

CROSS EASEMENT

THIS CROSS EASEMENT (the “**Easement Agreement**”) is made as of _____, 2018 (the “**Effective Date**”) by **THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI A/K/A METROPOLITAN COMMUNITY COLLEGE** (hereinafter “**MCC**” or “**Grantor**”), for itself, the City of Lee’s Summit, Missouri by and through the Lee’s Summit Parks and Recreation Board (hereinafter “**LSPR**” or “**Grantee**”), with an address of 220 SE Green Street, Lee’s Summit, Missouri 64063, Attn: Administrator, and the future owners of the property herein defined.

Recitals

A. MCC is the fee owner of a tract of land in Lee’s Summit, Missouri (the “**Property**”) which Property is improved with, among other things, a recreation center (the “**Rec Center**”) and various public and private infrastructure and utilities located throughout, under, and across the Property in parking areas, driveways, sidewalks, landscaped areas, and other common areas that and complement the Rec Center and otherwise provide ingress and egress access from the Rec Center to other parts of the Property and the public streets adjoining the Property (collectively, the “**Common Area**”).

B. MCC and LSPR have entered into that certain Real Estate Purchase Agreement dated _____, 2018 (the “**Contract**”), pursuant to which MCC is conveying the Rec Center and portions of the Common Area to LSPR, as more fully depicted in the site plan and location attached hereto as **Exhibit A** and legally described on **Exhibit A-1** (the “**LSPR Property**”).

C. After the closing of the Contract, MCC will retain fee ownership of all the Property, less the LSPR Property (the “**MCC Property**”).

D. In furtherance of the redevelopment, use and operation of the LSPR Property and the MCC Property, MCC desires to dedicate, prior to the conveyance of the LSPR Property to LSPR, various cross pedestrian, vehicular, utility, and self-help easements over, across, above, through and beneath the Property, excluding the buildings and other facilities located thereon, for use by MCC and its officers, agents, employees, attorneys, elected officials, and board members, for Grantee and its officers, agents, employees, attorneys, and elected officials, and the future owners and occupants of the LSPR Property, subject to and conditioned upon the terms and conditions set forth herein.

Agreement

NOW, THEREFORE, MCC, as the sole owner of the Property, hereby states and declares as follows:

1. **Recitals.** The foregoing recitals are an integral part of this Easement Agreement, are incorporated into this Easement Agreement, and are not merely recitations.

2. **Grant of Easements.** MCC hereby dedicates and reserves unto itself and any and all successors and assigns in ownership of all or any portion of the Property, including LSPR, the following described easements (individually, the "**Easement**" and collectively, the "**Easements**"), subject to the terms and conditions hereinafter set forth:

2.1. **Pedestrian Easement.** A nonexclusive easement for the purpose of pedestrian ingress and egress on, over, across or between the MCC Property and the LSPR Property (hereinafter, individually, each is at times referred to as a "**Property**" and together, are referred to as the "**Properties**" or "**Easement Area**") inclusive of: (i) all private streets, driveways, roadways and alleys designed or dedicated for use by the Owners which are now or hereafter within or abutting or located upon any portion of either or both of the Common Areas of the Properties; and (ii) all walkways, concourses, plazas, and other pedestrian areas now or hereafter located on any portion of either or both of the Common Areas of the Properties. These nonexclusive Easements, however, are limited to those portions of either or both of the Properties which are improved, from time to time, as Common Areas for pedestrian use and made available for such use and shall specifically exclude any building or buildings now or hereinafter located upon such Properties, including but not limited to, the Rec Center. All such improved Common Areas may be reduced, increased, revised, vacated or relocated from time to time by the applicable owner or owners of the Properties (hereinafter each an "**Owner**" and together, the "**Owners**"), subject to the reasonable consent of the other Owner or Owners making use of such Common Areas, and the Easement herein granted shall be correspondingly reduced, increased, revised, vacated or relocated from time to time, so that the Easement herein granted shall at all times correspond to the Common Areas of each of the Properties which are from time to time improved by the Owner thereof for pedestrian use.

2.2. **Vehicular Easement.** A nonexclusive easement for the purpose of vehicular ingress and egress on, over, across and between the Properties and all streets, roadways and alleys designed or dedicated for such use which are now or hereafter abutting or located on any portion of the either or both of the Common Areas of the Properties. These nonexclusive Easements, however, are limited to those portions of the either or both of the Properties, which are improved by the respective Owner thereof, from time to time, as Common Areas for vehicular ingress and egress as such portions may be reduced, increased, revised, vacated or relocated from time to time by such Owner, subject to the reasonable consent of the other Owner. All such improved Common Areas may be reduced, increased, revised, vacated or relocated from time to time by each such Owner, subject to the reasonable consent of the other Owner, and the Easements herein granted shall automatically be adjusted to correspond to the reduced, increased, revised, vacated or relocated Common Areas from time to time, so that the Easement herein granted shall at all times correspond to the Common Areas of each of the Properties which are from time to time improved by the Owner thereof for vehicular ingress and egress and made available by

such Owner for such uses. In no event shall either of the Owners use the vehicular ingress and egress Easement Areas for the parking of vehicles, for a duration greater than temporary.

2.3. Utilities Easement.

i. A nonexclusive easement for the purpose of maintaining, repairing, upgrading, replacing, removing, and separating of any and all utilities now or hereinafter located on the Properties including, but not limited to, electrical, natural gas, telecommunications, fiber optic, and data lines, and sanitary and storm water sewer facilities, and any and all tunnels, borings, conduits, casings, pipes, lines, valves, boxes, meters, connections, housings, and infrastructure and appurtenances related thereto (hereinafter collectively, the “**Utilities**”). The location of Utilities may be relocated from time to time by the Owner on such Owner’s portion of the Properties, subject to the other Owner’s reasonable consent. In the event the location of the Utilities is modified, the utility Easement herein granted shall automatically be adjusted to correspond to the revised or relocated area, so that the Easement herein granted for the Utilities shall at all times correspond to the areas of each of the Properties which are from time to time improved by the Owner for such uses. The use, maintenance, repair, upgrade, replacement, and removal of any such Utilities shall be subject to all applicable governmental laws and regulations.

ii. Each Owner shall be responsible for the cost and expense to use, maintain, repair, replace, remove and separate such Utilities if, and to the extent, such cost and expense is not paid or waived by the provider of the Utilities. Notwithstanding the foregoing, the Owners acknowledge that, following the Effective Date, use of water, gas, and electric Utilities which service the Properties in some partial or full capacity are measured, respectively, (a) from a water Utilities meter located on the MCC Property (identified as “**Water Meter #78460101**” and defined as the “**Water Meter**”), (b) from a gas Utilities meter located on the MCC Property (identified as “**Gas Meter #7234751111**” and defined as the “**Gas Meter**”), and (c) from an electric Utilities meter located on the LSPR Property (identified as “**Electric Meter #1772118599681**” and defined as the “**Electric Meter**”). From the Effective Date and thereafter, for so long as the Water Meter, the Gas Meter, and the Electric Meter (individually each, a “**Meter**” and together, the “**Meters**”) are measuring comingled Utilities consumption between the MCC Property and the LSPR Property, the Owners of the Properties using Utilities that are subject to the Meters shall perform or cause the performance of the following, with respect to all the Utilities measured by such Meters, if and for so long as the Properties subject to the Meters are owned by more than one Owner:

a. Within five (5) business days of its receipt of any bill for Utilities (“**Utility Bill**”) which includes Utilities measured by a Meter and provided to and consumed by a party other than the Owner receiving the Utility Bill (in such capacity, the “**Using Owner**”), the Owner receiving the Utility Bill (in such capacity, the “**Providing Owner**”) shall provide a copy of the Utility Bill to the Using Owner.

b. The Using Owner shall, within fourteen (14) days of its receipt of the Utility Bill from the Providing Owner, remit to the Providing Owner a payment in the amount designated as due and owing by the Providing Owner on its transmittal of the Utility Bill (the “**Proportionate Share**”), which Proportionate Share the Owners acknowledge and agree represents an estimated allocation of the amount of Utilities measured by the applicable Meter, based upon MCC’s historic use of the Utilities at the Property. In the event the Proportionate Share is determined by the Using Owner to be disproportionate when compared consistently with the historic use of utilities at the Property, the Providing Party may, but shall not be required to, adjust the Proportionate Share in such amount requested by the Using

Party. Such adjustment may result in an offset or demand of payment from the Using Party by the Providing Party, timely following the date on which the Providing Party reconciles the data collected by the Meters with such historic use.

c. Within six (6) months following the Effective Date of this Easement Agreement, LSPR or the successor Owner of the LSPR Property, at its sole cost and expense, shall take such steps as are reasonably necessary to separate the water and gas Utilities servicing the LSPR Property, as measured by the Water Meter and Gas Meter located on the MCC Property, and MCC or the successor Owner of the MCC Property, at its sole cost and expense, shall take such steps as are reasonably necessary to separate MCC's electric Utilities from the Electric Meter located on the LSPR Property (each, a "**Separating Owner**"). Any separation of Utilities by a Separating Owner shall be subject to notice to the other Owner, no fewer than thirty (30) days' prior to the date such Utilities separation shall take effect. If either or any Owner fails to initiate such Utilities separation timely, as required by this subsection 2.3.c, then the Owner upon whose Property the Meter is located may commence such proceedings, pursuant to the Self-Help Easement set forth in Section 2.4 below, at no cost or expense to the Owner exercising self-help. Each Owner shall provide reasonable accommodation to the Separating Owner as may be needed to effectuate such Utilities separation.

d. If and at such time that each of the Meters are separated, the Utilities Easement contemplated by this section of the Easement Agreement shall be extinguished and be of no further force and effect; provided, however, any Separating Owner, in its capacity as a Using Owner, shall remain liable to the Providing Owner for the payment of its Proportionate Share which is due and owing through the date of the Utilities separation.

2.4. **Self Help Easements.** Nonexclusive rights of entry and easements over, across and under the Properties, for all purposes reasonably necessary to enable an Owner to perform at its cost, any of the provisions of this Easement which a defaulting Owner has failed to perform, after reasonable written notice and an opportunity for such defaulting Owner to commence the cure of such default.

3. **No Barricades or Barriers.** MCC declares that no barricade or other divider will be constructed or erected on the Properties, if doing so may interfere with the use of the Easements herein granted for their intended uses and purposes, unless such barricade or divider is used in connection with revision, relocation or vacation of such improvement by such Owner as otherwise herein permitted. MCC declares that no Owner shall take or allow any action, the result of which may prohibit or discourage the free and uninterrupted flow of pedestrian and vehicular travel throughout the Common Areas of the Properties in the areas designated for such purpose by each Owner over its Property.

4. **Use of Easements.** Each and every Owner shall use and cause their respective successors, assigns, and their respective agents, customers, invitees, licensees, employees, servants, contractors, mortgagees, tenants and tenants' customers, invitees, employees, servants, licensees, contractors and agents as they may exist from time to time (all of which persons of each Owner are hereafter called "**Permittees**") to use the Easement Areas for the purposes provided herein and for no other purpose and in a manner that promotes the health, safety, welfare and security of the users of such Easement Areas and the care and management of the improvements thereon located. Each of the Owners shall ensure the proper use of the Easement Areas and the use of all Easements created by this Easement will, in each instance, be nonexclusive and shall exist for the use and benefit of the Owners and their

respective Permittees. Each Owner may, at any time and from time to time, remove, exclude and restrain any Permittee of any Owner from the use, occupancy or enjoyment of any Easement hereby created or the area covered thereby for failure of such Permittee to observe the use requirements established herein. If unauthorized use is being made of the Easement Area by any of the Owners or their respective Permittees, such unauthorized use may be restrained or terminated by appropriate proceedings after written notice to the defaulting Owner and failure to cease such unauthorized use within a reasonable time.

5. **Maintenance and Use of Easement Areas.**

5.1. Each Owner shall maintain its Properties in sound condition, at such Owner's sole cost and expense. Such maintenance shall include (a) the repair of cracks, potholes and other surface damage which significantly impairs the use of any Pedestrian or Vehicular Easement, keeping the same reasonably free of snow and ice; striping, signs and other appropriate markings, and any requirements of state or local laws, ordinances, rules or regulations relating to accessibility by persons with disabilities; and any other work necessary to permit the free flow of traffic; and (b) the maintenance of Utilities, so that service to the Properties shall be continuous or reasonably consistent.

5.2. Except as provided herein, in the event of damage, destruction or other casualty to the Properties, each Owner shall be liable for the cost of repairing and replacing the damaged area of the Properties; provided, however, if the damage, destruction or other casualty is a result of the Owner making use of the other Owner's Property and Easement Areas, the Owner causing such damage, destruction, or other casualty shall be liable for the reasonable cost to repair such damage, destruction, or other casualty, to the extent caused by such Owner. The Owner repairing and replacing the damaged area of the Easement Area shall invoice the other Owner for its contribution to such repair and replacement, which invoice shall be paid to the invoicing Owner within thirty (30) days of receipt of same; provided, however, such invoice may be subject to dispute by the contributing Owner, provided such dispute is made in good faith and not for the purposes of delaying payment of avoiding liability for the damage, destruction, or other casualty caused by such Owner.

5.3. **Insurance.** Each Owner shall procure and shall maintain during the continuance of this Easement Agreement, at its sole cost and expense, workers' compensation insurance in statutory limits and a policy of Commercial General Liability Insurance ("CGL") naming the other Owners as additional insureds, and covering liabilities assumed by such Owner under this Agreement. Such CGL shall include a coverage limit of not less than Two Million Dollars (\$2,000,000) Combined Single Limit per occurrence for bodily injury liability and property damage liability or such greater per occurrence coverage limit as may be reasonably and periodically required by the Owners (but no more frequently than every five years). Each Owner will keep the insurance described in this subsection in effect at all times during the term of this Easement Agreement. Failure of an Owner to comply with the requirements under this subsection shall be considered a default by such Owner. Each Owner shall provide the other Owner(s) with evidence reasonably satisfactory to the other Owner(s) that it has secured the insurance coverage required by this subsection, and thereafter from time to time, upon an Owner's request, shall provide a requesting Owner with updated evidence of such coverage.

5.4. **Indemnity.** To the extent allowed by applicable law, each Owner shall defend, indemnify and hold harmless each other Owner and its respective Permittees from any and all claims, assertions, losses, costs, expenses or liabilities which may arise from or in connection with the use of the Easements hereby created, to the extent that such use occurs within the boundaries of the Property of such Owner and is caused by the gross negligence or intentional misconduct of such Owner. Each Owner shall maintain policies of fire and extended

coverage insurance and of public liability insurance issued by reputable companies in amounts and on policy terms which are reasonable and customary for the improvements of such Owner. Each Owner shall release each other Owner from any liability for any loss or damage of the type provided by fire and extended coverage insurance, and grants to each other Owner, on behalf of any insurer providing such insurance, a waiver of any right of subrogation which any insurer of any Owner might acquire against any other Owner by virtue of payment of any loss covered by such insurance. If either, both or all of the Owners are named as a defendant in any suit brought against another Owner in connection with or arising out of each Owner's respective use of the Properties, each Owner shall bear its own costs and expenses incurred in and associated with such suit. Nothing in this Easement Agreement shall constitute a waiver of or otherwise negatively affect either sovereign immunity as provided by applicable law.

6. Appurtenant Easements; Binding on Successors.

6.1. Appurtenant Easements. Each of the Easements and rights created by this Easement Agreement are appurtenant to the Property. For the purpose of each such Easement and rights set forth in this Easement Agreement, the benefited Property will constitute the dominant estate and the burdened Property will constitute the servient estate.

6.2. Effect of Covenants. Each of the covenants contained in this Easement Agreement: (i) are made for the direct, mutual and reciprocal benefit of the MCC Property and the LSPR Property and each portion thereof, should ownership of either of Properties ever be divided in any manner; (ii) create mutual equitable servitudes on each of the Properties in favor of the other of such Properties; (c) constitute covenants running with the land; (d) bind every Owner now having or hereafter acquiring an interest in any of the Properties; and (e) will inure to the benefit of each Owner and each Owner's successors, assigns and mortgagees.

6.3. Conveyance of Property. Each Owner shall require that, upon any conveyance of all or any part of either of the Properties, the purchaser thereof, by accepting such conveyance, will thereupon become a new party to and be bound by this Easement Agreement. In each such instance, the Owner conveying an interest in such Properties affected shall: (i) require the purchaser to assume and agree to perform each of the obligations of the conveying Owner under this Easement Agreement, with respect to the portion of the Property conveyed to such purchaser by means of a written instrument executed, acknowledged and recorded in the Office of the Director of Records of Jackson County, Missouri; and (ii) give notice of each such conveyance and agreement to each other Owner within ten (10) days after the execution thereof, which notice will be accompanied by a copy of such conveyance and agreement. Upon such assumption by a purchaser and the giving of notice thereof, the conveying Owner will thereafter be released from any obligation under this Easement Agreement arising thereafter with respect to the portion of the Property so conveyed. Each Owner, on the written request of the conveying Owner, shall execute and deliver any appropriate documents or assurances to evidence such release.

7. No Dedication. Nothing contained in this Easement Agreement will be deemed to constitute a gift, grant or dedication of any portion of the Properties. This Easement Agreement is intended to benefit the Owners and their respective Permittees, but is not intended to confer upon any Permittee a third-party beneficiary rights hereunder.

8. **Amendment.** Any agreement which amends or terminates this Easement Agreement or any of the Easements created hereunder, in whole or in part, must be executed by the then Owners of the Properties, exclusive always of all mortgagees, tenants and lessees, which hold any possessory interest in any portion of the Properties. However, no amendment, modification, extension or termination of this Easement shall affect the rights of the holder of any mortgage constituting a lien on any portion of the Properties should such mortgage holder acquire ownership of the Property either by foreclosure or deed in lieu of foreclosure unless such mortgagee consents to the same either prior to or after acquiring such title, nor will any amendment, modification, extension or termination be effective against any mortgagee subsequent to such mortgagee acquiring title to a portion of a property or properties by foreclosure or deed in lieu of foreclosure, unless the mortgagee has so consented in writing.

9. **Condemnation.** In the event the whole, or any part, of any of the Properties affected hereby is taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, each Owner benefited by any of the Easements created by this Easement Agreement will not share in any award, compensation or other payment made by reason of the taking of a portion of any such Properties which is or are subject to such Easement, and such award, compensation or other payment will belong entirely to the Owner of that portion of the Properties which is taken, and such Owner will have no further liability to any other Owner for the loss of such Easements, or portion thereof, located on the Properties so taken.

10. **Default and Remedies.** In the event of any default hereunder, monetary damages would (in the absence of an affected Owner's determination at the time) be insufficient to compensate the non-defaulting Owner for its losses and inconvenience. Accordingly, MCC hereby declares that each the Owners of Properties will be subject to the following enforcement provisions:

10.1. **Injunctive Relief.** In the event of any violation or threatened violation by any Owner of any of the provisions of this Easement Agreement, in addition to the right to collect damages, each Owner will have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, written notice of the violation will be given to the Owner claimed to have committed such violation and such Owner shall have had thirty (30) days following such notice to commence the curing of such violation but shall not have cured such violation.

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

10.3. **Notice of Default.** An Owner will not be in default under this Easement Agreement, unless the Owner has received written notice from another Owner which specifies the nature of such default, and such defaulting Owner has failed to cure or commence appropriate action to cure such default within the times provided in this Easement Agreement and any notice of default so given.

10.4. **No Termination.** No breach of this Easement will entitle any Owner to cancel, rescind or otherwise terminate this Easement. The foregoing limitation will not affect, in any manner, any other right or remedy which any Owner might have by reason of any breach of this Easement.

11. **Miscellaneous.** MCC further declares as follows:

11.1. **Notices.** All notices, statements, demands, approvals and other communications given pursuant to this Easement Agreement will be in writing. Notices to be given hereunder may be personally delivered with written receipt acknowledged, sent by registered or certified mail, postage prepaid, return receipt requested, or sent by overnight delivery service using any reputable commercial overnight delivery service (such as Federal Express, UPS, etc.), to the physical address of such Owner's Property set forth in the official records of the City of Lee's Summit.

11.2. **Attorneys' Fees.** If any Owner institutes any action or proceeding against any other Owner relating to the provisions of this Easement or any default hereunder, the unsuccessful Owner in such action or proceeding will reimburse the successful Owner therein for the reasonable expenses of attorneys' fees and disbursements incurred by the successful Owner.

11.3. **Waiver of Default.** No waiver of any default by any Owner will be implied from the failure by any other Owner to take any action in respect of such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Easement Agreement will not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any Owner will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Easement Agreement are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Owner might otherwise have by virtue of a default under this Easement Agreement and the exercise of any right or remedy by any Owner will not impair such Owner's standing to exercise any other right or remedy.

11.4. **No Partnership.** Nothing contained in this Easement Agreement and no action by any of the Owners will be deemed or construed by the Owners or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any other association between or among any or all of the Owners.

11.5. **Severability.** If any provision of this Easement Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Easement Agreement (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Easement will be valid and enforceable to the fullest extent permitted by law.

11.6. **Governing Law.** This Easement will be construed in accordance with the laws of the State of Missouri.

11.7. **Captions.** The captions of the sections of this Easement Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained and shall not affect the interpretation or construction of the provisions herein contained.

11.8. **Time.** Time is of the essence of this Easement Agreement.

IN WITNESS WHEREOF, MCC has declared this instrument effective as of the Effective Date first above written.

**THE JUNIOR COLLEGE DISTRICT OF
METROPOLITAN KANSAS CITY,
MISSOURI, Seller**

By: _____

Name: _____

Title: _____

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ___ day of _____, 2018, before me, a Notary Public in and for said state, personally appeared _____, who stated that s/he is the _____ of THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, known to me to be the person who executed the within instrument on behalf of said body, and acknowledged to me that s/he executed the same for the purposes therein stated.

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

Notary Public in and for said County
and State

My Commission Expires:
