

PURCHASE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2012, by and between ELLEN M. KOMAREK (the “Seller”), who is an individual resident of the State of Kansas, and THE CITY OF OVERLAND PARK, KANSAS, a municipal corporation existing under the laws of the State of Kansas (the “Buyer”).

WHEREAS, Seller is the owner of certain real estate and improvements whose common address is 10272 Rosewood St., Overland Park, Johnson County, Kansas (the “Property”), and which is legally described as follows:

MONITOR SQUARE LOT 4 BLK 1 OPC-0785 0004 CONS.

WHEREAS, Buyer may undertake the Monitor Square Stormwater Drainage Improvement Project, 101st & Roe to 103rd & Rosewood (the “Improvement Project”) in the vicinity of the Property, and Buyer has determined that if the Improvement Project is approved by the Buyer’s Governing Body (the “Governing Body”), it will be necessary to acquire the Property, including the improvements thereon for the Improvement Project; and

WHEREAS, pursuant to applicable Kansas statutes, Buyer has the power of eminent domain to acquire real property and the improvements thereon for its lawful public purposes; and

WHEREAS, in lieu of Buyer’s exercise of its power of eminent domain, Seller is willing to sell and if the Improvement Project is approved by the Governing Body, Buyer is willing to purchase the Property, and by this written Agreement the parties desire and intend to set forth the terms and conditions of their agreement in writing.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Contingency.** This Agreement is subject to the express and official approval of the Governing Body. In the event the Governing Body does not expressly and officially approve this Agreement, it shall become null and void and the duties and obligations of the Buyer and Seller under the terms of this Agreement shall be forever discharged.

2. **Purchase Price.** The purchase price for the Property and any improvements located thereon is Two Hundred Fifty Nine Thousand Three Hundred Seventy Five and 00/100 Dollars (\$259,375.00), payable at Closing. The Parties hereby acknowledge that the purchase price includes an additional amount, equal to twenty five percent (25%) of the fair market value as determined by the Buyer's appraiser and review appraiser. Buyer offers and Seller accepts this additional amount as a relocation benefit.

3. **Improvements Sold "As Is."** Buyer acknowledges that it is acquiring the Property for the proposed Improvement Project, and therefore will be demolishing any improvements located on the Property. Therefore, it is agreed by the parties that the improvements located on the real property, are sold "as is," and that no representation or warranties, expressed or implied, are made by Seller regarding the habitability, fitness for use or other condition of such real property or improvements.

4. **Fee Simple Title.** Buyer shall obtain a certification of title, and Seller agrees to provide merchantable fee simple title to Buyer as of the date of recording of the deed, subject only to such liens and encumbrances as may be approved by Buyer. Buyer

shall, within seven (7) days prior to closing, deliver such certificate to Seller. Seller shall, prior to closing, secure and file any and all lien releases as may be necessary in order to deliver merchantable fee simple title to Buyer. In the event that Seller is unable to secure such releases, Buyer shall be entitled to extend closing for up to thirty (30) days in order to secure and file releases, or Buyer, at its option, may utilize as much of the above-stated purchase price as is necessary to satisfy any and all such liens which encumber merchantable fee simple title.

5. **Proration.** Seller shall pay all real property and other taxes, general and special, all assessments of any kind or nature, which are due and have accrued at the date of Closing, and Buyer shall assume such taxes or assessments which become due and owing after the date of Closing.

6. **Closing Costs.** Buyer agrees to pay the costs of recording all deeds and other instruments tendered to it.

7. **Real Estate Commissions.** The parties represent that neither has engaged the services of a real estate agent or broker in relation to this transaction, and that to the best of their respective knowledge no person or entity has a claim for any commission in connection with this transaction. In the event that any person or entity claims a commission from Seller for services provided to Seller in relation to this transaction, such commissions are the sole responsibility of Seller. Seller agrees to indemnify and hold Buyer harmless from and against any and all liability, costs and expenses, including reasonable attorney's fees, arising out of or pertaining in any manner to any claim for any such commission claimed from Sellers. In the event that any person or entity claims a commission from Buyer for services provided to Buyer in relation to this transaction,

such commissions are the sole responsibility of Buyer. To the extent permitted by law and subject to the provisions of the Kansas Tort Claims Act and Cash Basis/Budget laws (need to get citations), Buyer agrees to indemnify and hold Sellers harmless from and against any and all liability, costs and expenses, including reasonable attorney's fees, arising out of or pertaining in any manner to any claim for any such commission claimed from Buyer.

8. **Closing and Possession.** The sale and purchase provided herein shall be consummated at a Closing to be held at a location determined by the Buyer at 4:00 p.m. on or before May 3, 2013. The date and event of the sale and purchase are, respectively, herein referred to as the "Closing Date" and the "Closing." On the Closing Date, Seller shall deliver to Buyer a Warranty Deed conveying to Buyer the property herein sold free and clear of all liens, taxes, charges and encumbrances whatsoever, excepting those recorded restrictions and easements approved by Buyer. At the Closing, all monies and papers shall be delivered and all other things called for by this Agreement shall be done, including the proration of taxes, assessments, and other items called for in this Agreement.

a. **Possession.** Seller shall be entitled to possession of the property prior to the Closing. Absolute and unqualified possession shall be delivered to Buyer at 5:00 p.m. on the date of the Closing, unless extended in writing by Buyer (the "Possession Date"). Seller agrees and acknowledges Buyer is allowing Seller to retain possession of the real property and improvements through the Possession Date, but that Buyer is in no way guaranteeing or warranting the habitability of the real property and improvements and has no obligation to the Seller should the

property become uninhabitable prior to the possession date. Seller agrees to hold harmless, indemnify and defend the Buyer, its employees and elected officials against all liability or injury to persons or damage to property that may occur between the Closing Date and the Possession Date.

b. **Insurance.** Seller shall maintain through the Possession Date an Owners' liability insurance policy in a minimum amount of \$100,000 per occurrence and shall provide the Buyer with a Certificate of Insurance evidencing the same.

c. **Delivery of Keys.** The property shall be fully locked and secured and Seller shall deliver to Buyer all keys, garage door openers, and other methods of entry into the property on the Possession Date.

9. **Salvage.** Seller shall have the right, until the Possession Date, to salvage and retain any or all personal property located on the property. Seller shall not salvage any structural items and the building envelope shall remain secured through the Possession Date. In the event Seller seeks to salvage any fixtures, Seller shall provide to Buyer a list of items it seeks to salvage within 15 days of execution of this Agreement. Buyer, at its sole discretion, shall have the exclusive right to deny the salvage of any fixtures and shall communicate any denial within 15 days of receipt of any such request from Seller.

10. **Notices.** The delivery of any documentation or notices as provided hereunder shall be made with respect to Seller to Ellen M. Komarek, 10272 Rosewood St., Overland Park, KS 66207 and with respect to Buyer to Jason Prier, Orrick & Erskine, L.L.P., 901 N. 8th Street, Suite 203, Kansas City, Kansas, 66101, with a copy to Law

Department, 8500 Santa Fe, Overland Park, Kansas 66212, or at such other places as the parties shall hereinafter designate in writing.

11. **Authority to Execute Agreement.** Each of the persons executing this Agreement on behalf of the respective parties represents and warrants that they have the authority to bind the party on behalf of whom they sign this Agreement, and that all acts requisite to the authorization to enter into this Agreement have been taken and completed.

12. **Choice of Law.** The law of the State of Kansas shall govern the rights of the parties with respect to this Agreement.

13. **Entire Agreement.** This Agreement contains the entire agreement between the parties regarding the subject matter of this agreement. All prior oral or written statements relating to the subject matter of this Agreement are merged into this written Agreement, and no promise or agreement not herein expressed has been made by the parties. None of the provisions contained in the Agreement may be changed except by an instrument in writing signed by all of the parties hereto.

14. **Other Relocation Benefits.** The parties agree and acknowledge that in separate correspondence, dated August 21, 2012, Buyer has offered certain relocation benefits, also subject to the express and official approval of Governing Body. Nothing in this Agreement shall be construed to waive or limit those benefits.

15. **Agreement Binding.** This Agreement, and the obligations of the parties, are joint and several obligations of the respective parties, and shall be binding upon the heirs, executors, successors or assigns of the respective parties.

EXECUTED this _____ day of _____, 20__, by Seller.

Ellen M. Komarek

EXECUTED this _____ day of _____, 20__, by Buyer.

THE CITY OF OVERLAND PARK

Carl Gerlach
Mayor

ATTEST:

APPROVED AS TO FORM:

Marian Cook
City Clerk

Tammy Owens
Deputy Assistant City Attorney

