

## REAL ESTATE AGREEMENT TO EXCHANGE PROPERTIES

**THIS REAL ESTATE AGREEMENT TO EXCHANGE PROPERTIES** (the "Agreement") is by and between **The City of Oklahoma City**, ("CITY"), and **HC California Ave, LLC**, ("HC"). CITY and HC are referred to herein collectively as the "Parties", and individually as a "Party."

1. *Agreement to Exchange Properties.* The CITY and HC mutually agree to an exchange of the following described real properties:

(a) CITY owned property located at 19 N. Klein Avenue, Oklahoma City, Oklahoma County, Oklahoma and all of the appurtenances belonging to the land located thereon, ("Klein");

### EXCHANGE FOR

(b) HC owned property located at 1127 W. Main Street, Oklahoma City, Oklahoma County, Oklahoma and all of the appurtenances belonging to the land located thereon, ("Main Street", and collectively with Klein the "Properties").

*See Exhibit "A" for the legal descriptions attached hereto and made a part hereof.*

Subject to the terms and conditions of this Agreement.

2. *Purchase Price.* The CITY purchased the Klein property on September 6, 2022, for \$1,200,000 and whereas HC purchased the Main Street property on October 31, 2023, for \$1,400,000. The Properties are similar in size and location with both being warehouses with office space and zoned Moderate Industrial.

The Parties mutually agree to an exchange of the Properties with the purchase price for each Property being the equivalent of the exchange of the Properties without any additional funds being paid by either Party subject to the following conditions, apportionments, and adjustments as provided here:

(a) The Main Street property is occupied by a tenant, DJS Industrial Rubber Products, Inc., and subject to a leasehold interest. The Lease must be terminated in order to terminate the leasehold interest and the Property vacated prior to the Closing Date at HC's sole cost and expense; and

(b) Within 90 days following the expiration of the Due Diligence Period, HC shall complete its demolition of the garage on the east end of the Main Street property together with the installation of fencing for the entire Property and an automatic gat (the "Improvements"). The City Engineer must review and approve the proposed fence and gate to be installed. HC must obtain the appropriate demolition and fence permits. The approximate location of such Improvements is further depicted on Exhibit "B". The Parties will work together during the Due Diligence Period to finalize plans, scope, and location of the Improvements. All completed Improvements shall be approved by the City Engineer prior to the Closing Date; provided that HC shall be entitled to delay the Closing Date by up to 30 days if such Improvements have not been completed. This will be provided by HC at its sole cost and expense.

3. *Due Diligence Period.* The Parties obligations under this Agreement are contingent, among other things, upon each Party's satisfaction with the condition of the Property it is acquiring and the suitability of the Property for such Party's intended use. For a period of 60 days following the execution of this Agreement, each Party and its respective agents, employees, and contractors shall have the right to enter upon the other Party's Property during normal business hours to inspect the condition of the Property, at the inspecting Party's sole cost and expense (the "Due Diligence Period"). At any time prior to the expiration of the Due Diligence Period, if either Party determines that the Property it is acquiring is not satisfactory, as determined in such Party's sole and absolute discretion, or for any reason or for no reason at all, then such Party shall have the right to terminate this Agreement by giving written notice to the other Party on or before the expiration of the Due Diligence Period. If either Party elects to give to the other Party such notice of termination within the Due Diligence Period, this Agreement shall become null and void and of no further force or effect, and neither Party shall have any further rights or obligations to the other (except for those which expressly survive termination). If neither Party elects to provide a notice of termination pursuant to this Section prior to the expiration of the Due Diligence Period, the Parties shall be deemed to have elected to proceed with the exchange of the Properties pursuant to the terms hereof.

4. *Time and Place of Closing.* Closing shall be held within 90 calendar days following the expiration of the Due Diligence Period, at the office of the CITY located at **420 West Main Suite 700, Oklahoma, Oklahoma, 73102**, or at such other place and time as the Parties may mutually agree.

5. *Apportionments and Adjustments.* The following items are to be apportioned to and adjusted between CITY and HC as of the close of business on the Closing Date and are to be assumed and paid thereafter by the respective owner of the Property:

(a) all utilities, if any;

(b) all real estate taxes, general or special, and all other public or governmental charges or assessments against the Property, which are or may be payable on an annual basis (including charges, assessments, liens or encumbrances for sewer, water, drainage or other public improvements completed or commenced on or prior to the date hereof or subsequent thereto), whether assessments have been levied or not as of the Closing Date; and

(c) 2023 Ad valorem taxes for the Main Street property shall be paid in full by HC with the 2024 Ad valorem taxes for the Main Street property shall be prorated and paid in accordance with 68 Okla. Stat. § 2940 at Closing.

2023 Business Personal Property taxes for DJS Industrial Rubber Products, Inc., shall be paid in full for the Main Street property.

6. *Risk of Loss Pending Closing.* The risk of loss or damage to or destruction of the Properties occurring prior to the Closing Date shall be upon each respective owner Party. Either Party shall promptly notify the other of any damage to or destruction of its respective Property. Pending Closing, the Parties shall keep their respective Property in its present "AS-IS" condition except as set out in Section 2(a) and (b) above.

2. *Pre-Closing Requirements.* Prior to Closing, each Party, at its respective sole cost and expense, shall obtain any abstracting, title work, title insurance policy, survey, and environmental report as each Party in its discretion may determine to obtain.

Title requirements for each Property are to be satisfied by each respective owner for its Property at that owner's sole costs and expense prior to the Closing Date. Title requirements may be waived as agreed upon between the Parties prior to the Closing Date.

7. *Events Occurring at Closing.*

(a) *CITY'S Performance.* CITY shall deliver to HC a Special Warranty Deed, in form satisfactory to HC, fully and duly executed and acknowledged, conveying fee simple marketable record title free of defects, judgments, liens, taxes, and other encumbrances in and to the Klein Property to HC.

(b) *HC's Performance.* HC, shall deliver to CITY a Special Warranty Deed, in form satisfactory to CITY, fully and duly executed and acknowledged, conveying fee simple marketable record title free of defects, judgments, liens, taxes, and other encumbrances in and to the Main Street Property to The City of Oklahoma City.

(c) *The Parties shall record their respective deed with the Oklahoma County Clerk within ten (10) calendar days of Closing with recorded copies provided to each respective Party.*

8. *Closing Costs.*

8.1 *CITY's Costs.* CITY shall pay the following costs and expenses in connection with the Closing:

(a) Recording fees for the Special Warranty Deed for the Main Street Property;

(b) All costs incurred in connection with obtaining abstracting, title work, title insurance policy, survey, and environmental report, if any, for the Main Street Property; and

(c) All other costs incurred by the CITY.

8.2 *HC's Costs.* HC shall pay the following costs and expenses in connection with the Closing:

(a) Recording fees for the Special Warranty Deed for the Klein Property;

(b) All costs incurred in connection with obtaining abstracting, title work, title insurance policy, survey, and environmental report, if any, of the Klein Property; and

(c) All other costs incurred by HC.

9. *Other Costs.* All other expenses incurred by the Parties with respect to the consummation of the transaction contemplated by this Agreement, including but not limited to commissions and attorneys' fees are to be borne and paid exclusively by the Party incurring same, without reimbursement.

10. *Possession and Condition of the Property.* Possession of each Property shall be given to the respective Party at Closing. At Closing, condition of the Property shall be "AS-IS" "WHERE-IS", WITH ALL FAULTS condition except as set out in Section 2(a) and (b) above. Neither Party nor any of its representatives has made any statement or representation or warranty about the physical condition of the Property on which either Party has relied in entering into this Agreement. Each Party represents that it is knowledgeable, experienced, and sophisticated in the acquisition of real estate and that each Party is relying and will rely solely on its own expertise and that of its consultants, agents, or attorneys in acquiring the respective Property and shall make an independent verification of the accuracy of any documents and information provided by the other Party. Upon Closing, each Party shall assume the risk that adverse matters, including adverse physical or construction defects or adverse environmental, health, or safety conditions, may not have been revealed by each Party's independent inspections and investigations. Each Party hereby releases the other Party and their respective successors and assigns from any claims which the other Party or any party related to or affiliated with the respective Party has or may have arising from or related to any matter or thing related to the Properties.

11. *Access Pending Closing.* Prior to Closing the Parties and the Parties' consultants, agents, architects, and contractors shall have the right to enter the Properties, at their own risk and at reasonable times, for the purpose of examination and study. Entries shall be made at such times and in such a manner as to not interfere with either Party. There shall be at least twenty-four (24) hours advance notice of any such entry.

12. *Warranties.* The Parties do not make any warranties to each other except for the warranties contained in the Warranty Deeds.

13. *Notices.* Any notices required or permitted to be given by either Party to the other shall have been deemed to have been served when hand delivered or, if the United States Mail is used, on the three (3) business day after the notice is deposited in the United States Mail, postage prepaid, registered or certified mail, and addressed to the parties as follows:

To the CITY:

The City of Oklahoma City  
Public Works Department  
Attn: Debbie Miller, Public Works Director  
420 W. Main, 7<sup>th</sup> Floor  
Oklahoma City, OK 73102

To HC:

HC California Ave, LLC  
9225 Lake Hefner Parkway, Suite 200  
Oklahoma City, Oklahoma  
Attn: Clay Moss

14. *Default and Penalties.*

14.1 *HC's Defaults; The CITY's Remedies.*

(a) *HC's Defaults.* HC shall be deemed to be in default hereunder in the event that HC shall fail to comply with or observe any covenant, agreement, or obligation on HC's part to be performed within the time limits and in the manner required herein or in the event any of the conditions precedent described herein shall not have been complied with or waived by the CITY.

(b) *The CITY's Remedies.* In the event HC shall be deemed to be in default by virtue of the occurrence of any one or more of the events specified herein, the CITY may at the CITY's sole and exclusive remedy for such default, terminate this Agreement by written notice to HC on or before Closing Date.

14.2 *The CITY's Defaults; HC's Remedies.*

(a) *The CITY's Defaults.* The CITY shall be deemed to be in default hereunder in the event that the CITY shall fail to comply with or observe any covenant, agreement, or obligation on the CITY's part to be performed within the time limits and in the manner required herein or in the event any of the conditions precedent described herein shall not have been complied with or waived by HC.

(b) *HC's Remedies.* In the event the CITY shall be deemed to be in default by virtue of the occurrence of any one or more of the events specified herein, HC may, at HC's sole and exclusive remedy for such default, terminate this Agreement by written notice to the CITY on or before Closing Date.

14.3 *Mutual Remedies.* If the exchange of Properties has not consummated due to either Party's default, then the non-defaulting party shall be entitled to seek damages or any other remedies available under the law. No right, remedy or election given by any term of this Agreement or made by and Party shall be deemed exclusive, but shall be cumulative with all other rights, remedies, and elections available at law or equity. The Parties agree that each Property is unique and recognize and affirm that in the event of a breach of this Agreement by either Party irreparable harm would be caused, money damages would be inadequate and an aggrieved Party may not have an adequate remedy at law. Accordingly, the Parties agree that in addition to any other rights and remedies existing at law or in equity, the non-breaching party shall be entitled to equitable relief, including an injunction and to seek to enforce specifically this Agreement and its terms and provisions, without the necessity of proving the inadequacy of money damages as a remedy.

15. *Miscellaneous Provisions.*

15.1 *Gender.* As used herein the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

15.2 *Binding Effect.* This Agreement shall be binding upon the Parties hereto and on their respective successors or assigns.

15.3 *Entire Agreement.* This Agreement contains the final and entire agreement between the Parties, and they shall not be bound by any terms, conditions, statements or representations, oral or written, not herein contained. Any subsequent amendment to this Agreement shall be valid only if executed in writing by the Parties or their successors or assigns.

15.4 *Governing Law.* This Agreement shall be construed, interpreted, and enforced according to the laws of the State of Oklahoma without regard to principals of conflict of laws. Jurisdiction and venue for any action pertaining to this Agreement shall be the Oklahoma County District Court.

15.5 *Time.* Time shall be of the essence for this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this Real Estate Agreement to Exchange Property.

HC California Ave, LLC

By: Clay Moss  
Clayton G. Moss, Manager

**ACKNOWLEDGMENT**

STATE OF OKLAHOMA )  
 ) SS.  
COUNTY OF OKLAHOMA )

This instrument was acknowledged before me on March 25<sup>th</sup>, 2024,  
by Clayton G. Moss, Manager of HC California Ave, LLC.

M. McLuckie-Williams  
Notary Public # 23001180

My commission expires: 11/26/2027



ATTEST:

Amy K. Simpson  
City Clerk



THE CITY OF OKLAHOMA CITY

David Holt  
MAYOR

STATE OF OKLAHOMA     )  
                                      )     SS.  
COUNTY OF OKLAHOMA    )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared David Holt, to me known to be the identical person who executed the within and foregoing instrument as the Mayor of The City of Oklahoma City, and he acknowledged to me that he executed the same as his free and voluntary act and deed and the free voluntary act and deed of such corporation for the uses and purposes therein set forth.

Given under my hand and seal this 9th day of April, 2024.



Mike Graham  
Notary Public

My Commission expires: \_\_\_\_\_  
Commission No.: \_\_\_\_\_

REVIEWED for form and legality.

Patricia Mann  
Assistant Municipal Counselor



## EXHIBIT "A"

### LEGAL DESCRIPTIONS

The City of Oklahoma City Property: 19 N. KLEIN AVENUE, OKLAHOMA CITY

Lots Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-eight (28), Twenty-nine (29), Thirty (30), Thirty-one (31), Thirty-two (32), Thirty-three (33) and Thirty-four (34) of Block Three (3) in ORCHARD PARK ADDITION to Oklahoma City, Oklahoma County, Oklahoma according to the recorded plat thereof.

HC California Ave, LLC Property: 1127 W. MAIN STREET, OKLAHOMA CITY

Lots Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-six (36), Thirty-seven (37), Thirty-eight (38), Thirty-nine (39), Forty (40) and Forty-one (41) of Block Sixteen (16) in PARKER AND COLCORD'S ADDITION to Oklahoma City, Oklahoma County, Oklahoma according to the recorded plat thereof.

EXHIBIT "B"

IMPROVEMENTS

