improve or cause to be constructed and improved thereon the Project Improvements. The City agrees to lease the Project to the Company for the purpose of furthering the public purposes of the LCRA Act;

(c) The purchase, construction, extension and improvement of the Project and the leasing of the Project by the City to the Company will further the public purposes of the Act;

(d) To the City's knowledge, no member of the City Council or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby;

(e) The City will not knowingly take any affirmative action that would permit a lien to be placed on the Project except with the written consent of the Authorized Company Representative; and

(h) The City shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof.

Section 2.2. Representations by the Company. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri and is authorized to conduct business in the State of Missouri;

(b) The Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its members the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives;

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Company will not, to the best of the Company's actual knowledge, conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Company is a party or by which it or any of its property is bound, or the Company's organizational documents, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party;

(d) The estimated costs of the construction and improvement of the Project are in accordance with sound engineering and accounting principles;

(e) The Project will comply in all material respects with all presently applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations; and

(f) The Project is located wholly within the corporate limits of the City of Lee's Summit, Missouri.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City hereby exclusively rents, leases and lets the Project to the Company, and the Company hereby rents, leases and hires the Project from the City, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term. This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have a term commencing as of the date of this Lease and terminating on December 31, 2022.

Section 3.3. Possession and Use of the Project.

(a) The City covenants and agrees that as long as the City has not exercised any of the remedies set forth in **Section 11.2** following the occurrence and continuance of an Event of Default, the Company shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the City's right of access pursuant to **Section 10.3** hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XI** hereof, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Company, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project and will defend the Company's enjoyment and possession thereof against all parties.

(b) Subject to the provisions of this Section, the Company shall have the right to use the Project for any lawful purpose allowed by law and contemplated by the LCRA Act and this Lease. The Company shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. In the event of demonstrated noncompliance with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements the Company will take all reasonable steps to comply with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the

Company shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

Section 3.4. Title to the Project. The City shall be the sole owner of the Project during the Lease Term.

ARTICLE IV

CONSTRUCTION AND IMPROVEMENT OF THE PROJECT

Section 4.1. Construction and Improvement of the Project. The City and the Company agree that the Company, as the agent of the City, shall construct and improve the Project as follows:

(a) The Company has acquired the Project Site prior to the execution hereof. Concurrently with the execution of this Lease, (i) a deed and any other necessary instruments of transfer have been delivered to the City and placed of record, and (ii) the commitment for title insurance or ownership and encumbrance report required by **Article VII** hereof will be delivered to the City;

(b) On behalf of the City, the Company will construct and improve the Project Improvements on the Project Site and otherwise improve the Project Site in material accordance with the Plans and Specifications and in a manner materially consistent with the description of the Project Improvements included in **Exhibit B** to this Lease. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that would alter the intended purpose of the Project may be made only with the prior written approval of the City, which shall not be unreasonably conditioned or delayed. The Company agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Company for its purposes, and that all real and personal property described in the Plans and Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.2**;

(c) The Company will comply with the provisions of Section 107.170 of the Revised Statutes of Missouri, as amended, to the extent applicable to the construction of the Project; and

(d) The Company agrees that it will use reasonable efforts to cause the construction and improvement of the Project to be completed as soon as practicable with all reasonable dispatch. The Company agrees to advance all funds necessary for such purpose.

Section 4.2. Payment for Project Costs. All Project Costs as specified in **Section 4.1** hereof shall be paid by the Company.

Section 4.3. Establishment of Completion Date. The Completion Date shall be evidenced to the City by a certificate signed by the Authorized Company Representative stating (a) the construction and improvement of the Project has been substantially completed in accordance with the Plans and Specifications, and (b) that all costs and expenses incurred in the construction and improvement of the

Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Company. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 4.4. Project Property of City. The Project Site and the Project Improvements, which the Company desires to convey to the City, including all work and materials on the Project Improvements as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the City, subject only to this Lease and any Permitted Encumbrances, until the Property is transferred to the Company.

Section 4.5. Non-Project Improvements, Machinery and Equipment Property of the Company. Any improvements or items of machinery or equipment which do not constitute part of the Project Improvements and the entire purchase price of which is paid for by the Company with the Company's own funds shall be the property of the Company and shall not constitute a part of the Project for purposes of **Section 6.4** hereof and therefore are subject to taxation, to the extent otherwise provided by law.

Section 4.6. Environmental Matters. The Company acknowledges that is it responsible for maintaining the Project in compliance with all Environmental Laws. In the event that the Company fails to undertake to comply with any final, non-appealable order issued by any local, state or federal authority under applicable Environmental Law, the City, immediately after notice to the Company, may elect (but shall not be required) to undertake such compliance. Any moneys expended by the City in efforts to comply with any applicable Environmental Law (including the reasonable cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and reasonable attorneys' fees) shall be due and payable as Additional Rent hereunder from the date such cost is incurred. There shall be unlimited recourse to the Company to the extent of any liability incurred by the City with respect to any breaches of the provisions of this section.

The Company shall and does hereby indemnify the City and agree to defend and hold the City harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs associated incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the Project during the term of this Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim is raised before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, this indemnity shall only relate to claims resulting from the City's ownership of the Project.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Company covenants and agrees to pay to the City in same day funds for the account of the City during this Lease Term, on or before each December 1, commencing December 1, 2020 and continuing until this Lease has been terminated, a Basic Rent amount as set forth in

this Section. In 2019, the Project (two parcels) was assigned by Jackson County a market valuation of \$3,156,564, with the resulting assessed valuation of \$1,003,436. The parties agree that the following amounts are projected to be the annual Basic Rent based on the 2019 tax levy rates and County assessed valuation of \$1,003,436 as applicable to the Project Site in 2019:

<u>Year</u>	<u>Amount</u>
2020	\$83,724
2021	\$83,724
2022	\$83,724

The parties further agree that the amounts stated above shall be modified to reflect a Base Rent payment that is the assessed value of \$1,003,436 multiplied by the property tax levy rates which are applicable to the property in the years stated above. All payments of Basic Rent provided for in this Section shall be paid directly to the City Finance Department, which shall be disbursed to the taxing districts in proportion to their real property tax levy rates. In the event that the Lease Term is extended by agreement of the parties, the method described in this Section to calculate Basic Rent shall be applied to such additional years of the Lease Term, including any partial year in which this Lease is in effect as of January 1 of such year.

Section 5.2. Additional Rent. The Company shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts as and when the same become due:

- (a) As “Additional Rent – Enforcement” those amounts which are attributable to the following:
 - (1) all reasonable fees, charges and expenses, including agent and counsel fees, of the City incurred under the Redevelopment Contract, this Lease, or any other document entered into in connection with the Project, as and when the same become due;
 - (2) all reasonable costs which are reasonably incurred in connection with the enforcement of any rights against the Company or the Project or in connection with a failure of the Company to perform its obligations under this Lease or the Redevelopment Contract by the City, including counsel fees and expenses;
 - (3) all other payments of whatever nature which Company has agreed to pay or assume under the provisions of this Lease except for the Additional Rent – PILOTs as defined below;
- (b) As “Additional Rent – PILOTs” those amounts which are attributable to an incremental increase in taxes that would be due for the Property as a result of an increased in the assessed valuation of the Property as determined by the County in the normal taxation process during the Lease Term.

All payments of Additional Rent shall be paid to the City Finance Department and disbursed in accordance with the applicable terms of the Redevelopment Contract.

Section 5.3. Additional Rent Following Cessation of Construction. If for any reason the Company ceases construction of the Project during the term of this Lease, the Base Rent and Additional Rent shall still be paid when due until the Lease is terminated. “Ceases construction” or “cessation of construction” for the purpose of this paragraph means, subject to force majeure and other delays not within the Company’s reasonable control, the Company completely vacates, abandons and permanently ceases construction for a period of 90 consecutive days during the term of this Lease, unless the Project has been

subject to a casualty and the Company is intending to rebuild the Project or the Company's interest in this Lease has been transferred pursuant to this Lease and the Project construction continues thereafter.

Section 5.4. Obligations of Company Absolute and Unconditional.

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this **Section 5.4(a)** or **Section 5.4(b)** is intended or shall be deemed to affect or impair in anyway the rights of the Company to terminate this Lease as provided herein.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Company of any rights or claims the Company may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the City. The Company may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

Section 5.5. Prepayment of Basic Rent. The Company may at any time and from time to time prepay a portion of the Basic Rent provided for hereunder. During such times as the amount held by the City as Basic Rent shall be sufficient to pay, at the time required, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES; TAX ABATEMENT

Section 6.1. Maintenance and Repairs. Throughout the Lease Term the Company shall, at its own expense, keep the Project in as reasonably safe condition as the operation thereof will permit, and keep the Project in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof it determines to be necessary. Without limiting the generality

of the foregoing, the Company shall at all times remain in compliance with all provisions of the City's Code of Ordinances relating to property maintenance and appearance.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

(a) Subject to subsection (b) of this Section and Section 6.4, the Company shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would encumber the City's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Company, before instituting any such contest, gives the City written notice of its intention to do so, (2) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the Company promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the City from any costs and expenses the City may incur related to any of the above, which may be charged as Additional Rent as provided in Section 5.2.

Section 6.3. Utilities. All utilities and utility services used by the Company in, on or about the Project shall be paid for by the Company and shall be contracted for by the Company in the Company's own name (or the name(s) of its affiliates), and the Company shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.4. Property Tax Exemption. So long as the City owns title to the Project, the City expects that the Project will be exempt from *ad valorem* taxes on real property. The first year of the exemption period for purposes of this Lease shall be 2020. Notwithstanding any other provision of this Lease to the contrary, the last year of such exemption period shall be 2022. The Company covenants and agrees that, during each year the Project is exempt from *ad valorem* taxes by reason hereof, the Company will make the Basic Rent payments. The City and the Company hereby agree that the tax abatement provided by this Lease shall not apply to personal property relating to the Project other than construction materials.

Section 6.5. Obligation of City to Effect Tax Abatement. The City agrees to take all actions within its control to obtain and/or maintain in effect the exemption referred to in **Section 6.4** above, including any filing required with any governmental authorities; provided, however, the City shall not be

liable for any failure of Jackson County, Missouri or any other governmental taxing authority to recognize the exemption provided herein. The City covenants that it will not voluntarily take any action that may cause or induce the levy or assessment of ad valorem taxes on the Project. In the event such a levy or assessment should occur, the City shall, at the Company's request and at the Company's expense, fully cooperate with the Company in all reasonable ways to prevent and/or remove any such levy or assessment against the Project.

Section 6.6. Administration Costs. Under Section 99.520 of the LCRA Act, the City is authorized to covenant as to the amount of revenues to be raised each year or other period of time by rents, fees and other revenues and create special funds for moneys held for administrative costs, and may require the Company to reimburse the City for its actual costs of administering the LCRA Plan including costs associated with this Lease. The City will charge such costs pursuant to **Section 6.11** of the Redevelopment Contract as Administrative Costs, as such term is defined in the Redevelopment Contract. In the event that the City incurs costs in excess of the annual amount stated in **Section 6.11** of the Redevelopment Contract, the City may charge an additional amount, not to exceed an annual cap of \$10,000, for the administration of this Lease and the transactions and administrative actions required pursuant to this Lease. The provisions of this paragraph shall be in effect until this Lease expires or is terminated, and after such expiration or termination the City may charge any final Administrative Costs under this Lease pursuant to **Section 6.11** of the Redevelopment Contract to wind up the transactions and tracking associated with the sales tax exemption which is provided through the LCRA Plan and this Lease

Section 6.7. No Abatement on Special Assessments, Licenses or Fees. The City and the Company hereby agree that the property tax exemptions described in this Lease shall not apply to special assessments and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project. The Company hereby agrees to make payments with respect to all special assessments, licenses and fees which would otherwise be due with respect to the Project if such Project was not owned by the City.

Section 6.8. Sales Tax Exemption. [Promptly after the Effective Date of this Lease, the City will issue] [Prior to the execution of this lease, the City has issued] a sales tax exemption certificate to the Company for construction materials to be purchased for the Project and the City shall provide such other documentation as may be necessary from time to time to effect said sales tax exemption. The Company shall use the exemption certificate only for the purchase of construction materials to be incorporated into the Project on the Project Site and shall not use the exemption certificate for the purchase of any personal property other than construction materials. The Company shall indemnify and defend the City and its respective officers, employees and agents against and from any and all causes of action or actions in law or equity, liens, claims damages, loss, costs or expenses of any nature whatsoever by any person or entity, arising out of the City's furnishing of the exemption certificate.

ARTICLE VII

INSURANCE

Section 7.1. Title Report. Before conveying title to any real property to the City, the Company will provide a report reasonably acceptable to the City showing the ownership of and encumbrances on the Project Site. Copies of such report shall be provided to the City.

Section 7.2. Property Insurance.

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term, a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of B+ or the equivalent thereof or better as may be selected by the Company. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Company as insured and the City shall be named as a loss payee and shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the cancellation of such insurance. Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City. The City shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements. The insurance required in this Section may be supplemented with any additional insurance requirements imposed by a Lender, to the extent required by the Lender.

(b) In the event of loss or damage to the Project, the Net Proceeds of property insurance carried pursuant to this Section shall be applied as provided in **Article IX** of this Lease.

Section 7.3. Commercial General Liability Insurance.

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term general accident and commercial general liability insurance under which the City shall be named as an additional insured, properly protecting and indemnifying the City, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri (subject to loss deductible clauses not to exceed \$25,000). The policies of said insurance shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the cancellation of such insurance. The Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City. The City shall be entitled to rely upon said certificate as to the Company's compliance with the insurance requirements.

(b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 7.4. Workers' Compensation. The Company agrees throughout the Lease Term to maintain or cause to be maintained the Workers' Compensation coverage required by the laws of the State of Missouri.

Section 7.5. Blanket Insurance Policies; Self-Insurance. The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with. Nothing in this Lease shall be construed from prohibiting the Company from self-insuring provided the Company, or in combination with its parent corporation, has a net worth in excess of \$200,000,000, as determined by generally accepted accounting principles.

Section 7.6. Certificate of Compliance. The Company shall provide the City, on an annual basis, commencing on December 1, 2019 with a certificate of an Authorized Company Representative certifying compliance with this **Article VII**.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements to the Project. Subject to all applicable laws and requirements and the requirements of the LCRA Plan and the Redevelopment Contract, the Company shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to the authority of this Section shall (a) be made in workmanlike manner and will comply in all material respects with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project; provided, however, that additions of machinery and equipment installed on the Project Site by the Company and not constituting repairs, renewals or replacements of the Project shall remain the property of the Company and may be removed by the Company. Such property shall be subject to *ad valorem* taxes.

Section 8.2. Permits and Authorizations. The Company shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in material compliance with all applicable building, zoning and other laws, ordinances, governmental regulations. In the event of demonstrated noncompliance with such laws, ordinances, governmental regulations and requirements the Company will take all reasonable steps to comply with laws, ordinances, governmental regulations and requirements.

Section 8.3. Mechanics' Liens.

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project, except Permitted Encumbrances, and the Company shall promptly notify the City of the imposition of such lien of which the Company is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project, the Company shall discharge the same of record. Notice is hereby given that the City shall not be liable for any labor or materials furnished the Company or anyone claiming by, through or under the Company upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to the Project or any part thereof.

(b) Notwithstanding paragraph (a) above, the Company may contest any such mechanics' or other similar lien if the Company (1) within 60 days after the Company becomes aware of any such lien notifies the City in writing of its intention so to do, (2) diligently prosecutes such contest, (3) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (4) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (5) thereafter promptly procures record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Company is notified by the City that, in the opinion of counsel, by nonpayment of any such items, the interest of the City in the Project will be subject to loss or forfeiture. In that event, the Company shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim if the same shall arise at

any time. The Company shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

(a) If the Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall either (i) determine that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, or that the Company does not have the right under any Mortgage to use any Net Proceeds for repair or restoration of the Project, or (ii) repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding the Project is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Company's option, construct upon the Project Site new buildings and improvements thereafter together with all new machinery, equipment and fixtures which are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (A) the value thereof shall not be less than the value of such destroyed or damaged Project Improvements immediately before the occurrence of such damage or destruction and (B) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Project as an enterprise permitted by the Act.

If the Company elects to construct any such new buildings and improvements, for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings and improvements and all additions thereto and all replacements and alterations thereof.

(b) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Company shall remain and continue liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.

(c) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(d) The Company agrees to give prompt notice to the City with respect to all fires and any other casualties occurring in, on, at or about the Project Site which damages a material portion of the Project.

(e) The Company shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

Section 9.2. Condemnation.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$1,000,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City and any Lender under a Mortgage (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Company determines that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed before the exercise of the said power of eminent domain, including the acquisition or construction of other improvements suitable for the Company's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Company without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by this Lease other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds). If the Company determines that it is not practicable and desirable to acquire or construct substitute improvements then proceeds may be paid to a lender, if applicable.

(c) The Company shall not, by reason of its inability to use all or any part of the Project during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the City or to any abatement or diminution of the rentals payable by the Company under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The City shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Company.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification. The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the City from, agrees

that the City shall not be liable for, and agrees to hold the City harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project or the Company's use thereof, unless such loss is the result of the City's negligence or willful misconduct. This provision shall survive termination of this Lease.

Section 10.2. Reserved.

Section 10.3. City's Right of Access to the Project. The Company agrees that the City and its duly authorized agents shall have the right at reasonable times during business hours, subject to 24 hours' advance written notice and the Company's usual safety and security requirements, to enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) as may be reasonably necessary to cause to be completed the purchase and installation provided for in **Section 4.2** hereof, and (c) performing such work in and about the Project Site made necessary by reason of the Company's default under any of the provisions of this Lease.

Section 10.4. Granting of Easements; Mortgages and Financing Arrangements.

(a) Subject to **Sections 10.4(b)** and (c), if no Event of Default under this Lease has happened and is continuing, the Company may at any time or times (i) grant subleases (as permitted in **Section 12.1(b)** hereof), easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (ii) release or terminate existing subleases, easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine, or (iii) incur Permitted Encumbrances. The Company may take such actions and may execute any applicable documents in the Company's own name. No separate signature of or authorization from the City shall be required for the execution and delivery of any such document, although the City agrees to execute and deliver such confirming documents as are described below, under the procedures described below, if the Company chooses to make such a request. All third parties entering into agreements with the Company or receiving delivery of or the benefit of such agreements or documents shall be entitled to rely upon the same as having been executed and delivered by the City, unless such third party has actual or constructive notice, expressly in writing, that the agency herein granted by the City to the Company has been terminated by the City because of an uncured Event of Default hereunder. The City agrees that it will execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any such sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the City of: (i) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (ii) a written application signed by an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, and will be a Permitted Encumbrance. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(b)** and (c), upon (i) termination of this Lease for any reason other than the completion of construction of the Project by the Company or (ii) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the City.

(b) The City acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project, this Lease, and the leasehold estate created hereby with prior notice to but

without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such Mortgage, and the note or other obligation secured thereby, is delivered to the City within thirty (30) days after the execution thereof. The Company may mortgage the fee estate held by the City with the consent of the City, not to be unreasonably withheld, conditioned, or delayed. In either case, in connection therewith, the Company shall have the right to assign this Lease, the leasehold estate, any sublease, and any rights in connection therewith, and/or grant liens or security interests therein, to any Lender, provided that the requirements of the Redevelopment Contract have been satisfied. Any further sublease or assignment by any Lender shall be subject to the provisions of **Section 12.1(c)**. The Parties acknowledge that Company has granted a Deed of Trust to ___ covering the Project Site together with an Assignment of Leases (collectively the “___ **Deed of Trust**”), and that this Lease is subject and subordinate to the ___ Deed of Trust in all respects.

(c) With respect to the ___ Deed of Trust and any future Mortgage, upon notice by the Company to the City in writing that it has executed a Mortgage under which it has granted rights in this Lease to a Lender which includes the name and address of such Lender, the following provisions shall apply in respect of each such Lender:

(1) there shall be no merger of this Lease or of the leasehold estate created hereby with the fee title to the Project, notwithstanding that this Lease or said leasehold estate and said fee title shall be owned by the same Person or Persons, without the prior written consent of such Lender;

(2) the City shall serve upon each such Lender (at the address, if any, provided to the City) a copy of each notice of the occurrence of an Event of Default and each notice of termination given to the Company under this Lease, at the same time as such notice is served upon the Company. No such notice to the Company shall be effective unless a copy thereof is thus served upon each Lender (at the address, if any, provided to the City);

(3) each Lender shall have the same period of time which the Company has, after the service of any required notice upon it, within which to remedy or cause to be remedied any payment default under this Lease which is the basis of the notice plus thirty (30) days, and the City shall accept performance by such Lender as timely performance by the Company;

(4) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of each Lender under this **Section 10.4(c)** as to such other events of default;

(5) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Lender and permitting such Lender (or its designee, nominee, assignee, or transferee) a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured (provided that the period to remedy such event of default shall continue beyond any period set forth in the Lease to effect said cure so long as the Lender (or its designee, nominee, assignee, or transferee) is diligently prosecuting such cure); provided that the Lender (or its designee, nominee, assignee, or transferee) shall pay or cause to be paid to the City all expenses, including reasonable counsel fees, court costs and disbursements incurred by the City in connection with any such default; and

(6) such Lenders (and their designees, nominees, assignees, or transferees) shall have the right to enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Mortgage(s).

(d) In connection with the execution of one or more Mortgages, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a Lender and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Mortgage, provided that the City shall not be required to undertake any duties or payment obligations under such documents. The Company agrees to reimburse the City for any and all costs and expenses incurred by the City pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(e) This Lease is subject and subordinate to any Mortgage.

(f) Notwithstanding anything contained to the contrary in this Lease, (a) the Company shall have the right to assign this Lease and any subleases to a Lender or to the designee or nominee of a Lender in compliance with the requirements of the Redevelopment Contract, without the consent of the City, and (b) if a Lender or its designee or nominee shall acquire ownership of the leasehold estate, either following foreclosure of the applicable Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof, said Lender or its designee or nominee shall have the further right to further assign this Lease and any subleases and any purchase money mortgage accepted in connection therewith, without the consent of the City and such assignee shall enjoy all rights, powers and privileges granted herein to said Lender; provided, however, that such Lender or its assignee or nominee, or their assignee or nominee, shall assume in writing all rights, duties and obligations of the Company under this Lease.

(g) During the term of any Mortgage, the following provisions shall apply:

(i) this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without the prior written consent of the applicable Lender;

(ii) if this Lease shall terminate prior to the expiration of the Lease Term, the City shall enter into a new lease for the Project with the applicable Lender or its designee or nominee, for the remainder of the Lease Term, effective as of the date of such termination, at the same rent and upon the same terms, covenants and conditions contained herein, except that such new lease shall not guarantee possession of the Project to the new tenant as against the Company and/or anyone claiming under the Company, and the City, simultaneously with the execution and delivery of such new lease, shall turn over to the new tenant all monies, if any, then held by the City under the Lease on behalf of the Company, on condition that:

(A) The applicable Lender shall make written request for such new lease within thirty (30) days after the date of such termination, and

(B) on the commencement date of the term of the new lease, the applicable Lender shall cure all defaults of the Company under the Lease (susceptible of being cured by such Lender) which remain uncured on that date, and shall pay or cause to be paid all unpaid sums which at such time would have been payable under this Lease but for such termination, and shall pay or cause to be paid to the City on that date all fees, costs, charges and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements,

incurred by the City in connection with any such default and termination as well as in connection with the execution and delivery of such new lease;

(iii) if a Lender or its designee or nominee shall become the owner of this Lease either following foreclosure of a Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof and said Lender or its designee or nominee shall have assigned this Lease, said Lender or its designee or nominee so assigning shall be released from all liability accruing from and after the date of such assignment.

(h) The City agrees that any requested consent or signature of the City to any Mortgage under this Section (including any related document, including but not limited to documents subordinating the City's fee interest in the Project Site or any portion thereof to a Mortgage) may be given by the City Manager, in his or her discretion, without further approval of the City Council.

Section 10.5. Indemnification of City. The Company shall indemnify and save and hold harmless the City and the City Council members, officers, agents and employees (collectively, the "Indemnified Parties") from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any person, firm or corporation arising from the execution of this Lease, the Redevelopment Contract or any other documents entered into in connection with this Lease and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Lease or any related document, (c) any contract entered into by the Company in connection with the purchase, construction, extension or improvement of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, and (g) any claim relating to the presence on, escape or removal from the Project during the term of the Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim arises before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, the indemnification contained in this **Section 10.5** shall not extend to the City if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of work being performed at the Project by employees of the City or the result of negligence or willful misconduct by the City. Upon notice from the City, the Company shall defend the City in any such action or proceeding. This **Section 10.5** shall survive any termination of this Lease with respect to liability arising during the Lease Term.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all reasonable expenses and the right to negotiate and consent to settlement. If the Company shall have wrongfully failed to assume the defense of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company. If any of the Indemnified Parties is advised by counsel retained by the Company to defend such action that there may be legal defenses available to it which are adverse to or in conflict with those available to the Company or any other Indemnified Party, and that the defense of such Indemnified Party should be handled by separate counsel, the Company shall not have the right to assume the defense of such Indemnified Party, but shall be responsible for the reasonable fees and expenses of counsel retained

by such Indemnified Party in assuming its own defense, provided, such counsel shall be acceptable to the Company. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, then provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits. The City agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the City will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits.

Section 10.7. Company to Maintain its Corporate Existence. The Company agrees that until this Lease is terminated, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets except as allowed by the Redevelopment Contract; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations to consolidate with or merge into it, or may sell or otherwise transfer to another domestic corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporation expressly assumes in writing all of the obligations of the Company contained in this Lease; and, further provided, that if the surviving, resulting or transferee corporation, as the case may be, has a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least (i) equal to or greater than that of the Company immediately prior to said consolidation, merger or transfer, or (ii) \$50,000,000. The term “net worth,” as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Company and all of its subsidiaries.

Section 10.8. Security Interests. The City and the Company agree to enter into all instruments (including financing statements and statements of continuation) necessary for perfection of and continuance of the perfection of the security interests of the City in the Project.

ARTICLE XI

DEFAULTS AND REMEDIES

Section 11.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an “Event of Default” or “default” under this Lease:

- (a) Default in the due and punctual payment of Basic Rent for a period of 5 days following written notice to the Company by the City; or
- (b) Default in the due and punctual payment of Additional Rent for a period of 15 days following written notice to the Company by the City; or

(c) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company's part to be observed or performed, and such default shall continue for 30 days after the City has given the Company written notice specifying such default (or such longer period as shall be reasonably required to cure such default provided that (1) the Company has commenced such cure within said 30-day period, and (2) the Company diligently prosecutes such cure to completion); or

(d) The Company: (1) admits in writing its inability to pay its debts as they become due; or (2) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company's consent or acquiescence, vacated or set aside; or (5) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (7) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(e) the Company vacates, abandons, ceases operations, fails to occupy or is ejected from the Project Site or any material portion thereof, and the same remains uncared for or abandoned for a period of 90 days; or

(f) the Company fails to complete the Project as described in **Exhibit B** within the term of this Lease.

With regard to any alleged default concerning which notice is given to the Company under the provisions of this Section, the City hereby grants the Company full authority for account of the City to perform any covenant or obligation, the nonperformance of which is alleged in said notice to constitute a default, in the name and stead of the City, with full power to do any and all things and acts to the same extent that the City could do and perform any such things and acts in order to remedy such default.

Section 11.2. Remedies on Default. If any Event of Default referred to in **Section 11.1** hereof has occurred and continues beyond the period provided to cure, then the City may at the City's election, then or at any time thereafter, and while such default continues, give the Company written notice of the City's intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, this Lease shall thereupon be terminated.

Section 11.3. Survival of Obligations. The Company covenants and agrees with the City and Owners that those of its obligations under this Lease which by their nature require performance after the end of the term of this Lease, or which are expressly stated herein as intended to survive expiration or

termination of this Lease, shall survive the cancellation and termination of this Lease, for any cause, except as specifically limited in this Lease.

Section 11.4. Performance of the Company's Obligations by the City. If the Company shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the City may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 30 days after written notice of such failure is given the Company by the City, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City and all incidental reasonable costs and expenses incurred by the City (including, without limitation, attorneys' fees and expenses) in performing such obligations shall be deemed Additional Rent and shall be paid to the City on demand, and if not so paid by the Company, the City shall have the same rights and remedies provided for in **Section 11.2** hereof in the case of default by the Company in the payment of Basic Rent.

Section 11.5. Rights and Remedies Cumulative. The rights and remedies reserved by the City and the Company hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 11.6. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of any covenant, agreement or undertaking by the Company or the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving the City's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the Company which were in existence at the time such payment or payments were accepted by the City.

Section 11.7. Application of Article. If any portion of the Project Site has been assigned pursuant to an Assignment and Assumption Agreement, this **Article XI** and the rights and obligations hereunder shall be applied individually with respect to each Assigned Property. Each "Event of Default" or "default" shall be individual to the particular Assigned Property and shall not create an "Event of Default" or "default" with respect to any other Assigned Property. If any portion of the Project Site has become Assigned Property, application of this Article to the remainder of the Project Site with respect to which the original Company maintains rights and obligations shall occur separately from the Assigned Property.

ARTICLE XII

ASSIGNMENT AND SUBLEASE

Section 12.1. Assignment of Lease; Sublease of Project.

(a) The Company may not assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof to any person or party except a Related Entity or as allowed by **Section 10.7** for any

lawful purpose under the Act. With respect to any assignment, the Company shall comply with the following conditions:

(1) Such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;

(2) Such assignment shall include the entire then unexpired term of this Lease; and

(3) A duplicate original of such assignment shall be delivered to the City within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

(b) The Company shall not have the right to sublet all or any part of the Project to any person or party except a Related Party or a residential tenant. The Company shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City a true and correct copy of each such sublease. Any sublease may provide, at the Company's option, that the City's consent shall not be required in respect of any further subletting thereunder if such further subletting is to an Related Entity and for a similar purpose as the original sublease and is for a purpose permissible under the Act.

(c) The City agrees that any requested consent or signature of the City to any sublease or assignment to an Related Entity under this Article, including any related document, may be given by the City Manager, in his or her discretion, without further approval of the City Council.

Section 12.2. Assignment of Revenues by City. The City shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the Special Allocation Fund for disbursement in accordance with the Redevelopment Contract.

Section 12.3. Prohibition Against Fee Mortgage of Project. Except as otherwise set forth in **Section 10.4**, the City shall not mortgage its fee interest in the Project, but may assign its interest in and pledge any moneys receivable under this Lease to the Special Allocation Fund for distribution as provided in the Redevelopment Contract.

Section 12.4. Restrictions on Sale or Encumbrance of Project by City. During this Lease Term, the City agrees that it will not sell, assign, encumber, transfer or convey the Project or any interest therein, but may assign its interest in and pledge any moneys receivable under this Lease to the Special Allocation Fund for use in accordance with the Redevelopment Contract.

ARTICLE XIII

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 13.1. Amendments, Changes and Modifications. Except as otherwise provided herein, this Lease may not be effectively amended, changed, modified, altered or terminated except as mutually agreed by the Parties.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 14.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing. Notices with respect to Assigned Property shall be given to the appropriate Partial Assignee.

Section 14.2. City Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any additional project or matter unrelated to the Project subject to zoning, building permit or other regulatory approvals by the City.

Section 14.3. Net Lease. The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City a source of revenue to replace the real property taxes that are abated during the Lease Term, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent – Enforcement, such further sums of money, in cash, as may from time to time be required for such purposes as set forth in this Lease.

Section 14.4. Limitation on Liability of City. No provision, covenant or agreement contained in this Lease or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

Section 14.5. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 14.6. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns.

Section 14.7. Severability. If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 14.8. Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 14.9. Electronic Storage. The parties hereto agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be

deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 14.10. Satisfaction of the Company's Obligations. Any obligation of the Company under this Lease, including, but not limited to, the obligations of the Company to pay Basic Rent, Additional Rent and to maintain insurance as required herein, may be performed by a member of the Company, and such performance by a member of the Company shall be treated as though the obligation were performed by the Company.

Section 14.11 Complete Agreement. To protect the Company and the City from misunderstanding or disappointment, any agreements the Company and the City reach covering the subject matter of this Lease are contained in this Lease, which are the complete and exclusive statements of the agreement between the Company and the City, except as the Company and the City may later agree in writing to modify this lease.

Section 14.12. Employee Verification. The Company will comply with and satisfy the requirements of Section 285.530.2, RSMo., as amended, which requires (1) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Company shall provide such affidavits and documentation to the City on or before December 1 of each year during the term of this Lease, beginning December 1, 2020, and also upon execution of this Lease.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Name: William A. Baird
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Trisha Fowler Arcuri
Title: City Clerk

Approved as to form:

By: _____
Name: David Bushek
Title: Chief Counsel of Economic Development & Planning

DTLS APARTMENTS, LLC,
a Missouri limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

PROJECT SITE

The following described real estate located in Jackson County, Missouri:

TRACT 1:

TRACT A, REPLAT OF LOTS 1 THRU 9 AND 11 THRU 23, INCLUSIVE, BLOCK 4, TOWN OF STROTHER, A SUBDIVISION IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI.

TRACT 2:

THE WEST 130 FEET OF LOTS 11 AND 12, BLOCK 4, CITY OF LEE'S SUMMIT, FORMERLY THE TOWN OF STROTHER, A SUBDIVISION IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI.

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following:

A project consisting of the demolition of existing structures and the site preparation work and construction of an approximately 274 unit multi-family apartment complex with all associated amenities and improvements, including the location of the administrative offices in the Sanctuary (as such term is defined in the Redevelopment Contract), and other uses permitted from time to time in accordance with the Redevelopment Contract.