

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (the "Agreement"), is entered into by and between the **BYKOTA REI, LLC ("Bykota" or "Owner"), a Colorado Limited Liability Company,** and the **CITY OF JOPLIN, a Missouri Municipal Corporation ("City")** (sometimes hereinafter referred to individually as a "Party" or collectively as the "Parties") on the Effective Date set forth on the signature page below, as follows:

WITNESSETH:

WHEREAS, Bykota REI, LLC ("Bykota" or "Owner") owns or will own real estate in Joplin, Jasper County, Missouri that is legally described on Exhibit A; and,

WHEREAS, part of the real estate is the Olivia Apartment Building that was damaged by fire in December, 2020; and,

WHEREAS, as a result of the fire, the roof on the Olivia was destroyed; and,

WHEREAS, Bykota desires to acquire the real estate for a redevelopment/rehabilitation project ("Project" or "Redevelopment Project"); and,

WHEREAS, Bykota has requested an investment from the City into the real estate as a part of the total redevelopment project; and,

WHEREAS, Bykota will seek federal and state historical tax credits as an additional financing incentive for the project and will also apply for real estate tax abatement under RSMo Chapter 353; and,

WHEREAS, the Parties hereto desire to enter into this Cooperative Agreement to memorialize the terms, covenants, and conditions of their agreement.

NOW, FOR AND IN CONSIDERATION of the covenants, agreements, and premises herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Legal Description of the Real Estate.

See Exhibit "A"

2. City's Obligations.

a. The City agrees to invest an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) into the Olivia project on a dollar-for-dollar basis to match the funds spent by Bykota on the rehabilitation project. The City's investment is limited to a reimbursement match only for Bykota's hard construction costs related to the project on only the property known as the Olivia Building with an address of 320 South Moffet Avenue. The parties

agree that securing the building and re-constructing the roof on the building will be the first construction items to be completed. “*Hard construction costs*” is defined as “the costs of construction materials, equipment, and labor. Hard costs shall not mean soft costs including but not limited to accountant fees, administrative fees, appraisal fees, architect fees, consulting fees, design fees, engineering fees, environmental testing, financing, legal fees, overhead, professional fees, real estate fees, soil testing, surveying fees, or title work.” City shall have sole discretion in determining whether a cost is a hard cost or soft cost.

b. The City’s investment is conditioned on the construction timeline being strictly adhered to by Bykota, as outlined in Section 4., below.

c. City lien and special tax bill. The City will have a lien that will encumber the real estate, and upon final payment of the total investment for the Project, the City will issue a special tax bill for the investment amount. The tax bill will bear no interest. Upon timely completion of the Project, under the construction completion schedule outlined in this Agreement and a Certificate of Occupancy being issued, the City agrees to release, forgive, and discharge its lien and special tax bill against the real estate.

d. Reimbursement payments by the City. At least ten (10) days before any reimbursement payment for Owner’s hard construction costs is to be requested, the Owner or Owner’s Representative (“Owner”) will submit to the City’s Project Administrator, a payment request filled out and signed by the Owner and any Contractor selected by the Owner, covering the work performed and supported by lien releases or conditional lien releases covering all supplies, labor and/or subcontractors used in the completion of the rehabilitation project. Owner agrees to submit reimbursement requests to the City no more frequently than every thirty (30) days. Upon approval by the Project Administrator, the City shall reimburse fifty percent (50%) of the payment request. Lien releases or conditional lien releases must be provided prior to any payment being made to the Owner. In the event that a conditional lien release is approved, a full lien release shall be submitted to the City with the next reimbursement request.

e. Chapter 353 Tax Abatement. The City agrees to review an application by the Owner for tax abatement under RSMo Chapter 353 upon the recommendation of the Joplin Redevelopment Corporation. The City agrees that this proposed project is appropriate for tax abatement under Chapter 353.

3. Bykota’s obligations and requirements. The Owner agrees to the follow obligations and requirements for the Project:

a. Secure the property, including barring entry to unauthorized persons.

b. Correct any unsafe conditions on the property, including, as necessary, structural reinforcement, temporary stabilization, and weatherization.

- c. Timely apply for all available Federal and State historical tax credits.
- d. Timely submit an application for tax abatement under Chapter 353, RSMo.
- e. Comply with all appropriate specifications, including the terms contained in this Agreement, and codes referred to, and with all regulations, ordinances, and laws of the City, the State of Missouri, and the Federal Government, and permit reasonable inspection of all work by authorized inspectors.
- f. Obtain and pay for all permits and licenses necessary for the completion and execution of the work and labor to be performed.
- g. Bykota and/or its building contractor agree to carry general liability insurance for the Project in the amount of \$5,000,000.00 or some other amount agreeable to the City. In addition, Bykota will carry a Builder's Risk Insurance Policy for the amount of the Project. The parties agree and understand that this policy amount will increase in coverage as the improvements on the Project are completed.

4. Timing of Completed Construction of Improvements. Owner has submitted to the City, a proposed schedule for the completion of the Project. The parties agree that this schedule of completed construction improvements is material to this Agreement. The investment by the City is based on this schedule being met by Owner. The schedule is as follows:

- a. April 1, 2021: Roof permit is to be obtained.
- b. June 15, 2021: The Roof is to be completed.
- c. October 1, 2021: The permit for the interior work is to be obtained.
- d. March 1, 2023: The project is to be completed and a Certificate of Occupancy issued.

5. Control of Project. Except as otherwise provided in this Agreement, Owner shall have complete and exclusive control over construction of the Olivia Building Project. As to all parts of the Project, Owner hereby grants to City, its agents, and employees the right to enter following reasonable advance notice at reasonable times for the purpose of inspecting the Project.

6. Indemnification.

a. Owner shall indemnify, protect, defend, and hold City and its officers, directors, city council, employees and agents (collectively, the “**Indemnified Parties**” or, individually, an “**Indemnified Party**”) harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys’ fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any acts or omissions of Owner, its constituent members or partners, their employees, agents, independent

Contractors, licensees, invitees, or others acting by, through, or under such indemnifying parties, in connection with its or their activities conducted pursuant to this Agreement and/or in connection with the ownership, use or occupancy and redevelopment and rehabilitation of the Olivia Building Project. Provided that, Owner shall not have any indemnification obligation with respect to any particular liability where one or more Indemnified Parties' negligence or willful misconduct was involved.

b. In the event any suit, action, investigation, claim, or proceeding (collectively, an "**Action**") is begun or made as a result of which Owner may become obligated to one or more of the Indemnified Parties hereunder, the Indemnified Party shall give prompt notice to Owner of the occurrence of such event, but the failure to notify Owner will not relieve Owner of any liability that it may have to an Indemnified Party. After receipt of such notice, Owner may elect to defend, contest, or otherwise protect the Indemnified Party against any such Action, at the cost and expense of Owner, utilizing counsel of Owner's choice. The Indemnified Party shall have the right, but not the obligation, to participate, at the Indemnified Party's own cost and expense, in the defense thereof by counsel of the Indemnified Party's choice. In the event that Owner shall fail to timely defend, contest or otherwise protect an Indemnified Party against such Action, the Indemnified Party shall have the right to do so, and (if such defense is undertaken by the Indemnified Party after notice to Owner asserting Owner's failure to timely defend, contest or otherwise protect against such Action), the Indemnified Party may submit any bills for fees and costs received from its counsel to Owner for payment, and, within thirty (30) business days after such submission, Owner shall transfer to the Indemnified Party sufficient funds to pay such bills. Owner acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

c. An Indemnified Party shall submit to Owner any settlement proposal that the Indemnified Party shall receive. Owner shall be liable for the payment of any amounts paid in settlement of any Action to the extent that Owner consents to such settlement. Neither Owner nor the Indemnified Party will unreasonably withhold its consent to a proposed settlement.

d. Owner expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Agreement imposed upon Owner in order to induce City to enter into this Agreement. To the fullest extent permitted by law, an Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Agreement. If such court action is successful, the Indemnified Party shall be reimbursed by Owner for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement, or appeal of such action).

e. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement and the Redevelopment Project Areas as development areas with respect to any liability arising during the term of the Agreement.

7. Breach-Compliance.

a. If Owner or City does not comply with provisions of this Agreement, within the time limits and in the manner for the completion of the Project as herein stated, except for any extensions or waivers described herein and Excusable Delays (as defined in this Agreement), in that Owner or City shall do, permit to be done, or fail or omit to do, or shall be about so to do, permit to be done, or fail or omit to have done, anything contrary to or required of it by this Agreement or the Act, and if, within thirty (30) days after notice of such default by the nondefaulting party to the defaulting party, the defaulting party shall not have cured such default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period, then the nondefaulting party may institute such proceedings as may be necessary in its opinion to cure the default including, but not limited to, proceedings to compel specific performance (but not to compel construction) by the party in default of its obligations and, in the case of default by Owner, City is granted the right to terminate this Agreement, the right to exercise its right under the City's special tax bill that will be issued for its investment in the Project and pursue any other legal remedies that are available.

b. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by either party shall apply to obligations beyond those expressly waived.

c. Owner (for itself and its successors and assigns, and for all other persons who are or who shall become liable, by express or implied assumption or otherwise, upon or subject to any obligation or burden under this Agreement), waives to the fullest extent permitted by law and equity, all claims or defenses otherwise available on the ground of being or having become a surety or guarantor, whether by agreement or operation of law. This waiver includes, but is not limited to, all claims and defenses based upon extensions of time, indulgence, or modification of terms of Agreement.

d. Any delay by either party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit them in any way. No waiver in fact made by either party of any specific default by the other party shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect, to the particular default except to the extent specifically waived.

8. Excusable Delays. The parties understand and agree that Owner shall not be deemed to be in default of this Agreement because of delays or temporary inability to commence, complete or proceed in accordance with the Redevelopment Schedule, due in whole or in part to causes beyond the reasonable control or without the material fault of Owner which are caused by the action or failure to act of any governmental body, department or agency, including but not limited to, failure to approve complete applications for permits that comply with all applicable laws and regulations within thirty (30) days of submission and failure to provide any consent required by this Agreement where all applicable requirements for said consent have been complied with, within twenty (20) days of submission, acts of war or civil insurrection, breach of this Agreement by City or any natural occurrence, pandemic of any nature, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, litigation, tornadoes, or unusually severe weather (collectively "**Excusable**

Delays”). The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any of the foregoing causes, which approval shall not be arbitrarily or unreasonably withheld. Nothing herein shall excuse Owner from performance of its obligations because of a lack of funds or inability to obtain financing.

9. Non-subordination. The parties agree that the City’s investment in the project and the its lien and special tax bill against the real estate will not be subordinated to any other party or lender for the Project.

10. Notice. Any notice required by this Agreement shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, and addressed as hereinafter specified.

Any notice to City shall be addressed to:

City Manager
City Hall
602 South Main Street
Joplin, Missouri 64801

With a copy to:

City Attorney
City Hall
602 South Main Street
Joplin, Missouri 64801

Any notice to Owner shall be addressed to:

Bykota REI, LLC
Attn: Chris Smith

Each party shall have the right to specify that notice be addressed to any other address by giving the other party ten (10) days’ written notice thereof.

11. Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement between City and Owner. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

12. Effective Date. This Agreement shall become effective upon passage of an Ordinance by the City Council and full execution by both parties.

13. Recording. Upon full execution by City and Owner, this Agreement or a memorandum thereof shall be recorded by City, at Owner’s expense, in the Office of the Recorder of Deeds for Jasper County, Missouri.

14. Applicable Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. Jurisdiction for any dispute arising under this Agreement shall lie exclusively in the Circuit Court of Jasper County, Missouri.

15. Covenant Running With the Land. The provisions of this Agreement shall remain in effect for the duration of the Project. They shall be covenants running with the land and shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and be enforceable by, City, its successors and assigns, against Owner, its successors and assigns, and every successor in interest to the subject real property, or any part of it or any interest in it and any party in possession or occupancy of the real property or any part thereof.

16. Validity and Severability. It is the intention of the parties hereto that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. All exhibits attached hereto are hereby incorporated into this Agreement by reference.

17. Time and Performance are of the Essence. Time and exact performance are of the essence of this Agreement.

18. City's Legislative Powers. Notwithstanding any other provisions in this Agreement, nothing herein shall be deemed to usurp the governmental authority or police powers of City or to limit the legislative discretion of the City Council, and no action by the City Council in exercising its legislative authority shall be a default under this Agreement.

[Remainder of page intentionally left blank – signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY:

THE CITY OF JOPLIN, MISSOURI, a
municipal corporation

By: _____

Print Name: _____

Title: _____

OWNER:

BYKOTA REI, LLC, a Colorado limited liability
company

By: _____

Print Name: Chris Smith

Title: Manager

By: _____

Print Name: Michelle Johnson

Title: Manager

EXHIBIT A

ALL THAT PART OF LOTS NUMBERED THIRTY-ONE (31), THIRTY-TWO (32) AND THIRTY-THREE (33) IN MOFFET'S SUB-DIVISION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 40 FEET WEST OF THE SOUTHEAST CORNER OF LOT NUMBERED THIRTY-ONE (31), THENCE NORTH PARALLEL WITH THE WEST LINE OF THE ALLEY TO A POINT 18 FEET SOUTH OF THE NORTH LINE OF LOT NUMBERED THIRTY-THREE (33), THENCE WEST 42.5 FEET, THENCE SOUTH TO THE SOUTH LINE OF LOT NUMBERED THIRTY-ONE (31), THENCE EAST 42.5 FEET TO THE POINT OF BEGINNING, BEING THE EAST 42.5 FEET OF THE WEST 85 FEET OF LOTS THIRTY-ONE (31) AND THIRTY-TWO (32), AND THE EAST 42.5 FEET OF THE WEST 85 FEET OF THE SOUTH 32 FEET OF LOT NUMBERED THIRTY-THREE (33) IN MOFFET'S SUB-DIVISION IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

ALSO, ALL OF THE EAST 40 FEET OF LOTS NUMBERED THIRTY-ONE (31), THIRTY-TWO (32) AND THIRTY-THREE (33), EXCEPT THE NORTH 18 FEET OF LOT NUMBERED THIRTY-THREE (33) IN MOFFET'S SUB-DIVISION IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

ALL OF THE SOUTH ONE-HALF OF LOT NUMBERED FORTY-FOUR (44) AND ALL OF LOT NUMBERED FORTY-FIVE (45) IN MOFFET'S SUB-DIVISION, TO THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF, SUBJECT TO ALL PRIOR EASEMENT, RESTRICTIONS, RESERVATIONS, COVENANTS AND ENCUMBRANCES NOW OF RECORD.

ALL OF LOTS NUMBERED FORTY-SIX (46), FORTY-SEVEN (47) AND FORTY-EIGHT (48) IN MOFFET'S SUBDIVISION TO THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF, BEING SUBJECT TO ALL EASEMENTS, RIGHT OF WAYS, AND RESERVATIONS OF RECORD.