

## INSTALLMENT CONTRACT FOR SALE OF REAL ESTATE

**THIS AGREEMENT** is hereby made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the Lee Mill Land Company, LLC, a Kansas limited liability company, hereinafter referred to as "Seller"; and, the City of Manhattan, Kansas, a municipal corporation, hereinafter referred to as "Purchaser" or "City".

**WHEREAS**, Seller owns the property described on Exhibit A, which is attached hereto and incorporated herein by reference, and which is hereinafter referred to as the "Real Estate"; and,

**WHEREAS**, the Seller desires to sell the Real Estate and Purchaser desires to purchase the same.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

1. Seller agrees to sell, and Purchaser agrees to purchase, the Real Estate.
2. The total purchase price of the Real Estate shall be the sum of Three Hundred Fifty Thousand Dollars (\$350,000). Said purchase price shall be paid by Purchaser, as follows:

The sum of Fifty Thousand Dollars (\$50,000) shall be paid to the hereinafter named escrow agent on or before the Closing Date of this contract. At the Closing Date, if the Seller has complied with all obligations hereunder, and all contingencies have been met, the escrow agent is hereby directed to disburse said sum to Seller, after deducting all amounts that are the obligation of Seller hereunder. The balance of Three Hundred Thousand Dollars (\$300,000), with no interest, shall be paid in five (5) equal installments of Sixty Thousand Dollars (\$60,000), with the first such installment due on January 15, 2010, and the subsequent installments due on January 15 of each succeeding year

thereafter until said sum is paid in full. Nothing contained herein shall prevent Purchaser from paying off the entire outstanding balance, at any time, without penalty.

3. Closing shall occur at the office of the title company, or at such other place as shall be mutually agreed upon by the parties, within thirty (30) days after the date this agreement has been signed by Purchaser, or at such sooner time as may be mutually agreed upon by the parties, said date sometimes hereinafter referred to as the "Closing" or the "Closing Date", subject to satisfaction of all contingencies and conditions precedent.

4. Seller shall, along with the execution of this Agreement, execute to the City a good and sufficient Warranty Deed, conveying good and marketable title to the Real Estate, in fee simple, free and clear of all encumbrances whatsoever, including taxes for the current year up to the Closing Date, and all prior years, except those encumbrances, easements, restrictions and other items which may be approved by the City in its sole discretion, hereinafter sometimes referred to as "Permitted Exceptions". Said Deed shall be deposited with the hereinafter named escrow agent until Purchaser has complied with the terms of this agreement and shall then be delivered to Purchaser. Purchaser shall be entitled to the possession, and control, of the Real Estate upon the Closing of this transaction, except as follows: Seller shall have the right to remove approximately 30-40,000 cubic yards of soil from the area depicted as "Borrow Area" on Exhibit B. The removal of such soil shall be completed on, or before, the date City's final payment is due. The removal of such soil shall be done in a workman-like and professional manner and shall leave the Real Estate in

\_\_\_\_\_.

5. Charlson and Wilson, Bonded Abstracters, shall be the escrow agent for this contract until this sale is closed. Charlson and Wilson shall also be the escrow agent for this contract subsequent to Closing, unless the parties mutually agree upon a different escrow agent. Seller shall be responsible for all fees charged by either escrow agent. Purchaser shall make all installment payments required hereunder to Charlson and Wilson, or such other escrow agent as mutually agreed upon. Said escrow agent is also directed to forward all payments made hereunder to Seller. At such time as Purchaser has completed all obligations hereunder, said escrow agent is directed to deliver the Deed to Purchaser.

6. The mailing addresses of the parties are as follows, and all notices required hereunder shall be made to said addresses, unless written notification to the other party is provided for a change of address:

City of Manhattan  
c/o City Manager  
1101 Poyntz Ave.  
Manhattan, KS 66502

Lee Mill Land Company, LLC  
1213 Hylton Heights, Suite 129  
Manhattan, KS 66502

7. Purchaser's obligation to purchase, and Seller's obligation to sell, the Real Estate, is contingent upon the satisfactory completion of the following factors:

- a. Prior to Closing, Seller shall have furnished to Purchaser, and Purchaser in its sole discretion will have approved, the commitment of the title company to issue the title policy, hereinafter sometimes referred to as the "Title Commitment" in the amount of the purchase price, insuring that upon recording the Warranty Deed from Seller to Purchaser, the Purchaser will be the fee simple owner of the Real Estate, except for Permitted Exceptions. Seller shall have a reasonable amount of time, not exceeding thirty (30) days, within which to remedy any defects of title which may appear, and if legal proceedings are necessary, they shall be commenced promptly and diligently prosecuted to completion. The

date of Closing of this sale shall be extended until title or other work necessary to render the title marketable shall be concluded. In the event Seller is unable to furnish marketable title as provided herein then this contract shall be null and void and the escrow agent shall return the Warranty Deed to Seller and all parties shall be released from further liability hereunder. Purchaser shall not have a claim against Seller should the consummation of this contract be prevented because of the inability of Seller to deliver marketable title. In case of dispute between the parties, the title standards adopted by the Kansas Bar Association and the Kansas Marketable Title Act shall control. Seller shall be responsible for all costs of the title policy referred to herein.

- b.** Prior to Closing, Purchaser has completed, at its expense, a Phase I Environmental Audit of the Real Estate, and, Purchaser is satisfied with the results of said audit. Purchaser may waive this contingency, in its sole discretion.
- c.** On the Closing Date:

  - i.** No part of the Real Estate is subject to pending or threatened condemnation proceedings or public taking.
  - ii.** All of the Seller's representations and warranties shall be true, and the Seller shall have complied with all of the Seller's covenants and obligations contained in this Agreement relating to the sale of the Real Estate.
  - iii.** No material adverse change shall have occurred in the condition of the Real Estate between the date of this agreement and the Closing Date.
- d.** A contract between Seller and Purchaser, whereby Seller is donating the property described on Exhibit C, attached hereto (the "Donation Tract"), is closed simultaneously with this agreement.

If any of the conditions precedent set forth above are not fulfilled within the time period required, then the Purchaser may, at its option, by so advising

the Seller, in writing: (a) terminate this agreement, in which event, both the Purchaser and the Seller will be released from further obligations and liabilities hereunder, or (b) waive any of the factors; or (c) upon the mutual agreement of the parties, extend the time for fulfilling any of such conditions to a later date, in which event the parties will continue to use their best efforts to satisfy such factors prior to Closing.

**8.** The Seller hereby covenants and agrees to indemnify, protect and hold harmless the Purchaser (and any successor to Purchaser's interest in the Real Estate whether by merger or otherwise), its officers, directors, employees and agents from and against any and all claims, fines, penalties, demands, liabilities, costs and expenses (including any of the foregoing based upon strict liability) including attorney's fees, in connection with or arising from:

- a.** Any release (as defined in CERCLA) or threat of a release, actual or alleged, of:
  - i.** Any hazardous substances;
  - ii.** Petroleum and petroleum products, including without limitation, crude oil, waste oil or any fraction thereof; or,
  - iii.** Natural gas liquids, liquefied natural gas, or synthetic gas, upon or about the Real Estate the subject of this agreement or respecting any products or materials previously located upon, delivered to or in transit to or from the Real Estate, if such release arises out of conditions which existed as of the Closing Date of this Real Estate agreement.
- b.** Any violation, actual or alleged, or any other liability under or in connection with any Environmental Laws relating to or affecting the Real Estate or any products or materials previously located

upon, delivered to or in transit to or from the Real Estate, if such violation or alleged violation or other liability has occurred or arisen due to conditions that existed as of the Closing Date of this Real Estate agreement.

- c. Any investigatory work and/or remedial action required by any Environmental Laws arising out of conditions that existed as of the Closing Date.

9. This agreement shall be considered to be an "Installment Purchase Agreement" as that term is used in K.S.A. 10-1116b. The parties hereto understand and agree that the obligation of Purchaser to make payments hereunder shall constitute a current expense of Purchaser and shall not in any way be construed to be a debt of Purchaser in contravention of applicable constitutional and statutory debt limitations, nor shall any obligation created hereby constitute a pledge of the general tax revenues, funds or moneys of Purchaser. Purchaser is obligated only to pay such payments under this agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Purchaser's current budget year, as provided by K.S.A. 10-1116b, as amended. The failure, on the part of Purchaser, to budget and appropriate funds for the payments set forth herein shall not be considered to be a default on the part of Purchaser. In the event Purchaser fails to budget and appropriate funds for the payment set forth herein, Seller shall have the right to foreclose any interest that Purchaser might have in the above described property by filing a foreclosure action in a court of competent jurisdiction. In said foreclosure action, this contract shall be treated as an equitable mortgage in favor of Seller. Seller shall not be entitled to recover any monetary judgment against Purchaser in said action. Seller's rights shall be limited to a foreclosure of

Purchaser's interest in the above described Real Estate. Purchaser shall be entitled to all rights, including the right of equity of redemption, as if this document were a mortgage under the laws of the State of Kansas. The amount required to purchase the interest in the Real Estate, if paid in cash, is the purchase price set forth in paragraph 2. There are no annual average interest costs related to this agreement. There are no amounts included in the installments for service, maintenance, insurance or other charges. In the event Seller forecloses its interest in the Real Estate, such foreclosure shall also be deemed to be a foreclosure of any interest that Purchaser has in the Donation Tract and the Donation Tract shall be considered to be a part of the Real Estate for the purposes of such foreclosure action.

**10.** The parties agree that there are no real estate agents that have been involved in this transaction.

**11.** This contract may not be assigned by Purchaser without the prior written consent of Seller.

**12.** The Seller shall pay the cost of preparing the Deed, the premium for title insurance and all escrow fees. Purchaser shall pay the cost of recording its Deed.

**13.** This agreement shall extend to, and be binding upon, the heirs, executors, trustees, successors and assigns of the parties hereto. Time shall be considered to be of the essence in the performance of this agreement.

**14.** As a part of the consideration for the purchase of the Real Estate, the City hereby grants to Seller the right to name any park that the City establishes upon the Real Estate. Such right shall be subject to the reasonable approval of the

governing body of the City. Such right shall expire on January 1, 2020, and from, and after said date Seller shall no longer have any control over the name of such park, including any changes thereto. The right set forth in this paragraph shall survive the closing of this agreement and shall not be assignable by Seller.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands the day and year above written.

**LEE MILL LAND COMPANY, LLC**

BY: \_\_\_\_\_  
**TIM SCHULTZ,**  
**AUTHORIZED MEMBER**

**CITY OF MANHATTAN**

**ATTEST:**

BY: \_\_\_\_\_  
**MARK J. HATESOHL,**  
**Mayor**

\_\_\_\_\_  
**GARY S. FEES,**  
**City Clerk**

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## EXHIBIT A

A tract of land in the Northwest Quarter (NW1/4) and the Northeast Quarter (NE1/4) of Section 22, Township 10 South, Range 7 East of the 6<sup>th</sup> Principal Meridian in Riley County, Kansas described as follows:

BEGINNING at the Northwest Corner of the East Half (E1/2) of the Northwest Quarter (NW1/4) of said Section 22;

THENCE South 89°29'49" East, along the North line of said Northwest Quarter (NW1/4), for a distance of 449.51 feet;

THENCE South 03°49'27" East for a distance of 235.12 feet;

THENCE South 28°42'15" East for a distance of 213.78 feet;

THENCE South 35°40'20" West for a distance of 173.40 feet;

THENCE South 09°23'30" East for a distance of 201.65 feet;

THENCE South 46°29'54" East for a distance of 188.78 feet;

THENCE North 70°39'04" East for a distance of 457.63 feet;

THENCE South 12°37'47" East for a distance of 328.40 feet;

THENCE South 61°59'01" East for a distance of 254.02 feet;

THENCE South 33°11'08" East for a distance of 34.23 feet to the Northwest corner of Lot 24, Lee Mill Heights Unit Four, an Addition to the City of Manhattan, Riley County, Kansas;

THENCE South 33°11'08" East, along the West line of said Lot 24, for a distance of 538.17 feet;

THENCE South 09°57'29" East, along the West line of said Lee Mill Heights Unit Four, for a distance of 147.29 feet;

THENCE North 89°50'46" West for a distance of 1697.15 feet to a point on the West line of the East Half (E1/2) of the Northwest Quarter (NW1/4) of said Section 22;

THENCE North 00°11'33" West, along said West line of the East Half (E1/2) of the Northwest Quarter (NW1/4), for a distance of 1803.54 feet to the POINT AND PLACE OF BEGINNING.

Together with and subject to covenants, easements and reservations of record.

Said property contains 41.01 acres, more or less.

**END DESCRIPTION**

**EXHIBIT B**

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**EXHIBIT C**

A tract of land in the Northeast Quarter (NE1/4) and the Northwest Quarter (NW1/4) of Section 22, Township 10 South, Range 7 East of the 6<sup>th</sup> Principal Meridian in Riley County, Kansas described as follows:

BEGINNING at the Southwest Corner of the Northwest Quarter (NW1/4) of said Section 22;

THENCE North 89°41'21" West, along the South line of said Northwest Quarter (NW1/4), a distance of 1325.27 feet to the Southwest Corner of the East Half (E1/2) of said Northwest Quarter (NW1/4);

THENCE North 00°11'33" West, along the West line of said East Half (E1/2) of the Northwest Quarter (NW1/4), a distance of 837.32 feet;

THENCE South 89°50'46" East a distance of 1697.15 feet to a point on the West line of Lot 20, Lee Mill Heights Unit Four, an Addition to the City of Manhattan, Riley County, Kansas;

THENCE South 09°57'29" East, along said West line of Lot 20, a distance of 154.89 feet to the Southwest corner of said Lot 20;

THENCE, continuing along said West line of Lee Mill Heights Unit Four, South 29°56'12" West for a distance of 793.23 feet to the POINT AND PLACE OF BEGINNING.

Together with and subject to covenants, easements and reservations of record.

Said property contains 30.02 acres, more or less.

**END DESCRIPTION**