

# **REDEVELOPMENT CONTRACT**

**BETWEEN**

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

**AND**

**LEE'S SUMMIT SENIOR COMMUNITY, LLC**

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**To implement the**

**LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY  
REDEVELOPMENT PLAN  
FOR THE PRINCETON REDEVELOPMENT AREA**

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**September \_\_, 2019**

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## REDEVELOPMENT CONTRACT

**THIS REDEVELOPMENT CONTRACT** (the “**Contract**”) is made and entered into as of the \_\_\_\_ day of September, 2019 (the “**Effective Date**”), by and between THE CITY OF LEE’S SUMMIT, MISSOURI (“**City**”), and LEE’S SUMMIT SENIOR COMMUNITY, LLC, a Missouri limited liability company, the developer selected by the City (“**Developer**”) to implement its plan of redevelopment as more fully described herein.

### RECITALS

1. On June 26, 2019, the Land Clearance for Redevelopment Authority of Lee’s Summit, Missouri (the “**LCRA**”), recommended that the City approve the LCRA Redevelopment Plan for the Princeton Redevelopment Area (the “**LCRA Plan**” or the “**Plan**”). On July 16, 2019, the City Council of the City (the “**City Council**”) approved the LCRA Redevelopment Plan through the adoption of Ordinance No. 8675 pursuant to the Land Clearance for Redevelopment Authority Act set forth in Sections 99.400 through 99.715 of the Revised Statutes of Missouri (the “**LCRA Act**”).

2. Pursuant to Ordinance No. 6551 which was adopted on December 13, 2007, the City Council determined that the Redevelopment Area is a Blighted Area as that term is defined in the Real Property Tax Increment Allocation Redevelopment Act Sections 99.800 to 99.865, RSMo (the “**TIF Act**”). Ordinance No. 8675 re-affirmed that prior blight finding, and made the same blight finding for the project under the LCRA Act.

4. Pursuant to Ordinance No. 8675, the City Council made several factual findings as it related to implementation of the LCRA Plan and that the LCRA Plan meets the other applicable requirements of the LCRA Act. Ordinances No. 8675 also selected Developer as the developer of record to implement the Plan, and authorized City to enter into a contract with such party as the developer for the implementation of the Plan.

5. The LCRA Plan calls for the construction of the Redevelopment Project which will by “The Princeton” which will contain approximately 153 units which will consist of 91 independent living units, 44 assisted living units, and 18 memory care units.

### AGREEMENT

Now, therefore, for and in consideration of the premises, and the mutual covenants herein contained, City and Developer agree as follows:

#### ARTICLE 1: RULES OF INTERPRETATION AND DEFINITIONS

**Section 1.01. Rules of Interpretation.** Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Contract:

A. The terms defined in this Contract which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided, that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement other than in accordance with **Section 6.05** of this Contract.

B. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Contract shall refer to this Contract as a whole and not to any particular provision of this Contract.

Section, subsection and exhibit references are to this Contract unless otherwise specified. Whenever an item or items are listed after the words “including” and/or “include(s)”, such listing is not intended to be a listing that excludes items not listed.

C. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, limited liability companies, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

D. The table of contents, captions and headings in this Contract are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Contract.

**Section 1.02. Definitions.** All capitalized words or terms used in this Contract that are not otherwise defined in this Contract but are defined in the Incentive Plans shall have the meaning ascribed to them in the Incentive Plans. In addition thereto and in addition to words and terms defined elsewhere in this Contract, the following words and terms shall have the meanings ascribed to them in this **Section 1.02** unless the context in which such words and terms are used clearly requires otherwise.

“**Act**” means the LCRA Act.

“**Action**” shall have the meaning set forth in **Section 6.01**.

“**Administrative Costs**” means all documented costs and expenses reasonably incurred by the City, and to be paid for as provided in **Section 6.11**, for planning, legal, financial, auditing, administrative and other costs associated with the review, consideration, approval and implementation of the Plan and this Contract, including all documented in-house legal costs, all cost certifications as set forth in **Section 2.04**, and all consultants costs engaged by the City.

“**Affiliate**” means any person, entity or group of persons or entities which controls a party, which a party controls or which is under common control with a party. As used herein, the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

“**Assignment Agreement**” shall have the meaning set forth in **Section 5.03**.

“**Blighted Area**” shall have the meaning set forth for such term in the LCRA Act.

“**Certification Application**” shall have the meaning set forth in **Section 4.03**.

“**City**” means the City of Lee’s Summit, Missouri.

“**City Council**” means the governing body of Lee’s Summit, Missouri.

“**City Engineer**” means the city engineer of Lee’s Summit, Missouri.

“**City Manager**” means the City Manager of Lee’s Summit, Missouri.

“**City Treasurer**” means the Finance Director of Lee’s Summit, Missouri.

“**Construction Contract**” means each contract between the Developer and any Construction Contractor for the construction of the Private Improvements on behalf of the City.

“**Construction Contractor**” means \_\_\_\_\_, its successor and assigns, or any other construction contractor chosen by Developer to construct all or any portion of the Project Improvements.

“**Construction Period**” means the period of time from the execution of this Contract to the date that the City issues the final certificate of occupancy for the Project.

“**County**” means Jackson County, Missouri.

“**County Assessor**” means the assessor of Jackson County, Missouri.

“**County Collector**” means the collector of Jackson County, Missouri.

“**Deposit Sum**” shall have the meaning set forth in **Section 3.01**.

“**Design and Construction Manual**” means the Lee’s Summit Design and Construction Manual which is adopted by ordinance, as such document may be amended by the City.

“**Developer**” means Lee’s Summit Senior Community, LLC, its successors and assigns.

“**Developer Controlled Improvements**” shall have the meaning set forth in **Section 2.08**.

“**Excusable Delay**” shall have the meaning set forth in **Section 6.02**.

“**Financing Plan**” shall have the meaning set forth in **Section 3.05**.

“**Indemnified Party**” or “**Indemnified Parties**” shall have the meaning set forth in **Section 6.01**.

“**Land Use Approvals**” means those approvals required pursuant to the UDO and those ordinances approving the Preliminary Development Plan and all other subsequent zoning approvals which are required for the construction of the Redevelopment Project.

“**LCRA**” means the City of Lee’s Summit Land Clearance for Redevelopment Authority, which exercises its powers and authority through its Board of Commissioners.

“**LCRA Plan**” shall have the meaning assigned in the Recitals on Page 1.

“**Lease**” or “**Lease Agreement**” means the lease agreement between the City, as “Lessor,” and Developer, as the “Company” and lessee (as such terms are defined in such lease), to implement the LCRA Plan and the sales tax exemption provided through the LCRA Plan.

“**Legal Requirements**” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence and specifically including but not limited to all ordinances, rules and regulations of the City, such as zoning ordinances, subdivision ordinances, building codes, property maintenance codes, and City’s Design and Construction Manual (Ordinance No. 3719).

“**Materials**” means construction materials and supplies necessary for and used in the construction of the Project Improvements and all fixtures and supplies necessary for the completion of and operation of the Project Improvements acquired during construction.

“**Off-Site Sewer Improvements**” shall have the meaning assigned in **Section 3.01**.

“**On-Site Sewer Improvements**” shall have the meaning set forth in **Exhibit D**.

“**Ordinance**” means an ordinance enacted by the City Council.

“**Preliminary Development Plan**” means the Preliminary Development Plan located in District CP-2 that was approved by Ordinance No. 8612 on April 9, 2019, and as such plan may be modified or amended pursuant to the requirements of the UDO.

“**Private Investment**” shall have the meaning set forth in **Section 4.07**.

“**Project**” means all of the development work contemplated to be undertaken by Developer within the Redevelopment Project Area pursuant to the LCRA Plan and this Contract.

“**Project Improvements**” means the Private Improvements and the Public Improvements which are constructed by or at the direction of Developer. The Project Improvements do not include the Off-Site Sewer Improvements that are constructed by or at the direction of the City.

“**Property**” means all of the property within the Redevelopment Area as legally described in **Exhibit A**.

“**Private Improvements**” shall mean those improvements set forth in **Exhibit E**.

“**Public Improvements**” means the Water Improvements, the On-Site Sewer Improvements and the Transportation Improvements.

“**Public Improvement Plans**” means the Public Improvements as set forth in the official plans submitted to and approved by the City related to the Project.

“**Purchasing Agents**” shall have the meaning set forth in **Section 2.04**.

“**Redevelopment Area**” means the approximately 37-acre area that is legally described in **Exhibit A** and depicted in **Exhibit B**.

“**Redevelopment Project**” means the Work to be undertaken by Developer within the Redevelopment Project Area.

“**Redevelopment Project Area**” means the approximately 13-acre area that is legally described in **Exhibit A** and depicted in **Exhibit B**.

“**Redevelopment Schedule**” shall have the meaning set forth in **Section 2.05**.

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

“**Restricted Entity**” shall have the meaning set forth in **Section 5.03**.

“**Restricted Period**” shall have the meaning set forth in **Section 5.03**.

“**Taxing Districts**” means any political subdivision of this state having the power to levy taxes on sales or property in the Redevelopment Project Area.

“**Transportation Improvements**” shall have the meaning set forth in **Exhibit D**.

“**UDO**” means the City’s Unified Development Ordinance as set forth in Chapter 33 of the City Code.

“**Work**” means all work, including, but not limited to, demolition, site preparation, development, design, engineering and construction, necessary to prepare the Property and to construct the Project.

“**Water Improvements**” shall have the meaning set forth in **Exhibit D**.

## **ARTICLE 2: THE REDEVELOPMENT PROJECT**

**Section 2.01. Redevelopment Area.** The LCRA Plan covers the entire Redevelopment Area, although Developer’s Work that will be undertaken pursuant to this Contract is limited to the Redevelopment Project Area. The Parties agree that the scope of this Contract covers only the Redevelopment Project Area, and if Developer or any other party seek to develop any remaining portion of the Redevelopment Area, and if any incentives are requested for such additional development pursuant to the LCRA Plan, such incentives will be address by a separate contract or by an amendment to this Contract, as appropriate.

**Section 2.02. Redevelopment Project Area.** The Redevelopment Project Area will be developed by Developer in one phase. The Redevelopment Project Area may only be changed, modified or amended in accordance with the LCRA Act. If the Redevelopment Project Area is amended, the parties acknowledge that a corresponding amendment to the LCRA Plan may be necessary.

**Section 2.03. Project Improvements.** In accordance with the LCRA Act and the terms and conditions of this Contract, to ameliorate or satisfy those conditions which are the basis for eligibility and designation of the Redevelopment Area as a Blighted Area and otherwise eligible as a redevelopment area under the Acts, Developer shall use best commercially reasonable efforts to cause the Redevelopment Project Area to be redeveloped through the construction of the Project Improvements. Developer shall construct, or cause to be constructed, all Project Improvements with private funds, which will be derived from a combination of Developer’s equity, assets contributed, or equity investment provided by third parties, and debt incurred by Developer or third parties. The City’s role in the funding for the project shall consist solely of providing the sales tax exemption through the LCRA Plan and this Contract, implementation of the escrowed funds as set forth in **Article 3**, and paying for any cost overruns that result from construction of the Off-Site Sewer Improvements.

### **Section 2.04. Lease Agreement and Sales Tax Exemption for Construction.**

A. **Lease.** Developer will transfer fee title to the Property to the City to implement the incentives provided by the LCRA Plan. The City and Developer will coordinate on the schedule for this transaction. Simultaneously with this Contract, or at such other time as deemed appropriate by agreement



of the Parties, the City and Developer will enter into the Lease which will provide the terms for acquisition of the Property by the City from Developer and the lease of the Property back to Developer for the effective period of the Lease, which duration will generally coincide with the Construction Period for the Project.

B. Rent. Pursuant to the terms of the Lease, and as such additional capitalized terms used in this paragraph are defined in the Lease, Developer shall pay as annual “Basic Rent” an amount equal to the real property taxes that would be collected from the Redevelopment Project Area assuming Developer continued to own the Property during the Lease term and assuming the market value of the Property is fixed at \$24,704 as assigned by the Jackson County Assessor to the Property for calendar year 2019. Further, Developer will pay as “Additional Rent” such additional amounts as may be charged pursuant to the terms of the Lease. The Basic Rent and the Additional Rent, when paid to the City, will be disbursed to the Taxing Districts in the same manner and in the same proportions as real property taxes would be distributed by the County to the Taxing Districts that have jurisdiction within the Redevelopment Project Area. The provisions of this paragraph and the corresponding provisions of the Lease, and the amounts of rent as established in such documents, shall apply to the Property regardless of the actual market value that may be assigned to the Property by the County Assessor during the term of the Lease.

C. Construction Period. The Developer shall enter into all Construction Contracts with the Construction Contractors for the construction of the Project Improvements on behalf of the City and all contractors purchasing Materials for the Project on behalf of the City (the “**Purchasing Agents**”). The Developer shall cause each Construction Contract and contracts with Purchasing Agents to include provisions satisfactory to the City:

1. necessary to assure that the Construction Contractor and Purchasing Agent includes in contracts with the Suppliers that sell the Materials necessary for the construction of the Project Improvements: (a) a provision acknowledging that title to the Materials shall pass directly to the City from the Supplier, but only after the Materials have been inspected and accepted by the Construction Contractor or Developer, acting as the agents of the City; and (b) a provision that requires Suppliers to properly submit detailed invoices for Materials for review and approval to the Developer and the City or the City’s designee;

2. stating that the invoices for Materials must reflect that the Developer or the Construction Contractor is purchasing the Materials on behalf of the City as the City’s agent or subagent, respectively;

3. requiring that the Developer and the Construction Contractor keep full and complete records of the Materials purchased on behalf of the City, and providing that the Developer and the City shall each have reasonable access to those records, as may be necessary or desirable to ascertain that the Materials are, in fact, being acquired in accordance with this Contract;

4. providing that all Work performed under such contracts shall be in accordance with the LCRA Plan and this Contract; and

5. providing that the Developer, Purchasing Agents and the Construction Contractor acknowledge and affirm that they are each buying the Materials on behalf of, and as agent or subagent, respectively, for the City, and that the Purchasing Agents and Construction Contractor further acknowledge and affirm that any such Materials purchased are the sole property of the City.

D. Agent. The City appoints and confirms the appointment of the Developer as its agent to purchase the Materials for and on behalf of the City pursuant to power and authority delegated to the

City by the LCRA. The Developer has the right to make the Construction Contractor and each Purchasing Agent a subagent for the purchase of the Materials and, accordingly, Developer appoints the Construction Contractor and each Purchasing Agent as a subagent for the City for the limited purpose of purchasing the Materials. The City and the Developer confirm that the Construction Contractor and each Purchasing Agent is authorized to appoint its subcontractors as subagents of the City for the limited purpose of purchasing Materials. The City will provide its sales tax exemption certificate to Developer, Purchasing Agents and Construction Contractor for purposes of purchasing the Materials. Notwithstanding anything in this Contract to the contrary, the Developer acknowledges that the City makes no representation or warranty with respect to any sales tax exemption during the Construction Period. In the event that the City's tax exempt status is reduced or eliminated, or City is otherwise unable to effectively extend sales tax exemption due to: (i) a change in federal or State law as to the purchase of all or any Materials used for construction of the Project Improvements and/or operation of the Project Improvements; or (ii) a lawsuit or administrative proceeding challenging the validity or legality of the sales tax exemption granted by the City during the Construction Period and which results in a determination by a court of competent jurisdiction or by a federal, state or local governing body or agency or department thereof that the sales tax exemption is invalid or illegal, then the Developer shall be fully responsible for payment of any sales or use taxes, interest, fees, charges, or penalties levied or imposed against the City or the LCRA. Developer shall indemnify, protect, defend and hold the City and the LCRA and their respective officers, elected officials, commissioners, agents and employees harmless from and against any and all sales or use taxes, interest, fees, charges, penalties, claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, resulting or arising from, or otherwise incurred in connection with, the loss of any sales tax exemption and/or any related lawsuit or administrative proceeding.

E. Title. Title to the Materials shall pass to the City directly from the Suppliers, but only after the Materials have been inspected and accepted by Developer acting as the agent of the City (or by the Construction Contractor or another person or entity acting as the Developer's subagent); thereafter title to the Materials shall remain in the City unless and until transferred, together with the City's title to the Property, and the Project Improvements, by the City pursuant to the Lease.

F. Enforcement of Warranties. The Developer, in its capacity as the agent of the City, is granted the right to make on behalf of the City, all warranty, indemnification or other claims to enforce any of the City's warranty rights related to the Materials. The Developer is assigned the benefits derived by the City from the actions of the Developer taken pursuant to this Section, insofar as such rights relate to the Materials.

G. Cost Certifications. As a material inducement for the City to enter into this Contract, the Developer shall pay, as part of the Administrative Costs, the costs and fees incurred by the City to review and cost certify the invoices for Materials submitted to the City, to ensure that the Materials are properly being purchased and used in the construction of the Project Improvements, all in accordance with this Contract.

#### **Section 2.05. Redevelopment Schedule.**

A. It is the intention of the parties that development activities for Redevelopment Project Area will be substantially commenced and completed on or before the dates set forth in **Exhibit E** attached hereto and incorporated herein by reference (the "**Redevelopment Schedule**"). Developer shall construct or cause to be constructed all Private Improvements, and all Public Improvements, and shall complete all other development-related activities including, but not necessarily limited to design, land preparation, environmental evaluation and remediation, construction, management, maintenance and procurement of private financing in sufficient time to comply with the Redevelopment Schedule. Changes in the

development program contemplated by the Incentive Plans that require an amendment under the Acts, as reasonably determined by City, shall be processed in accordance with the Acts, and changes in the development program contemplated by the Incentive Plans that do not require an amendment under the Acts, as reasonably determined by City, may be made only by agreement of the parties hereto.

B. The parties hereto recognize and agree that market and other conditions may affect the Redevelopment Schedule. Therefore, the Redevelopment Schedule is subject to change and/or modification, with the written approval of City, which shall not be unreasonably withheld, upon a showing by Developer of changed market or other conditions.

C. Any amendment to the LCRA Plan that is approved by City as provided herein may require an amendment to the Redevelopment Schedule and the provisions of this Contract. City shall use reasonable efforts to expedite the approval of the Land Use Approvals; provided, however, that nothing herein shall constitute or be deemed to be a waiver by City or the City Council of its legislative authority.

D. If Developer does not comply with the Redevelopment Schedule as set forth above, then, unless Developer requests an amendment of such Redevelopment Schedule prior to such violation and any amendment of the Redevelopment Schedule is so approved by City, City may require Developer to appear before the City Council to show cause why this Contract and the Incentive Plans shall not be terminated in accordance with **Section 6.02** hereof.

**Section 2.06. Design and Construction of Public Improvements.** Developer shall cause all of the Public Improvements to be designed and constructed as follows:

A. The Public Improvements shall be constructed in accordance with all Legal Requirements and all additional requirements that the City shall impose pursuant to the City's Code of Ordinances and all applicable regulations and policies.

B. The Public Improvements shall be funded by Developer and designed and constructed by or at the direction of Developer. The Parties agree that the escrow arrangements in Article 3 do not apply to the Public Improvements and apply only to the Off-Site Sewer Improvements.

C. The Sewer Improvements shall be funded by Developer in accordance with the escrow requirement of Article 3 and constructed by or at the direction of the City.

D. The parties agree that the costs associated with relocating any existing utilities from any existing public or private easement or from any existing right-of-way, as a result of construction of the Public Improvements, shall be paid by Developer and are not the responsibility of City. The parties agree that all costs associated with relocating any existing utilities from any existing right-of-way as a result of construction of the Public Improvements, which are not paid by a utility company, shall be paid by Developer and are not the responsibility of City.

**Section 2.07. Design Criteria and Review Procedures for Private Improvements.**

A. The land uses allowed on the property and the design and configuration of the Redevelopment Project Area shall be controlled by the Preliminary Development Plan. The Preliminary Development Plan may be amended pursuant to the requirements of the UDO. It is the intention of the parties that the uses allowed by the City pursuant to approval of the Preliminary Development Plan, and the City's approval of any amendments thereto, shall control the land uses permitted in the Redevelopment Area pursuant to this Contract.

B. Construction plans for the Private Improvements shall conform to the Preliminary Development Plan.

**Section 2.08. Construction and Maintenance of the Project.**

A. Construction. Except as otherwise provided in this Contract or in the Lease, Developer shall have complete and exclusive control over construction of the Project Improvements that it owns or controls (the “**Developer Controlled Improvements**”), subject, however, to all Legal Requirements. Developer hereby grants to City, its agents and employees the right to enter the Redevelopment Area (but not private residences unless otherwise allowed pursuant to applicable laws) at reasonable times for the purpose of inspecting the Redevelopment Project.

B. Certificates of Occupancy. City shall not be obligated to issue any certificates of occupancy for structures within the Redevelopment Project Area until a certificate of substantial completion for all required Public Improvements has been issued by the City pursuant to the provisions of the Design and Construction Manual.

C. Maintenance and Repair. Developer, at its sole cost and expense, at all times shall (1) maintain and operate Developer Controlled Improvements in a first class manner, (2) timely make all necessary repairs to and replacements and restorations of all parts of the Developer Controlled Improvements, (3) keep the Developer Controlled Improvements in good condition, repair and appearance, and (4) maintain casualty insurance on the Developer Controlled Improvements in an amount equal to the full replacement value thereof and provide City with evidence of such insurance upon demand.

Developer shall use its best efforts to contractually obligate any tenant, purchaser, transferee, developer, manager, contractor or subcontractor to comply with the provisions of this **Section 2.07.C** for all portions of the Private Improvements. Developer shall enforce the provisions of this **Section 2.07.C** to the maximum extent permitted by law. Developer shall use its best efforts to enforce such contract rights.

D. Prevailing Wages. The Developer shall comply with all laws regarding the payment of prevailing wages to contractors or subcontractors of the Developer, as applicable. Upon written request by the City, Developer shall provide or cause to be provided written proof that the requirements of this paragraph have been satisfied from and after the date that the Work has commenced. Developer shall indemnify the City for any damage resulting to it from failure of either the Developer or any contractor or subcontractor to pay prevailing wages pursuant to applicable laws.

**Section 2.09. Permitted Uses.** Property within the Redevelopment Project Area may only be used as allowed by the Preliminary Development Plan.

**Section 2.10. Certificate of Substantial Completion.** Promptly after substantial completion of the Redevelopment Project in accordance with the provisions of this Contract, the Developer shall submit a Certificate of Substantial Completion to the City. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit G**. The City agent or employee designated by the City to perform inspections shall, within thirty (30) days following City’s receipt of the Certificate of Substantial Completion, carry out such inspections necessary to verify to their reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. Upon acceptance of the Certificate of Substantial Completion, the Developer may record the Certificate of Substantial Completion with the Jackson County Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer’s agreements and covenants to construct the Redevelopment Project.

## ARTICLE 3: FUNDING FOR PUBLIC IMPROVEMENTS

### Section 3.01. Funding for Off-Site Sewer Improvements.

A. Prior to the issuance of any building permits related to the Project contemplated by this Contract, Developer will deposit with Assured Quality Title the sum of \$1,311,000 (the “**Deposit Sum**”) to be held in escrow for the purpose of guaranteeing the construction, installation, and completion of those sewer improvements that are deemed necessary by the City to provide adequate sewer service to the Redevelopment Area as a whole (the “**Off-Site Sewer Improvements**”). Notwithstanding the foregoing, no deposit shall be required prior to the Parties entrance into a mutually agreeable escrow agreement with Assured Quality Title to handle the escrow arrangements for the Deposit Sum and draws on the funds to complete the Off-Site Sewer Improvements. The City and Developer further agree that the Deposit Sum shall be held by the City in an interest bearing account, and that the City shall retain the right to any accrued interest.

B. The Parties agree that the Deposit Sum is the aggregated estimate of probable costs for such improvements, and that the Deposit Sum shall guarantee the construction, installation and completion of the required Off-Site Sewer Improvements which serve the Redevelopment Area as a whole, regardless of the actual costs incurred by the City for such improvements. Developer’s total liability for any costs related to the Off-Site Sewer Improvements shall not exceed the Deposit Sum, regardless the final actual cost of Off-Site Sewer Improvements. The City shall fund any costs that exceed the Deposit Sum which are needed to complete the Off-Site Sewer Improvements.

C. The construction of the Off-Site Sewer Improvements shall be the responsibility of the City and shall occur on a schedule to be determined by the City. Completion of the Off-Site Sewer Improvements shall not delay the Project. Certificates of occupancy shall be issued by the City for the Project when Developer has met all of the normally-applicable requirements to receive such certificates in accordance with the requirements of the City Code, and the status of completion of the Off-Site Sewer Improvements by the City shall not serve to delay the issuance of any temporary or final certificates of occupancy for the Project.

**Section 3.02. Completion of Public Improvements.** The Developer guarantees that all Public Improvements will be funded, installed, constructed and completed in accordance with the Approved Public Improvement Plans and the ordinances of the City not later than **two years** after the date of this Contract (“**Completion Date**”).

**Section 3.03. Compliance with Laws.** Developer shall in all respects comply with all applicable Legal Requirements pertaining to the construction, completion, dedication and installation of the Public Improvements. This Article shall not be deemed to create any commitment by the City to accept any Public Improvement for dedication and maintenance until all such Legal Requirements have been satisfied.

## ARTICLE 4: PROJECT CONTROL AND OPERATIONS

**Section 4.01. Tenant Approvals.** Subject to the provisions of **Section 2.09**, Developer shall have complete and exclusive control over the leasing of property which it owns within the Redevelopment Project Area including, without limitation, the fixing of rentals and the selection or rejection of tenants.

### Section 4.02. Sale or Disposition of Project Property.

A. Sale of Property. During the Construction Period, other than the sale of the Property to a Related Entity that is obligated to manage and operate the Project and that agrees that any subsequent change

in the party granted the right to manage and operate such property may be made only with the prior written approval of City, no sale, transfer or other conveyance of any property in the Redevelopment Project Area may be made except with the prior written approval of City, which approval will not be unreasonably withheld. City's right of approval of any transferee shall be in force during the Construction Period. Without limiting the generality of the foregoing, City may require that any transferee demonstrate to City's reasonable satisfaction, that it has sufficient financial, management, property ownership and operation capabilities, and that it is interested in the long-term viability of the subject land use and the LCRA Plan as a whole. In addition, as a condition precedent to the transfer of any property interest within the boundaries of the Redevelopment Project Area to any transferee, Developer shall require the transferee to enter, and shall deliver to City an Assignment Agreement in the form attached as **Exhibit G** (the "**Assignment Agreement**"), with those modifications as requested by such transferee and acceptable to City. Upon execution of an Assignment Agreement, Developer shall be released from its obligations in this Contract relating to said transferred property. City shall exercise its right to approve or deny any proposed sale or transfer within thirty (30) days from the date of receipt of written notice from Developer. In the event City fails to act within said thirty (30) days, the proposed sale or other transfer shall be deemed approved.

B. Continuation of Rent Payments. In the event of the sale or other voluntary or involuntary disposition of any or all of the real property of Developer or any third party in the Redevelopment Project Area, the Lease rents shall continue, and such obligations shall inure to and be binding upon Developer and its successors and assigns in ownership of said property as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable as if such purchaser, transferee or other possessor thereof were originally a party to and bound by this Contract.

C. Obligation to Ameliorate Existing Conditions. Developer's obligations pursuant to **Section 2.03** hereof, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable against purchasers or other transferees as if such purchaser or transferee were originally a party to and bound by this Contract.

D. Incorporation. The obligations and restrictions set forth in this Contract during the Construction Period shall be incorporated by reference into any deed or other instrument conveying an interest in real property during the Construction Period, other than a lease agreement, within the Redevelopment Project Area and shall provide that said obligations or restrictions shall constitute a benefit held by both Developer and City and that City is an intended third party beneficiary of said obligations and restrictions. Failure of Developer to require that such restrictions be placed in any such deed or other instrument shall in no way modify, lessen or diminish the obligations and restrictions set forth herein relating to the Redevelopment Project Area.

E. Restriction on Transfer to Tax-Exempt Entities. No sale, transfer or other conveyance of any property in the Redevelopment Project Area may be made to an entity that may claim exemption, or is exempt, from real property taxes for all or part of the property in the Redevelopment Project Area (a "**Restricted Entity**") during the Construction Period (the "**Restricted Period**") without the prior written approval of the City. In the event that Developer seeks to transfer any property in the Redevelopment Area to a Restricted Entity during the Restricted Period, such transfer may only occur upon the prior written approval of the City, which approval shall not be unreasonably withheld, and upon the prior execution of a separate agreement between the purchasing Restricted Entity and the City which provides for the annual payment of an amount equal to the Lease rents, notwithstanding the tax-exempt status of the transferee. This requirement shall be a covenant running with the land and shall be enforceable for such period as if such purchaser, transferee or possessor thereof were originally a party to and bound by this Contract.

F. Notification to City of Transfer. During the Construction Period, Developer shall notify City in writing of any proposed sale or other transfer of any or all of the real property in the Redevelopment Project Area or any interest therein. Such notice shall be provided not less than thirty (30) days prior to the proposed effective date of the sale or other transfer in a manner as described in **Section 6.04** hereof and shall include a copy of the instrument effecting such sale or other disposition to enable City to confirm that the requirements set forth above in this **Section 5.03** hereof have been fulfilled.

**Section 4.03. Compliance with Laws.** Subject to Developer's rights to contest the same in any manner permitted by law, Developer, its officers, directors and principals, at its sole cost and expense, shall comply in every respect with all Legal Requirements, ordinances, rules and regulations of all federal, state, county and municipal governments, agencies, bureaus or instrumentalities thereof now in force or which may be enacted hereafter which pertain to the ownership, occupancy, use and operation of the Redevelopment Project and the Redevelopment Project Area.

**Section 4.04. Assignment of Developer's Obligations.**

A. Restriction on Assignments; Exception for Related Entities. The Developer represents that its undertakings pursuant to this Contract are for the purpose of redevelopment. Developer agrees that this Contract and the rights, duties and obligations hereunder may not and shall not be assigned by Developer during the Construction Period except upon terms and conditions agreeable to City; provided, however, nothing in this **Section 5.06** shall prevent the Developer from assigning, without the City's consent, all rights and/or obligations under this Contract to a Related Entity (as defined below), provided that prior to an assignment to a Related Entity the Developer furnishes City with the name of the Related Entity, together with a certification from Developer, and such other proof as City may reasonably request, that such assignee is a Related Entity of Developer. Any proposed transferee shall have all of the qualifications and financial responsibility, as determined by City in its sole discretion, necessary and adequate to fulfill the obligations of Developer, and, if the proposed transfer relates to a portion of the Redevelopment Project Area on which Project Improvements are under way, such obligations to the extent that they relate to such property. Any proposed transferee shall, utilizing the form Assignment Agreement, expressly for the benefit of City, assume all of the obligations of Developer under this Contract and agree to be subject to all the conditions and restrictions to which Developer is subject. Upon approval of the Assignment Agreement by City as set forth herein, Developer shall be released from such obligations accruing after the date of such assignment.

B. Collateral Assignment of Payments. Developer may collaterally assign or pledge the Redevelopment Project Area by providing City with notice of any such assignment or pledge, and such assignment shall be in a form as approved by the City Attorney. Such assignment or pledge shall remain subject to the terms, provisions and conditions of this Contract and such assignment shall in no way be deemed an amendment or modification of this Contract.

**Section 4.05. Transfer of Interests in Developer – City Approval.**

A. During the Construction Period, Developer shall, prior to the sale, conveyance, merger or other transfer of any interest in Developer (including without limitation any stock if Developer is a corporation or membership interests if Developer is a limited liability company, and any transfers by operation of law), deliver to City a request for approval of such transfer, and no such transfer shall be permitted except with the prior approval of City; provided, however, that the members, partners or shareholders of Developer as of the Effective Date, shall have the right to transfer, in one or more transactions, up to a cumulative total of one hundred percent (100%) of the ownership interest in Developer, without City's consent, to a Related Entity.

B. Upon submission by Developer of any request for transfer to City during the Construction Period, City shall have the right to request such documentation and information as City shall determine to be

necessary or desirable to determine whether such transfer is acceptable to City. Any purported transfer by Developer or any party owning any interest in Developer of any interest without the consent of City shall be null and void. In addition, City may require Developer, as a condition precedent to the transfer of any interests in Developer, to require the transferee to enter into an Assignment Agreement with the City in substantial compliance with the form attached as **Exhibit G**, obligating the transferee to comply with the requirements of the LCRA Plan and the obligations in this Contract relating to the property. Notwithstanding the foregoing, Developer or Developer's members, or any one of them, may, without notice to or approval of City, transfer interests in Developer to any Affiliate of such member, if such transfer does not result in a material change in the controlling interests of Developer.

## **ARTICLE 5: GENERAL COVENANTS**

### **Section 5.01. Indemnification.**

A. Developer shall indemnify, protect, defend and hold City and its officers, directors, members, commissioners, employees and agents (collectively, the "**Indemnified Parties**" or, individually, an "**Indemnified Party**") harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any acts or omissions of Developer, its constituent members or partners, their employees, agents, independent contractors, licensees, invitees or others acting by, through or under such indemnifying parties, in connection with its or their activities conducted pursuant to this Contract and/or in connection with the ownership, use or occupancy and development or redevelopment of the Redevelopment Area or a portion thereof and the Project Improvements.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an "**Action**") is begun or made as a result of which Developer may become obligated to one or more of the Indemnified Parties hereunder, the Indemnified Party shall give prompt notice to Developer of the occurrence of such event, but the failure to notify Developer will not relieve Developer of any liability that it may have to an Indemnified Party. After receipt of such notice, Developer may elect to defend, contest or otherwise protect the Indemnified Party against any such Action, at the cost and expense of Developer, utilizing counsel of Developer's choice. The Indemnified Party shall have the right, but not the obligation, to participate, at the Indemnified Party's own cost and expense, in the defense thereof by counsel of the Indemnified Party's choice. In the event that Developer shall fail timely to defend, contest or otherwise protect an Indemnified Party against such Action, the Indemnified Party shall have the right to do so, and (if such defense is undertaken by the Indemnified Party after notice to Developer asserting Developer's failure to timely defend, contest or otherwise protect against such Action), the Indemnified Party may submit any bills for fees and costs received from its counsel to Developer for payment and, within thirty (30) business days after such submission, Developer shall transfer to the Indemnified Party sufficient funds to pay such bills. Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

C. An Indemnified Party shall submit to Developer any settlement proposal that the Indemnified Party shall receive. Developer shall be liable for the payment of any amounts paid in settlement of any Action to the extent that Developer consents to such settlement. Neither Developer nor the Indemnified Party will unreasonably withhold its consent to a proposed settlement.

D. Developer expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Contract imposed upon Developer in order to induce City to enter into this Contract. To the fullest extent permitted by law, an Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the



rights to indemnification created by, or provided pursuant to, this Contract. If such court action is successful, the Indemnified Party shall be reimbursed by Developer for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

E. The right to indemnification set forth in this Contract shall survive the termination of this Contract and the Redevelopment Project Area as a development area.

#### **Section 5.02. Breach-Compliance.**

A. If Developer or City does not comply with provisions of this Contract, including provisions of the LCRA Plan pertaining to the Redevelopment Project Area, within the time limits and in the manner for the completion of the Redevelopment Project as therein stated, except for any extensions or waivers described herein and Excusable Delays, in that Developer or City shall do, permit to be done, or fail or omit to do, or shall be about so to do, permit to be done, or fail or omit to have done, anything contrary to or required of it by this Contract or the LCRA Act, and if, within thirty (30) days after notice of such default by the nondefaulting party to the defaulting party, the defaulting party shall not have cured such default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period (but in any event if the defaulting party shall not have cured such default within one hundred twenty (120) days), then the nondefaulting party may institute such proceedings as may be necessary in its opinion to cure the default. Such proceedings may including, but are not limited to, proceedings to compel specific performance by the party in default of its obligations and, in the case of default by Developer, City is granted the right to terminate this Contract, the right to apply any deposit or other funds submitted by Developer to City in payment of the damages suffered by it to such extent as is necessary to protect City from loss or to ensure that the LCRA Plan and the Redevelopment Project are fully and successfully implemented in a timely fashion, and the right to withhold issuance of a Certificate of Substantial Completion. Notwithstanding anything contained in the foregoing, any member of the Company shall have the same rights, but not the obligation, to cure any breach.

B. If any action is instituted by either party hereunder, the nonprevailing party in such action shall pay any and all costs, fees and expenses, including attorneys' fees incurred by the prevailing party in enforcing this Contract.

C. The rights and remedies of the parties to this Contract, whether provided by law or by this Contract, shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by either party shall apply to obligations beyond those expressly waived.

D. Developer (for itself and its successors and assigns, and for all other persons who are or who shall become liable, by express or implied assumption or otherwise, upon or subject to any obligation or burden under this Contract), waives to the fullest extent permitted by law and equity all claims or defenses otherwise available on the ground of being or having become a surety or guarantor, whether by agreement or operation of law. This waiver includes, but is not limited to, all claims and defenses based upon extensions of time, indulgence or modification of terms of contract.

E. Any delay by either party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit them in any way. No waiver in fact made by either party of any specific default by the other party shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect, to the particular default except to the extent specifically waived.

F. In no event shall City be obligated to certify any Reimbursable Project Costs, approve any Certification Application or Draw Certificate or reimburse Developer for any Reimbursable Project Costs incurred or paid by Developer at any time while any default by Developer has occurred, or any event that, with the passage of time or the giving of notice or both, will ripen into or constitute a default hereunder. The City shall notify Developer if this Section is being relied upon to withhold disbursement.

G. Notwithstanding anything to the contrary herein, Developer agrees that in the event of any default by City under this Contract, it will not bring any action or suit to recover damages against City or any officer, director, commissioner, member, employee, or agent of any of them, except that this **Section 5.02.G** shall not prevent the award of attorneys' fees under **Section 5.02.B** hereof in the event of a default by City under this Contract. Actions brought in equity or which otherwise do not seek to recover damages are not precluded by this Section.

**Section 5.03. Excusable Delays.**

A. The parties understand and agree that Developer shall not be deemed to be in default of this Contract because of an "**Excusable Delay**" (as herein defined). For purposes of this Contract, the term "**Excusable Delay**" shall mean any delay beyond the reasonable control of Developer, caused by damage or destruction by fire or other casualty, strike, shortage of materials, civil disorder, war, wrongful failure or refusal of any governmental entity to issue any permits and/or legal authorization necessary for the Developer to proceed with construction of the Work or any portion thereof, the Developer's inability to secure acceptable financing for the development despite the Developer's commercially reasonable efforts, unavailability of labor or other labor/contractor disputes outside the reasonable control of the Developer, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, and any other events or conditions, which shall include but not be limited to any litigation interfering with or delaying the construction of the Project in accordance with this Contract, which in fact prevents the Developer from discharging its obligations hereunder.

B. With the approval of City, the time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any of the foregoing causes, which approval shall not be arbitrarily or unreasonably withheld. Developer may be granted such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays. Nothing herein shall excuse Developer from any obligation to pay money hereunder, nor shall this Section excuse Developer from performance of its obligations because of a lack of funds or inability to obtain financing, except if financing commitments obtained by Developer and approved by City as provided in this Contract are not fulfilled by the party issuing such commitment through no fault of Developer, in which case Developer shall be entitled to additional time not to exceed ninety (90) days to obtain new financing commitments to be approved by City in the same manner as provided herein for the initial financing commitments. Notwithstanding the foregoing, in no event shall such Excusable Delays entitle Developer to a certificate of occupancy for any structure located within the Redevelopment Project Area until a certificate of substantial completion for the Public Improvements has been issued by City pursuant to the provisions of the Design and Construction Manual.

**Section 5.04. Notice.** Any notice required by this Contract shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, and addressed as hereinafter specified.

Any notice to City shall be addressed to:

City Manager  
Lee's Summit City Hall

Any notice to Developer shall be addressed to:

Lee's Summit Senior Community,  
LLC

220 SE Green Street  
Lee's Summit, MO 64063

c/o O'Reilly Development Co., LLC  
5051 S. National Ave. Suite 4-100  
Springfield, MO 65810

With a copy to:

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

With a copy to:

Spencer Fane  
1000 Walnut, Suite 1400  
Kansas City, MO 64106  
Attn: S. Shawn Whitney

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

**Section 5.05. Modification.** The terms, conditions, and provisions of this Contract and of the LCRA Plan can be neither modified nor eliminated except in writing and by mutual agreement between City and Developer. Any modification to this Contract as approved shall be attached hereto and incorporated herein by reference.

**Section 5.06. Effective Date.** This Contract shall become effective on the Effective Date and shall remain in full force and effect until the end of the Construction Period.

**Section 5.07. Recording.** Upon full execution by City and Developer, a Memorandum of this Contract (using the legal description for the Redevelopment Project Area) shall be recorded by City, at Developer's expense, in the Office of the Recorder of Deeds for Jackson County, Missouri.

**Section 5.08. Applicable Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Missouri.

**Section 5.09. Covenant Running With the Land.** The provisions of this Contract shall be covenants running with the land and shall remain in effect until termination. They shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and be enforceable by, City, its successors and assigns, against Developer, its successors and assigns, and every successor in interest to the subject real property, or any part of it or any interest in it and any party in possession or occupancy of the real property or any part thereof.

**Section 5.10. Administrative Costs and Expenses.**

A. Termination of Funding Agreement. The Developer has previously advanced, pursuant to a Funding Agreement between the City and the Developer dated June 26, 2019 ("the **Funding Agreement**"), certain funds for Administrative Costs. Within thirty (30) days after execution of this Contract, the City shall submit final invoices which will be paid by Developer, along with the payment of any other outstanding invoices, pursuant to the terms of the Funding Agreement. All such invoiced amounts shall be paid first from the existing advanced funds and thereafter by the Developer directly to the extent that invoiced amounts exceed the existing advanced funds. After final payment of all outstanding invoices is made by Developer under the Funding Agreement, the Funding Agreement shall be terminated, and any funds remaining on deposit with the City pursuant to the Funding Agreement shall be used by the City in accordance with paragraph **B** of this Section.

B. **Initial Deposit.** In addition to the Administrative Costs paid under the Funding Agreement, the City shall also be reimbursed for all other Administrative Costs incurred in connection with the Plans and this Contract. Upon termination of the Funding Agreement, the City shall deposit the funds remaining on deposit with the City pursuant to the Funding Agreement in a separate, segregated account of the City (the “**Advanced Funds Account**”), and, if such amount is less than \$5,000, then Developer shall make a payment to the City (all amounts in the Advanced Funds Account are the “**Advanced Funds**”) so that the initial amount on deposit in the Advanced Funds Account, together with funds remaining from the Funding Agreement, is \$5,000. If there are no funds on deposit with the City pursuant to the Funding Agreement on the Effective Date, then the Developer shall advance the sum of \$5,000 to the City as Advanced Funds for deposit in the Advanced Funds Account. If there are more funds on deposit with the City pursuant to the Funding Agreement than what is necessary to advance the sum of \$5,000 to the City as Advanced Funds for deposit in the Advanced Funds Account, then the City shall promptly refund such excess amount to the Developer. The City may invest the Advanced Funds in the same manner as other funds of the City are invested, and interest earnings shall remain in the Advanced Funds Account.

C. **Payment of Administrative Costs.** All Advanced Funds shall be used to pay Administrative Costs. The City shall submit to the Developer an itemized statement of actual payments made from the Advanced Funds Account for such expenses on a regular periodic basis, but no more often than monthly and no less often than quarterly. Developer shall replenish the Advanced Funds Account so that it maintains a balance of \$5,000 during the effective period of this Contract. At the termination of this Contract and after the payment of all final Administrative Costs, all funds remaining in the Advanced Funds Account shall be returned to Developer.

**Section 5.11. Validity and Severability.** It is the intention of the parties hereto that the provisions of this Contract shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Contract. Accordingly, if any provision of this Contract shall be deemed invalid or unenforceable in whole or in part, this Contract shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Contract in order to render the same valid and enforceable. All exhibits attached hereto are hereby incorporated into this Contract by reference; however, in the event of any conflict between any exhibit and the text of the Contract, the text of the Contract shall prevail.

**Section 5.12. Time and Performance are of the Essence.** Time and exact performance are of the essence of this Contract.

**Section 5.13. City’s Legislative Powers.** Notwithstanding any other provisions in this Contract, nothing herein shall be deemed to usurp the governmental authority or police powers of City or to limit the legislative discretion of the City Council, and no action by the City Council in exercising its legislative authority shall be a default under this Contract.

**Section 5.14. Disputes between Private Parties and Affiliated Entities.** In the event of a dispute regarding the rights, duties and obligations of any of the private parties that are associated with developing the Redevelopment Area, including any disputes between or among Developer, Related Entities and such parties’ lenders, the City shall have no obligation to resolve such disputes, and the private parties that are connected with such dispute shall independently resolve their issues. In the event that the City is requested to take any action associated with the implementation of the LCRA Plan or development of the Redevelopment Area, and another private party that is Developer, a Related Entity of Developer, a lender, or another private party that has a colorable right under this Contract, contests or challenges the City’s right

to take such action, the City may decline to take such action until such time as the dispute between the appropriate parties is resolved to the City's satisfaction.

**Section 5.15. Approvals by City.** Unless specifically provided to the contrary herein, all approvals or consents of the City may be given by the City Manager or his or her designee without the necessity of any action by the City Council. The City Manager, in his/her discretion, may seek the advice, consent or approval of the City Council for any action that requires consent or approval by the City Manager pursuant to this Contract.

**Section 5.16. Electronic Storage.** The Parties agree that the transactions 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.

*[Remainder of the page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

**CITY OF LEE'S SUMMIT, MISSOURI**

By: \_\_\_\_\_  
Stephen A. Arbo, City Manager

[SEAL]

ATTEST:

\_\_\_\_\_  
Trisha Fowler Arcuri  
City Clerk

STATE OF MISSOURI    )  
                                  )   ss.  
COUNTY OF JACKSON )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. Arbo, City Manager of the City of Lee's Summit, Missouri, a city duly incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such person duly acknowledged the execution of the same to be the free act and deed of said City.

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

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_



## EXHIBIT A

### LEGAL DESCRIPTION OF REDEVELOPMENT AREA AND REDEVELOPMENT PROJECT AREA

#### REDEVELOPMENT AREA

All of the Southwest Quarter (SW¼) of Section Ten (10), Township Forty-seven (47), Range Thirty-one (31) in LEE'S SUMMIT, JACKSON County, Missouri lying between the South Right of way line of U.S. Highway 50 and the following described line; beginning at a point of the West line of said Southwest Quarter (SW¼) that is 1008.2 feet South of the Northwest corner thereof, said point being 900 feet South of the center-line of the East bound or South traffic lane of said Highway 50; thence East parallel with said center-line to the East line of said Southwest Quarter (SW¼) EXCEPT all right, title and interest over and across all that part of defendants' real property and real property rights and interest in a tract of land located in the North Half (N½) of the Southwest Quarter (SW¼) of Section Ten (10), Township Forty-seven (47) North, Range Thirty-one (31) West in LEE'S SUMMIT, JACKSON County, Missouri, lying within the widths on the right or Southerly side of the following described Eastbound Route 50 Improvement centerline, to wit: Beginning with a width of 274.3 meters (900 feet) at Station 24+219.758; thence an even width of 274.3 Meters (900 feet) to Station 24+234.8; thence decreasing uniformly to a width of 248.4 Meters (815 feet) at Station 24+240.4; thence decreasing uniformly to a width of 212 Meters (696 feet) at Station 24+248.7; thence decreasing uniformly to a width of 196.6 Meters (645 feet) at Station 24+282.8; thence decreasing uniformly to a width of 190 Meters (623 feet) at Station 24+300; thence decreasing uniformly to a width of 55 Meters (181 feet) at Station 24+525; thence an even width of 55 Meters (181 feet) to Station 24+600; thence decreasing uniformly to a width of 43 Meters (141 feet) at Station 24+650; thence an even width of 43 Meters (141 feet) to Station 24+925; thence increasing uniformly to a width of 45 Meters (148 feet) at Station 24+947; thence decreasing uniformly to a width of 39.1 Meters (128 feet) at Station 24+975.

#### REDEVELOPMENT PROJECT AREA

All that part of the Southwest Quarter of Section 10, Township 47 North, Range 31 West, in the City of Lee's Summit, Jackson County, Missouri, described as follows:

COMMENCING at the Northwest corner of the Southwest Quarter of Section 10, Township 47 North, Range 31 West, said point also lying on the centerline of Westbound U.S. Route 50 right of way, as established in MoDOT Job No. J4P1191, dated 12/14/98; thence South 87 degrees 49 minutes 47 seconds East, along the North line of said Southwest Quarter, and along said centerline, a distance of 2058.21 feet to a point; thence South 02 degrees 10 minutes 13 seconds West, departing said North line and said centerline, a distance of 246.60 feet to a point on the South line of said U.S. Route 50 right of way, as established in said MoDOT Job No. J4P1191, dated 12/14/98, the POINT OF BEGINNING; thence South 87 degrees 48 minutes 47 seconds East, along said South line, a distance of 255.44 feet to a point; thence South 82 degrees 16 minutes 26 seconds East, continuing along said South line, a distance of 72.52 feet to a point; thence North 79 degrees 54 minutes 16 seconds East, continuing along said South line, a distance of 94.02 feet to a point; thence South 87 degrees 48 minutes 47 seconds East, continuing along said South line, a distance of 162.49 feet to a point on the East line of said Southwest Quarter; thence South 02 degrees 13 minutes 14 seconds West, departing said South line, along said East line, a distance of 769.10 feet to the Northeast corner of Princeton Heights 3rd Plat, a subdivision in the City of Lee's Summit, Jackson County, Missouri; thence North 87 degrees 51 minutes 04 seconds West, departing said East line, along the North line of said Princeton Heights 3rd Plat, and along the North line of Princeton Heights 2nd Plat, a subdivision in the City of Lee's Summit, Jackson County, Missouri, a distance of 581.97 feet to a point; thence North 02 degrees 13 minutes 14 seconds East, departing said North line, a distance of 756.49 feet to the POINT OF BEGINNING, containing 442,278 Square Feet or 10.1533 Acres, more or less.



**EXHIBIT B**

**MAP OF REDEVELOPMENT AREA AND REDEVELOPMENT PROJECT AREA**



**Note: Redevelopment Area is red and Redevelopment Project Area is blue.**

## **EXHIBIT C**

### **PRIVATE IMPROVEMENTS**

Land acquisition, preparation of public improvements, site preparation, and the construction of private improvements consisting of “The Princeton” senior living community consisting of a 3-story independent living facility, 1-story memory care facility, and 1-story assisted living facility which will contain approximately 153 units which will consist of 91 independent living units, 44 assisted living units, and 18 memory care units.

The foregoing description of the Private Improvements is based on the Preliminary Development Plan approved by the City for the Redevelopment Project Area as of the Effective Date of this Contract and is subject to change based on changes to the Private Improvements approved in any amendment to the Preliminary Development Plan, as the same may be amended from time to time.

## **EXHIBIT D**

### **PUBLIC IMPROVEMENTS**

The requirements of Exhibit D shall not exceed or be interpreted to exceed those set forth in the Public Improvements Plans.

#### **Water Improvements**

Install approximately 2650 linear feet of 12-inch C900 PVC public water main and approximately 60 linear feet of 12-inch Class 50 DIP public water main and all associated appurtenances along the south side of Oldham Road (Line 1) from the existing 20-inch public water transmission main on Ranson Road eastward to the west side of (new) Princeton Drive and install approximately 755 linear feet of 8-inch C900 PVC public water main and all associated appurtenances along the west side of (new) Princeton Drive (Line 2) to the existing 8-inch public water main near the southeast corner of the project. Foundation Only building permits will be allowed upon approval of the engineering plans. Lines 1 and 2 shall have received a Certificate of Substantial Completion and the private site fireline loop shall be considered substantially complete prior to any full building permits being issued.

#### **On-Site Sewer Improvements**

The sanitary sewer improvements that will be constructed by Developer within the boundaries of the Redevelopment Project Area as required by the City's Code of Ordinances.

#### **Transportation Improvements**

1. Improve Oldham Parkway adjacent to the development to an urban standard as shown on the Preliminary Development Plan. This improvement shall be constructed in coordination with widening of Oldham Parkway for left-turn lanes at the site driveways.
2. The construction of Princeton Drive as a public street, as shown on the Preliminary Development Plan.

**EXHIBIT E**

**REDEVELOPMENT SCHEDULE**

| <b>EVENT</b>         | <b>ESTIMATED COMMENCEMENT</b>   | <b>ESTIMATED COMPLETION</b> |
|----------------------|---------------------------------|-----------------------------|
| Site Preparation     | 3 <sup>rd</sup> Quarter of 2019 |                             |
| Public Improvements  | [Developer to complete table]   |                             |
| Private Improvements |                                 |                             |

The above schedule is the Developer's estimate based on information available on the Effective Date of this Contract. Developer may commence construction activities earlier than the dates set forth in this Redevelopment Schedule.

## EXHIBIT F

### CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, Lee's Summit Senior Community, LLC (the "**Developer**"), pursuant to that certain Redevelopment Contract dated as of \_\_\_\_, 2019, between the City of Lee's Summit, Missouri (the "**City**") and the Developer (the "**Contract**"), hereby certifies to the City as follows:

1. That as of \_\_\_\_\_, 20\_\_\_\_, the Redevelopment Project (as such term is defined in the Contract) has been substantially completed in accordance with the Contract.
2. The Redevelopment Project has been substantially completed in a good and workmanlike manner.
3. Lien waivers for the Public Improvements have been obtained.
4. This Certificate of Substantial Completion is accompanied by the project architect's certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as Appendix A and by this reference incorporated herein, certifying that the Redevelopment Project has been substantially completed in accordance with the Contract.
5. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Contract to evidence the Developer's satisfaction of all obligations and covenants with respect to the Redevelopment Project.
6. The City's acceptance (below) or the City's failure to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate of Substantial Completion to the City (which written objection, if any, must be delivered to the Developer prior to the end of such 30-day period), and the recordation of this Certificate of Substantial Completion with the Jackson County Recorder of Deeds, shall evidence the satisfaction of the Developer's agreements and covenants to construct the Redevelopment Project.

This Certificate of Substantial Completion shall be recorded in the office of the Jackson County Recorder of Deeds. This Certificate of Substantial Completion is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Contract.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Lee's Summit Senior Community, LLC**  
a Missouri limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTED:**

**CITY OF LEE'S SUMMIT, MISSOURI**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Insert Notary Form(s) and Legal Description]

## EXHIBIT G

### FORM OF ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and is made by and among Lee's Summit Senior Community, LLC ("Assignor"), \_\_\_\_\_, a \_\_\_\_\_ ("Assignee"), and the City of Lee's Summit, Missouri, a municipal corporation (the "City").

#### RECITALS

A. On July 16, 2019, the City Council by Ordinance No. 8675 approved the Redevelopment Plan for the Princeton Redevelopment Area (the "**Plan**").

B. On \_\_\_\_\_, 2019, the City and Assignor entered into a Redevelopment Contract that set forth the respective obligations and duties of the City and Assignor with respect to the implementation of the Plan (the "**Redevelopment Contract**").

C. Assignor now desires to enter into this Assignment to convey to Assignee its rights, interests, duties and obligations under the Redevelopment Contract, and Assignee has agreed to assume and perform all of Assignor's rights, duties, interest and obligations under the Redevelopment Contract.

NOW, THEREFORE, in consideration of the foregoing and the covenants and obligations contained in this Assignment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and among Assignor, Assignee and the City as follows:

*Capitalized terms that are not defined in this Assignment shall have the meaning assigned to them in the Redevelopment Contract.*

1. Assignee acknowledges that it has been provided with and/or has reviewed true and accurate copies of the Plan, the Ordinance that approved the Plan, the Redevelopment Contract and all other documents associated with the Plan that may be necessary for Assignee to make an informed decision regarding purchase of the Property with respect to the matters set forth in those documents and this Assignment Agreement.

2. The Assignor hereby assigns to the Assignee all of the Assignor's rights, duties, interests and obligations under the Plan, with respect to the Redevelopment Project Area, and the Redevelopment Contract.

3. Assignee acknowledges that the Property will be subject to the payment of rent under a Lease Agreement between the City and Developer dated \_\_\_\_\_, 2019. The obligation to make said Lease rent payments shall be a covenant running with the land.

5. Assignee acknowledges that in the event of the sale, lease, sublease, assignment, or other voluntary or involuntary disposition of any or all of the Property, Lease rents shall continue, and such obligations shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable as if such purchaser, tenant, transferee or other possessor thereof were originally a party to and bound by the Contract. Assignee assumes the duty to notify any

purchaser, tenant, transferee or other possessor of the property its rights, duties and obligations under the Contract.

6. Assignee acknowledges that, for any subsequent conveyance, the City must be notified in writing of the proposed sale of the Property prior to the proposed effective date of the sale, which notification shall include a copy of the instrument affecting such sale. Assignee acknowledges that its purchase and any subsequent sale of the Property will be subject to any and all rights of the City or Developer, as are set forth in the Redevelopment Contract.

7. The Plan and the Redevelopment Contract shall inure to and be binding upon the successors and assigns of Developer, as to the Property, including Assignee, as if they were in every case specifically named and shall be construed as a covenant running with the land and shall be enforceable against purchasers or other transferees as if such purchaser or transferee were originally a party to and bound by this Assignment Agreement.

8. Assignee and the City acknowledge that, upon the full execution of this Assignment Agreement, Developer is hereby released from all its obligations under the Redevelopment Contract relating to the Property.

9. This Assignment Agreement shall be governed by the laws of the State of Missouri.

10. Except as otherwise provided herein, each of the parties hereto will pay its own costs and expenses, including attorney's fees, incurred by such party or on its behalf in connection with this Assignment and the transactions contemplated herein, except that Assignee shall pay for all expenses incurred by the City pursuant to the Redevelopment Contract.

[Remainder of this page intentionally left blank]



IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

**ASSIGNOR:**

Lee's Summit Senior Community, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MISSOURI        )  
  ) ss.  
COUNTY OF JACKSON     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Lee's Summit Senior Community, LLC, personally known by me to be the person who executed the within instrument on behalf of said company and acknowledged to me that he executed the same for the purposes therein stated.

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

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

Printed Name: \_\_\_\_\_

[SEAL]

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

**ASSIGNEE:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, personally known by me to be the person who executed the within instrument on behalf of said \_\_\_\_\_ and acknowledged to me that he executed the same for the purposes therein stated.

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

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

Printed Name: \_\_\_\_\_

[SEAL]

My Commission Expires:

\_\_\_\_\_

**CITY:**

CITY OF LEE'S SUMMIT, MISSOURI

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MISSOURI )  
 )  
COUNTY OF JACKSON )

ss:

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did say that he/she is the City Manager of the City of Lee's Summit, Missouri, a Missouri municipal corporation, that said instrument was signed on behalf of said corporation by authority of its City Council, and acknowledged said instrument to be the free act and deed of said corporation.

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

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

Printed Name: \_\_\_\_\_

[SEAL]

My Commission Expires:

\_\_\_\_\_