
PUT AND CALL AGREEMENT

by and between

Westport Community Improvement District

and

The City of Kansas City, Missouri

_____, 2017

THIS PUT AND CALL AGREEMENT, is made as of _____, 2017, by and between Westport Community Improvement District (the “CID”), a non-profit corporation organized pursuant to the Missouri Nonprofit Corporation Act, Chapter 355, RSMo, and a Community Improvement District of the State of Missouri established in accordance with the Missouri Community Improvement District Act, Sections 67.1401, et seq, RSMo, as amended (the “CID Act”), and the City of Kansas City, Missouri (the “City”), a constitutionally chartered municipal corporation, (separately a “party” and jointly the “parties”).

WHEREAS, the parties entered that certain Agreement, dated as of _____, 2017 (the “Agreement”), for the purpose of outlining the parties rights and obligations pertaining to the vacation of the public rights-of-way that currently encumber portions of Westport Road and Pennsylvania Avenue as described in **Exhibit A**, attached hereto and incorporated herein by reference (the “ROW Property”); and

WHEREAS, upon such vacation, the ownership of the ROW Property shall revert back to the individual adjacent property owners (the “Adjacent Owners”) who will transfer their interests in the ROW Property to the CID; and

WHEREAS, the parties hereto now desire to enter into this Put and Call Agreement and set forth all of the terms and conditions upon which CID shall have an option to put the ROW Property to the City, and the City shall have an option to call for the sale to the City of the ROW Property.

NOW, THEREFORE, in consideration of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

Section 1. Put Option.

(a) If the City defaults (“City Default”) in the due observance or performance of any covenant, obligation or provision of the Agreement, and such default shall continue for 30 days after the CID has given the City written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that the City (i) has commenced such cure within said 30-day period, and (ii) diligently prosecutes such cure to completion), the CID shall have the right and option, but not the obligation, to require the City to purchase the ROW Property (the “Put Option”).

(b) The CID shall exercise such Put Option by delivering notice of such exercise (the “Put Option Notice”) in writing to the City. If exercised, the CID shall be obligated to sell, without recourse, representation or warranty, and the City shall be obligated to purchase, the ROW Property. The CID’s failure to exercise its Put Option after any City Default shall not preclude the CID from exercising its Put Option after the occurrence of any subsequent City Default.

(c) The purchase price for the ROW Property (the “Purchase Price”) shall be an amount equal to the sum of:

- (i) Any transfer taxes and other closing costs attributable to the exercise of the Put Option (or Call Option, as applicable) and the sale of the ROW Property; plus
- (ii) an amount equal to the aggregate amount of any expenses the CID incurred in the vacation of the ROW Property.
- (d) The Purchase Price shall be paid by the City by federal wire transfer on the Put Closing Date (as defined below), at which time the Agreement will terminate and the CID shall convey the ROW Property to the City without recourse, representation or warranty.
- (e) The date of the Put closing (the "Put Closing Date") will be thirty (30) calendar days following the mailing of the Put Option Notice, or such other date as the CID and the City shall agree in writing.

Section 2. Call Option.

- (a) IF the CID defaults ("CID Default") in the due observance or performance of any covenant, obligation or provision of the Agreement, and such default shall continue for 30 days after the City has given the CID written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that the CID (i) has commenced such cure within said 30-day period, and (ii) diligently prosecutes such cure to completion), the City shall have the right and option, but not the obligation, to require the CID to sell the ROW Property (the "Call Option").
- (b) The City shall exercise such Call Option by delivering notice of such exercise (the "Call Option Notice") in writing to the CID. If exercised, the City shall be obligated to purchase, and the CID shall be obligated to sell, without recourse, presentation or warranty, the ROW Property. The City's failure to exercise its Call Option after any CID Default shall not preclude the City from exercising its Call Option after the occurrence of any subsequent CID Default.
- (c) The Purchase Price shall be paid by the City by federal wire transfer on the Call Closing Date (as defined below), at which time the Agreement will terminate and the CID shall convey the ROW Property to the City without recourse, representation or warranty.
- (d) The date of the Call closing (the "Call Closing Date") will be thirty (30) calendar days following the mailing of the Call Option Notice, or such other date as the CID and the City shall agree in writing.

Section 3. Representations and Warranties of CID. The CID represents and warrants to the City as of the date of this Put and Call Agreement as follows, all of which are material to the City and the truth and accuracy of which have been relied upon by the City in executing and performing their obligations under this Put and Call Agreement:

(a) The CID has authority to enter into this Put and Call Agreement and carry out the transactions contemplated hereunder;

(b) the execution, delivery, and performance by the CID of this Put and Call Agreement have been duly authorized and are valid and binding upon, and enforceable against the CID in accordance with the applicable terms hereof; and

(c) no approvals are required by any governmental or regulatory body or other party in connection with this Put and Call Agreement, the rights granted hereunder, their exercise by the CID.

Section 4. Representations and Warranties of City. City represents and warrants to the CID as of the date of this Put and Call Agreement as follows, all of which are material to the CID and the truth and accuracy of which have been relied upon by the CID in executing and performing their obligations under this Put and Call Agreement:

(a) The City has authority to enter into this Put and Call Agreement and carry out the transactions contemplated hereunder;

(b) the execution, delivery, and performance by the City of this Put and Call Agreement have been duly authorized and are valid and binding upon, and enforceable against the City in accordance with the applicable terms hereof; and

(c) no approvals are required by any governmental or regulatory body or other party in connection with this Put and Call Agreement, the rights granted hereunder, their exercise by the City.

Section 5. Notice. All notices hereunder shall be in writing and shall be sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any notice sent by (i) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (ii) personal messenger shall be deemed delivered when actually received; and (iii) an overnight delivery service shall be deemed delivered on the business day following the date the notice is deposited with the overnight delivery service addressed as specified below:

(a) If to City: City of Kansas City, Missouri
City Hall
414 E. 12th Street, 29th Floor
Kansas City, MO 64106
Attention: City Manager

With a copy to:

City of Kansas City, Missouri
City Hall
414 E. 12th Street, 23rd Floor

(b) If to CID:

Kansas City, MO 64106
Attention: City Attorney
Westport Community Improvement District
4050 Pennsylvania, Suite M100
Kansas City, MO 64111
Attention: Executive Director

With a copy to:

Husch Blackwell LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112
Attention: Charles Renner

Section 6. Governing Law. This Put and Call Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed, interpreted and enforced in all respects in accordance with the laws of the State of Missouri.

Section 7. Successors and Assigns. This Put and Call Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 8. Amendment. This Put and Call Agreement may not be modified, amended or otherwise altered except by written agreement executed by the parties hereto.

Section 9. Counterparts. This Put and Call Agreement and any amendments hereof may be executed in counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument.

Section 10. Prevailing Party. In the event of any litigation between the parties to this Put and Call Agreement, the prevailing party in any such dispute shall be entitled to recover from the other party its reasonable attorneys fees and expenses.

Section 11. Time is of the Essence. Time is of the essence with respect to all of the terms of this Put and Call Agreement.

Section 12. Successors and Assigns. This Put and Call Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that except as otherwise provided herein, no party shall assign this Put and Call Agreement without the prior written consent of the other parties hereto.

Section 13. No Waiver. No consent or waiver, express or implied, by any party to this Put and Call Agreement to or of any breach or default by any other party in the performance by such other party of its obligations under this Put and Call Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any of the other parties or to declare any of

the other parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Put and Call Agreement.

Section 14. Further Acts and Assurances. The parties will do, execute, acknowledge and deliver such further acts, instruments and assurances as may reasonably be required for accomplishing the purposes of this Put and Call Agreement.

Section 15. Representatives Not Individually Liable. No member, official, representative, or employee of the City shall be personally liable to the CID in the event of any default or breach by the City hereunder for any amount which may become due to the CID, or on any obligations under the terms of this Put and Call Agreement. No director, representative, or employee of the CID shall be personally liable to the City in the event any default or breach by the CID hereunder for any amount which may become due to the City, or on any obligations under the terms of this Put and Call Agreement.

Section 16. Payment or Performance on Saturday, Sunday, or Holiday. Whenever the provisions of this Put and Call Agreement call for any payment or the performance of any act on or by a date that is a Saturday, Sunday, or legal holiday of the State of Missouri, including the expiration date of any cure periods provided herein, then such payment or such performance shall be required on or by the immediately succeeding day that is not a Saturday, Sunday, or legal holiday of the State of Missouri

Section 17. Term. This Put and Call Agreement shall commence upon that certain date in which the Adjacent Property Owners convey the ROW Property to the CID and shall terminate upon the earlier of (i) September 25, 2023 or (ii) termination of the CID in accordance with the CID Act.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has executed this Put and Call Agreement as of the day and year first above written.

Westport Community Improvement District

By: _____

Name: _____

Title: _____

City of Kansas City, Missouri

By: _____

Name: _____

Title: _____

Approved as to form:

By: _____

Assistant City Attorney

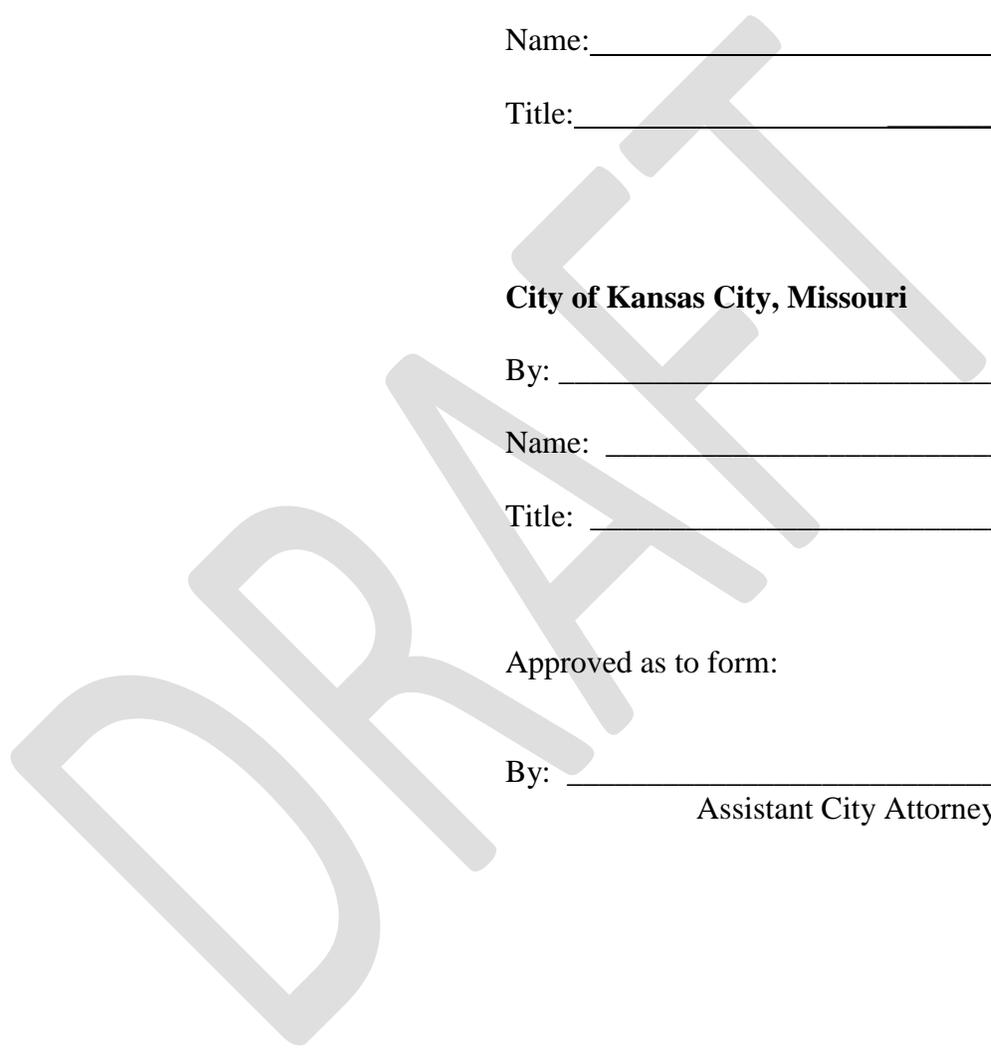


Exhibit A

ROW Property

DRAFT