

REAL ESTATE CONTRACT

THIS REAL ESTATE CONTRACT is made and entered into this _____ day of _____, 2012 (the "**Agreement**"), by and between Triple J of Wichita, L.L.C., hereinafter referred to as first party, and **SEDGWICK COUNTY FIRE DISTRICT NUMBER ONE**, a Kansas political subdivision, hereinafter referred to as second party.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. **Property.** First Party does hereby agree to convey to Second Party by a good and sufficient general warranty deed certain real property described on Exhibit "A" attached hereto and incorporated herein by this reference which real property is located generally south of 47th S and S. Oliver, together with all buildings, improvements, fixtures and personal property, if any, located thereon (collectively referred to herein as the "**S. Oliver Property**").

Second Party agrees to transfer title to First Party by a good and sufficient conditional warranty deed certain real property described on Exhibit "B" attached hereto and incorporated herein by this reference which real property is located generally at 6400 S. Rock Rd., Derby, Kansas, together with all buildings, improvements, fixtures and personal property, if any, located thereon (collectively referred to herein as the "**S. Rock Rd. Property**").

2. **Condition Precedent to Conveyance of S. Rock Rd. Property.** First Party hereby agrees to construct water and sewer utility improvements to the S. Oliver Property, at its sole expense. The water main is to be an 8" line running south along Oliver to the south property line. The sewer line will be a 2" or 2-1/2" force main going to the west and will terminate at the west property line, final location to be coordinated with the County. The sewer line will discharge into the Oaklawn sewer and First Party will pay any tap fees for the sewer. First Party will also provide an access and maintenance easement over its adjoining property for the sewer line.

The conditional warranty deed conveying the S. Rock Rd. Property to First Party shall include a condition that title to the S. Rock Rd. Property shall not pass until Second Party records an affidavit of completion. The Second Party shall record the affidavit of completion within five business days of transfer of its fire station operations from the S. Rock Rd. Property to the S. Oliver Property.

3. **Closing.** It is understood and agreed between the parties hereto that time is of the essence with respect to this Agreement and that this transaction shall be consummated (herein the "**Closing**") in accordance with the following schedule:

The Closing shall take place at the "Title Company" (hereafter defined), on or before thirty (30) days after expiration of the "Inspection Period" (hereafter defined) (herein the "**Closing Date**").

4. **Termination for Default.** In the event First Party should fail to cure any default in the performance of its obligations hereunder within ten (10) days after receiving written notice thereof from Second Party, specifically setting out such default and advising what must be done to correct the default, this Agreement shall be considered as terminated and the Parties shall be under no further obligation to each other. If Second Party should default hereunder, First Party shall be entitled to terminate this Agreement by giving Second Party written notice of termination, and if the default is not cured within ten (10) days after receiving written notice thereof from First Party, this Agreement shall be considered as terminated and the Parties shall be under no further obligation to each other.

5. **Title Evidence.** On or before fifteen (15) days after the Effective Date of this Agreement, First Party agrees to furnish to Second Party's counsel, Richard A. Euson, 525 N. Main Street, Suite #359, Wichita, KS 67203 (herein "**Third Party's Counsel**"), a title commitment (herein the "**Commitment**"), issued by First America Title Insurance Co. (herein the "**Title Company**"), obligating the Title Company to insure, in Second Party's name and in the amount of the purchase price, fee simple title to the S. Oliver Property. At the time the Commitment is delivered to Second Party's Counsel, there shall accompany the Commitment, legible copies of all instruments shown as exceptions to title. The Commitment shall provide for the issuance of an ALTA form B owner's policy. The title evidence shall be sent to Second Party's Counsel and Second Party's Counsel shall have ten business (10) days after receipt of both the "Survey" (hereafter defined) and Commitment (accompanied by legible copies of all instruments shown as exceptions to title) within which to make its title objections to matters shown in the Commitment or on the Survey, by giving First Party written notice thereof. In the event Second Party's Counsel does not make any title objections, then Second Party shall be deemed to have accepted the condition of title as reflected in the Commitment and Survey. If Second Party's Counsel timely gives notice of its title objections it is understood and agreed that the First Party shall have a reasonable time after Second Party's Counsel gives such notice within which to cure Third Party's Counsel's objections but said time shall not extend past the Inspection Period. The title policy which will be issued pursuant to the Commitment shall, at Second Party's option, have all standard ALTA exceptions deleted except for taxes not yet due. The base premium for the Commitment to insure and the title insurance policy providing the coverage described in this paragraph 5 will be paid one-half (2) by First Party and one-half (2) by Second Party. If Second Party elects to obtain survey coverage or other special coverage, Second Party shall pay the cost therefor. First Party's curing of Second Party's Counsel's title objections in a manner reasonably satisfactory to Second Party shall constitute a condition precedent to Second Party's obligation to acquire the Property. If such condition precedent is not satisfied within the Inspection Period then Second Party may either waive its title objections by giving First Party written notice thereof on or before the expiration of the Inspection Period or terminate this Agreement by giving First Party written notice of termination at any time on or before the expiration of the Inspection Period. In the event Second Party terminates this Agreement in accordance with the provisions of this paragraph, the "Inspection Documents" (hereafter defined) shall be returned to First Party and the Parties shall be relieved of their respective rights and obligations set forth in this Agreement. Notwithstanding any statement contained herein to the contrary, First

Party covenants and agrees to cause all liens encumbering the Property to be released at Closing.

On or before fifteen (15) days after the Effective Date of this Agreement, Second Party agrees to furnish to First Party's counsel, [Name], [Address] (herein "**First Party's Counsel**"), a title commitment (herein the "**Commitment**"), issued by First America Title Insurance Co. (herein the "**Title Company**"), obligating the Title Company to insure, in First Party's name and in the amount of the purchase price, fee simple title to the S. Rock Property. At the time the Commitment is delivered to First Party's Counsel, there shall accompany the Commitment, legible copies of all instruments shown as exceptions to title. The Commitment shall provide for the issuance of an ALTA form B owner's policy. The title evidence shall be sent to First Party's Counsel and First Party's Counsel shall have ten business (10) days after receipt of both the "Survey" (hereafter defined) and Commitment (accompanied by legible copies of all instruments shown as exceptions to title) within which to make its title objections to matters shown in the Commitment or on the Survey, by giving Second Party written notice thereof. In the event First Party's Counsel does not make any title objections, then First Party shall be deemed to have accepted the condition of title as reflected in the Commitment and Survey. If First Party's Counsel timely gives notice of its title objections it is understood and agreed that the Second Party shall have a reasonable time after First Party's Counsel gives such notice within which to cure First Party's Counsel's objections but said time shall not extend past the Inspection Period. The title policy which will be issued pursuant to the Commitment shall, at First Party's option, have all standard ALTA exceptions deleted except for taxes not yet due. The base premium for the Commitment to insure and the title insurance policy providing the coverage described in this paragraph 5 will be paid one-half (2) by First Party and one-half (2) by Second Party. If First Party elects to obtain survey coverage or other special coverage, First Party shall pay the cost therefor. Second Party's curing of First Party's Counsel's title objections in a manner reasonably satisfactory to First Party shall constitute a condition precedent to First Party's obligation to acquire the Property. If such condition precedent is not satisfied within the Inspection Period then First Party may either waive its title objections by giving Second Party written notice thereof on or before the expiration of the Inspection Period or terminate this Agreement by giving Second Party written notice of termination at any time on or before the expiration of the Inspection Period. In the event First Party terminates this Agreement in accordance with the provisions of this paragraph, the "Inspection Documents" (hereafter defined) shall be returned to Second Party and the Parties shall be relieved of their respective rights and obligations set forth in this Agreement. Notwithstanding any statement contained herein to the contrary, Second Party covenants and agrees to cause all liens encumbering the Property to be released at Closing.

6. **Notices.** Any notice from a Party to the other Party, except where otherwise specifically provided, shall be deemed served effective: (i) upon actual delivery, (ii) the day following delivery to Federal Express or other similar courier service, marked for next day delivery, addressed as set forth below, (iii) upon receipt if sent by registered or certified mail, return receipt requested, addressed as set forth below, or (iv) upon being sent by facsimile transmission, provided an original is mailed the same day by registered or certified mail, return receipt requested, addressed as set forth below. The notice addresses of the parties are:

If to First Party: Triple J of Wichita, L.L.C.
c/o Morgan Koon, General Counsel
2060 E. Tulsa
Wichita, KS 67216
Facsimile Number: (316) 522-8187

If to Second Party:

Richard Euson,
Sedgwick County Counselor
525 N. Main, Suite 359
Wichita, KS 67202
Facsimile Number: (316) 383-7007

The customary registered/certified mail receipt or Federal Express or other courier receipt shall be evidence of such notice. Either Party hereto may change the name and address of the designee to whom their notice shall be sent by giving written notice of such change to the other Party hereto in the manner above provided, at least ten (10) days prior to the effective date of such notice.

7. **Survey.** First Party shall, at First Party's expense, as promptly as possible, cause to be prepared and furnished to First Party and the Title Company a current survey (the "**Survey**") of the S. Rock Rd. Property, prepared by a Registered Public Surveyor or Professional Engineer acceptable to First Party.

Second Party shall, at Second Party's expense, as promptly as possible, cause to be prepared and furnished to Second Party and the Title Company a current survey (the "**Survey**") of the S. Oliver Property, prepared by a Registered Public Surveyor or Professional Engineer acceptable to Second Party.

8. **Documents.** First and Second Parties shall, contemporaneously with execution of this Agreement, cause to be furnished to each other, true and complete copies of all leases, service contracts, tenant correspondence, surveys, engineering drawings, reports or studies, environmental inspection reports, notices or studies, engineering data, topographic maps, plat maps, hydrology reports and studies, or any and all similar information of or in any way relating to or pertaining to the Property which is in the possession of that Party. For the purposes of this Agreement, such documents shall be collectively referred to herein as the "**Inspection Documents**". If any Party terminates this Agreement on or before the expiration of the Inspection Period, each Party shall return all of the Inspection Documents promptly upon such termination.

9. **Additional Condition Precedent.** Each Party's obligations under this Agreement are contingent, among other things, upon the Party's satisfaction with its analysis and review of the physical, structural and environmental condition of the Property it is acquiring, the applicable zoning, platting and other use restriction provisions, procedures and laws covering the Properties and each Party's intended use thereof, and the economic feasibility of each party's intended development and use of the Properties. If First or Second Party, in their sole and arbitrary discretion, determines that the Property it is acquiring is not acceptable to the Party, for any reason whatsoever, then that Party may elect to terminate this Agreement by providing other Party with written notice thereof on or before sixty (60) days following the later of: (i) the date that Party receives the Commitment; or (ii) the date that Party receives the Survey (the "**Inspection Period**"). If First or Second Party elects to terminate this Agreement pursuant to the terms of this paragraph the Parties shall be relieved of their respective obligations under this Agreement. If First or Second Party fails to timely give such written notice of termination, then this Agreement shall remain in full force and effect as if there were no unacceptable conditions.

Each Party shall have the right, at that Party's expense, to conduct all of the procedures necessary in order to satisfy the foregoing conditions precedent in either First Party's or Second Party's name including, without limitation, applying for a rezoning of the Property. Each Party agrees to fully cooperate with the other Party in completing such procedures including, without limitation, executing and delivering to the other Party, in a timely manner, any and all documents reasonably necessary in order to satisfy the foregoing conditions precedent; provided, however, it is understood that any Party will not be required to incur any of the expense of conducting such procedures by the other Party. If prior to the expiration of the Inspection Period the Party determines the Property is acceptable to the Party, that Party may waive its conditions precedent by providing written notice thereof to the other Party and the Inspection Period shall end upon such notice.

10. **Engineering Studies.** Each Party is hereby authorized to conduct such soil tests, environmental tests and studies and engineering studies as the Party deems necessary with respect to the Property it is acquiring. For such purposes, each Party and the Party's agents, employees and contractors shall have the right, pending Closing, to go upon the Property it is acquiring at all times. The cost of the engineering studies shall be paid by the Party requesting the studies. To the extent allowed by law, each Party agrees to indemnify and hold harmless the other Party from any losses, damages, costs or expenses incurred by the indemnified Party resulting from personal injuries, property damage or mechanic liens caused by the indemnifying Party or that Party's contractors, agents or representatives in connection with inspection of the property the Party is acquiring.

11. **Approval by Governing Body of Second Party.** Notwithstanding any statement contained in this Agreement to the contrary, the Parties acknowledge and agree that Second Party is a political subdivision of the state of Kansas and that the Second Party's obligation to under the terms of this Agreement is subject to and conditioned upon the formal approval by its governing body. If the governing body disapproves the agreement, in its free and arbitrary discretion, at any time prior to the Closing, then this Agreement shall automatically terminate, the Inspection Documents returned to respective

parties and except as otherwise provided herein the Parties shall be relieved of their respective rights and obligations set forth in this Agreement.

12. ***Delivery of Instruments.*** At Closing or at such time as otherwise provided, each Party will deliver or cause to be delivered to the other Party, the following items (all required documents will be duly executed, acknowledged where required, and in form satisfactory to the other Party's Counsel):

12.1 ***Warranty Deeds.*** Second Party shall deliver to First Party, a valid, good and proper Conditional Warranty Deed transferring good and merchantable title to the S. Rock Rd. Property in fee simple absolute, free from encroachments, to First Party, except approved easements and restrictions of record, and such other matters which First Party has approved in writing.

First Party shall deliver to Second Party, a valid, good and proper General Warranty Deed transferring good and merchantable title to the S. Oliver Property in fee simple absolute, free from encroachments, to Second Party, except approved easements and restrictions of record, and such other matters which Second Party has approved in writing.

12.2 ***Affidavit with Respect to Property.*** Each Party shall deliver to the Title Company, a valid, good and proper instrument or instruments stating that there are no mechanic's or material liens on the properties and that all persons, corporations, partnerships or other entities which would be entitled to a mechanic's or material lien thereon have been paid in full and containing such other reasonable representations as may be required by the Title Company and each Party's Counsel.

12.3 ***Section 1445.*** If required by the Title Company, deliver to the Title Company a non-foreign affidavit stating that the Party is not a foreign individual or company as defined in Section 1445 of the Internal Revenue Code.

12.4 ***Other Documents.*** Each Party shall deliver to the other Party any and all other documentation reasonably required by a Party's counsel and/or the Title Company in order to consummate this transaction and secure the issuance of the title policy with respect to the properties. Timely receipt of each of the foregoing documents shall constitute a condition precedent to each Party's performance of its obligations set forth in this Agreement.

13. ***Possession, Adjustments and Prorations.*** Possession of the properties shall be delivered to pursuant to subparagraph 13.1 below. The adjustments and prorations hereafter designated shall be computed as of the Closing Date and shall be prorated, paid, assigned or credited at the Closing as hereinafter provided:

13.1 ***Possession.*** Possession of the S. Oliver Property shall be delivered to Second Party on the Closing Date free and clear of any leases

and parties in possession thereof; provided, however, First Party shall have the right to enter the property for the construction of water and sewer improvements required as a condition precedent for transfer of title of the S. Rock Rd. Property.

Possession of the S. Rock Rd. Property shall be delivered to First Party upon the recording of the affidavit of completion by the Third Party.

13.2 **Prorations.** First Party shall be responsible for all real estate taxes and installments of special assessments for the year 2011 and all prior years regarding the S. Oliver property.

The Second Party is a political subdivision of the State of Kansas and the land and improvements referred to as the S. Rock Rd. Property have been exempt from the payment of general real estate taxes. Except for the solid waste fee there have been no other special assessments, state or local taxes assessed on this property to the date of sale and for all prior years. Second Party shall be liable for the payment of the 2011 solid waste fee for the S. Rock Rd. Property. First Party acknowledges and agrees that the S. Rock Rd. Property shall be placed on the tax roll effective as of the date of recording of the affidavit of completion referred to in the conditional warranty deed. First Party shall be liable for all general real estate taxes, annual installments of special assessments, and other state or city taxes or other assessments and/or fees affecting the S. Rock Rd. Property, assessed for the portion of the year of purchase following the recording of the affidavit of completion, and all future years. By acknowledging and agreeing that the S. Rock Rd. Property is being placed on the tax rolls after the Closing, First Party is in no way waiving any right to protest, challenge or contest any valuation of the S. Rock Rd. Property for tax purposes.

13.3 **Closing Fee.** The closing fee charged by the Title Company shall be shared equally between First Party and Second Party.

14. **Confidentiality.** This Agreement is confidential in nature, and it is agreed by the Parties hereto that the terms of this purchase shall remain confidential and shall not be disclosed or released to third persons (except to the Parties' accountants, attorneys and other agents necessary in connection with this transaction) without the prior written consent of the other Party, except as otherwise required by law. Each Party agrees that if the Party releases a press release with respect to the transactions contemplated herein, such Party will first obtain the written consent of the other Party, which consent shall not be unreasonably withheld.

15. **Damage.** If either property, or portion thereof, is condemned, damaged or destroyed by fire or other casualty prior to Closing, the applicable Party shall immediately notify the other Party thereof and the acquiring Party shall have the right to terminate this Agreement by giving the conveying Party written notice of termination within twenty (20) days after being notified of such condemnation or damage. In the event a Party terminates this Agreement pursuant to the terms of this paragraph, the Inspection Documents shall be

returned to appropriate Party, and except as otherwise provided herein the Parties shall be relieved of their respective rights and obligations set forth in this Agreement.

16. **Commissions.** The Parties covenant and represent to each other that no person is entitled to be paid a fee or commission in connection with the transaction contemplated by this Agreement, and no Party has had any dealings or agreements with any individual or entity in connection therewith. If any individual or entity shall assert a claim to a finder's fee, or commission, or other similar fee against either First Party or Second Party on account of an alleged employment, arrangement or contract as a broker or a finder, then the Party who is alleged to have retained such individual or entity, to the extent allowed by law, shall and does hereby agree to indemnify and hold harmless the other Party from and against any such claim and all costs, expenses, liabilities and damages incurred in connection with such claim or any action or proceeding brought thereon. Notwithstanding any other provision of this Agreement to the contrary, the indemnity and hold harmless provisions contained in this paragraph shall survive the Closing and, if this Agreement is terminated, the termination of this Agreement.

17. **Successors and Assigns.** The rights of each Party to acquire the properties as set forth herein may not be assigned by the Party to any other person.

18. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, which when taken together, shall constitute the agreement of the Parties.

20. **Authority.** Each person executing this Agreement warrants and represents that he or she is fully authorized to do so.

21. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Kansas.

22. **Modification and Non-Waiver.** This Agreement may not be modified or amended, except by an agreement in writing signed by all Parties. The Parties may waive any of the conditions contained herein or any of the obligations of the other Party hereunder, but any such waiver shall be effective only if in writing and signed by the Party waiving such conditions or obligations.

23. **Miscellaneous.** As used in this Agreement, the masculine, feminine or neuter gender and singular or plural numbers shall each be deemed to include the other whenever the context so indicates. If any date under this Agreement on which an event is to occur or notice is to be given falls on a Saturday, Sunday or federal holiday, then such date shall be the first business day following such Saturday, Sunday or federal holiday.

24. **Entire Agreement.** This Agreement (including any exhibits hereto) embodies the entire agreement between the Parties concerning the subject matter hereof and


replaces and supersedes any prior and contemporaneous negotiations, agreements or understandings among the Parties hereto.

25. **Headings.** The headings of paragraphs herein are for convenience of reference only, do not constitute a part of this Agreement, and shall not be deemed to limit or alter any of the provisions hereof.

26. **Severability.** In the event any one or more of the provisions contained in this Agreement shall, for any reason, be judicially declared to be invalid, illegal, unenforceable or void in any respect, such declaration shall not have the effect of invalidating or voiding the remainder of this Agreement, and the Parties hereto agree that the part or parts of this Agreement so held to be invalid, illegal, unenforceable or void will be deemed to have been stricken herefrom and the remainder will have the same force and effectiveness as if such part had never been included herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

"FIRST PARTY"

By: 
Name: MORGAN B. KEEN
Title: GENERAL COUNSEL

"SECOND PARTY"

BOARD OF COUNTY COMMISSIONERS, SEDGWICK COUNTY, KANSAS, a Kansas political subdivision

By: _____
Name: ~~David M. Unruh~~ TIM R. NORTON
Title: Chairman, ~~First District~~ Second DISTRICT

Attested to:

KELLY B. ARNOLD, SEDGWICK COUNTY CLERK

APPROVED AS TO FORM:



ROBERT W. PARNACOTT, ASSISTANT COUNTY COUNSELOR

EXHIBIT "A"

Commencing at the Northeast corner of the Southeast Quarter of the Northeast Quarter of Section 23, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas; thence south along the East line of the Southeast Quarter of said Northeast Quarter; 316 feet for a point of beginning; thence west parallel with the North line of the Southeast Quarter of said Northeast Quarter, 418 feet; thence south parallel with the East line of the Southeast Quarter of said Northeast Quarter, 275 feet; thence east parallel with the north line of the Southeast Quarter of said Northeast Quarter, 418 feet to a point on the east line of the Southeast Quarter of said Northeast Quarter; thence north 275 feet of to the point of beginning, subject to road rights of way of record.

EXHIBIT B

Beginning 40 feet south and 40 feet east of the Northwest corner of the Northwest Quarter, South 208.71 feet, East 208.71 feet, North 208.71 feet, West 208.71 feet to the beginning, Section 32, Township 28, Range 2 East, Sedgwick County, Kansas; generally located at 6400 South Rock Road, Derby, Kansas.