

## COMMUNITY BENEFITS AGREEMENT

This Community Benefits Agreement (this “CBA”) is made and entered into as of this \_\_\_\_ day of September 2017, by and between the Tower Grove South Neighborhood Association, Inc., a Missouri nonprofit corporation, and Tower Grove Business Association, a Missouri nonprofit corporation, (collectively the “Coalition”) and 3172 Morganford, LLC, a Missouri limited liability company (the “Developer”) (together, the “Parties”).

### RECITALS

A. Developer has proposed to build a mixed-use building, with rental units and commercial space, at 3172 Morganford Avenue, in the Tower Grove South Neighborhood, in the City of St. Louis, Missouri.

B. Organizations in the Coalition have been working for years to maximize the benefits of development in and around Morganford Avenue for the residents and small businesses in the Tower Grove South neighborhood and to encourage the responsible and effective use of tax credits, incentives, and abatements to foster equitable development.

C. Developer and the Coalition hope that the Project will provide significant benefit to the Tower Grove South neighborhood as well as to the City as a whole.

D. The Coalition has advocated that the Project include, among other things, community benefits for social and economic justice, including: affordable housing; living wage jobs; and, contracting to minority and women business enterprises.

E. The Parties have agreed that it is in their mutual interest to cooperate as set forth in this CBA.

F. The Parties have agreed to undertake this CBA.

### DEFINITIONS

“City” shall mean the City of St. Louis.

“Coalition” shall mean the following Organizations, which are Parties to this CBA: Tower Grove South Neighborhood Association, Inc., a Missouri nonprofit corporation, and the Tower Grove Business Association, a Missouri nonprofit corporation. References to the Coalition shall refer to the Organizations both individually and collectively.

“CBA” shall mean this Community Benefits Agreement, including those terms set forth in Exhibit A, attached hereto and incorporated herein by reference.

“Contractor” shall mean a project manager, general contractor, a subcontractor, or any other business who has entered into a contract or arrangement with Developer, including its agents, successors, or assigns, or with another Contractor for the construction, development,

maintenance, or repair of the Project. By way of example but not limitation, a Contractor shall include a janitorial company hired by a management company or leasing agent used by Developer. The term “Contractor” shall not include Tenants and shall not include any individual who lease or purchase space solely for residential purposes.

“Developer” shall mean 3172 Morganford, LLC, a Missouri limited liability company, and its agents, successors, and assigns per Section 11 of this CBA.

“Effective Date” shall mean the date of this CBA

“Organization” shall mean each entity that is a member of the Coalition and is a signatory to this CBA and its agents, successor, and assigns per Section 11 of this CBA.

“Project” shall mean the mixed-use building, with rental units and commercial space, at 3172 Morganford Avenue.

“Project Approvals” shall mean any and all action relating to the Project, whether discretionary or ministerial, that in order for the Project to be built and become fully operational, are required to be taken by any governmental agency, including the City, the Board of Alderman, any department of the City, and any other governmental agency including but not limited to: building permits; occupancy permits; and, any financing from a governmental agency, such as tax credits, abatements, or subsidies. Notwithstanding, nothing herein shall prevent the Coalition from opposing, or require the Coalition to support, approval of any financing from a governmental agency exceeding a ten year tax abatement at 100%.

“Proposal” shall mean what is attached hereto as Exhibit B.

“Property” shall mean the real property commonly known and numbered as 3172 Morganford Avenue, and more particularly described as City Block 4162 MORGANFORD 140 FT X 125 FT OAK HILL IMP CO ADDN LOTS 16 TO 19.

“Tenant” shall mean a person or entity that conducts any portion of its operations within or on the site of the Project, such as a tenant leasing commercial space within the Project. “Tenant” does not include individuals who lease or purchase space solely for residential purposes.

“Termination Date” shall mean the date set forth in Section 5.a)

“Terms of Community Benefit” shall mean those terms described on Exhibit A, attached hereto and incorporated herein by reference.

“Tower Grove South Neighborhood” shall mean the area bounded by Arsenal, South Grand, Chippewa, and Kingshighway.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual, covenants, promises, and undertakings set forth herein and other consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. Commitment and Obligations of the Developer. Developer agrees that it shall, at such time as the building permit for the construction of any component of the Project is issued and acted upon, or such later or earlier dates as indicated in the Terms of Community Benefit carry out its commitment and obligations under the CBA and ensure that Contractors, Tenants, and Developer's successors, agents, and/or assigns take all actions necessary to fulfill terms set forth in the CBA including the Terms of Community Benefit in Exhibit A. The commitments and obligations of Developer and Developer's successors, agents, and/or assigns, if any, under this Section 1 and the CBA shall terminate on the Termination Date or such earlier or later time as may be specified for any particular commitment or obligation in the CBA. Developer represents and warrants that it is not, nor shall become, a party to any agreement that contravenes, conflicts with, or prevents Developer's execution of this CBA or performance of its commitments or obligations as set forth herein or in the CBA.

2. Commitments and Obligations of Coalition.

a) The Coalition and the Organizations, as distinct from the individual members and officers making up those Organizations, agree that they shall, upon execution of this CBA or at such later time as set forth herein or in the CBA, undertake the following actions:

i) The Coalition shall designate, at its sole discretion, at least three Coalition Representatives to act on behalf of the Coalition in carrying out the affirmative commitments and obligations under this CBA. The Coalition retains the right to remove any Representative or to add any new Representative at any time for any reason. Only Coalition Representatives are authorized to bind, and speak on behalf of, or otherwise obligate the Coalition consistent with the commitments and obligations of this Section. Furthermore, at any time the Coalition and any Organization that is part of the Coalition shall not be liable for any member, including an officer, of an Organization provided such member of an Organization is not a Coalition Representative. However, the Coalition shall make good faith efforts to cause members, including officers, of an Organization to support the Project and Project Approvals through a series of persuasive conversations, but which shall not require terminating an Organization's relationship with a member or officer who does not in his or her personal capacity support the Project or Project Approvals.

ii) The Coalition agrees not to oppose and agrees to support the Project as a whole and any Project Approvals specifically.

iii) The Coalition, in collaboration with the Developer, shall prepare any necessary letter or paperwork describing its non-opposition and support for the Project and any Project Approval consistent with this CBA.

iv) Developer may designate public hearings at which at least one Coalition Representative will provide testimony in non-opposition and support of the Project and

any Project Approval. Developer shall give the Coalition at least 10 days advanced notice of such hearing.

v) The Coalition's commitment and obligations under this Section shall terminate at the time a certificate of occupancy is issued for the Project.

b) The commitment and obligations of the Coalition as set forth in this Section 2 not to oppose and to support the Project and Project Approvals are contingent upon and shall not be applicable if the Project plans substantially deviate from the plans set forth in the Proposal or the Project Approvals. As used in this paragraph and Section 3, the term 'substantially deviate' shall mean a change in a governmental agency providing a tax abatement of longer than 10 years at 100% of the Project's real estate tax liability or any other incentive, financing, tax abatement, tax exemption, tax increment financing, or tax credits from the City of St. Louis or a change in the Project's housing units from all rental units to any condominiums or for-sale units; and, shall not mean alterations or deviations with respect to Project's architecture, design, or materials, the selection of tenants, the use of the Project (so long as it is compliant with the applicable zoning code), or other aspects unrelated to incentives, financing, tax abatement, tax exemptions, tax increment financing, or tax credits from the City of St. Louis except for a change in the Project's housing units as set forth above.

3. Covenant Not to Bring Challenge or Contest. The Coalition agrees not to challenge or contest the Project or the Project Approvals, except (a) for the right to enforce this CBA, (b) the right to challenge or contest changes to the Project that substantially deviate from the description of the Project in the Proposal or the Project Approvals, and (c) any right to challenge violations of the law, including local ordinances, state and federal law, and local, state, and federal rules and regulations. The provisions of this Section are effective from the Effective Date to the Termination Date unless Developer has breached any of the terms set forth in this CBA.

4. Enforcement.

a) If any Party believes that another Party is in breach of this CBA, the Party shall provide written notice to the other Party of the alleged breach; shall offer to meet and confer in good faith with the other Party to resolve the issue; and, shall provide the other Party 60 days from the date of the notice to cure the alleged breach. Any notice provided pursuant to this Section shall specify the nature of the alleged breach and the manner in which it can be satisfactorily cured.

b) When a notice of default has been given, the Parties shall first attempt to resolve the dispute by meeting and conferring in person. If Parties do not reach a resolution through the meet and confer process within the first 30 days, either Party may request mediation of the dispute by written notice to the other. Such mediation shall be voluntary and shall occur within the next 30 days. The mediator shall be selected through mutual agreement. The Parties agree to split equally the cost of the mediator and each bear their own fees and expenses. If the Parties do not agree to mediation, they shall continue to meet and confer.

c) In the event that a Party alleges a default of this CBA by another Party, and the requirements of subsections (a) and (b) of this Section have been met, including a 60 day notice to cure, a meeting, and mediation when both Parties agree to mediation, the Party may bring action seeking to enforce any term of this CBA that has allegedly been breached, except that a Party need not first comply with subsections (a) and (b) if it alleges an irreparable injury and may in such case bring immediate action to require the specific performance of an express obligation of a breaching Party under this CBA. The Parties agree that money damages would be an inadequate remedy for any breach (or threatened breach) of this CBA and agree that a court shall have the power to order equitable/injunctive relief on a temporary, preliminary or permanent basis, and/or to order specific performance, to comply with any term of this CBA. With the exception of an order to a Party to pay sums it has agreed to pay under this CBA, monetary damages shall in no circumstances be available against any Party, person, or entity as a remedy for an alleged breach of this CBA. Notwithstanding, in the event the Coalition or an Organization that is part of the Coalition brings action against the Developer to enforce Section 1 of the Terms of Community Benefits in this CBA and a court finds a breach on the part of the Developer of such Section 1, the Coalition and/or the Organization shall be entitled to all reasonable costs and attorneys' fees they incurred in the action.

d) The Developer recognizes that either the Tower Grove South Neighborhood Association, Inc. or the Tower Grove Business Association may bring an action on behalf of the Coalition and/or itself to enforce this CBA.

#### 5. Termination.

a) This CBA shall terminate upon the earliest of the following to occur: (i) 10 years following the date a certificate of occupancy is issued for the Project; (ii) the City of St. Louis or any of its department or agencies denies the Proposal and construction of the Project is not started as a result thereof; (iii) upon written notice from the Coalition to the Developer if the Developer is unable to obtain Project Approval or to complete the Project for reasons beyond Developer's control within 24 months from the Effective Date; or (iv) upon written notice from the Developer to the Coalition, but only so long as the Developer has withdrawn its application for Project Approvals or Developer has abandoned construction of the Project and retracted claim to any tax abatement, credits, or incentives.

b) If Developer terminates this CBA, Developer covenants that it shall not resubmit an application or request for any Project Approvals associated with the Property for a five year period. This covenant shall survive termination of this CBA.

c) This CBA shall not terminate nor shall any commitment or obligation of any Party set forth herein be suspended in the event that any action or claim is commenced, whether by filing an action or claim or by way of defense, by any person or entity not a Party to this CBA challenging the Project or Project Approvals.

6. Notices. All notices shall be in writing and shall be addressed to the affected Parties at the addresses set forth below. Notices shall be sent by certified mail and deemed

delivered three days from the date deposited in the mail. Notices shall also be e-mailed as a courtesy, but certified mail shall be required:

- a) If to the Coalition:  
Tower Grove Business Association  
Ms. XXXXXX  
Tower Grove Business Association

Mr. Jeffrey Bargielski, President  
Tower Grove South Neighborhood Association, Inc.  
4128 Oleatha  
St. Louis, Missouri 63116  
[jeffrey.bargielski@gmail.com](mailto:jeffrey.bargielski@gmail.com)

With a copy to:  
Christopher Grant  
Schuchat, Cook & Werner  
1221 Locust Street, 2<sup>nd</sup> Floor  
St. Louis, MO 63103  
[cng@schuchatew.com](mailto:cng@schuchatew.com)

- b) If to the Developer:  
3172 Morganford, LLC  
4046 Utah Street  
St. Louis, MO 63116  
Attn: Robert Maltby

With a copy to:  
Rosenblum Goldenhersh, P.C.  
7733 Forsyth Blvd., Ste. 400  
Clayton, MO 63105  
Attn: Alexander H. Kuehling  
[akuehling@rosenblumgoldenhersh.com](mailto:akuehling@rosenblumgoldenhersh.com)

7. Implementation through Relevant Contracts. Where this CBA requires an entity to impose responsibilities on another entity, such entity shall ensure that any relevant contracts: (i) impose such responsibilities on the other entity; (ii) require such other entity to impose such responsibilities on subcontractors or other parties involved in this Project through the contract in questions; (iii) state with regard to such responsibilities imposed on any such entities that the Coalition and its Organizations are intended third party beneficiaries with enforcement rights. Any entity that imposes a commitment or obligation required by this CBA on another entity shall, in event of failure by that other entity to comply with such commitment or obligation, enforce that commitment or obligation against the other entity or terminate the contractual relationship in question.

8. Expenses. Except as provided above, each Party shall bear its own expense and the fees and expenses of its counsel and other experts in connection with this CBA and any legal actions related to this CBA.

9. Waiver. The waiver of any provision or term of this CBA shall not be deemed a waiver of any other provision or term of this CBA. Passage of time or delay or failure to act shall not be deemed a waiver of any provision or term of this CBA.

10. Time is of the Essence. Time is of the essence in this CBA.

11. Successors and Assigns. This CBA shall bind and inure to the benefit of the Parties and their respective successors, agents, and/or assigns as follows:

a) Any agents, assigns, or successors of the Developer will comply with the Developer's responsibilities under this CBA. This includes master developers for the Project, a managing company or leasing agents for the Project, and other developers who develop components of the Project. Any contracts or agreement related to the Project between Developer and such entities shall include this CBA as a material term. The Developer shall not convey any interest in the Project or the Property on which the Project is located without first requiring any other party to that conveyance to assume the obligations and commitments set forth in this CBA.

b) Any agents, assigns, or successors in interest of the Coalition or any Organization will comply with the Coalition's responsibilities under this CBA.

c) This CBA shall insure to the benefit of against, assigns, and successor of each Party. Any reference in this CBA benefiting a Party shall be deemed to benefit any agents, assigns, and successors of such Party.

12. Missouri Law. This CBA shall be construed in accordance with laws of the state of Missouri. The Parties agree that all disputes arising out of or relating to this CBA shall be brought in the Circuit Court for the City of St. Louis.

13. Entire Agreement. This CBA contains the complete and entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior agreements, understandings, representations, or warranties whatsoever, whether written or oral.

14. Authority of Signatories. The individuals executing this CBA represent and warrant they have the authority to sign on behalf of the respective Parties.

15. Headings. Headings and subheadings are included herein only for convenience and shall not be deemed to govern, limit, or modify the meaning or intent of the provisions herein.

16. Amendments. This CBA may not be amended, altered, or modified except by writing signed by the Parties.

17. Agreement Lawful and Enforceable. All Parties agree that this CBA is lawful, enforceable, and binding on all Parties, and agree to waive any challenges to the enforceability of this CBA, and agree not to affirmatively or by way of defense seek to invalidate or seek to avoid application of this CBA in any judicial action.

18. Severability. Should a court declare any term of this CBA void or unenforceable, it shall have no legal effect upon the validity of any other term of this CBA.

19. Counterparts. This CBA may be executed in one or more counterparts. Facsimile or .pdf signatures to this CBA shall be as valid as written signatures.

**[Remainder of page intentionally left blank; signature page follows]**

**IN WITNESS WHEREOF**, authorized representatives of the Developer and the Coalition have executed this Community Benefits Agreement as of the date first above written.

**COALITION:**

**TOWER GROVE SOUTH NEIGHBORHOOD ASSOCIATION, INC.**,  
a Missouri nonprofit corporation

By: \_\_\_\_\_  
Jeffrey Bargielski, President

**TOWER GROVE BUSINESS ASSOCIATION**

By: \_\_\_\_\_  
Name:  
Title:

**DEVELOPER:**

**3172 MORGANFORD, LLC**,  
a Missouri limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**TERMS OF COMMUNITY BENEFITS**

1) Affordable Housing Benefits

a) On or before the one (1) year anniversary of the issuance of a certificate of occupancy for the Project, Developer shall contribute Sixty Thousand Dollars (\$60,000) to a nonprofit corporation as specified in Subsection (c) below.

b) In the event the St. Louis Development Corporation purchases materials for the Project and if such purchase causes the Developer not to incur certain sales tax liability with respect to the purchase of the materials, on or before the two (2) year anniversary of the issuance of a certificate of occupancy for the Project, the Developer shall contribute an amount equal to Ten Percent (10%) of the sales tax liability that the Developer did not incur to a nonprofit corporation as specified in Subsection (c) below.

c) The Coalition shall have the right, in its sole and absolute discretion, to determine what nonprofit corporation or corporations shall receive the contributions set forth in Subsections (a) and (b) above. The Coalition shall provide notice of its selection or selections to the Developer through written notice as required in the CBA. It is anticipated that the contributions will be used to address affordable housing issues in the Tower Grove South Neighborhood by funding down-payments on new housing rental units. The non-profit corporation referenced above may be selected through a request for proposal (“RFP”) process conducted and funded by the Coalition, in the Coalition’s discretion. The Coalition shall have sole discretion in running the RFP process and in selecting and awarding the bid according to any formula it desires. Notwithstanding the foregoing, in the event that the Coalition fails to designate a nonprofit corporation or corporations to receive the contributions set forth in Subsection (a) and (b) through a written notice delivered to Developer within nine (9) months from the Effective Date of the CBA, Developer shall have the right to make the contributions set forth in Subsection (a) and (b) to Habitat for Humanity St. Louis.

d) Any and all contributions made by Developer pursuant to Subsections (a) and (b) above shall be made as a direct payment or payments from Developer to a nonprofit corporation as specified in Subsection (c) above.

2) Employment Benefits

a) Living Wage. Developer, including its agents, successors, and assigns, shall pay all its employees and cause Contractors to pay all of its employees working within or on the site the Project a minimum of Ten Dollars (\$10.00) per hour. This requirement shall not prohibit the Developer or a Contractor from agreeing to pay more than Ten Dollars (\$10.00) per hour, and shall not diminish, impede, or interfere with the right of employees to collectively bargain with the employers through a representative of their own choosing in order to establish wages or other conditions of work in excess of any minimum required herein.

*Exhibit A*

b) Non-Construction Local Hiring Program.

i) Prior to hiring for any job within or on the site of the Project, Developer agrees to comply with the Local Hiring Requirement as set forth below. In addition, Developer shall cause non-construction Contractors, such as janitorial contractors, to comply with the Local Hiring Requirement as set forth below.

ii) Local Hiring Requirement. Developer, including its agents, successors, and assigns, and non-construction Contractors employing personnel shall make good faith efforts to employ individuals who are residents of the City of St. Louis. Good faith efforts shall include, prior to the filling of open positions, communicating and cooperating with the St. Louis Agency on Training and Employment (SLATE), or with the agreement of the Coalition a similar organization dedicated to the training and employment of St. Louis City residents, for purposes of advertising open positions and finding qualified candidates for interview.

c) Tenants. Developer agrees to cause the following language (or its substantive equivalent) to be inserted in all leases it enters into with tenants of commercial space in the Project:

[Tenant] agrees to pay all of its employees that are primarily located at [the leased premises] a minimum of Ten Dollars (\$10.00) per hour and Tenant shall make good faith efforts to employ individuals who are residents of the City of St. Louis. For purposes of this provision, good faith efforts shall include, prior to the filling of open positions, communicating and cooperating with the St. Louis Agency on Training and Employment (SLATE) [or a similar organization] for purposes of advertising open positions and for referring qualified candidates for interview.

3) Contracting in Project Construction. Developer and its Contractors shall comply with and adhere to the minority business enterprise (MBE) requirements and women business enterprise (WBE) requirements established by the City of St. Louis Minority and Women's Business Enterprise Program for purposes of any construction work on the Project. In the event Developer is unable to obtain a competitive bid from MBE or WBE entities for any particular work to be performed (a bid that would not be competitive would be in excess of the average of all bids), Developer shall have the right to request a waiver from these requirements; otherwise, the Developer agrees not to request a waiver from these requirements.

4) Information.

a) Throughout the duration of this CBA, the Developer shall provide the Coalition Representatives (as appointed pursuant to Section 2(a)(i) of the CBA) any and all reasonable information and records (excluding any non-public personal information and proprietary information of Developer), within 30 days of request, that are necessary for the Coalition to monitor compliance with the commitments and obligations set forth in this CBA, including but not limited to information on the costs, number, and type of units, sales tax on materials, construction bids and requests for waivers from MBE or WBE requirements, and employee hiring and payroll. The Coalition Representatives shall keep all such information and records

*Exhibit A*

confidential, unless disclosure of the information and records is approved in writing by Developer or per a court order.

b) The failure to provide information pursuant to this Section shall be a breach of the CBA.

c) The Developer agrees to attend, upon request, at least one meeting per calendar year of the Tower Grove South Neighborhood Association and one meeting per calendar year of the Tower Grove Business Association, to give information about the Project and take questions from members.

**EXHIBIT B**  
**PROPOSAL**

[to be added]