

REAL ESTATE SALES CONTRACT

THIS REAL ESTATE SALES CONTRACT (the "Contract") is made and entered into as of the _____ day of _____, 2019 (the "Effective Date") by and between **The City of Lee's Summit**, a municipal corporation ("Seller"), whose address is 220 NE Green Street, Lee's Summit, Missouri, 64013 Attention: City Manager and **Dahmer Brothers Investment LLC**, a Missouri Limited Liability Corporation ("Buyer") having an address of 8375 Nieman Road, Lenexa Kansas.

RECITALS:

A. Seller is the owner of fee simple title to a certain tract of property located in Lee's Summit, Jackson County, Missouri, more particularly described in Exhibit A, which is attached hereto and by this reference made a part hereof.

B. The parties hereto desire to make and enter into this Contract.

AGREEMENTS:

In consideration of the premises, the covenants and agreements and representations and warranties hereinafter set forth, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the respective parties hereto), it is agreed as follows:

1. **Sale and Purchase With Special Conditions.** Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, the real estate described on Exhibit A and comprising approximately 82,707 square feet consisting of parcels PDE 2, TCE and Unity School, and attached hereto, together with all easements, rights and appurtenances appertaining thereto owned by Seller, at this Property in Jackson County, State of Missouri (hereinafter referred to as "the Property"). This Property is being purchased by the Buyer "AS-IS and WHERE-IS". In addition, within thirty (30) days of closing Seller shall initiate a vacation of any right-of-way running through or adjacent along the former Douglas Road to the Property. Buyer acknowledges that if Seller should vacate all or part of any right-of-way that utility easements would be reserved in the right-of-way for any existing utility or planned Seller utilities.

2. **Purchase Price.** The parties agree that the purchase price ("Purchase Price") shall be One Hundred and Thirty Seven Thousand Dollars (\$137,000.00), which shall be paid in cash or other immediately available funds at the closing of the transaction described herein (the "Closing").

3. **Warranty of Title.** Seller warrants that Seller has good and marketable fee simple title to the Property. Seller further warrants that at the time of Closing seller will convey good and marketable fee simple title to the Property to Buyer

by general warranty deed (the "Deed"), free and clear of any liens and encumbrances except any of easements of record and the Seller's right of first refusal.

4. **Title Insurance and Survey.**

(A) **Policy.** Buyer will obtain, within ten (10) days of the Effective Date of this Contract, at its sole cost, an owner's title insurance policy (the "Policy"), in the amount of the Purchase Price issued by a title company acceptable to Buyer (the "Title Company"), insuring Buyer has merchantable fee simple title to the Property as of the date and time of the recording of the Deed, subject only to such exceptions and other matters as Buyer may approve. Seller shall provide such documents or information as required by the Title Company in order to issue the Policy.

(B) **Commitment, Survey and Due Diligence.** Buyer will obtain a commitment for the Policy (the "Commitment") issued by the Title Company, together with copies of all recorded documents listed on the Commitment. The Buyer reserves the right to obtain, at its own expense, a current survey of the Property (the "Survey"), a copy of which shall be delivered to Seller and the Title Company as soon as it is available.

Buyer shall have **fourteen (14)** days after receipt of the Title Commitment (the "Title Review Period") in which to notify Seller in writing of any objections Buyer has regarding any matters shown or referred to in the Title Commitment. Any matters which are set forth in the Title Commitment and to which Buyer does not object within the Review Period shall be deemed to be permitted exceptions to the status of Seller's title (the "Permitted Exceptions"). With regard to items to which Buyer does object within the Review Period, Seller shall have **thirty (30)** days after receipt of Buyer's written notice of objections to cure such objections ("Title Cure Period").

If Seller does not cure the objections by the end of the Title Cure Period or if Seller and Buyer have not agreed to extend the Title Cure Period by amending this Contract, then Buyer shall have the option to terminate this Contract unless Buyer waives the objections no later than five (5) days after the end of the Title Cure Period.

Buyer shall order a survey of the Property as soon as possible and not later than **thirty (30)** days after the receipt of the Title Commitment. Unless otherwise objected to in writing by Buyer or Seller within five (5) days of delivery of the survey, the survey will be accepted as being correct for the Property and there will be no objections to such.

Buyer will have **thirty (30)** days after the Effective Date of this Contract to perform due diligence (the "Due Diligence Period") for the purpose of exploring Buyer's intended purpose of the Property. If Buyer determines the Property is not suitable for Buyer's intended use, Buyer may deliver written notification to Seller to cancel this Contract and this Contract will be terminated.

5. **Prorations.** Seller is a tax exempt political subdivision that is exempt from taxes, general and special and will not pay taxes, general and special, and assessments

against the Property which are due and have accrued as of the date of Closing, and Buyer shall assume and pay all of such taxes and assessments and installments of unpaid special assessments becoming due or accruing thereafter; provided, however, that all general state, county, school and municipal taxes and special assessments (exclusive of rebates, penalties and interest) becoming due and accruing during the calendar year in which Closing occurs shall be prorated between Seller and Buyer on the basis of such calendar year, as of the date of Closing. If the amount of any tax to be prorated cannot then be ascertained, proration shall be computed on the amount of such taxes for the calendar year immediately prior to the year in which Closing occurs.

6. **Right of Entry; Inspections.** Within ten (10) business days from and after the Effective Date of this Contract, Seller grants Buyer the right, at Buyer's expense and risk, to survey, inspect and investigate the Property and to conduct such tests and audits of soil, environmental and such other conditions in, upon or under all or any portion of the Property as Buyer in its sole discretion and expense deems necessary or appropriate. For purposes of conducting such surveys, inspections, investigations and tests, Buyer and Buyer's agents and independent contractors may enter upon the Property after prior written notice and consent of the Seller. In which event Buyer shall provide Seller copies of any written reports of such testing, inspection or investigation.

With regard to any deficiencies identified during the inspection by Buyer which Buyer requests be corrected, Seller shall have **forty five (45)** days (the "Cure Period") after seller's receipt of Buyer's written notice of such inspection issues to define in an Amendment to this Contract how and when such deficiencies will be cured. If Seller elects not to cure the deficiencies within the time frame defined in such Amendment, then the Buyer shall have the option of terminating this contract and Buyer waives the objections.

Seller shall deliver to Buyer, promptly upon execution of this Contract, copies of all environmental assessments, special assessments, if any, audits, reports, and investigations, and all surveys, title commitments, recorded documents and title policies, relating to the Property that are in the possession of Seller.

7. **Brokerage.** Seller hereby represents and warrants to the other that it has not dealt with any broker or finder in connection with the sale or purchase of the Property. Buyer is represented by Cushman & Wakefield and shall solely be responsible for payment of any fees or commission due such Broker or agent. Any party to this Contract through whom any separate broker's, finder's or other fee is made, contrary to the representations made above in this paragraph, shall indemnify, defend and hold harmless the other party to this Contract from any other loss, liability, damage, cost or expense, including, without limitation, reasonable attorney's fees, court costs and other legal expenses paid or incurred by the other party, that is in any way related to such a claim. The provisions of this paragraph shall survive Closing or termination of this Contract.

8. **Closing Date.** The Closing shall occur on or before _____, (the "Closing Date") or on such earlier or later date as may be mutually agreed to by Buyer and Seller.

9. **Closing.**

(A) **Place.** The place of Closing shall be the offices of First American Title Located at _____, Lee's Summit, MO 64063 such other place as Seller and Buyer shall mutually agree in writing.

(B) **Delivery of Property and Documents.** The Property shall be delivered to Buyer at Closing in substantially the same condition as it was on the date Buyer executed this Contract, subject to normal wear and tear and the effect of the elements. At the Closing, Seller shall deliver to Buyer the Deed, properly executed and acknowledged by Seller, conveying to Buyer the Property free and clear of all liens and encumbrances whatsoever except as herein provided and a closing statement each in form and content satisfactory to Buyer and Seller, together with any other documents, instruments, records, correspondence, affidavits or agreements called for hereunder or reasonably required by Buyer or the Title Company and which have not been previously delivered.

(C) **Costs and Expenses.** All costs and expenses incurred by either party hereto in connection with this Contract or the transactions contemplated hereby shall, unless otherwise provided herein, be paid by the party incurring the expenses. Any fees to be paid to a closing agent as closing fees shall be borne by Buyer.

10.1. **Representations and Warranties of Seller.** Seller warrants, represents, and covenants with Buyer as follows:

(A) **Leases.** There are no leases, agreements, contracts or other documents or instruments affecting or pertaining to the Property, or any portion thereof. From and after the date of this Contract until the earlier of the Closing or the termination hereof, neither Seller nor its agents or representatives will make or enter into any lease for the Property or any portion thereof or make or enter into any other contract, mortgage or other agreement affecting the Property, any part thereof or any interest therein, unless same is cancelled and terminated by Seller at or before the Closing, with no liability or obligation of Buyer or the Property then or thereafter remaining or accruing.

(B) **Seller to Take No Actions.** During the period from and after the date hereof and to and including the Closing Date, Seller will take no action which might materially or adversely affect the condition or operation of the Property or any portion thereof, including, without limitation, any action which would result in any change to the current zoning classification of the Property (except as expressly set forth in Section 12(A) hereof) or the imposition of any special assessment upon the Property.

(C) **No Condemnation.** To Seller's knowledge no condemnation or similar proceeding affecting the Property or any portion thereof is pending in any court, and Seller has not received any written notice that any such proceeding is contemplated.

(D) **No Notice.** Seller has not received any written notice from any governmental authority of violations of any federal, state, county or municipal law, ordinance, order, regulation or requirement affecting any portion of or interest in the Property, and to the

best of Seller's knowledge, information and belief, the Property is in material compliance with all applicable statutes, rules, regulations, and ordinances, including those relating to environmental matters.

(E) **No Mechanics' Liens**. No work has been performed or is in progress by Seller at, and no materials have been furnished to, the Property or any portion thereof, by or on behalf of Seller which might give rise to mechanics', materialmen's or other liens against the Property or any portion thereof.

(F) **No Other Sales Contracts**. There are no contracts or other obligations outstanding for the sale, exchange or transfer of the Property or any portion thereof.

(G) **No Proceedings**. There are no actions, suits, claims, proceedings or causes of action or legal, administrative, arbitration or other proceeding or governmental investigation, affecting the Property or Seller, pending or, to Seller's knowledge, threatened in writing, at law or in equity, or before any federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality, which might materially adversely affect the condition of the Property, the operation thereof or its use for Buyer's intended purposes.

(H) **No Releases**. To the best of the knowledge of the Seller, during the period of Seller's ownership of the Property or any part thereof there has not been any "release" (as defined in 42 U.S.C. Section 9601(22)) or threat of a "release" of any "Hazardous Substances" (as hereinafter defined) upon the Property or any part thereof, any adjacent or nearby property, or in any water or groundwater thereon or thereunder; there have not been any polychlorinated biphenyls on or about the Property; there have not been any environmental investigations or audits of the Property; and there have not been any conditions on the Property constituting a violation of any federal, state, local or other law, statute, ordinance, rule, regulation or agreement pertaining to environmental protection, regulation, contamination or clean up, toxic waste, underground storage tanks, asbestos, or the handling, treatment, storage, use and disposal of any "hazardous substances" (as defined in 42 U.S.C. Section 9601(14)), "chemicals" subject to regulation under Title III of the Superfund Amendments and Reauthorization Act of 1986, natural gas liquids, liquefied natural gas or synthetic gas, any petroleum, petroleum-based products or crude oil or any fraction, any other hazardous or toxic substances, wastes or materials, pollutants, contaminants (collectively, "Hazardous Substances").

(I) **No Default by Seller**. Neither this Contract nor the transactions contemplated herein will result in a breach of, or constitute a default under, any indenture, bank loan, credit agreement or other agreement or instrument to which Seller is a party or by which Seller or its property may be bound or affected or constitute a violation of any statute, judgment or rule or regulation of any governmental body having jurisdiction over Seller or its properties. No consent, approval or other authorization of any governmental body is required for the consummation by Seller of the transactions contemplated by this Contract.

(J) **FIRPTA**. Sellers are not foreign persons selling property as described in the Foreign Investment in Real Property Tax Act ("FIRPTA").

(K) **Underground Storage Tanks.** Seller represents that no part of the Property has been used as a site for handling, treatment, storage, refining or disposal of Hazardous Substances; no part of the Property has been a "facility" (as defined in 42 U.S.C. Section 9601(9)(b)); and there have not been any underground storage tanks located in, on, under or about any part of the Property.

(L) **Sellers' Authority.** Sellers have full authority to do all things required under this Contract and has obtained all necessary approvals that may be needed in order to perform all obligations of this Contract subject only to the final approval of the City Council of the City of Lee's Summit, Missouri.

10.2 **Representations and Warranties of Buyer.** Buyer warrants, represents, and covenants with Seller as follows:

(A) **Buyer's Power and Authority.** Buyer has the power to enter into and perform this Contract and the transactions contemplated herein. The making and performance by Buyer of this Contract and the transactions contemplated herein have been authorized by all necessary action. The Buyer, through its members, has approved entering into this transaction and has empowered its managing member with all necessary authority to sign this Contract and complete the performance of the Buyer under this Contract.

(B) **No Default by Buyer.** Neither this Contract nor the transactions contemplated herein will result in a breach of, or constitute a default under, any indenture or other agreement or instrument to which Buyer is a party or by which Buyer or its property may be bound or affected or constitute a violation of any statute, judgment or rule or regulation of any governmental body having jurisdiction over Buyer or its properties.

11. **Notices.** All notices and other communications required hereunder shall be in writing and shall be considered as given when delivered personally or one (1) day after deposited with a reputable overnight delivery service such as FedEx, with all delivery charges paid by the sender, or three (3) days after deposited in the U.S. Mail, certified mail, return receipt requested, postage prepaid, addressed: if to Seller, addressed to Seller's address as shown in the opening paragraph or preamble of this Contract; if to Buyer, addressed to Buyer's address as shown in the opening paragraph or preamble of this Contract, with a courtesy copy to the City Attorney, City of Lee's Summit, 220 S.E. Green Street, Lee's Summit, Missouri 64063. Any party may, by notice as aforesaid, designate a different address for notices or other communications intended for it.

12. **Conditions to Performance.**

(A) **Buyer's Conditions.** Buyer shall be under no obligation to perform pursuant to this Contract on the Closing Date unless:

- (i) the representations and warranties of Seller in this Contract remain true in all material respects on and as of the Closing Date with the same effect as

though such representations and warranties had been made or given on or as of the Closing Date;

- (ii) Seller has provided also necessary documents and information required by Title Company in order for Title Company to issue the Policy;
- (iii) the Property is in substantially the same condition on the Closing Date as existed on the date of this Contract, normal wear and tear and the effects of the elements notwithstanding, and excepting such items that Seller removes prior to Closing in accordance with Section 1 above; and
- (iii) Seller shall have performed and complied in all material respects with all of its obligations under this Contract, in form and substance reasonably satisfactory to Buyer.
- (iv) Seller's City Council has approved the terms agreed to in this contract by separate vote following presentation and signature by Buyer on this contract.

In the event that any of such conditions set forth in this Section 12(A) has not been fulfilled on or prior to Closing, Buyer at its option may waive any such condition and to proceed to close in accordance with the terms hereof, or to exercise any other right or remedy available to Buyer at law or in equity, including without limitation specific performance.

(B) **Seller's Conditions**. Seller shall be under no obligation to perform pursuant to this Contract on the Closing Date unless the representations and warranties of Buyer in this Contract remain true in all material respects on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on or as of the Closing Date and Buyer shall have performed and complied in all material respects with all of its obligations under this Contract, in form and substance reasonably satisfactory to Seller and the City Council of Lee's Summit has approved this Contract in its final form by specific vote. In the event that such condition has not been fulfilled on or prior to Closing, Seller at its option may elect to exercise its rights and remedies at law or in equity, or Seller may waive any such condition and proceed to close in accordance with the terms hereof.

13. **Indemnification**. Seller to the extent permitted by law agrees to defend, indemnify, and hold Buyer harmless from and against any and all loss, liability, damage or expense (including attorneys' fees and expenses) resulting from any misrepresentation or breach of warranty, covenant, or agreement of Seller herein set forth. Mutually, Buyer agrees to defend, indemnify, and hold Seller harmless from and against any and all loss, liability, damage or expense (including attorneys' fees and expenses) resulting from any misrepresentation or breach of warranty, covenant, or agreement of Buyer herein set forth.

14. **Entire Agreement**. This Contract constitutes the sole and entire agreement between the parties respecting the transaction described herein and no modification hereof shall be binding unless executed in writing by each of the parties hereto.

15. **Successors.** Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the heirs, executors, personal representatives, successors, successors-in-interest and assigns of the parties hereto.

16. **No Assignment.** This Contract may not be assigned or transferred, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the other party.

17. **Possession.** Possession of the Property shall be delivered to the Buyer at 5:00 P.M. on the day of Closing, or on such earlier or later date as may be mutually agreed to by Buyer and Seller.

18. **Survival of Representations.** All representations, warranties, covenants and agreements of either party hereto contained in this Contract or delivered subsequent to the date hereof in connection with this transaction shall survive the consummation of the transaction contemplated by this Contract.

19. **Rules of Construction.** Each party to this Contract has received independent legal advice from its attorneys of choice with respect to entering this Contract and the advisability of agreeing to the provisions herein. Because each of the parties has had its respective legal counsel review the terms of this Contract, the normal rules of construction to the effect that any ambiguities in its terms be resolved against the drafting party shall not be employed with regard to issues of its validity, interpretation, performance or enforcement.

20. **Law Governing.** This Contract is a Missouri contract and shall be governed, construed and interpreted in accordance with the laws of the State of Missouri.

21. **Execution of Contract.** This Contract may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement.

22. **Condition of Property.** Seller shall maintain the Property in its present condition through the date of Closing. Seller shall advise Buyer of any substantial change in the condition of the Property prior to Closing. Unless otherwise agreed in writing, Seller shall remove all possessions, trash and debris from the Property prior to delivery of possession.

23. **Parties.** This is a Contract between Seller and Buyer. If Seller or Buyer constitutes two or more persons, the terms "Seller" or "Buyer" shall be construed to read "Sellers" or "Buyers" whenever the sense of the Contract requires.

24. **Seller's Approval.** It is understood the Seller, as a municipal corporation, requires various approvals such as city council approval and the Seller agrees to proceed in a timely manner.

25. **Vacation of Douglas Road.** The Seller agrees to vacate that portion of Douglas Road as outlined in Exhibit A.

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

“SELLER”

THE CITY OF LEE’S SUMMIT, MISSOURI

By: _____
Printed Name:
Title: Mayor

**Approved as to form
For City of Lee’s Summit:**

City Attorney’s Office

“BUYER”

DAHMER BROTHERS INVESTMENT, LLC

By: _____
Printed Name:
Managing Member

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ____ day of _____, 2018, before me personally appeared William A. Baird, Mayor of the City of Lee’s Summit, who is personally known to me to be the same person

described in and who executed the foregoing instrument and acknowledged the same to be his free act and deed as the Mayor.

In Witness Whereof I have hereunto subscribed my name and affixed my official seal.

Notary Public

SEAL

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

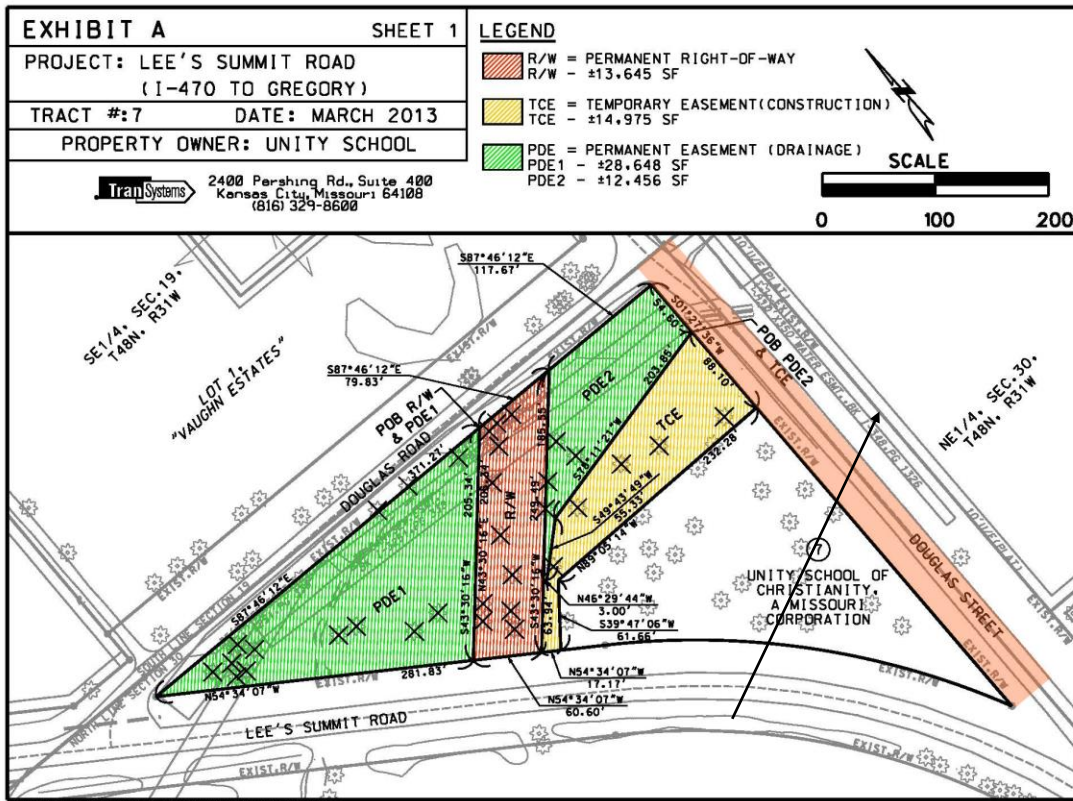
On this ____ day of _____, 2018, before me personally appeared _____, who is personally known to me to be the same person described in and who executed the foregoing instrument as the managing member of Dahmer Brothers Investment, LLC, and acknowledged the same to be his free act and deed.

In Witness Whereof I have hereunto subscribed my name and affixed my official seal.

Notary Public

SEAL

EXHIBIT A



Portion of former Douglas to area to be vacated.