

## **REAL ESTATE PURCHASE AND SALE AGREEMENT**

**THIS REAL ESTATE PURCHASE AND SALE AGREEMENT** (this "Agreement") is made and entered into this 20 day of March, 2006 by and between **Mary's Lake Properties, L.L.C.**, a Kansas limited liability company (the "Seller") with an address of 1112 West 6<sup>th</sup> Street, Suite 5, Lawrence, Kansas 66044, and **The City of Lawrence, Kansas** ("Purchaser") with an address of 6 East 6<sup>th</sup> Street, P.O. Box 708, Lawrence, Kansas 66044.

### **RECITALS**

**A.** Seller is the owner of fee simple title to certain real estate located in Lawrence, Douglas County, Kansas, legally described on **Exhibit A** attached hereto and incorporated herein by reference (the "Property").

**B.** Purchaser has threatened to acquire the Property pursuant to the Purchaser's condemnation powers.

**C.** Purchaser is the owner of fee simple title to certain real estate located in Lawrence, Douglas County, Kansas, located immediately north of, and adjacent to, the Property (the "Adjacent Property").

**D.** Seller desires to sell all of its right, title and interest in and to the Property and Purchaser desires to purchase the same, all upon the terms and conditions hereinafter set forth.

### **AGREEMENT**

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

1. Sale of Property: Seller hereby agrees to sell, and Purchaser hereby agrees to purchase, on the date of closing as herein provided (hereinafter referred to as the "Closing Date") all of Seller's right, title and interest in and to the Property, together with all and singular the tenements, hereditaments, appurtenances, out parcels, existing leases, and permanent improvements, if any, thereto belonging. Purchaser and Seller hereby acknowledge and agree that Purchaser is a municipal governmental agency with the power of eminent domain under Kansas law, and that this Agreement is hereby entered into in lieu of the threat of a taking by Purchaser of the Property by eminent domain in connection with a public project and in furtherance of a public benefit.

2. Sale of Adjacent Property: In connection with the sale and Purchase of the Property, Purchaser has agreed to sell, and Seller has agreed to purchase, the Adjacent Property

pursuant to the terms this Agreement. The closing of the sale of the Adjacent Property shall also occur on the Closing Date. Notwithstanding the above, in the event the City Commission of the City of Lawrence, Kansas does not approve Seller's re-zoning request and Development Plans with respect to the Remaining Property (as described in Section 5, below), Seller shall have no obligation to purchase the Adjacent Property.

3. Purchase Price: The purchase price (the "**Purchase Price**") for the Property shall (subject to any adjustment required hereunder) be Three Hundred Forty Thousand and No/100 Dollars (\$340,000.00).

4. Payment of Purchase Price: The Purchase Price required to be paid for the Property shall be due and payable in the following manner, to-wit:

- (a) Purchaser shall have a credit towards the Purchase Price in the amount of Fifty Two Thousand and No/100 Dollars (\$52,000.00), which sum represents the purchase price to be paid by Seller to Purchaser for the acquisition by Seller of the Adjacent Property. Provided, however, in the event Seller is not obligated to purchase the Adjacent Property, as set forth in Section 5, Seller shall not be entitled to the credit described in this Section 4(b).
- (b) Purchaser shall have an additional credit towards the Purchase Price in the amount of Twenty Thousand and No/100 Dollars (\$20,000.00), which sum represents Seller's payment to Purchaser for an easement across the Property for storm water drainage and the right to locate storm water drainage structures in the easement across the Property, to be constructed at a later date, as more fully set forth in paragraph 17 of this Agreement.
- (c) The balance of the Purchase Price, subject to any further adjustment required hereunder, shall be paid by Purchaser to Seller on the Closing Date in certified funds due and payable to the order of Seller.

5. Development of the Remaining Property/Closing: Seller is the owner of fee simple title to certain real estate consisting of approximately 10 acres contiguous to the Property (the "Remaining Property"). Seller intends to develop the Remaining Property as a residential subdivision, and therefore has determined to re-zone the Remaining Property. Seller hereby agrees to submit all proposed development specifications, plans and zoning requests (the "Development Plans") and a proposed plat of the Property, the Remaining Property and the Adjacent Property (the "Plat") to the City Commission of the City of Lawrence, Kansas (the "City Commission") for approval prior to commencing development of the Remaining Property. In the event the City Commission does not approve Seller's proposed Development Plans and the Plat, the Seller shall not be obligated to purchase the Adjacent Property, and the Closing Date for the purchase of the Property shall be no later than thirty (30) days after Seller provides written notice to Purchaser stating that the City Commission has denied Seller's Development Plans and

the Plat; provided, however, that in no event shall the Closing Date occur until a period of thirty (30) days have elapsed since the last publication of Purchaser's intent to utilize the Property as a park pursuant to K.S.A. 12-1301. In the event the City Commission approves Seller's Development Plans and the Plat, the Closing Date for the purchase of the Property and the Adjacent Property shall be \_\_\_\_\_, 2006, provided that thirty (30) days have elapsed since the last publication of Purchaser's intent to utilize the Property as a park pursuant to K.S.A. 12-1301, or unless otherwise agreed by the parties in writing.

6. Seller's Representations and Warranties: Seller, to the best of its knowledge, hereby makes the following representations and warranties to and for the benefit of Purchaser, its successors and assigns:

- (a) Seller has good, marketable and insurable fee simple title to all property described on **Exhibit A**, subject only to the covenants, restrictions and encumbrances of record.
- (a) There are no mechanic's liens, contractors' claims, unpaid bills for material or labor pertaining to the Property, nor any other similar items of like nature which might adversely affect the Property, or Seller's title thereto.
- (b) From the date hereof through and including the Closing Date, Seller will continue to maintain the Property in its current condition, ordinary wear and tear and damage by fire or other casualty, or by acts of God and the elements, excepted.
- (c) There are no rental, lease or other commissions now or hereafter payable to any person or entity with respect to any lease agreements or tenancy arrangements affecting the Property.
- (e) On the Closing Date, Seller shall cause the existing mortgage liens against the Property, if any, to be released of record as encumbrances against the Property, and fund all prepayment penalties (if any) incurred for such releases, so that Purchaser shall be able upon consummation of closing to acquire the Property free and clear of any mortgage liens, other than such mortgage lien or liens placed by Purchaser against the Property on or after the Closing Date, and Seller shall bear all costs and expenses incurred in connection with release of its mortgage liens against the Property.
- (f) No lessee or third party has any right or option to purchase the Property or any portion thereof.
- (g) All representations and warranties contained in this Agreement, as set forth in the foregoing subparagraphs of this Section 6 or otherwise, or any document or exhibit attached hereto, to be delivered pursuant to this Agreement, or otherwise

required to be executed by Seller pursuant hereto, are true and correct as of the date hereof, shall be true and correct at the Closing Date, and shall survive for a period of one (1) year after Purchaser's acquisition of the Property.

7. Conditions Precedent to Closing. Each and every one of the following conditions precedent must be satisfied in full within the time frames as hereinafter provided:

- (a) Purchaser shall, as soon as reasonably possible after the execution of this Agreement, obtain consent from the City Commission of the terms and conditions set forth herein. In the event Purchaser is unable to obtain consent from the City Commission within twenty (20) days after the execution of this Agreement, the Agreement shall immediately terminate and become null and void, neither party shall have any further rights and obligations under the Agreement.
- (b) The parties hereto acknowledge that the Purchaser intends to utilize all or a portion of the Property for park purposes. Purchaser shall, therefore, as soon as reasonably possible after obtaining the consent of the City Commission referenced above, publish notice of Purchaser's intent to create a park upon the Property in accordance with K.S.A. 12-1301. In the event Purchaser receives a signed protest to the creation of the park meeting the requirements of K.S.A. 12-1301, the Agreement shall immediately terminate and become null and void, neither party shall have any further rights and obligations under the Agreement.
- (c) Purchaser shall have the right on or before expiration of the Inspection Period (as that term is defined herein) or such shorter time as provided herein to inspect and approve, or reject, the same:
  - (i) As soon as reasonably practicable, Seller shall deliver to Purchaser a current title commitment (the "Title Commitment"), issued by Kansas Secured Title (the "Title Company"), pursuant to which the Title Company commits to issue its extended ownership title insurance policy in favor of Purchaser in the amount of the Purchase Price subject only to the exceptions and such other stipulations, terms and conditions, exclusions and exceptions, as are permitted by Purchaser in writing, it being specifically understood that the Title Company is to deliver to Purchaser copies of all exceptions listed on the Title Commitment concurrently with the issuance thereof. Purchaser shall have until twenty (20) days (the "Review Period") after receipt of the Title Commitment and the Survey (defined below) in which to notify Seller of any objections that Purchaser has to any matters shown or referred to in the Title Commitment. Any title encumbrances or exceptions which are set forth in the Title Commitment to which Purchaser does not object within the Review Period shall be deemed to be permitted exceptions to the status of Seller's title (the

"Permitted Exceptions"). With regard to items to which Purchaser does object within the Review Period, Seller shall have a period of ten (10) days from the date of Purchaser's notice, in which to cure objections. If Seller fails or elects not to cure such objections within such period, Purchaser may at Purchaser's option either waive the objections not cured or terminate this Agreement by notice to Seller on or prior to the expiration of the Inspection Period. Waived objections shall be deemed to be Permitted Exceptions.

- (ii) Within five (5) days from the execution of this Agreement, Seller shall deliver to Purchaser true and correct copies of any lease agreements, management agreements, surveys, cross-easement agreements, environmental reports which are in Seller's possession, if any. Additionally, within said five day period, Seller shall deliver to Purchaser the existing Phase I Environmental Study (the "Phase I") for the Property.
- (iii) Seller, at Purchaser's sole cost and expense, shall furnish Purchaser with an ALTA/ASMC survey of the Property (the "Survey"). If upon receipt of the Survey and Title Commitment, Purchaser has any objection to a matter shown on said Survey, Purchaser shall, within the Review Period, notify Seller of said objection(s) in writing and Seller shall have until the Closing Date to correct such matters to Purchaser's reasonable satisfaction. Within ten (10) days of Seller's receipt of Purchaser's objections, Seller shall inform Purchaser in writing whether Seller intends to cure the objections prior to Closing. If Seller elects not to cure any such objections, Purchaser shall, within ten (10) days of Purchaser's receipt of Seller's notice, notify Seller in writing that either (a) Purchaser waives all such objections which Seller intends not to cure, or (b) that Purchaser does not waive one or more of the objections in which case this Agreement immediately shall terminate and this Agreement shall be null and void. Seller shall have no obligation to cure any Survey objections except as otherwise expressly agreed by Seller in its notice to Purchaser.
- (d) Purchaser shall have sixty (60) days from the date of this Agreement ("Inspection Period"), to conduct physical or other inspections of the Property, and all improvements and spaces located therein as Purchaser shall deem, in its sole discretion, necessary under the circumstances. Purchaser shall indemnify Seller for any damage caused to the Property or any improvements thereon as a result of said inspections.
- (e) If Purchaser is not satisfied with its inspections of the Property or the Phase I, then Purchaser may so notify Seller (which notification must be in writing and given no later than the expiration of the Inspection Period). Seller shall have until the

Closing Date to correct such matters to Purchaser's reasonable satisfaction. Seller shall, within ten (10) days of Seller's receipt of Purchaser's objections, provide written notice to Purchaser stating whether Seller intends to cure the objections prior to Closing. In the event Seller elects not to cure any such objections, Purchaser may either waive all objections which Seller intends not to cure or terminate the Agreement. Purchaser shall notify Seller in writing of its election within ten (10) days of receipt of Seller's notification.

- (f) If Purchaser fails to timely terminate this Agreement as set forth in subsections (c)(i), (c)(iii) or (e) of this Section 7, then Purchaser shall be deemed to be satisfied with the condition of the Property and all documentation provided above, and Purchaser shall be deemed to have waived all rights to terminate this Agreement based on the reasons contained in this Section. Upon Purchaser's termination pursuant to this Section 7, however, Seller shall have no further obligation to purchase the Adjacent Property.

8. Use of Trail: The Seller hereby grants to the Purchaser a revocable license to utilize the existing walking trail upon the Property, which walking trail shall be indicated upon the Survey. In the event this Agreement is terminated for any reason, by any party, prior to the Closing Date, the license granted in this Section 8 may be revoked by Seller by sending written notification to Purchaser to cease use of the trail within ten (10) days and Purchaser shall thereafter have no further rights of use with respect to the walking trail. The pre-existing license agreement with respect to the use of the trail shall be deemed to be amended by the foregoing provisions of this Agreement.

9. Prorations: All items that are customarily subject to proration including, without limitation, real estate taxes, if any, shall be prorated as of the Closing Date. Property damage and public liability insurance maintained by Seller on the Property shall be cancelled as of the Closing Date, and Purchaser shall obtain its own insurance in such respect.

10. Closing. Upon the compliance with the obligations of the parties set forth herein, the sale of the Property contemplated hereby shall be closed at 10:00 a.m. at the offices of the Title Company on the Closing Date, in accordance with the instructions to the Title Company set forth herein or otherwise supplied it by either Seller or Purchaser. If Seller's Development Plans and the Plat are approved by the City Commission, the Property shall be conveyed to Purchaser through dedication to the Purchaser of the Property pursuant to the Plat. At the closing:

- (a) Seller shall execute, acknowledge and/or deliver:
  - (i) In the event the Property is not dedicated to the Purchaser pursuant to the Plat, a general warranty deed conveying to Purchaser all of Seller's fee simple title and easement rights to the Property free and clear of all exceptions, liens or encumbrances other than the Permitted Exceptions;

- (ii) Such items as shall be reasonably required by the Title Company or by Purchaser, authorizing execution of this Agreement, sale of the Property pursuant to the terms and conditions hereof, and execution of all additional and further documents required or necessary to be executed pursuant to the provisions of this Agreement;
  - (iii) Any other documents or instruments required to be executed pursuant to provisions of this Agreement, or otherwise reasonably necessary to be executed or delivered for consummation of the transactions contemplated hereby.
- (b) Purchaser shall deliver, or cause to be delivered, to the Title Company, for disbursement to Seller upon consummation of closing, (i) certified funds (after deduction all credits due Purchaser under this Agreement) in an amount sufficient to pay the balance of the Purchase Price, (ii) such certified resolutions, certificates of good standing, and certificates of authority, as shall be reasonably required by the Title Company or by Seller authorizing execution of this Agreement, purchase of the Property pursuant to the terms and conditions hereof, and execution of all additional and further documents required or necessary to be executed pursuant to the provisions of this Agreement; and (iii) any other document required to be delivered by Purchaser hereunder.
- (c) The Title Company shall, upon delivery of all of the aforementioned documents and funds, and subject to such further instructions as may be given it by either Seller or Purchaser, (i) cause Seller's deed to be recorded (in the event the Property is not dedicated on the Plat), and (ii) issue its ownership title insurance policy (the "Title Policy"), subject only to the Permitted Exceptions, the premium cost of which shall be paid solely by the Seller, in the name of Purchaser in the full amount of the Purchase Price, as provided for hereinabove. The Title Policy shall contain such endorsements as the Purchaser may reasonably request.

11. Notices: Any notice, demand, or other document with either party is required or may desire to give or deliver to, or make upon, the other party shall, in the case of a notice, be in writing, and may be personally delivered or given by reputable overnight mail courier, addressed to the parties at their respective addresses set forth hereinabove, with copies to be sent to any additional person whose name and address has been supplied by one party to the other. Either party hereto may designate a different address for itself by notice similarly given. Notice shall be deemed given when received if delivered personally or when delivered to the overnight mail courier.

12. Validity of Agreement. Each party hereto hereby warrants, represents and agrees that the execution of this Agreement, and any other documents executed and delivered pursuant to the provisions hereof, have been duly authorized by it, that this Agreement is duly executed by

it and the obligations herein set forth are its valid and binding obligations enforceable in accordance with their terms. This Agreement shall be construed in accordance with the laws of the State of Kansas. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this Agreement, or any document executed and delivered pursuant hereto, shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any document executed and delivered pursuant hereto. Time is of the essence of this Agreement.

13. Default: In the event Seller has fulfilled all of its obligations hereunder and all conditions precedent and concurrent to closing for which it is responsible, and Purchaser fails to fulfill its obligations hereunder, Seller shall be entitled to pursue an action to enforce specific performance of Purchaser's obligations under this Agreement. In the event Purchaser fulfills all of its obligations hereunder and meets all conditions precedent and concurrent to closing for which it is responsible and Seller is unable, fails or refuses to meet its obligations hereunder and continues to fail and refuse to honor its obligations hereunder Purchaser shall be entitled to terminate this Agreement upon written notice to Seller. In addition, Purchaser shall have the right to pursue a condemnation action to acquire the Property.

14. Amendments: This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect unless contained in a written amendment. Any amendment to this Agreement shall not be binding upon either of the parties hereto unless such amendment is in writing and executed by the authorized representatives of the parties hereto.

15. Expenses: Seller shall pay (i) Seller's attorney fees and expenses, (ii) required filing fees in connection with recording the Plat; (iii) the fees and expenses of obtaining the Title Commitment; (iv) the fees and expenses of obtaining the Survey, and (v) the cost of obtaining the Phase I Environmental Study. Purchaser shall pay (i) Purchaser's attorney fees and expenses, and (ii) any recording costs of the deed. Except as otherwise provided in this Section, all other costs and expenses hereunder shall be paid by Purchaser.

16. Benefits: This Agreement shall be binding upon, and inure to the benefit of, the respective parties hereto, and their respective successors, transferees and assigns. This Agreement shall not be assigned by Purchaser without the Seller's written consent.

17. Reservation of Drainage Easement: In consideration of this Contract, Seller hereby reserves a non-exclusive, permanent, appurtenant easement (the "**Easement**"), following the Closing Date, across and upon a portion of the Property (i) for the purpose of diverting, discharging and draining surface water from Seller's Remaining Property to Mary's Lake, and (ii) for reasonable access onto the Property for the purpose of constructing, maintaining and repairing



any drainage improvements that Seller may reasonably require, including, without limitation, storm drains and facilities for surface drainage across the Property ("**Drainage Improvements**"). Seller shall be responsible, at its sole cost and expense, to prepare or have prepared a metes and bounds description of the location of the Easement and Drainage Improvements, which description shall be reasonably acceptable to Purchaser, and shall be generally located in the areas shown on the map attached to this Agreement as **Exhibit B** and, by reference, made a part of this Agreement. Any Drainage Improvements desired by Seller may be constructed by Seller at any time, or from time to time, following Closing and shall be at Seller's sole cost and expense. The Easement shall at all times be construed as a covenant running with the land and shall be binding upon the owner or owners of the Property and the Remaining Property and all parties claiming under them and shall be for the benefit of and limitations upon all future owners of such real estate. As soon as the metes and bounds description of the Easement is prepared and approved by the City, the parties agree to execute a separate easement agreement in a format that may be recorded in the Office of the Register of Deeds of Douglas County, Kansas, for the purpose of imparting notice of the Easement reserved under this paragraph. The terms and provisions described in this paragraph shall survive the Closing and shall not merge in the Deed.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one agreement.

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

**SELLER**

MARY'S LAKE PROPERTIES, L.L.C.,  
a Kansas limited liability company

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

Rodger Henry, Manager

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

Rodney Wenger, Manager

**PURCHASER**

THE CITY OF LAWRENCE, KANSAS

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

Dennis Highberger, Mayor

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

David Corliss, City Manager

## **EXHIBIT A**

### **Legal Description**

## **EXHIBIT B**

Final Plat