

PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT is made this _____ day of November, 2017, by and between the City of Lawrence, Kansas, a municipal corporation, and Robert J. Schumm, Sandra J. Schumm, individually and as husband and wife, and Vermont Place, L.L.C., a Kansas limited liability company.

RECITALS

- A. The City of Lawrence, Kansas, a municipal corporation ("the City"), is authorized by the State of Kansas, pursuant to the Neighborhood Revitalization Act of 1994 ("NRA"), codified as amended at K.S.A. 12-17,114 *et seq.*, to grant certain economic development incentives to developments of real property that qualify for incentivization under the NRA;
- B. Additionally, pursuant to K.S.A. 12-740 *et seq.*, the City is authorized by the State of Kansas to issue, as an economic development incentive, industrial revenue bonds (IRBs) for the purpose, *inter alia*, of promoting the City's economic goals and objectives;
- C. Robert J. Schumm and Sandra J. Schumm ("the Schumms") own that real property, commonly known as 815 Vermont Street ("the Property"), which is currently undeveloped, and which bears the following legal description:

Lot 51 and the North 45 feet of Lot 53 on Vermont Street, in
the City of Lawrence, Douglas County, Kansas;
- D. In 2016, The Schumms submitted to the City a request for economic development incentives under the NRA and for certain IRBs to assist with the development of the Property, which development shall be effected by Vermont Place, LLC, a Kansas limited liability company ("the Developer");
- E. On November 7, 2017, after conducting a public hearing, the Governing Body voted to approve, subject to certain conditions, the Schumms' request for economic incentives under the NRA, to establish the NRA area, to approve the NRA Plan, and to issue IRBs for the proposed development of the Property;
- F. Pursuant to the policy of the Governing Body, every economic development incentive granted by the City shall be subject to and be accompanied by a Performance Agreement; and
- G. Pursuant to that policy and as a condition for the granting of economic development incentives, the City requires the Schumms and the Developer to execute this Performance Agreement and to comply with its terms.

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

TERMS

1. **Adoption of Recitals.** The above-stated recitals are incorporated herein by reference, are hereby made a part of this Performance Agreement, and shall be as effective as if repeated verbatim.
2. **Adoption of the NRA Plan.** The parties hereby adopt and incorporate herein by reference the "Neighborhood Revitalization Plan for Vermont Place" ("NRA Plan"), as approved by the Governing Body on November 7, 2017, the terms of which are specifically recognized and understood by the parties as being contractual and not mere recitals. (A copy of the NRA Plan is affixed hereto as Exhibit A.)
3. **The Schumms' and the Developer's Covenants.** In exchange for the City's grant of an economic development incentives to develop the Property and, in consideration therefor, the Schumms and the Developer hereby agree to comply with all terms and conditions of the NRA Plan, the City's Economic Development Policy, and this Performance Agreement.
4. **Term.** This Performance Agreement shall be in full force and effect coextensively with the NRA Plan and shall expire or be terminated contemporaneously therewith, except that, in accordance with the NRA Plan, the provisions therein regarding the setting aside of a dwelling unit as Affordable Housing shall survive the expiration or termination of the NRA Plan and this Performance Agreement.
5. **Periodic Review.** The parties agree and understand that this Performance Agreement shall be subject to periodic review by the City, that the Schumms and the Developer are in compliance with the Performance Agreement, and that all conditions qualifying the Schumms for economic development incentives continue to be met.
6. **Access to Records.** The Schumms and the Developer agree that all books, records, documents, contracts, and agreements, related to the proposed development of the Property as may reasonably be necessary for an effective audit under this Performance Agreement, shall, upon reasonable notice being given by the City, be opened to the City, including its duly authorized agents, auditors, and employees, for inspection and examination. The City shall bear the costs of any such audit, unless, however, the audit discloses that the Schumms are not or the Developer is not in compliance with this Performance Agreement, the NRA Plan, or the City's Economic Development Policy. In that case, the Schumms and Developer shall be responsible to the City for the reasonable costs of the audit.

7. **Affordable Housing.** In accordance with the NRA Plan, the Schumms and the Developer have agreed to make available one Affordable Housing dwelling unit within the proposed development of the Property. The Schumms and the Developer agree to underwrite the cost of the Affordable Housing dwelling unit. The parties contemplate and agree that the Lawrence Community Housing Trust, its successors, or assigns, in conjunction with Tenants to Homeowners, Inc., its successors, or assigns, will oversee, into the future, the continued affordability of the Affordable Housing dwelling unit.
8. **Notice and Waiver.** The City hereby gives notice that it reserves the right, in the future, to grant economic development incentives on comparable projects that may be in amounts that differ from those granted the Schumms and the Developer herein. The City also gives notice that any subsequent project may be subject to different terms and conditions. The Schumms and Developer hereby recognize that such may be the case and hereby waive any right to request modification or amendment of the economic development incentives granted herein as the result of any such differences in any future grant of economic development incentives to any such subsequent project.
9. **Termination.** During the term of this Performance Agreement, notwithstanding any provision herein to the contrary, in the event of any default under the NRA Plan, the Economic Development Policy, or this Performance Agreement on the part of the Schumms or the Developer that is not cured within the framework established by Part 12, Item 10 of the NRA Plan, or upon any fraudulent or illegal act of the Schumm's, the Developer, or any lessee, assignee, or successor thereof, the City shall have the right either to modify or to terminate this Performance Agreement and the underlying economic development incentive and, in addition thereto, to take whatever other recourse that may be available to it.
10. **Claw-back Provision.** Notwithstanding any provision herein to the contrary, in the event that the Schumms or the Developer no longer meet one or more conditions of the grant of the economic development incentives hereunder, then the City shall have the right to clawback any economic development incentive granted, paid, or issued from and after the date that the Schumms or the Developer failed to meet that condition or those conditions and shall have the authority to eliminate or to reduce proportionally the amount of economic development incentives being granted, paid, or issued until the termination of this Performance Agreement.
11. **Assignment.** This Performance Agreement may not be sold, assigned, transferred, or sublet without the prior written approval or consent of all parties.

12. **Binding Effect.** This Performance Agreement shall, at all times, be binding upon the City and the Schumms and the Developer and all owners of the Property and all parties claiming by, through, or under them, shall run with the land, and shall be for the benefit of, and shall oblige all future owners of the Property; provided, however, that the rights, duties, and obligations of each owner, as set forth herein, shall cease with the termination of his, her, or its ownership of the Property, or portion thereof, except for those duties and obligations arising during the period of his, her, or its ownership.
13. **Non-waiver.** The failure of the City or the Schumms and the Developer to insist in any one or more instances upon the strict performance of one or more of the terms or provisions of this Performance Agreement shall not be construed as a waiver or relinquishment of any right in the future to enforce such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment of any term or provision of this Performance Agreement shall be deemed to have been made by the City or the Schumms and the Developer unless said waiver or relinquishment is in writing and signed by both the City and the Schumms and the Developer.
14. **Amendment.** This Performance Agreement may only be amended or modified by a writing signed by all parties.
15. **Authorization.** Each of the persons executing this Performance Agreement, in behalf of their respective parties, represent and warrant that they have the authority to bind the party in behalf of whom they have executed this Performance Agreement, and that all acts requisite to the authorization to enter into and to execute this Performance Agreement have been taken and completed.
16. **Severability.** If any section, sentence, clause, or phrase of this Performance Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Performance Agreement.
17. **Governing Law.** This Performance Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the State of Kansas.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have caused this Performance Agreement to be executed as of the date noted above.

**CITY:
CITY OF LAWRENCE, KANSAS, a
municipal corporation**

THOMAS M. MARKUS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) ss:

BE IT REMEMBERED, that on this ____ day of _____, 2017, before me the undersigned, a notary public in and for the County and State aforesaid, came Tom Markus, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

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

Notary Public

My Appointment Expires:

**SCHUMMS: ROBERT J. SCHUMM and
SANDRA J. SCHUMM, individually
and as husband and wife**

ROBERT J. SCHUMM

SANDRA J. SCHUMM

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of _____, 2017, before me the undersigned, a notary public in and for the County and State aforesaid, came Robert J. Schumm and Sandra J. Schumm, who are personally known to me to be the same persons who executed this instrument in writing, and said persons fully acknowledged this instrument to be their act and deed.

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

Notary Public

My Appointment Expires:

**DEVELOPER:
VERMONT PLACE, L.L.C., a Kansas
limited liability company**

ROBERT J. SCHUMM
President

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of _____, 2017, before me the undersigned, a notary public in and for the County and State aforesaid, came Robert J. Schumm, as President for Vermont Place, L.L.C., a Kansas limited liability company, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

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

Notary Public

My Appointment Expires: