

**REAL ESTATE CONTRACT
AND DEVELOPMENT AGREEMENT**

THIS REAL ESTATE CONTRACT AND DEVELOPMENT AGREEMENT (this "Agreement") is hereby made and entered into as of _____, 2021 (the "Effective Date"), by and between the City of Olathe, Kansas, a municipal corporation duly organized under the laws of the State of Kansas (the "Seller" or "City"), and TKA Properties, LLP and/or its affiliated assigns (the "Buyer" or "Purchaser") (collectively, the "Parties", and each, a "Party").

WHEREAS, Seller desires to sell and Buyer desires to purchase, upon the terms and conditions hereinafter set forth, the following described real estate located at the northeast corner of 119th Street and Renner Boulevard in Olathe, Kansas, generally depicted in **Exhibit A**, attached hereto and incorporated herein by reference, together with all rights, easements, private rights-of-way, private utilities and/or common area improvements and other related tangible and intangible rights as mutually agreed to by Seller and Buyer (the "Property"). The Property consists of approximately 400,000 square feet +/- of land (subject to adjustments based on, and defined by, an ALTA survey conducted by Buyer and provided to Seller).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, the Parties agree as follows:

1. **Property**. Subject to the terms and conditions hereinafter set forth, Seller shall sell to Buyer and Buyer shall purchase the Property from Seller, for the purpose of developing a commercial name brand new and used automotive dealership, service and repair facility, together with other commercial and/or retail facilities (collectively, the "Project") thereon. The Parties agree that upon completion of the Survey (as defined in Section 9 below), the legal description set forth in the Survey shall be attached hereto as **Exhibit B** and utilized for all purposes in connection with this Agreement and the sale of the Property, as contemplated herein.

2. Purchase Price. The “**Purchase Price**” shall be Six Dollars Per Square Foot (\$6.00/SF) (the total Purchase Price to be determined based on Buyer’s survey and/or final Plat), payable in immediately available and collectible funds at Closing, subject to adjustments as provided herein.

3. Title Company. First American Title Insurance Company, National Commercial Services, 1201 Walnut, Suite 700, Kansas City, MO 64106, Attn: Sheryl Snook (ssnook@firstam.com), shall be the Title Company acting as escrow agent for all purposes in connection with this Agreement.

4. Deposit. Within ten (10) days of the Effective Date, Buyer will deliver the sum of Forty-Five Thousand and 00/100 Dollars (\$45,000.00) (the “**Deposit**”) to the Title Company, which Deposit shall be held in escrow by the Title Company and refundable or nonrefundable based upon the further terms of this Agreement. Subject to the other terms and conditions of this Agreement: the Closing Costs (as defined in Section 6) below will be deducted against the Deposit at Closing, and (ii) all of the Deposit remaining (after deducting the aforementioned Closing Costs), if any, will be attributed to (and not in addition to) the Purchase Price at Closing.

5. Taxes & Prorations. Real estate and personal property taxes shall be prorated as of the Closing Date. Seller shall be responsible for all such taxes payable during the calendar year of the Closing and attributable to the Property up to, but not including, the Closing Date (as defined in Paragraph 7, below). The Parties acknowledge and agree that no special assessments are currently levied or outstanding against the Property. If the real estate mill levy rate has not been set for the taxes payable during the year in which the Closing occurs, then the proration of such taxes shall be based upon the mill rate for the preceding tax year. Notwithstanding any provisions hereof to the contrary, the Parties agree that no adjustment to such proration shall be made subsequent to Closing.

6. Closing. Closing hereunder (the “**Closing**” or the “**Closing Date**”) shall be held on or before thirty (30) days after the Approval Period Expiration Date (as hereinafter defined) as

long as all Closing Conditions set forth in Paragraph 17 hereof have been satisfied or waived by Buyer, or on such earlier date as selected by Buyer and communicated to Seller at least twenty (20) days in advance. Closing will occur no earlier than October 1, 2021. Closing shall be held at the offices of the Title Company, or at such other location which may be agreed upon by the Parties. "**Closing Costs**" are defined as all appraisal costs, inspection costs, title service costs, settlement statements, governmental recording and transfer charges, and escrow fees. Except as otherwise provided herein, all Closing Costs shall be paid half by Buyer and half by Seller, with Buyer's portion in addition to the Purchase Price, and Seller's portion deducted from the Purchase Price. All costs for title insurance shall be paid by Buyer in accordance with Section 14 hereof. There shall be no proration of Seller's insurance premiums or assignment of Seller's insurance policies. Buyer shall be obligated (at its own election) to obtain any insurance coverage deemed necessary or appropriate by Buyer.

7. Possession. Seller will deliver possession of the described Property, free and clear from all tenancies, upon Closing (the "**Closing Date**") unless a different possession date is agreed upon between the Parties in writing. Seller shall be responsible and liable for removing all personal property from the Property prior to Closing. Any and all personal property remaining on the Property after the date of Closing shall become the property of Buyer. Seller shall be responsible for and pay all utilities and ad valorem real property taxes (in accordance with Paragraph 5, above) until the Closing Date.

8. Right of Entry; Due Diligence Materials. Seller hereby grants to Buyer, and its investors, employees, consultants, auditors, legal counsel, potential financing sources, and other representatives and agents, a non-exclusive right and license to enter the Property, until the Closing or earlier termination of this Agreement, for the purposes of conducting any and all of Buyer's review, due diligence, and planning activities ("Buyer's Due Diligence"). Buyer acknowledges that as of the Effective Date the Property is being used by the City as an active staging, demolition, and construction site. Buyer agrees that Buyer's Due Diligence must be

coordinated with the City prior to Closing to avoid interference with the City's construction staging activities and also avoid creating undue risk to the City and its contractors.

Within ten (10) days of the Effective Date, Seller shall, at Seller's sole cost and expense, provide Buyer copies of the following in Seller's possession or control and not previously provided to Buyer: (a) any and all existing environmental reports, engineering reports, surveys, soil and substrata studies, development assessments, appraisals, and any other similar studies, reviews, surveys, assessments, audits or reports on the Property, (b) any and all previous title commitments, title reports, or title insurance policies with respect to the Property, and (c) any and all covenants, restrictions, easements, and other agreements affecting the Property, (collectively, the "**Due Diligence Materials**"). Buyer shall have until the expiration of the Inspection Period to review the Due Diligence Materials, obtain updated Due Diligence Materials if it wishes, and submit written notification to Seller of any objections it has to the Property and/or the Due Diligence Materials. In the event Buyer determines, in its sole and absolute discretion, that the Property contains an unacceptable environmental or other any other condition (e.g., without limitation, the discovery of hazardous materials which would require extensive and costly remediation), this Agreement shall, at Buyer's option and upon notice to the City, be null and void, in which event this Agreement shall automatically terminate, the Deposit shall be returned to Buyer, and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement, other than obligations which are herein expressly provided to survive the termination of this Agreement.

9. Survey. Prior to expiration of the Inspection Period (as defined in Subsection 10.a.), but before preparation of the Survey by Buyer (as defined herein), Seller agrees, at its sole cost and expense, to prepare and record all necessary public street right-of-way dedication and public easement documents relative to the Property (the "Dedication Documents"). Buyer will be responsible, at its sole cost and expense (except as otherwise provided in Section 6 above), for obtaining a current ALTA/NSPS survey of the balance of the Property not dedicated as public

street right-of-way as set forth in the Dedication Documents (the "Survey"). Such survey will be performed by a licensed surveyor in the State of Kansas prior to the expiration of the Inspection Period. The Buyer shall furnish a copy of the Survey to Seller. Upon completion of the Survey, the legal description set forth therein shall be attached hereto as **Exhibit B** and shall be the legal description of the Property for all purposes in connection with this Agreement, including the Purchase Price, the Deed (as defined herein), and the title insurance policy.

10. Inspection Period.

- a. Initial Inspection Period. Buyer, its agents and representatives, shall have ninety (90) days from the Effective Date (the "**Inspection Period**") to enter upon the Property to inspect the same and to perform such tests as needed to determine surface, subsurface and structural conditions of the Property, including but not limited to conducting Phase I and Phase II environmental inspections (each, an "**Environmental Assessment**", and collectively, the "**Environmental Assessments**"), geotechnical investigations and core drillings (the "**Geotechnical Investigations**"), and to conduct such other activities and reviews with respect to the Property, and Buyer's intended use thereof, as Buyer shall deem appropriate in its discretion. In the event Buyer notifies Seller during the Inspection Period that Buyer elects to terminate this Agreement for any reason or for no reason, in Buyer's sole and absolute discretion, then this Agreement shall be null and void and automatically terminate, the Deposit shall be returned to Buyer, and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement, other than obligations which are herein expressly provided to survive the termination of this Agreement.
- b. Extensions. Buyer shall have the right to extend the Inspection Period for two (2) additional periods, each consisting of thirty (30) days (each, an

"Extension"). In exchange for each Extension, Purchaser agrees to deposit an additional Ten Thousand Dollars (\$10,000.00) (each, an "Additional Deposit") with the Title Company. Each Additional Deposit shall be deemed part of the Deposit and applicable to the Purchase Price. Prior to expiration of the Inspection Period (as it may be extended), or sooner at Purchaser's option, Purchaser shall notify Seller of its intent to proceed with closing or canceling the Contract prior to the expiration of the Inspection Period (as it may be extended). If Purchaser cancels the Contract, the Deposit and all interest earned thereon will be promptly returned to Purchaser.

11. Representations and Warranties. Seller represents, warrants and covenants to Buyer that:

- a. Capacity & Authority. Seller has the legal capacity and authority to execute, deliver and perform this Agreement and all instruments to consummate the Closing of the sale of the Property, and no further consents or approvals are necessary.
- b. Ownership Interest. Seller is the fee simple owner of the Property, and no person other than Seller has any right, title or interest in and to the Property.
- c. No Litigation. To the best of Seller's knowledge, there are no causes of action, suits or judgments against Seller or the Property which would delay or prohibit the sale, and the Property is not in violation of any federal state or local law, statute, ordinance, rule or regulation.
- d. No Additional Disclosures. There are no leases, contracts, agreements or obligations of Seller for and with respect to the Property which have not been disclosed to Buyer in writing as part of the Due Diligence Materials, and which will not be terminated by Seller on or before Closing.

- e. Condemnation. Seller has received no written notices of any pending or threatened condemnation or disconnection of any existing utilities.
- f. Hazardous Materials. To the best of Seller's knowledge, there has occurred no release, generation, discharge, manufacture, treatment, transportation or disposal on or in connection with the Property of any hazardous, dangerous or toxic materials, substances or wastes (all, collectively, "**Hazardous Materials**"), as any of such terms are defined by the Comprehensive Environmental Response, Compensation, and Liability Act (known as "**CERCLA**") or the Resource Conservation and Recovery Act (known as "**RCRA**") or any other applicable federal, state or local law, regulation, ordinance or requirement relating to or imposing standards of conduct concerning any hazardous, toxic or dangerous materials, substances or wastes (all, collectively "**Environmental Laws**") in violation of any Environmental Laws.
- g. Utilities; Access. The Property has adequate water supply, storm and sanitary sewage facilities, telephone, gas, electricity and other required public utilities and fire protection available near its boundary lines. No additional easements will be required for utility purposes; however, utility connections will be made by Buyer within the public right-of-way. No easements are required by the owner of the Property for such access and full utilization or in connection with any utilities. All streets and roads necessary for access to and utilization of the Property or any part thereof have been completed, dedicated and accepted for maintenance and public use by the appropriate governmental authorities. Buyer acknowledges that no temporary or permanent access points to the Property may be made

from 119th Street, and that public road access to the Property will be made from 118th Street and Renner Road.

h. Soil Conditions. To the best of Seller's knowledge there are no soil conditions materially adversely affecting the Property.

12. Conditions Precedent. It is specifically agreed that Buyer's obligations hereunder are conditioned upon Buyer's satisfaction that Seller's warranties and representations shall remain true and correct in all material respects on and as of the Closing Date. Should any warranty or representation not be in effect or complied with on or before Closing, Buyer shall have the option of (i) waiving compliance with any one or more of said warranties or representations and closing this transaction, (ii) extending the Closing Date for a reasonable period of time, not to exceed thirty (30) days, in order to provide Seller time to satisfy such warranties or representations, or (iii) terminating this Agreement upon written notice to the City, in which latter event this Agreement shall terminate, the Deposit shall be returned to Buyer, and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement, other than obligations which are herein expressly provided to survive the termination of this Agreement.

13. Conveyance of Title. Seller shall convey good and marketable fee simple title to the Property to Buyer pursuant to a recordable special warranty deed reasonably acceptable to the Title Company and Buyer (the "**Deed**"). "Good and marketable title" as used herein shall mean ownership which, when acquired by Buyer, will be insurable by the Title Company under its standard ALTA extended coverage title insurance policy at standard rates, including such endorsements as Buyer may request, and is free and clear of all liens, encumbrances, and other exceptions to title except the Permitted Title Exceptions as hereinafter defined. The Parties hereby specifically agree that the above-described title insurance policy shall be issued with all "standard exceptions" being deleted therefrom. The "standard exceptions" to be deleted shall include the mechanic's lien exception, the unsettled taxes exception, and all "standard" survey

exceptions. Seller shall deliver to Buyer at Closing an affidavit acceptable to Buyer and the Title Company stating that Seller has sole and exclusive possession of the Property and stating, among other things which may be reasonably required by Buyer and the Title Company, that either (i) there have been no improvements, additions, alterations, repairs or any changes of any kind whatsoever made to the Property during the last sixty (60) days immediately preceding Closing, or (ii) if there have been any such improvements or repairs, that all lienors, in connection with such improvements or repairs have been paid in full, together with such other documentation reasonably required by Buyer, including without limitations, a Foreign Investment in Real Property Tax Act (known as FIRPTA) income tax withholding certificate, and evidence of authority to consummate the sale, in form and substance acceptable to Buyer.

14. Title Commitment. The Parties acknowledge that Buyer (will obtain, within ten (10) days after the Effective Date), a commitment for an owner's title insurance policy underwritten by the Title Company, together with legible copies of all documents recorded against the Property (the "**Title Information**"). The costs of said title insurance shall be paid by Buyer. Seller agrees that Buyer shall have until the expiration of the Inspection Period to examine the Title Information and the Survey to the Property and notify Seller of any objectionable matter or defect which affects the marketability or insurability of the title to the Property or which adversely affects the use of the Property, or which is otherwise objectionable to Buyer in its sole and absolute discretion (collectively, "**Objections**"). In the event Seller is notified of any such Objections, Seller shall have a period of ten (10) days in which to notify Buyer in writing of the Objections it elects to cure (the "**Seller Notice**"). If Seller fails to timely provide the Seller Notice to Buyer identifying the Objections Seller has elected to cure, Seller shall be deemed to have elected to cure all of the Objections. Seller agrees to promptly employ its best efforts to cure the Objections it has elected (or been deemed to have elected) to cure. In the event, however, Seller is unable through the exercise of its best efforts to cure any such Objections prior to Closing, then at Buyer's option, Buyer may either (i) take title to the Property despite the existence of such cure, or (ii) terminate

this Agreement upon written notice to the City in which event this Agreement shall automatically terminate, the Deposit shall be returned to Buyer, and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement, other than obligations which are herein expressly provided to survive the termination of this Agreement. Any title exceptions to the Property to which Buyer does not object, or any title exception as to which Buyer waives its objection, are referred to herein as "**Permitted Title Exceptions.**" Notwithstanding the foregoing, Seller shall satisfy all monetary encumbrances (e.g. mortgages, mechanic's or other monetary liens, judgments and/or tax liens) on or before Closing.

15. Destruction of the Property. Except as otherwise provided herein, Seller shall bear the risk of all loss or damage to the Property and any personal property located on the Property from any causes whatsoever during the time between the Effective Date and the Closing.

16. Maintenance of the Property & Demolition of Structures. Seller shall demolish and remove all vertical improvements located on the Property in accordance with generally accepted demolition practice and procedures prior to Closing. Prior to Closing, Seller will, at its sole cost and expense, clear the Property, remove all debris (including but not limited to all hard surfaces (e.g., asphalt & concrete pavement) and building foundations), install fill dirt as necessary (including infill of all subsurface areas resulting from the demolition) for the Property to be reasonably level, and seed the Property. Prior to Closing, the Property shall otherwise be maintained by Seller in a reasonable, professional and prudent manner at all times. Except as specifically set forth herein, Buyer is buying the Property in its "as is, where is" condition with all faults and in such condition as the Property is at Closing.

17. Development Approval Contingencies. Seller understands that Buyer intends to submit, application(s) for rezoning, preliminary and final site development plan, re-platting, and related permits/applications for the Property, or a portion thereof, to be developed for the Project consistent with the City's adopted building and site design standards as set forth in the Olathe Unified Development Ordinance (collectively, the "**Project Approvals**"). Buyer shall apply for

and diligently pursue the Project Approvals. In the event that Buyer does not obtain the Project Approvals, in a form acceptable to the Buyer, in its reasonable discretion, on or before the 150th day after the expiration of the Inspection Period (the "**Approval Period Expiration Date**"), the Buyer shall have the right to terminate this Agreement upon written notice to Seller, in which event this Agreement shall automatically terminate, the Deposit shall be returned to Buyer and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement.

The Parties acknowledge that Buyer's obligation to close on the Property is contingent upon the following (collectively, the "**Closing Conditions**"): (i) Buyer shall have obtained the Project Approvals under the conditions set forth below, (ii) no condition, event, or circumstance shall have occurred since the expiration of the Inspection Period, not caused by Buyer, that materially adversely affects the value of the Property, and (iii) the Title Company shall be irrevocably committed to issuing a policy for title insurance in compliance with the provisions of this Agreement. The Parties agree that the development of the Property is in the best interests of all Parties and requires their ongoing cooperation. Buyer hereby states and agrees to fully comply with all City requirements applicable to the Project pursuant to the Olathe Municipal Code and Olathe Unified Development Ordinance (collectively, the "Code") (subject to the City waiving any such requirements at the City's sole discretion). Seller hereby states its intent to cooperate with the Buyer in the resolution of mutual problems and its willingness to facilitate the development of the Property provided such development complies with the Code (subject to the City's right to waive such requirements in its sole discretion). The Seller agrees to consider and act on any zoning, planning and platting applications by the Buyer consistent with the originally intended development as outlined in Paragraph 1 hereof, in due course and good faith. The Seller shall cooperate with and provide all usual assistance to the Buyer in securing expedited issuance of all necessary permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law. However, such intention does not preclude

City staff from making professional recommendations regarding the Project Approvals which are in compliance with the Code which nonetheless conflict with Buyer's requests and/or desires pertaining to any of the Project Approvals. The denial of any Project Approvals by the City in accordance with applicable law will not constitute a material breach by Seller under Paragraph 20 of this Agreement.

a. Rezoning & Development Plan.

- i. Submittal. As soon as reasonably practicable after the Effective Date, Buyer will submit an application for rezoning and preliminary site development plan and preliminary plat for the Property. The City agrees not to rezone or consider any applications for preliminary or final site development or preliminary or final platting of any of the Property submitted by other parties without the written permission of Buyer during the term of this Agreement. Such rezoning, site development and plat applications will include all necessary and proper documentation, support data and analysis and shall comply with all rezoning, plan and platting procedures set forth in the Olathe Unified Development Ordinance and other applicable laws and requirements.
- ii. Comprehensive Plan. Buyer further acknowledges that the City has adopted a Comprehensive Plan, and that such Comprehensive Plan includes a Future Land Use Map. The map is intended to serve as a general guide for future land use decisions. Many of the boundaries on the Future Land Use Map is generalized for illustration purposes and may vary when applied to specific parcels and developments. Because it is difficult to predict market and other conditions for multiple decades, it is anticipated that the actual development of the community may differ in some respects from the illustrative vision found in the Future Land Use Map. Buyer

acknowledges that the proposed development should be consistent with the Future Land Use Map in effect on the Effective Date. A determination on compliance with the Comprehensive Plan and the Future Land Use Map will be provided by the City as part of the rezoning review of the Property.

iii. Associated Plans and Standards. Buyer further acknowledges that the City has adopted associated plans, a major street map, and subsequent amendments, including, but not limited to, standards for driveway access and setbacks for sewer lines, parking lots, and buildings for future development. Unless otherwise provided herein or in the Project Approvals, Buyer acknowledges that development of the Property will be (i) subject to City development standards as reasonably required by the City for all development projects within the City as expressly set forth in the Project Approvals, and (ii) of a quality consistent with other class A commercial automotive dealership, service and repair service developments in the City.

B. Sign Easement. Seller agrees to deliver to Buyer at Closing a sign easement (the “**Sign Easement**”) in favor of Buyer located on property retained by the Seller on the southeast corner of 118th Street and Renner Road in the area identified in Exhibit C, attached hereto and incorporated by reference herein for the benefit of Buyer’s Project. Any sign constructed by Buyer within such easement area will be designed and constructed in accordance with the Olathe Unified Development Ordinance. Buyer shall have the right to use the Sign Easement at no cost to Buyer.

C. Tax Increment Financing. Buyer acknowledges that, either before or after Closing, the Property may be included in a Tax Increment Financing (TIF) District which would be created by the City pursuant to K.S.A. 12-1770 et seq. and Olathe City Council Policy F-7 (the “**TIF Laws**”). Buyer acknowledges that such TIF District may divert certain real

property and sales taxes to pay eligible expense in accordance with the TIF Laws but will not create any additional sales taxes to be levied on sales transactions at the Property. Buyer agrees that it will not object to and will reasonably cooperate to create such TIF District to include the Property; provided that nothing contained within the proposed TIF will negatively impact the Project in Buyer's reasonable discretion. This agreement will survive Closing.

18. Notices. All notices, requests, demands or other communications hereunder shall be in writing and deemed given when delivered personally or by electronic mail, or on the day said communication is deposited with a nationally recognized overnight courier or in the U.S. mail, by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller: City of Olathe
PO Box 768
Olathe, KS 66051-0768
ATTN: Brenda D. Long, City Clerk
bdlong@olatheks.org

With a Copy to: City of Olathe
PO Box 768
Olathe, KS 66051-0768
ATTN: Ronald R. Shaver, City Attorney
rshaver@olatheks.org

If to Buyer: TKA Properties, LLP
Attn: Kevin Quinn, Chief Financial Officer
17950 Burt Street
Omaha, NE 68118

With a Copy to: Sandra S. Watts, Esq.
Rouse Frets White Goss Gentile Rhodes, P.C.
4510 Belleview Avenue, Suite 300
Kansas City, MO 64111

or to such other address as a Party may from time to time designate by notice in writing to the other Party.

19. Amendments. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

20. Termination. If the sale is not consummated because Seller materially breaches any of the terms and conditions provided herein, Buyer shall notify Seller in writing of any material breach of this Agreement. Upon such notice, Seller shall have 30 days to begin to cure the breach. If Seller does not begin to cure the breach within 30 days of the notice, then Buyer may then terminate this Agreement, in which event the Title Company shall immediately return the Deposit paid hereunder to the Buyer. Such termination shall be without prejudice to any other legal or equitable right or remedy of Buyer against Seller, including but not limited to an action for damages.

If the sale is not consummated because of the default of Buyer, then the Title Company shall deliver the Deposit paid hereunder to Seller as Seller's sole and exclusive remedy, and as full, complete and final liquidated damages. Seller and Buyer hereby agree that it would be impossible to ascertain the damages accruing to Seller as a result of a default by Buyer under this Agreement. The payment of said liquidated damages, therefore, shall constitute Seller's sole and exclusive remedy against Buyer and shall be in lieu of the exercise by Seller of any other legal or equitable right or remedy which Seller may have against Buyer as a result of Buyer's default.

21. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Kansas.

22. Legal Fees. In the event legal action is instituted by any of the Parties to enforce the terms of this Agreement or arising out of the execution of this Agreement each Party agrees to pay its own legal fees.

23. Waiver. Failure of either Buyer or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Buyer's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

24. Agents or Brokers. The City hereby represents that no agent represented the City for this transaction. Developer hereby represents that David Hickman, CBRE Brokerage – Retail Properties (“Broker”) represented the Seller for this transaction. Broker will receive a 3% commission based on the Purchase Price; one-half of such commission (1.5%) to be deducted from Seller's proceeds at Closing, and the other one-half of such commission (1.5%) paid by Buyer in addition to the Purchase Price at Closing. Except for the foregoing, each Party represents to the other that no other broker, finder or intermediary is involved in the purchase and sale of the Property. Each Party hereby indemnifies and agrees to hold the other Party harmless from and against any and all costs arising or resulting, directly or indirectly, out of any claim by any broker or finder in connection with this transaction due to their respective acts.

25. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same Agreement. Hand signatures transmitted by fax or electronic mail in PDF or similar format are also permitted as binding signatures to this Agreement.

26. Captions. All captions, headings, section and subsection numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

27. Severability. The invalidity or unenforceability of a particular provision of this Agreement, or the application thereof to any party or circumstance, shall not affect the other provisions hereof, or the application of the provision in question to any other party or

circumstance, and the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

28. Entire Agreement. **TIME IS OF THE ESSENCE OF THIS AGREEMENT.** This Agreement supersedes any letter of intent or prior agreement between Buyer and the City and constitutes the entire agreement of the Parties relating to the subject matter hereof, and is binding upon Seller and Buyer, their heirs, successors, legal representatives and assigns.

29. Voluntary Negotiation. Each Party hereby acknowledges that it has the power and authority to enter into this Agreement. By signing this Agreement, each Party affirms that this Agreement was negotiated voluntarily and in good faith.

30. Limited Beneficiaries. This Agreement is solely for the benefit of the Parties hereto, and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party which is not a Party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the Parties hereto and their respective designates, representatives, successors and/or assigns.

31. Right to Exchange Real Property. Buyer, through the use of a qualified intermediary, may transfer or acquire the Property through a tax free exchange, deferred exchange or reverse exchange of real property pursuant to Section 1031 of the Internal Revenue Code, and Seller agrees to reasonably cooperate in connection therewith; provided, however (i) in no event shall any such exchange, or the Buyer's inability to complete any such exchange, impair or otherwise affect the Closing Date, (ii) Seller shall have no obligation or liability to Buyer or any other person or entity in any respect for any matters in connection with any such exchange other than payment of the Purchase Price in exchange for the conveyance to Buyer of fee simple title to the Property by Deed subject only to those matters permitted under this Agreement, and (iii) Buyer shall indemnify and hold Seller harmless from and against any claims, actions, liability and expense in connection with each such exchange.

32. Assignment. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. Buyer may freely assign all or any portion of this Agreement without the consent of the City to any entity that is owned or controlled (defined as managerial authority) by Buyer or one or more of Buyer's principals. Notwithstanding anything herein to the contrary, there shall be no restriction on (and City approval shall not be required for): (i) the sale, transfer, or leasing of all or any portion of the Property; or (ii) any security interest granted to secure indebtedness (including, without limitation, collateral assignment of all or any portion of this Agreement) to any construction or permanent lender.

33. Term. The "**Term**" of this Agreement shall commence on the Effective Date and expire upon the earlier of: (i) termination of this Agreement as provided herein, and (ii) that date on which the IRBs for the Project are redeemed in full,

34. Excusable Delays. The performance of Buyer's obligations shall be excused or extended as a consequence of events caused by force majeure or excusable delay (collectively, "**Excusable Delays**") on account of any delay beyond the reasonable control of Buyer, caused by damage or destruction by fire or other casualty, power failure, strike, shortage of materials, unavailability of labor, delays in the receipt of Project Approvals as a result of unreasonable delay on the part of the applicable governmental authorities, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, and any other events or conditions, which shall include but not be limited to any litigation interfering with or delaying the construction of all or any portion of the Project in accordance with this Agreement, which in fact prevents Buyer from discharging its obligations hereunder. Notice of such a delay must be given to Seller in writing within ten (10) days of Buyer's discovery of such delay. This provision does not extend the Inspection Period in Paragraph 10 (the "Inspection Period"), or the Closing in Paragraph 6, which time limits may only be extended by written agreement of the parties.

35. Legal Holidays and Business Days. If any date herein set forth for the performance of any obligations by Seller or Buyer or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance of such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any federal holiday for which financial institutions or post offices in the State of Kansas are generally closed for observance thereof, and the term "business day" shall mean a day which is not a Saturday, Sunday or legal holiday.

36. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Buyer is required, or the City or the Buyer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Manager and for the Buyer by any officer of Buyer so authorized and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken.

37. Survival. Except as otherwise herein expressly provided, all the promises, representations, warranties and undertakings expressed in this Agreement shall be deemed made as of the Closing, as well as on the Effective Date, and shall survive consummation of this Agreement and deliver of the Deed to the Property for a period of six (6) months following the Closing Date.

38. Commencement of Construction. The Parties agree and acknowledge that it is in their mutual best interest for the Buyer to expeditiously develop the Property after Closing. However, in the event that Buyer fails to Commence Construction (as defined below) of its redevelopment project on the Property within one (1) year following the Closing (the "Commencement Date"), the Parties agree that, except as otherwise provided below, Buyer will

immediately re-convey the Property back to Seller at no greater than the Purchase Price. In such event, this Agreement shall automatically terminate and neither Buyer nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement, other than obligations which are herein expressly provided to survive the termination of this Agreement. Buyer may submit one (1) written request to Seller to extend the Commencement Date stipulating the reasons why Buyer should be granted an extension and specifying the duration of such extension. The granting of such extension is at the sole discretion of the City Manager or its designee; provided, however, that Buyer shall have the right to appeal such decision to the City's governing body. For purposes of this Agreement, the terms "Commence Construction" and "Commenced Construction" shall mean Buyer has obtained a demolition permit, grading permit and building permit, and mobilized construction crews for the Property. Notwithstanding the foregoing or anything in this Agreement to the contrary, in the event that Buyer has Commenced Construction on the Property on or before the Commencement Date, then Buyer shall have no obligation whatsoever to re-convey the Property to Seller, and this Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto as of the Effective Date.

SELLER:

City of Olathe, Kansas,
A Municipal Corporation

By: _____
John W. Bacon, Mayor

Date: _____

ATTEST:

Brenda D. Long, City Clerk

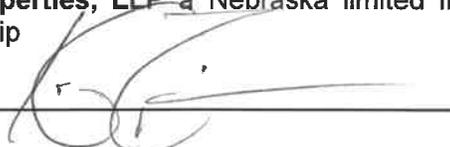
(SEAL)

APPROVED AS TO FORM:

Ronald R. Shaver, City Attorney

BUYER:

TKA Properties, LLP a Nebraska limited liability partnership

By: _____ 

Name: Kevin Quinn

Title: Chief Financial Officer

Date: April 7th, 2021

EXHIBIT A
DEPICTION OF LAND

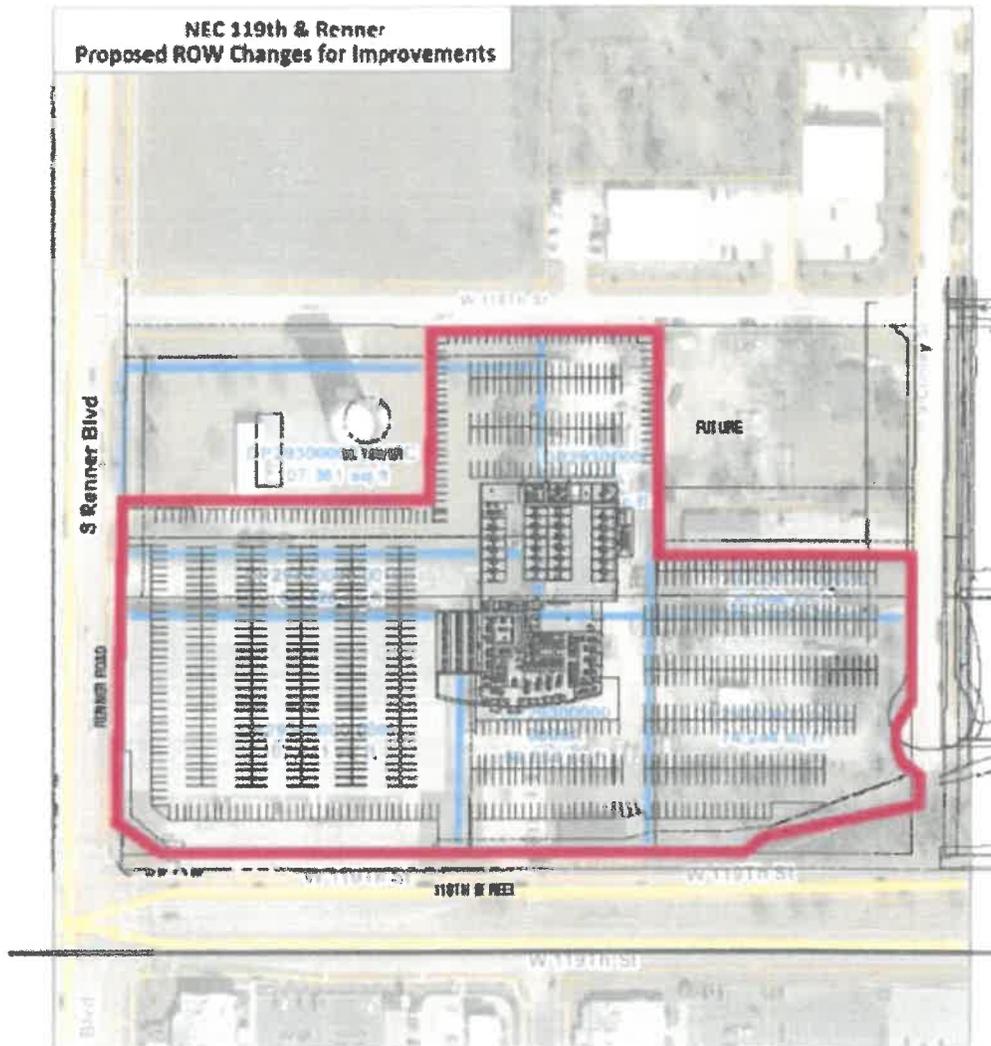


EXHIBIT B

LEGAL DESCRIPTION OF THE PROPERTY

[To be inserted upon completion of the Survey]

EXHIBIT C

LOCATION OF SIGN EASEMENT