

## **AGREEMENT FOR THE DONATION OF REAL ESTATE**

**THIS AGREEMENT FOR THE DONATION OF REAL ESTATE** is made this \_\_\_\_\_ day of June, 2017, by and between Burroughs Creek Addition, LLC, a Kansas limited liability company, and the City of Lawrence, Kansas, a municipal corporation.

### **RECITALS**

- A.** Burroughs Creek Addition, LLC, a Kansas limited liability company ("Burroughs"), is the owner of record of that real property, located at the northeast corner of 12th Street and Haskell Avenue, Lawrence, Douglas County, Kansas, and consisting of approximately 2.38 acres ("Donated Tract"), and bearing the legal description, to-wit:

BLOCK ONE, TRACT A, BURROUGH'S CREEK 2<sup>ND</sup> ADDITION, A SUBDIVISION IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS.

- B.** Burroughs is also the record owner of that real property located adjacent to the Donated Tract, commonly known as 1224 East 12th Street, Lawrence, Douglas County, Kansas, consisting of approximately 13,599 square feet ("Bur Oak Tract")(collectively, the Donated Tract and the Bur Oak Tract may be referred to as the Master Tract)(a plat showing the Master Tract is affixed hereto as Exhibit A and is incorporated herein by reference).
- C.** The City of Lawrence, Kansas, a municipal corporation ("City"), a municipal corporation, is duly organized and existing pursuant to the laws of the state of Kansas, and has been granted by the State of Kansas the power of eminent domain to purchase and otherwise to acquire real property for public use.
- D.** By separate agreement, Burroughs has agreed to sell to the City and the City has agreed to purchase from Burroughs the Bur Oak Tract (a map showing the Bur Oak Tract is affixed hereto as Exhibit B and is incorporated herein by reference).
- E.** Burroughs has also agreed to donate to the City the Donated Tract public use as a park and bike path, or for other public purpose as determined by the City (a map showing the Donated Tract is affixed hereto as Exhibit C and is incorporated herein by reference).
- E.** The Donated Tract and the Bur Oak Tract are being acquired by the City for public use as a public park.

- F. To accomplish the foregoing, Burroughs and the City enter into this Agreement for the Donation of Real Estate ("Agreement").

**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, City and Burroughs do hereby agree as follows:

## **TERMS**

1. **Donation Agreement.** Burroughs hereby donates to the City and the City hereby agrees to accept donation of the Donated Tract, without any cost to the City except as may otherwise be set forth in this Agreement. Upon transfer of fee simple title in and to the Donated Tract to the City, Burroughs shall not reserve any restrictions of record regarding the City's use of the Donated Tract, except those set forth in Paragraph 2, *infra*.
2. **Restrictions of Record.** The Final Plat of Burroughs Creek 2nd Addition notes that the Donated Tract will be a dedicated drainage easement, privately owned and maintained by a homeowner's association. The City hereby agrees to accept the Donated Tract, subject to those restrictions and to the following waiver. The following note, as set forth on the Plat, is hereby waived and declared null and void:

"Tract 'A' will be a privately owned, dedicated drainage easement. The developer is responsible for establishing ownership and maintenance of same via individual owner maintenance or maintenance by owners association."
3. **Closing and Possession.** The Closing Date of this Agreement shall be on or before December 29, 2017, and shall be at the office of Kansas Secured Title, Lawrence, Kansas, unless all parties agree in writing to advance or delay the Closing. For the purposes of this Agreement, "Closing" means the settlement of the obligations of the parties to each other under this Agreement, including the delivery to the City of a general Warranty Deed, in proper form for recording, and other transfer documents so as to transfer to the City fee simple title to the Bur Oak Tract, free of all liens, encumbrances, and tenancies, except those identified in the commitment, in accordance with Paragraph 4. At Closing, possession of the Donated Tract shall be transferred to the City. Closing and Possession shall occur simultaneously with Closing and Possession of the Bur Oak Tract.

4. **Title Insurance.** If the City desires title insurance, the City may, at its sole cost and expense, obtain a commitment for a title insurance policy ("Commitment") in whatever amount determined by the City, insuring its title to the Donated Tract, subject only to the liens, encumbrances, exceptions, restrictions, or qualifications set forth in this Agreement, and those which shall be discharged by Burroughs at or before Closing. The City shall provide Burroughs a copy of the Commitment. The Commitment shall be issued by the Title Company. The City shall have thirty (30) days after receipt to examine the Commitment and to notify Burroughs in writing of any requirements to make the title marketable. Burroughs shall have until Closing to cause the title to be made marketable. If defects precluding marketability are not removed by Burroughs prior to Closing, the City may either accept title or cancel this Agreement. Provided the City has satisfied the terms of this paragraph, Burroughs agrees that it shall diligently attempt, prior to Closing, to correct any defects to marketability of which the City has notified Burroughs in writing, and shall file and pursue any legal proceedings reasonably necessary to correct such defects. In case of dispute between the parties as to marketability of the title, the Title Standards adopted from time to time by the Bar Association of the State of Kansas, and the Kansas Marketable Title Act, as amended, shall control. All title insurance costs, as well as the costs of recording any corrective instruments, shall be paid by the City.
5. **Survey.** Within thirty (30) days of the effective date of this Agreement, the City may conduct and provide to Burroughs a survey that shows the boundaries of the Donated Tract.
6. **Burroughs Representations and Warranties.** Burroughs makes the following representations and warranties, each of which shall constitute a material part of the consideration for this Agreement, that to the best of its knowledge, the following are true and accurate:
- (a) Conveyance of the Donated Tract to the City and the consummation of the transaction described in this Agreement, in accordance with its terms, will not breach any agreement, written or oral, to which Burroughs is a party.
  - (b) Burroughs has full right, title, authority, and capacity to execute and perform this Agreement and to consummate all of the transactions contemplated herein, and the persons who execute and deliver this Agreement and all documents to be delivered to the City under this Agreement are and shall be duly authorized to do so. Likewise, the persons signing this Agreement in behalf of Burroughs have full right, title, authority, and capacity to execute and bind Burroughs to the terms of this Agreement.

7. **The City's Representations and Warranties.** The City makes the following representations and warranties, each of which shall constitute a material part of the consideration for this Agreement, that to the best of its knowledge, the following are true and accurate:
- (a) The City has full right, title, authority, and capacity to execute and perform this Agreement and to consummate all of the transactions contemplated herein, and the person who executes and delivers this Agreement and all documents to be delivered to Burroughs under this Agreement is and shall be duly authorized to do so. Likewise, the person signing this Agreement in behalf of the City has full right, title, authority, and capacity to execute and bind the City to the terms of this Agreement.
  - (b) The City has inspected the Donated Tract to the City's satisfaction, and the City acknowledges that the Donated Tract is granted and conveyed by Burroughs and is accepted by the City, in its present condition "as is." At the Closing, the City shall accept the Donated Tract subject to adverse physical characteristics and existing conditions that may not have been disclosed by the City's investigation.
  - (c) Except as expressly provided in this Agreement, no representation or warranties have been made by Burroughs, or anyone in their behalf, to the City as to the condition of the Donated Tract, provided, however, that Burroughs agree to provide to the City copies of any and all environmental assessments or similar reports relating to the Donated Tract that Burroughs currently has or may acquire in the future, it being understood that Burroughs makes no representations as to the accuracy or completeness of any such assessments or reports. The City has had or, prior to the Closing, will have a full and complete opportunity to inspect the Donated Tract, to observe its physical characteristics and existing conditions, and to have conducted such investigations and studies on the Donated Tract as the City deems necessary.
8. **Real Estate Taxes.** It is further agreed by the parties that, with respect to the Donated Tract, Burroughs shall pay all real estate taxes and other assessments for years prior to the year in which the Closing occurs. Real estate taxes for the year in which the Closing occurs shall be prorated between Burroughs and City as of the date of Closing, with Burroughs being responsible for all real estate taxes and other assessments to the date of Closing, prorated on a daily basis, and the City being responsible for all real estate taxes and other assessments after the date of Closing. In the event that real estate taxes and other assessments for the year in which the Closing occurs shall not have been determined as of the date of Closing, then the proration of real estate taxes and

other assessments as described herein shall be completed based upon real estate taxes and other assessments billed and paid in 2016.

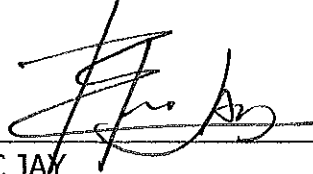
9. **Utility Expenses.** The City agrees that it shall pay all the costs associated with the extension of utility services to the Donated Tract, together with all utility costs incurred after such utilities are installed, if required or determined necessary by the City.
10. **Qualified Appraisal of Donated Tract.** Burroughs acknowledges receipt of a qualified appraisal of the Donated Tract in connection with their donation thereof.
11. **Further Acts.** Burroughs and the City agree, upon the written request of the other party, to perform any further acts and to execute and deliver any documents which may reasonably be necessary to complete the transactions contemplated by this Agreement.
12. **Construction of Terms, Waivers, and Agreements.**
  - a. Paragraph headings are for convenience and shall not be used for interpretation or construction of this Agreement.
  - b. No waiver of any breach of any provision of this Agreement shall be construed to be a waiver of any subsequent breach of such provision or any other provision.
  - c. This Agreement may be modified or amended only in writing, signed by both parties.
  - d. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day that is not a Saturday, Sunday, or legal holiday.
  - e. This Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.
  - f. The laws of the State of Kansas shall govern the validity, enforcement, and interpretation of this Agreement.
  - g. The above-stated Recitals are adopted hereby and incorporated herein by reference as if set forth in full.

13. **Survival.** All warranties, representations, indemnifications, covenants, and agreements of Burroughs, and the City contained or made in this Agreement or any attachment or exhibit to this Agreement shall survive delivery of the deed and the Closing contemplated by this Agreement.
14. **Integration.** This Agreement constitutes the complete and final expression of the agreement of the parties relating to the Donated Tract, and supersedes all previous agreements, and understandings of the parties, either oral or written, relating to the Donated Tract.
15. **Severability.** If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby.
16. **Assignment Prohibited.** The City shall not assign this Agreement or any interest under it, or any interest in or to the Donated Tract, in whole or in part, without the written consent of Burroughs.
17. **Time of the Essence.** Time is of the essence with regard to the parties' performance under this Agreement.
18. **Binding Effect.** It is mutually agreed that all of the covenants and agreements in this Agreement shall extend to and be obligatory upon any and all successors and assigns of Burroughs, and the City.
19. **Public Announcements.** All press releases and public announcements that relate to this Agreement shall be made only as the parties jointly agree.

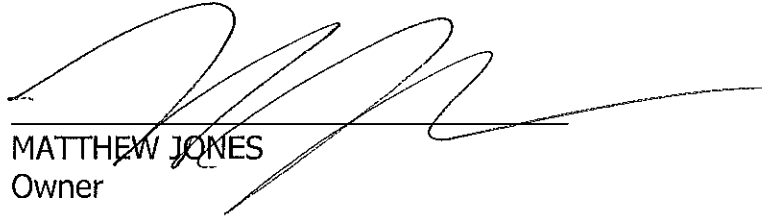
*[SIGNATURES APPEAR ON THE FOLLOWING PAGES]*

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement for the Sale of Real Property to be executed as of the date noted above.

**BURROUGHS:  
BURROUGHS CREEK ADDITION,  
LLC, a Kansas limited liability  
company**



ERIC JAY  
Owner



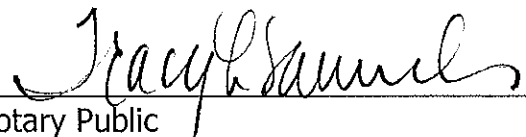
MATTHEW JONES  
Owner

**ACKNOWLEDGMENT**

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

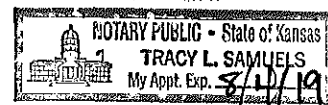
**BE IT REMEMBERED**, that on this 30<sup>th</sup> day of May, 2017, before me the undersigned, a notary public in and for the County and State aforesaid, came Eric Jay and Matthew Jones, as owners of Burroughs Creek Addition, LLC, a Kansas limited liability company, who are personally known to me to be the same persons who executed this instrument in writing, and said persons fully acknowledged this instrument to be 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: 8/4/2019



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

\_\_\_\_\_  
LESLIE SODEN  
Mayor

**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 Leslie Soden, as Mayor 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:



