

**NEIGHBORHOOD REVITALIZATION ACT
PERFORMANCE AGREEMENT for 1101/1115 Indiana Street**

This Agreement (hereinafter “**Agreement**”) is entered into this 12th day of August, 2014, by and between the City of Lawrence, Kansas (hereinafter the “**City**”), and HERE Kansas, LLC, a Delaware limited liability company or its assigns (the “**Company**”), with the City and the Company collectively referred to as the “**Parties**” and each a “**Party**.”

RECITALS

WHEREAS, Pursuant to K.S.A. 12-17,114 *et seq.* and amendments thereto, also referred to as the Kansas Neighborhood Revitalization Act (the “**Act**”), provides for the creation of a Neighborhood Revitalization Area (“**NRA**”) to provide incentives for property owners to improve aging and deteriorating property, or otherwise stimulate new construction, or engage in the rehabilitation, conservation or redevelopment of an area in order to protect the public health, safety and welfare;

WHEREAS, the Company, which is the owner of the property, requested the formation of a NRA for a redevelopment project located at 1101/1115 Indiana Street in Lawrence (the “**Project**”);

WHEREAS, after conducting a public hearing and complying with the publication requirements of K.S.A. 12-17,117 as amended, on July 8, 2014, the City approved Ordinance No. 9021 adopting a neighborhood revitalization district plan (the “**Plan**”) in substantially the same form and content as contained in **Exhibit A** attached hereto and incorporated herein by reference (the “**Ordinance**”).

WHEREAS, the County and the School District have also each approved the formation of a NRA for the 1101/1115 Indiana Street project subject to the requirements and conditions set forth in the Act, the ordinance referenced above passed by the City of Lawrence, the terms and conditions of the Cooperative Agreement (discussed below) and the terms and conditions of this Agreement;

WHEREAS, each of the City, the County, and the School District have entered into an agreement entitled “Neighborhood Revitalization Act Agreement, Cooperative Agreement for 1101/1115 Indiana Street” dated _____, 2014, attached as **Exhibit B**; and

WHEREAS, the City will have primary responsibility for the procedural aspects of NRA implementation and administration, and therefore desire to set forth the specific rights and responsibilities of the Parties with respect to these procedures.

AGREEMENT

NOW, THEREFORE, for the mutual promises and covenants contained herein and other good and valuable consideration, the Parties understand and agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide agreement on the administration of the NRA program for the benefit of the neighborhood revitalization area approved by the City, School District, and County, and set forth the terms and conditions required for the Company to meet the requirement imposed by the NRA law and local ordinance that approved the NRA for the 1101/1115 Indiana Street project.
2. **Duration.** This Agreement shall commence on August 12, 2014 and expire on the date the last payment and rebate is made under the plan, which is anticipated to occur around February 20, 2027.
3. **Company's Responsibilities.** Company agrees to adhere to the terms and conditions of the Plan, the Cooperative Agreement, and this Agreement, including:
 - a. Company agrees to build the Project as substantially described in the Plan, the approved Preliminary Development Plan, and the City's Land Use Development Code. Notwithstanding the foregoing, the Parties acknowledge that (i) the Company shall not be compelled by specific performance to construct the Project as described in the Plan; (ii) that the City's sole remedy for the Company's failure to construct the Project as substantially described in the Plan shall be the termination of this Agreement and the benefits accruing to the Company hereunder; and (iii) that neither Party shall be liable to the other Party for any special, punitive, or consequential damages arising from any breach of this Agreement.
 - b. Company shall notify the City Manager and the County Appraiser prior to commencement of redevelopment activities on the real property associated with the NRA project. Company shall provide any project information that may be helpful to the County Appraiser in the valuation process. In addition, Company shall submit notice to the City Manager that the County Appraiser's Office has completed the review of this real property prior to commencing redevelopment activities.
 - c. Within 10 business days of project construction completion, Company shall provide a Certificate of Project Completion (**Exhibit C**) to the City Manager, with a copy to the County Appraiser. For purposes of submitting this certificate, the project can be considered substantially complete if construction is at least 90% finished.
 - d. Company shall notify the City Manager in writing within 30 days if there are any substantial changes in the Project or in ownership of the Project.

4. **Calendar of Events.** Activities, payments and rebates due under the terms of the Plan, the Cooperative Agreement, and Kansas statutes are anticipated to occur on the following schedule, provided a project substantial completion date of December 1, 2016. If the Project is not substantially complete by December 1, 2016, the schedule in the table below remains applicable to the Project, and the Company shall only be eligible for a rebate of the property tax increment after substantial completion is achieved through Tax Year 2026, unless the Parties, and the County and School District all agree to an amendment or modification of the Plan's Schedule or Calendar of Events.

NRA Year	Tax Year	Rebate %	Year Rebate Paid to Property Owner
--	2016	n/a	Project complete July 1, 2016
1	2017	85% of increment	2018 (for 2017 Taxes)
2	2018	85% of increment	2019 (for 2018 Taxes)
3	2019	85% of increment	2020 (for 2019 Taxes)
4	2020	85% of increment	2021 (for 2020 Taxes)
5	2021	85% of increment	2022 (for 2021 Taxes)
6	2022	85% of increment	2023 (for 2022 Taxes)
7	2023	85% of increment	2024 (for 2023 Taxes)
8	2024	85% of increment	2025 (for 2024 Taxes)
9	2025	85% of increment	2026 (for 2025 Taxes)
10	2026	85% of increment	2027 (for 2026 Taxes)

5. **Amendment to Plan and this Agreement.** Pursuant to the Ordinance, the City reserves the right to evaluate the Program at any time. The City, County or School District may jointly agree to amend or modify the Plan as conditions, policies or priorities change. However, under no circumstances will the chart in Section 4 be modified.
6. **Termination.** The Parties agree that termination of this Agreement by any Party prior to February 20, 2027 would adversely impact the Plan, and consequently, this Agreement may only be terminated for a breach of either Party's obligations hereunder (subject to the cure period contemplated in Section 12) and ninety (90) days written notice, and further provided such written notice must be received prior to August 1 in the calendar year prior to the tax year the Party desires to terminate participation, unless such notice is waived, in writing, by all Parties to this Agreement. The Parties further agree that any application for tax rebate submitted to the City prior to receipt of the notice of termination shall, if approved, be considered eligible for the duration of the rebate period set forth in the Plan.

7. **City Responsibilities.** The City agrees to fulfill all of the responsibilities set forth in the Plan, the Cooperative Agreement, and Kansas statues governing Neighborhood Revitalization districts, K.S.A. 12-17,118 and amendments thereto. The City will also coordinate with the County, as required by the Cooperative Agreement.
8. **Execution.** For purposes of executing this Agreement, this document if signed and transmitted by facsimile machine, telecopier, or electronic mail is to be treated as an original document. This Agreement may be executed in one or more counterparts and by each Party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument.
9. **Liberal Construction.** This Agreement shall be liberally construed to achieve the economic development objectives and purposes of both this Agreement and the Plan. Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal, such provision(s) shall be null and void, but the remaining provisions shall be unaffected thereby and shall continue to be valid and enforceable.
10. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties on this subject and may not be modified or amended except in writing executed by all Parties in the same manner as the original.
11. **Governing Law.** This Agreement and the Plan and the rights of all the Parties hereto shall be governed by and construed according to the laws of the State of Kansas.
12. **Cure Period.** To the extent either Party determines that the other has failed to comply with any term of this Agreement, such Party shall provide written notice to the other Party, and said Party shall be provided thirty (30) days after the receipt of such notice to comply with the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective, appropriate representatives with authority to bind their respective entity.

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APPLICANT:

HERE Kansas, LLC

James W. Heffernan, Manager

CITY OF LAWRENCE, KANSAS

[SEAL]

Attest:

David L. Corliss, City Manager

Diane Trybom, Acting City Clerk

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Exhibit A

Neighborhood Revitalization Plan
As adopted by Governing Body of the City of Lawrence
On July 8, 2014
through Ordinance No. 9021

[See Attached]

Exhibit B

Neighborhood Revitalization Act
Cooperative Agreement for 1101/1115 Indiana Street
Executed _____, 2014

[See Attached]

Exhibit C

Certificate of Completion

[See Attached]

**City of Lawrence, Kansas
Certificate of Project Completion**



Please fill out the below certificate of completion and submit within 10 days of the conclusion of project construction. *For purposes of submitting this certificate, a project can be considered substantially complete when at least 90% of the construction has been completed.*

Submit Application to: City of Lawrence, City Manager's Office,
Attn: Economic Development
6th East 6th Street, Lawrence, KS 66044

With a copy sent to: Douglas County, Kansas, Attn: Appraiser's Office
1100 Massachusetts St., Lawrence, KS 66044

Project: 1101/1115 Indiana Street, Lawrence, KS 66044

Company Name: HERE Kansas, LLC

Company Address: _____

Contact Information:

Company Contact(s): _____

Contact Address: _____

Contact Phone: _____

Contact Email: _____

I certify that construction of the above project was completed as of: _____
(Date)

Owner's Signature _____ Date _____