

**REDEVELOPMENT CONTRACT**

**BETWEEN**

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

**AND**

**VANGUARD VILLAS, LLC**

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**To implement the**

**VANGUARD VILLAS AT STREETS OF WEST PRYOR  
LCRA REDEVELOPMENT PLAN**

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**May \_\_, 2021**

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## REDEVELOPMENT CONTRACT

**THIS REDEVELOPMENT CONTRACT** (the “**Contract**”) is made and entered into as of the \_\_\_ day of May, 2021 (the “**Effective Date**”), by and between THE CITY OF LEE’S SUMMIT, MISSOURI (“**City**”), and VANGUARD VILLAS, 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. Pursuant to Ordinance No. 8539 which was adopted on January 9, 2019, 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. 9120, referenced in these Recitals below, re-affirmed that prior blight finding, and made the same blight finding for the Redevelopment Area under the LCRA Act.

2. On March 9, 2021, the City Council approved Ordinance No. 9090 which approved a rezoning of the Redevelopment Project Area and certain adjacent properties and approved a preliminary development plan for the development of the Redevelopment Project Area and certain adjacent properties.

3. On March 24, 2021, the Land Clearance for Redevelopment Authority of Lee’s Summit, Missouri (the “**LCRA**”), recommended that the City approve the Vanguard Villas at Streets of West Pryor LCRA Redevelopment Plan (the “**LCRA Plan**” or the “**Plan**”). On April 20, 2021, the City Council of the City (the “**City Council**”) approved the LCRA Plan through the adoption of Ordinance No. 9120 pursuant to the Land Clearance for Redevelopment Authority Act set forth in Sections 99.300 through 99.660 and Section 99.715 of the Revised Statutes of Missouri (the “**LCRA Act**”).

4. Pursuant to Ordinance No. 9120, 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. Ordinance No. 9120 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 provides for mine remediation and stabilization of property, development, redevelopment, and improvement of the Property. The Redevelopment Project is underlain by mine space that was created when limestone was mined from the area between 1959 and 1981. Significant engineering controls are required in order to make the surface of the Redevelopment Project viable for development. As part of the Redevelopment Project, Developer is proposing substantial mine remediation work for the undermined areas below the Redevelopment Project in accordance with the Mine Remediation Plan in order to stabilize the property and make the surface of the Redevelopment Project viable for development. This remediation work will allow for the construction of approximately 83 market rate residential villa units for rent (the “**Redevelopment Project**”).

### 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 5.05** 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 LCRA Plan shall have the meaning ascribed to them in the LCRA Plan. 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 5.01**.

“**Administrative Costs**” means all documented costs and expenses reasonably incurred by the City, and to be paid for as provided in **Section 5.10**, 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. The Parties agree that engineering costs which are incurred during the effective period of this Contract and the Lease Term are not treated as Administrative Costs.

“**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 4.02**.

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

**“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 or Streets of West Pryor, LLC, a Missouri limited liability company, and any Construction Contractor for the construction of the Private Improvements on behalf of the City.

**“Construction Contractor”** means the construction contractor selected by Developer to construct all or any portion of the Private Improvements.

**“Construction Period”** means the period of time from the date the Lease is signed 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.

**“Design and Construction Manual”** means the Lee’s Summit Design and Construction Manual which is adopted by ordinance (Ordinance No. 3719), as such document may be amended by the City.

**“Developer”** means Vanguard Villas, LLC, its successors and assigns.

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

**“Development Agreement”** means the agreement to be executed between the City and Developer that shall establish the rights, duties and obligations of the parties regarding the construction of the Public Improvements.

**“Excusable Delay”** shall have the meaning set forth in **Section 5.03**.

**“Indemnified Party” or “Indemnified Parties”** shall have the meaning set forth in **Section 5.01**.

**“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 “Developer” and lessee (as such terms are defined in such lease), to implement the LCRA Plan and the sales tax exemption and real property tax abatement incentives 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).

“**Lease Term**” shall have the meaning assigned to such term in the Lease.

“**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.

“**Mine Remediation Plan**” means the plan described in **Exhibit H** which is implemented according to the requirements of this Contract.

“**Mine Remediation Work**” means work undertaken pursuant to the Mine Remediation Plan to remediate the undermined conditions in the Undermined Space.

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

“**Phase**” shall have the meaning set forth in **Section 2.02**.

“**Preliminary Development Plan**” means the Preliminary Development Plan located in District RP-4 that was approved by Ordinance No. 9090 on March 9, 2021, and as such plan may be modified or amended pursuant to the requirements of the UDO.

“**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.

“**Property**” means all of the property within the Redevelopment Project Area.

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

**“Public Improvements”** means those improvements set forth in **Exhibit D**.

**“Public Improvement Plans”** means the plans submitted to and approved by the City for the Public Improvements.

**“Redevelopment Area”** means the approximately 73.45-acre area that is legally described in **Exhibit A** and depicted in **Exhibit B**.

**“Redevelopment Project”** shall have the meaning ascribed to such term in the Recitals on page 1.

**“Redevelopment Project Area”** means the approximately 9.34-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 Streets of West Pryor, LLC, a Missouri limited liability, and any other 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.

**“Remediation Completion Certificate”** means the certificate issued by the City pursuant to the Mine Remediation Plan acknowledging that all remediation work has been completed.

**“Remediation Period”** means the period of time commencing on the Effective Date and ending when the City has issued the Remediation Completion Certificate.

**“Site Development Permit”** means a permit issued by the City pursuant to [Division IV in Article 3](#) of the UDO.

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

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

**“Undermined Space”** means the mine space that is located under the surface of portions of the Redevelopment Area which will be remediated pursuant to the Mine Remediation Plan. Where specified in this Contract, reference to Undermined Space may be limited to the portion of the Undermined Space within the boundaries of the Redevelopment Project Area

**“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.

## **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. The Parties acknowledge and agree that Streets of West Pryor, LLC, an entity affiliated with Developer, is already redeveloping other portions of the Redevelopment Area, which was originally found by the City Council to be a blighted area pursuant to the TIF Act and likewise a blighted area under the LCRA Act. If any additional incentives are requested pursuant to the LCRA Act for any portion of the Redevelopment Area outside the Redevelopment Project Area, such incentives will be addressed 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 multiple phases (each a “Phase”) according to the schedule set forth in **Exhibit E**. The Redevelopment Project Area may only be changed, modified or amended in accordance with the LCRA Act. If the exterior boundary of the Redevelopment Project Area is changed, the parties acknowledge that a corresponding amendment to the LCRA Plan will be necessary to conform the actual boundaries with the legally described boundaries in the LCRA Plan.

**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 LCRA Act, Developer shall use commercially reasonable efforts to cause the Redevelopment Project Area to be redeveloped through the remediation of the Undermined Space pursuant to the Mine Remediation Plan and the construction of the Project Improvements after completing the mine remediation as required by this Contract. 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 and real property tax abatement through the LCRA Plan, the Lease, and this Contract.

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

A. Lease. Pursuant to the transactions contemplated by the Lease, this Contract and the LCRA Plan, Developer will transfer fee title to the Property to the City to implement the incentives set forth and contemplated by the LCRA Plan. The transfer of the Property to the City, and the execution of the Lease by Developer and the City, shall occur at such time as Developer may reasonably request upon reasonable advance notice to the City, and subject to the City’s reasonable approval, it being the intent of the City and Developer that this transaction will occur at such time so as to maximize the benefit to Developer of the sales tax exemption on construction materials and the fifty percent (50%) real property tax abatement contemplated by the LCRA Plan and this Contract. Upon the conveyance of the Property to the City, 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 term of the Lease, which term is anticipated to commence on the Commencement Date as defined in the Lease (which will be prior to the start of the Construction Period for the Project), and continue for a period of twenty-five (25) years from and after the Commencement Date.

B. Rent. Under Article X, Section 6 of the Missouri Constitution and Section 137.100 of the Revised Statutes of Missouri, all property of any political subdivision is exempt from taxation. The “Basic Rent” and the “Additional Rent” (as those terms are defined in the Lease) payments shall be made and disbursed as required by the Lease.

C. Construction Period. The Developer or Streets of West Pryor, LLC 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.

1. 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.

2. 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. Promptly after execution of the Lease, the City will provide its sales tax exemption certificate to Developer and the City shall provide such other documentation as may be necessary from time-to-time to effect such sales tax exemption.

3. Developer shall use the sales tax exemption certificate only for the purchase of materials to be incorporated into the Project and shall not use the sales tax exemption certificate for any personal property other than materials that are to be affixed to or incorporated permanently into the Project.

4. 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.

5. 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. 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.

## **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**"). For purposes of compliance with the Redevelopment Schedule, the parties agree that commencement of construction activities for Phase 1 shall mean commencement of the Mine Remediation Work. 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 LCRA Plan that require an amendment under the Act, as reasonably determined by City, shall be processed in accordance with the Act, and changes in the development program contemplated by the LCRA Plan that do not require an amendment under the Act, 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, delayed or conditioned, 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 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. Phase 1 shall be completed according to the Redevelopment Schedule. With respect to the remaining Phases, Developer may request an amendment to the Redevelopment Schedule in accordance with the following:

1. Developer may request up to a one-year extension of time to commence and/or complete one or more of the Phases. Such request for an extension may be granted by the City Manager in accordance with **Section 5.15**.

2. After an extension has been approved by the City Manager pursuant to part 1 of this subsection, Developer may request up to an additional one-year extension of time to commence and/or complete one or more of the Phases. Such request for an extension may be granted by action of the City Council.

3. After extensions have been granted pursuant to parts 1 and 2 of this subsection, Developer may appear before the City Council for any additional requests for an extension of time to commence and/or complete one or more of the Phases.

E. If Developer does not comply with the Redevelopment Schedule as set forth above, including any extension as approved by the City according to paragraph D of this Section, then, unless Developer requests an additional amendment of such Redevelopment Schedule prior to such violation and any amendment of the Redevelopment Schedule is so approved by the City Council, the City may require Developer to appear before the City Council to show cause why this Contract and the LCRA Plan shall not be terminated in accordance with **Section 5.02** 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.

C. 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 Project 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 expressly provided in this Contract or in the Lease, Developer shall have complete and exclusive control over construction of the Project Improvements that it owns, leases 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 Project Area (but not private villa units 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 2.08.C** for all portions of the Private Improvements. Developer shall enforce the provisions of this **Section 2.08.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, but only in the event, and then only to the extent, applicable to Developer pursuant to applicable laws with respect to the portion of the Work associated with the construction of "public works" as defined in Section 290.210 of the Revised Statutes of Missouri, for which the prevailing wage requirements are imposed. 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 (or written proof that the requirements of this paragraph are not applicable to Developer and the Work, or portion thereof, performed by Developer). 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 each Phase of the Redevelopment Project in accordance with the provisions of this Contract, the Developer shall submit a Certificate of Substantial Completion to the City for such Phase. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit F**. 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 with respect to such Phase.

**Section 2.11. Mine Remediation Work.**

A. Limited Mine Remediation Work, including rock crushing activities, may be undertaken by Developer or Streets of West Pryor, LLC on and after the Effective Date of this Contract pursuant to the "Limited Site Development Permit for Test Hole Activities" which was issued by the City prior to the Effective Date of this Contract.

B. Other than the Limited Mine Remediation Work described in paragraph A of this Section, no Mine Remediation Work shall occur in the Undermined Space, including the boring of holes into the Undermined Space, prior to the issuance of a Site Development Permit by the City for such work.

C. An outline of the components of the Mine Remediation Plan are set forth in **Exhibit H**. A Mine Remediation Plan that contains the items set forth in **Exhibit H** and that is signed and sealed by a registered design professional who is competent in the subject area of mine remediation shall be generated by or at the direction of Developer or Streets of West Pryor, LLC and accepted by the City before the City will issue a Site Development Permit for the Mine Remediation Work. In the event of a conflict between the Mine Remediation Plan and the provisions of **Exhibit H**, the provisions of the Mine Remediation Plan shall control and shall supersede the provisions of **Exhibit H** and the parties agree that no amendment of **Exhibit H** shall be required if the Mine Remediation Plan contains terms and provisions that conflict with **Exhibit H**.

D. All Mine Remediation Work shall be undertaken in strict compliance with the Mine Remediation Plan. The Mine Remediation Plan may be amended according to its terms, and any such amendments shall not be deemed an amendment of this Contract. The City shall have the right to enter the Property according to the terms of the Lease for the purpose of monitoring and verification pursuant to the Mine Remediation Plan.

E. The City and Developer agree that Developer's and/or Streets of West Pryor, LLC is right to access and, if necessary, enter the Undermined Space in order to perform the Mine Remediation Work and observe, inspect and monitor the Mine Remediation Work pursuant to Mine Remediation Plan may be accomplished by either (i) Developer's or Streets of West Pryor, LLC's construction and use of a "Permanent Mine Access Facility" (defined below) on the Property, or (ii) Developer's or Streets of West Pryor, LLC's use of existing tunnels (the "**Existing Tunnels**") that provides access to the Undermined

Space, which have their openings north of the Property on property located on the north side of Interstate 470. If Developer or Streets of West Pryor, LLC intends to access the Undermined Space through the use of the Existing Tunnels, Developer or Streets of West Pryor, LLC shall provide the City with evidence that:

1. Developer and/or Streets of West Pryor, LLC has the temporary or permanent right to use the Existing Tunnels to access the Undermined Space while the Mine Remediation Work is occurring pursuant to an agreement or agreements (each an “**Access Agreement**” and together the “**Access Agreements**”) with those landowners or other parties whose permission is required in order for Developer and/or Streets of West Pryor, LLC to have the right to use the Existing Tunnels for the purpose of accessing the Undermined Space;
2. Developer and/or Streets of West Pryor, LLC will have the right pursuant to the Access Agreements to enter the Undermined Space through the Existing Tunnels while the Mine Remediation Work under the Mine Remediation Plan is occurring; and
3. To the extent the approval or consent of the Missouri Department of Transportation is required in order for Developer and/or Streets of West Pryor, LLC to utilize the Existing Tunnels to have access to the Undermined Space pursuant to the Access Agreements, Developer and/or Streets of West Pryor, LLC has verified with the Missouri Department of Transportation that Developer and/or Streets of West Pryor, LLC will have access and the right to use the Existing Tunnels while the Mine Remediation Work under the Mine Remediation Plan is occurring.

The term “**Permanent Mine Access Facility**” as used in this Contract shall mean a permanent mine access facility constructed on the Property in an area readily accessible to emergency responders that meets the following specifications:

- (i) 36” diameter access shaft extending from the surface to the mine ceiling;
- (ii) the access shaft shall be steel cased in areas that are not extended through competent rock or shale;
- (iii) the surface access point shall be provided with a typical 4 foot diameter precast concrete sanitary sewer manhole cone structure and steel lid in accordance with the City of Lee’s Summit Design and Construction Manual;
- (iv) the access shaft shall be provided with a steel ladder extending 3 feet above the bottom of the manhole and extend to the mine floor and the ladder shall be properly attached to the steel casing or competent rock or shale at 10 feet on center and anchored to the mine floor.

F. Representations for the Mine Remediation Work. Developer makes the following representations as the basis for the Mine Remediation Work to be undertaken pursuant to this Contract:

1. Developer owns fee title to the Property and, to Developer’s actual knowledge, Developer has the right to perform the Mine Remediation Work within the boundaries of the Property pursuant to the Mine Remediation Plan and pursuant to all Legal Requirements.
2. To Developer’s actual knowledge, no persons other than Developer and Streets of West Pryor, LLC and their authorized representatives have the right to enter the Undermined Space.

3. To Developer's actual knowledge, the Mine Remediation Work will comply with all local, state and federal environmental laws including the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1251 *et seq.*, and all regulations promulgated pursuant to these laws.

For purposes of this Section 2.11, the term "Developer's actual knowledge" shall mean the actual (as distinguished from constructive or imputed) present knowledge of Matt Pennington, without any duty of investigation or inquiry. Developer represents and warrants that Matt Pennington is involved with the day-to-day ownership and management of the Property and the individual in Developer's organization most likely to have knowledge of the matters set forth in Section 2.11

### **ARTICLE 3: FUNDING FOR PUBLIC IMPROVEMENTS**

#### **Section 3.01. Funding for Public Improvements.**

A. Prior to the issuance of any building permits related to the Project contemplated by this Contract, Developer will provide security for completion of the Public Improvements as required by the UDO, or shall have received a Certificate of Substantial Completion for the Public Improvements.

B. The Parties agree that the security provided pursuant to the Development Agreement is the aggregated estimate of probable costs for such improvements, and that the Deposit Sum (as that term is defined in the Development Agreement) shall guarantee the construction, installation and completion of the required Public Improvements which serve the Redevelopment Project Area and adjacent properties within the Redevelopment Area.

C. The construction of the Public Improvements shall be the responsibility of Developer and shall occur on a schedule as required by the Development Agreement. 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.

**Section 3.02. 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 or leases 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 Leasehold Interest in Project Property.**

A. Sale of Property. During the Lease Term, other than the sale of the Developer's leasehold interest in 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 Developer's leasehold interest in the Property may be made except with the prior written approval of City, which approval will not be unreasonably withheld, delayed or conditioned. City's right of approval of any transferee shall be in force

during the Lease Term. 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; provided, however, that the City acknowledges and agrees that any proposed transferee having a net worth of at least \$20,000,000 (as the term "net worth" is defined and used in Section 10.6 of the Lease) shall be deemed to have the financial qualifications necessary to fulfill the obligations of "Developer" under the Contract. In addition, as a condition precedent to the transfer of Developer's leasehold interest in the Property 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 of Developer's leasehold interest in the Property 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. Developer shall require the transferee to enter, and shall deliver to City, an assignment of lease agreement, in form and substance reasonably acceptable to Developer, City, and such transferee, assigning all of Developer's rights and obligations (with transferee assuming all such rights and obligations) under the Lease to the transferee ("**Assignment of Lease**"). Upon execution of the Assignment of Lease, Developer shall be released from its obligations in the Lease relating to said transferred property. In the event of the sale or other voluntary or involuntary disposition of Developer's leasehold interest in the Property, Basic Rent and Additional Rent payments due under the Lease with respect to the Property subject to the Assignment of Lease shall continue, and such obligations shall inure to and be binding upon Developer successors and assigns of Developer's leasehold interest in the 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 instrument conveying Developer's leasehold interest in the Property during the Construction Period (but not in any sublease Developer enters into in connection with the leasing of a residential unit in the Project) 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 instrument shall in no way modify, lessen or diminish the obligations and restrictions set forth herein relating to the Property.

F. Notification to City of Transfer. During the Construction Period, Developer shall notify City in writing of any proposed sale or other transfer of Developer's leasehold interest in the Property or any interest therein (such notice is not required when Developer enters into any sublease in connection with the lease of a residential unit in the Project). 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 5.04**

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 4.02** 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 4.04** 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, pursuant to a transfer requiring the City's consent, 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; provided, however, that the City acknowledges and agrees that any proposed transferee having a net worth of at least \$20,000,000 (as the term "net worth" is defined and used in Section 10.6 of the Lease) shall be deemed to have the financial qualifications necessary to fulfill the obligations of "Developer" under the Contract. 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 Contract. Developer may collaterally assign or pledge the Property and Developer's rights and obligations under this Contract by providing City with notice of any such assignment or pledge, and such assignment shall be in a form as reasonably approved by the City Attorney, the Developer and the assignee. 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 Lease Term, 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, which approval shall not be unreasonably withheld, delayed or conditioned; 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 Lease Term, 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 Project 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, then the nondefaulting party may institute such proceedings as may be necessary in its opinion to cure the default. Such proceedings may include, 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 (except as otherwise provided in **Section 2.05** of this Contract and provided the City complies with the provisions of Section 2.05 and grants Developer the opportunity to appear before the City Council to show cause why this Contract and the LCRA Plan should not be terminated due to Developer's failure to comply with the Redevelopment Schedule), 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 Developer 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. 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.F** shall not be 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, subsidence, strike, shortage of materials, civil disorder, war, pandemics, epidemics, public health emergencies, quarantines, 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, adverse market conditions, 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, delayed or conditioned. 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 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 forgoing, 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  
220 SE Green Street  
Lee's Summit, MO 64063

With a copy to:

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

Any notice to Developer shall be addressed to:

Vanguard Villas, LLC  
c/o Matt Pennington  
Drake Development, LLC  
7200 W. 132<sup>nd</sup> Street, Suite 150  
Overland Park, KS 66213

With a copy to:

Ralph E. Bellar, Jr.  
Lewis Rice LLC  
1010 Walnut, Suite 500  
Kansas City, MO 64106

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 date the Lease is terminated or otherwise expires.

**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 executed in March 2021 ("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 reasonable Administrative Costs incurred in connection with the LCRA Plan 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 \$10,000, 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 \$10,000. 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 \$10,000 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 \$10,000 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, and reasonable documentation evidencing such Administrative Costs in order for Developer to verify that such Administrative Costs relate to the LCRA Plan and/or this Contract, 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 \$10,000 during the Remediation Period. At the end of the Remediation Period, the amount of the Advanced Funds Account shall be \$10,000 during the remaining period of this Contract.

**D. On-Call Engineering Costs.** After the issuance of the Mine Completion Certificate, the City will engage its on-call engineering firm (the “**City On-Call Engineer**”), to provide services to the City pursuant to the Mine Remediation Plan. The current City On-Call Engineer is HDR Engineering, but this may be another company selected by the City Council in the normal course of bidding for such services on an annual or other periodic basis. As a condition to the issuance of the Mine Completion Certificate, Developer will deposit \$5,000 with the City which shall be deposited in a separate, segregated account of the City (the “**Engineering Costs Account**”). All funds in the Engineering Costs Account shall be used to pay costs associated with work performed by the City On-Call Engineer for the services set forth in **Exhibit I**. The City anticipates engaging the services of the City On-Call Engineer only if the need arises pursuant to the Mine Remediation Plan. The City shall submit to the Developer an itemized statement of actual payments made from the Engineering Costs Account for such expenses as they are incurred by the City, and reasonable documentation evidencing such costs in order for Developer to verify that such costs relate to the scope of work set forth in **Exhibit I**, but no more often than monthly. Developer shall replenish the Engineering Costs Account so that it maintains a balance of \$5,000 during the effective period of this

Contract. The amount to be maintained on deposit in the Engineering Costs Account shall be increased by 2% per calendar year during the effective period of this Contract.

**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 Project 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 Project 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.

**Section 5.17. Termination.** Developer's obligations under this Contract shall terminate simultaneously with termination of the Lease. The obligations of this Contract which expressly survive termination, shall continue past such termination of Developer's obligations.

*[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

Approved as to Form:

\_\_\_\_\_  
David Bushek, Chief Counsel of  
Economic Development & Planning

STATE OF MISSOURI    )  
  )    ss.  
COUNTY OF JACKSON    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of May, 2021, 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:

\_\_\_\_\_

**VANGUARD VILLAS, LLC**

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

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

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

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

On this \_\_\_\_\_ day of May, 2021, before me, a notary public, appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he is the Manager of VANGUARD VILLAS, LLC, and is authorized to sign documents on behalf of said entity and that said instrument was signed on behalf of said entity by authority of its Articles of Organization and acknowledged said instrument to be the free act and deed of said Developer.

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

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

My Commission Expires:

\_\_\_\_\_



## EXHIBIT A

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

#### REDEVELOPMENT AREA

ALL OF LOT 1, PRYOR ACRES RECORDED IN BOOK 147 PAGE 36, AND ALL OF CORLEW'S ESTATES RECORDED IN BOOK 35, PAGE 54, AND ALL OF ERICKSON ACRES, 1ST PLAT, RECORDED AS DOCUMENT 200110086408, AND ALL OF LOT 17, TRACT C AND TRACT D, AND A PORTION OF LOT 18 CHIPMAN-HWY 50 RECORDED IN BOOK 168, PAGE 62, AND A PORTION OF NW LOWENSTEIN DRIVE RIGHT-OF-WAY, AND UN-PLATTED LAND IN THE SOUTH HALF OF SECTION 35, TOWNSHIP 48, RANGE 32, CITY OF LEE'S SUMMIT, COUNTY OF JACKSON, STATE OF MISSOURI, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 35; THENCE ON THE WEST LINE OF SAID SOUTHEAST QUARTER, ON AN ASSUMED BEARING OF S 02°27'18" W 332.72 FEET TO THE POINT OF BEGINNING; THENCE N 31°23'08" E 362.27 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 470; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 85°14'51" E 359.55 FEET TO THE NORTHWEST CORNER OF GERBER HEIGHTS RECORDED IN BOOK 151, PAGE 74; THENCE ON THE WESTERLY LINE OF SAID GERBER HEIGHTS, S 24°49'45" E 579.75 FEET TO THE SOUTHWEST CORNER OF SAID GERBER HEIGHTS; THENCE ON THE SOUTH LINE OF SAID GERBER HEIGHTS, S 85°07'20" E 511.36 FEET TO THE SOUTHEAST CORNER OF SAID GERBER HEIGHTS; THENCE ON THE EAST LINE OF SAID GERBER HEIGHTS, N 02°27'18" E 417.29 FEET TO SAID SOUTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 470; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 77°50'38" E 148.55 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 46°58'04" E 317.20 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 74°45'44" E 322.94 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 87°42'21" E 182.05 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 64°40'25" E 144.66 FEET TO THE INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE WITH THE WESTERLY RIGHT-OF-WAY LINE OF NW PRYOR ROAD BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT; THENCE ON SAID WESTERLY RIGHT-OF-WAY LINE, SOUTHWESTERLY ON THE ARC OF SAID CURVE HAVING A RADIUS OF 1140.00 FEET, AN ARC LENGTH OF 444.52 FEET, AND WHOSE CHORD BEARS S 14°41'33" W 441.71 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT; THENCE CONTINUING ON SAID WESTERLY RIGHT-OF-WAY LINE, SOUTHERLY ON THE ARC OF SAID CURVE HAVING A RADIUS OF 1260.00 FEET, AN ARC LENGTH OF 1040.64 FEET, AND WHOSE CHORD BEARS S 02°12'10" W 1011.31 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT; THENCE ON SAID WESTERLY RIGHT-OF-WAY LINE, SOUTHERLY ON THE ARC OF SAID CURVE HAVING A RADIUS OF 1140.00 FEET, AN ARC LENGTH OF 485.50 FEET, AND WHOSE CHORD BEARS S 09°15'26" E 481.84 FEET; THENCE CONTINUING ON SAID WESTERLY RIGHT-OF-WAY LINE, S 02°56'36" W 154.04 FEET TO THE INTERSECTION OF SAID WESTERLY RIGHT-OF-WAY LINE WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF NW LOWENSTEIN DRIVE; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE,

N 63°21'08" W 614.37 FEET; THENCE CONTINUING ON SAID SOUTHERLY RIGHT-OF-WAY LINE, N 46°56'08" W 1305.77 FEET TO THE INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF NW BLACK TWIG LANE; THENCE N 46°07'56" W 55.00 FEET TO THE INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE OF NW LOWENSTEIN DRIVE WITH THE NORTHERLY RIGHT-OF-WAY LINE OF SAID NW BLACK TWIG LANE; THENCE CONTINUING ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF NW LOWENSTEIN DRIVE, N 45°11'41" W 1073.28 FEET; THENCE CONTINUING ON SAID SOUTHERLY RIGHT-OF-WAY LINE, N 73°35'29" W 146.53 FEET; THENCE N 31°23'08" E 397.41 FEET TO THE POINT OF BEGINNING.

CONTAINS 3,199,695.26 SQUARE FEET, 73.45 ACRES MORE OR LESS.

END OF DESCRIPTION

BASIS OF BEARINGS:

ASSUMED N 86°35'09" W ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 48, RANGE 32, CITY OF LEE'S SUMMIT, COUNTY OF JACKSON, STATE OF MISSOURI.

## REDEVELOPMENT PROJECT AREA

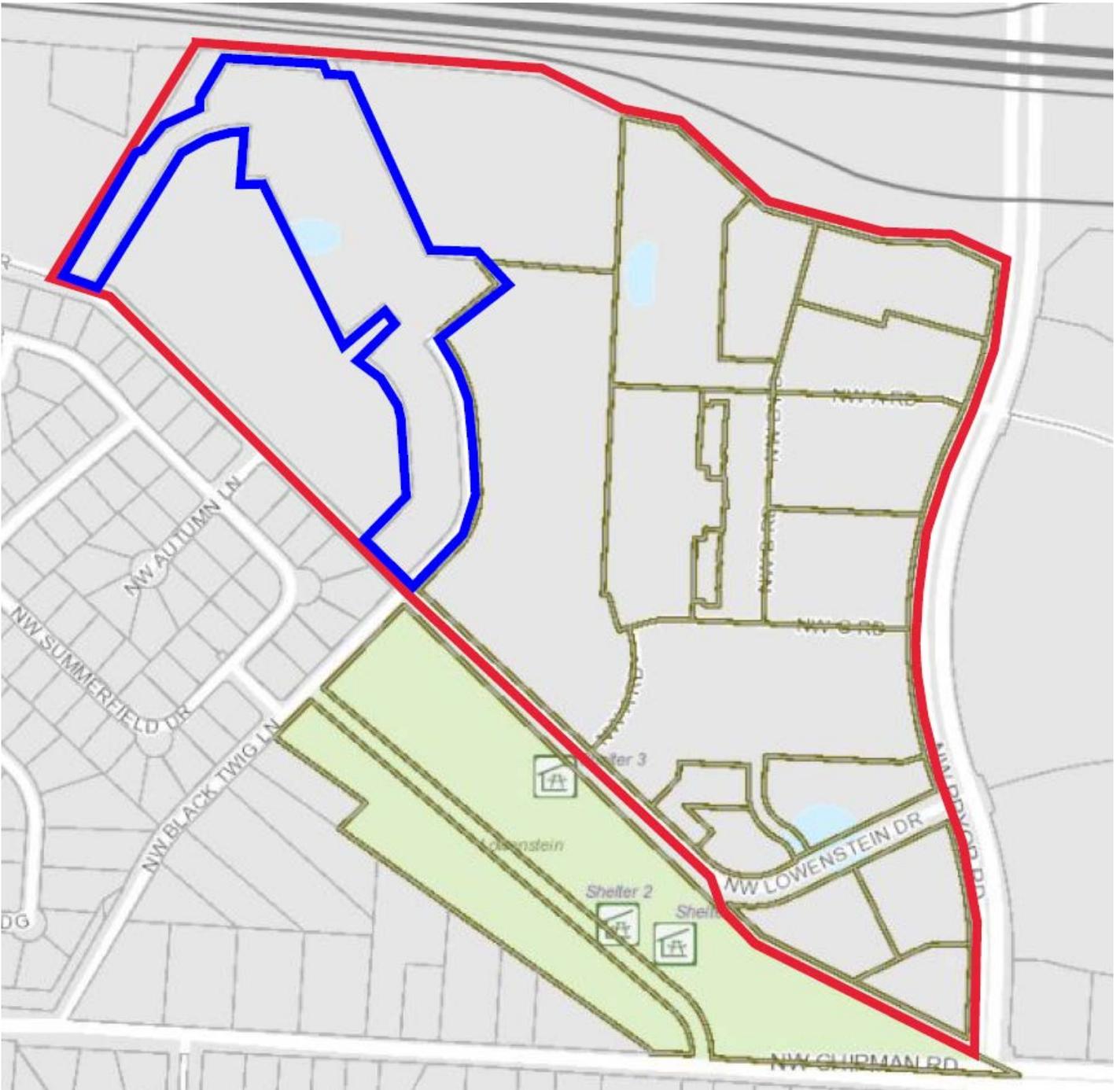
A tract of land being located in Section 35, Township 48 North, Range 32 West, in Jackson County, Missouri being more particularly described as follows:

Beginning at the Southwest Corner of Tract "A" of Streets of West Pryor Lots 1 thru 14, Tracts "A", "B", "C", & "D", a subdivision in Lee's Summit, Jackson County, Missouri; thence N 73°35'29" W, a distance of 82.81 feet; thence N 31°23'08" E, a distance of 376.82 feet; thence S 58°36'52" E, a distance of 16.45 feet; thence along a curve to the right having an Initial Tangent Bearing of N 35°45'03" E and a radius of 325.00 feet, an arc distance of 216.87 feet; thence N 16°00'59" W, a distance of 28.89 feet; thence N 31°23'08" E, a distance of 112.09 feet; thence S 85°14'51" E, a distance of 246.04 feet; thence S 4°45'09" W, a distance of 17.00 feet; thence S 85°14'51" E, a distance of 71.09 feet; thence S 24°49'45" E, a distance of 584.85 feet; thence along a curve to the right having an Initial Tangent Bearing of S 52°46'57" E and a radius of 526.00 feet, an arc distance of 336.40 feet; thence along a curve to the left having an Initial Tangent Bearing of S 82°56'10" W and a radius of 400.00 feet, an arc distance of 67.71 feet; thence S 73°14'15" W, 58.61 feet; thence along a curve to the right having an Initial Tangent Bearing of S 16°45'45" E and a radius of 400.00 feet, an arc distance of 91.52 feet; thence S 3°39'09" E, a distance of 167.38 feet; thence along a curve to the right tangent to the preceding course and having a radius of 200.00 feet, an arc distance of 167.29 feet; thence S 44°16'27" W, a distance of 145.26 feet; thence N 45°11'41" W, a distance of 155.01 feet; thence N 44°16'27" E, a distance of 143.98 feet; thence along a curve to the left tangent to the preceding course and having a radius of 45.00 feet, an arc distance of 37.64 feet; thence N 3°39'09" W, a distance of 167.38 feet; thence along a curve to the left tangent to the preceding course and having a radius of 245.00 feet, an arc distance of 201.29 feet; thence along a reverse curve having a radius of 555.00 feet, an arc distance of 24.67 feet; thence N41°49'12" E, a distance of 130.00 feet; thence along a curve to the right having an Initial Tangent Bearing of N 48°10'48" W and a radius of 425.00 feet, an arc distance of 67.19 feet; thence S 50°52'40" W, a distance of 130.00 feet; thence along a curve to the right having an Initial Tangent Bearing of N 39°07'20" W and a radius of 555.00 feet, an arc distance of 138.45 feet; thence N 24°49'45" W, a distance of 335.79 feet; thence N 87°02'19" W, a distance of 53.04 feet; thence N 4°49'07" E, a distance of 137.81 feet; thence along a curve to the left having an Initial Tangent Bearing of N 85°10'53" W and a radius of 275.00 feet, an arc distance of 214.78 feet; thence S 31°23'08" W, a distance of 418.78 feet to the Point of Beginning.

**Note:** The foregoing metes and bounds legal description is accurate as of the Effective Date. It is the intention of the Parties that this tract will become Lot 7B of a new final plat which will be recorded prior to development.

**EXHIBIT B**

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



**Note:** Redevelopment Area is red and Redevelopment Project Area is blue. Boundary lines are approximate and representative of the legal descriptions in Exhibit A.

## **EXHIBIT C**

### **PRIVATE IMPROVEMENTS**

Land acquisition, preparation of public improvements, site preparation, and the construction of private improvements consisting of “The Vanguard Villas” a residential community consisting of a 83 villa units that are constructed in compliance with the Preliminary Development Plan.

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 Development Agreement.

Improve Lowenstein Drive to urban standards that generally include curb and gutter, typical lane widths, enclosed storm sewer (as necessary), sidewalk, etc. from Black Twig to the westernmost property line of the subject development in compliance with the Unimproved Road Policy. These improvements shall be substantially completed prior to the issuance of any occupancy permits in the Redevelopment Project Area.

## EXHIBIT E

### REDEVELOPMENT SCHEDULE

Project Schedule/Phasing	Units	% of Units	Construction Start	Const. Months	Delivery
Phase I	18	21.69%	Aug-21	10.50	Jun-22
Phase II	22	26.51%	Dec-21	10.50	Oct-22
Phase III	25	30.12%	Mar-22	10.50	Jan-23
Phase IV	18	21.69%	Jun-22	10.50	Apr-23
Total	83	100.00%			
Total Phasing Months from Const. Start to Phase IV Delivery:				20.63	

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

## EXHIBIT F

### CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, VANGUARD VILLAS, LLC (the “*Developer*”), pursuant to that certain Redevelopment Contract dated as of \_\_\_\_, 2021, 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\_\_\_\_, Phase \_\_\_\_ of the Redevelopment Project (as such term is defined in the Contract) has been substantially completed in accordance with the Contract.

2. Phase \_\_\_\_ of 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 Phase \_\_\_\_ of 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 Phase \_\_\_\_ of 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 Phase \_\_\_\_ of 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\_\_\_\_.

**VANGUARD VILLAS, LLC**  
a Missouri limited liability Developer

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 VANGUARD VILLAS, LLC ("Assignor"), \_\_\_\_\_, a \_\_\_\_\_ ("Assignee"), and the City of Lee's Summit, Missouri, a municipal corporation (the "City").

#### RECITALS

A. On April 20, 2019, the City Council by Ordinance No. 9120 approved the Vanguard Villas at Streets of West Pryor LCRA Plan (the "**Plan**").

B. On \_\_\_\_\_, 2021, 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 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 owner of the leasehold interest in the Property will be subject to the payment of rent under a Lease Agreement between the City and Developer dated \_\_\_\_, 2021. 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 Assignee's leasehold interest in 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 Assignee's leasehold interest in 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 Assignee's leasehold interest in 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]



**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:

\_\_\_\_\_

## EXHIBIT H

### MINE REMEDIATION PLAN – SUMMARY OF KEY TERMS

The items below outline the components that will be compiled into a single document that is signed and sealed by a registered design professional competent in the subject area of mine remediation and accepted by the City (the “Mine Remediation Plan”). Any modifications or addendums to the Mine Remediation Plan shall also be signed and sealed by a registered design professional and shall be submitted to the City of Lee’s Summit for review and acceptance. The Mine Remediation Plan must be accepted by the City before the City will issue a Site Development Permit for the Mine Remediation Work. In the event of a conflict between the Mine Remediation Plan and the provision of this Exhibit H, the provisions of the Mine Remediation Plan shall control and shall supersede the provisions of Exhibit H and the parties agree that no amendment of Exhibit H shall be required if the Mine Remediation Plan contains terms and provisions that conflict with Exhibit H.

#### Underground Mine Remediation Plan:

- Evaluation of subsurface zone of stress influence of proposed surface structures relative to required pattern of mine rooms to be backfilled
- Plan of locations for mine backfilling (pattern of underground mine rooms and existing dome out areas to be backfilled)
- Specifications for mine backfill equipment, materials & placement
- Description of monitoring of mine backfilling operation (placed backfill quantity, backfill pile configuration)
- Quality assurance / quality control plan for backfilling operation
- Plan for remediation of discrepant/insufficient backfill piles/zones

#### Remediation Monitoring Plan (Requirements for site monitoring during backfilling):

- Description of proposed monitoring methods & details
- *Underground Monitoring Plan*
- Observations / inspections of backfill pile placement, configuration & deformation
- Observations / inspections of ground water infiltration to mine rooms

#### Corrective Action Plan:

- Notifications / contact list
- Provisions for emergency stop-work orders relative to urgent life-safety issues
- Description of possible events and corresponding mitigation actions that could be taken to resolve issues identified by the various monitoring activities (per Geotechnology’s *Mine Action Response Plan*, these should consider magnitude of ground movement; size of affected area; soil/bedrock conditions within affected area, and type of structure affected)

#### Long-Term Monitoring Plan:

- Description of proposed long-term monitoring for subsidence after the underground mine remediation work is complete
- *Surface Subsidence Instrumentation/Monitoring Plan*
- Survey point locations & relationship to sequence of construction
- Survey point construction details
- Survey monitoring procedures (including baseline readings, precision & repeatability, and quality control/checking)
- Survey monitoring frequency
- Survey points protection & maintenance

{LR: 00560634.8 }

- Collection and reporting of the survey data, including frequency & format of data & reports
- Relationship of ground subsidence to construction activities
- Establishment of action values of ground subsidence (trigger evaluation and corrective action) related to the proposed surface improvements

Long-Term Mitigation Plan:

- Plan for mitigation of long-term subsidence, dome outs which propagate to the ground surface, and distress of surface improvements

Mine Safety and Access Plan:

- Verification of access rights via Permanent Mine Access Facility constructed on the Property or Access Agreements
- Safety plan for all surface and sub-surface activities
- Access control
- Coordination steps between on-going work, City of Lee's Summit, and mine activities north of I-470 to the extent applicable
- Compliance with MSHA regulations

This list may be modified based upon the results of testing conducted by Developer in the initial test hole, site conditions, and the progression of the construction activities.

## **EXHIBIT I**

### **SCOPE OF SERVICES FOR CITY ON-CALL ENGINEER**

The following scope of services shall be used in the City's contract with an engineering firm selected by the City on an annual basis for the purpose of performing service pursuant to the Long-Term Monitoring Plan, Long-Term Mitigation Plan and Mine Safety and Access Plan that are part of the Mine Remediation Plan which shall be accepted by the City as set forth in this Contract.

- **Review/comment on-site conditions and reports generated by others**
- **Review/comment of corrective action plans**
- **Meetings with stakeholders to discuss conditions and corrective actions**
- **Additional services as deemed necessary based on actual site conditions**