

**AGREEMENT TO MAINTAIN DECORATIVE LIGHTS
IN PUBLIC RIGHT OF WAY
KIRKWOOD CIRCLE**

THIS AGREEMENT made and entered into this ____ day of _____, 2005, by and between Kansas City, Missouri, a constitutionally chartered city under the laws of Missouri, (herein referred to as the “**City**”) and Kirkwood Realty Company, LLC, a Missouri limited liability company (herein referred to as “**Developer**”).

WITNESSETH, THAT

WHEREAS, Developer has an interest in certain real estate generally located on 49th Street to 50th Street north to south or Central Street to Wyandotte Street west to east, in Kansas City, Missouri (**Property**) more specifically described in Exhibit “A” attached hereto and incorporated herein by reference; and

WHEREAS, Developer intends to cause the Property to be platted as Kirkwood Circle (**Plat**), in accordance with Chapter 66, Code of Ordinances of the City of Kansas City, Missouri; and

WHEREAS, City is vested with an interest in street right of way; and

WHEREAS, Developer and City agree that decorative street lighting in the public right of way is desirable to enhance the Property;

NOW, THEREFORE, Developer and City, for and in consideration of the benefits to themselves, their transferees, assigns, and future grantees do hereby agree as follows:

1) Scope. Developer and City enter into this agreement for the installation and maintenance of decorative lights within City street right of way for within the Property as it is platted.

2) City Obligations.

- a) The City agrees to issue permits to install, maintain, repair, and replace, when necessary, decorative street lights for “Kirkwood Circle.” Lights installed under such permits shall remain the property of the Developer and shall not be owned by the City.
- b) To the extent allowed by law and subject to budget appropriation, the City agrees to contribute annually a fixed amount for the electrical power cost of the decorative lights. The amount of the City’s annual payment for electrical power will be determined based upon the number of standard lights that would have been required but for the installation of the decorative street lights, the electrical efficiency of City standard light fixtures, the annual hours of use, and the electrical energy rate(s) applicable to other street lights in Kansas City. The energy rate, ballast factor, and calculation formula of standard City fixtures is shown in Exhibit B, a copy of which is attached hereto and incorporated herein by

reference. Based on plans prepared by the Developer and reviewed by the City, the number of standard lights required for "Kirkwood Circle"; twelve (12) lights at 150 Watt. Energy costs for the decorative lights in excess of the calculated cost of an equivalent standard street light system will be the responsibility of the Developer.

- c) The City agrees to allow the Developer to arrange and perform all maintenance, repairs, and, replacement of the decorative lights and place holiday decorations including seasonal banners on the decorative street lights. Maintenance, repairs, and replacements shall be defined to include any action necessary to keep the decorative lights in operation during hours of darkness as a result of normal wear and tear, accidents, storms, vandalism, or equipment failure including providing replacement fixtures, poles, arms, lamps, photo controls, ballasts, and all other incidental hardware.
- d) To the extent allowed by law and subject to budget appropriation, the City agrees to contribute annually a fixed amount for the repair and maintenance of decorative street lights. The amount of the City's annual payment for repair and maintenance will be based upon the number of standard lights shown in 2(b) above and the annual maintenance rate charged by the City's contractor or such maintenance cost otherwise incurred by the City. The annual maintenance rate of standard street lights is shown in Exhibit B. Maintenance or repair costs for the decorative lights in excess of said contractual rates or City cost of an equivalent standard street light system will be the responsibility of the Developer.
- e) The City agrees to pay the Developer annually for the City's portion of electrical energy and maintenance. Such payment will include documentation showing the City's actual cost of electrical energy and contractual or other cost of maintenance for an equivalent standard lighting system for the year. Payment will be tendered in January each year for just-ended calendar year.
- f) Whenever there are references herein to the City contributing any funds to Developer to the extent allowed by law and subject to budget appropriation, the City's Director of Public Works shall include within the annual department budget request, funds sufficient to satisfy the provisions of this paragraph. Developer recognized that such contributions are subject to available funds and approval by the City Council of the annual budget.

3) Developer Obligations

- a) Agrees to obtain permits and install decorative streetlights in accordance with plans approved by the City and on file in the City Engineer's Office. Lights installed under this permit shall be owned by the Developer and not become property of the City.
- b) Agrees the installation is to include all labor and materials necessary to construct the decorative lights including fixtures, ballast, lamps, poles, arms, controller wiring, and incidental hardware
- c) Agrees to arrange for and provide an electrical energy metered account with Kansas City Power & Light Company or a successor.
- d) Agrees to arrange for and/or perform all maintenance in the decorative lighting system using qualified individuals or contractors and to keep the lights in

operation during normal hours of darkness. Failed lamps, fixtures, or photo controls will be repaired or replaced within 36 hours of notification to or discovery by Developer of light(s) out. Pole knock-downs, exposed or cut wiring, circuit failures, storm damage, vandalism, or other major system damages will be secured for safety of pedestrians or motorists within 4 hours of notification to or discovery by Developer. Permanent repairs of major damage will commence within 14 days and continue uninterrupted until lighting service is restored. Provided, however, performance by Developer shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, labor disputes, governmental restrictions or priorities embargoes, litigations, tornadoes, usually severe weather, inability to obtain or secure necessary labor, materials or tools, delays of any contractor, subcontractor, or supplier, acts or failure to act of the City or of any other governmental agency or entity, or any other causes beyond the control or without the fault of Developer. With the notice to the City, 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.

e) Agrees to be responsible for payment of that portion of the electrical energy and annual maintenance costs for the decorative lighting system which exceeds the amounts contributed by the City based on an equivalent standard light system as described in 2) (b) and (d) above.

f) Agrees if in the future "Kirkwood Circle," its successors or assigns no longer wishes to operate and maintain the decorative lighting system, it shall cause the decorative lighting system to be removed and replaced with standard street lights of a type and design approved by the City at no cost to the City.

- 4) **Indemnifications.** Developer shall defend, indemnify, and hold harmless the City from and against any and all claims, liabilities, cost, and expenses which result or arise out of the design, construction, maintenance, or placement and location in the public right of way of the decorative lights.
- 5) **Assignment.** Developer shall have the right, once or more often, to assign, license, or otherwise transfer some or all of the rights granted herein to any person, corporation partnership, joint venture, or all of the rights granted herein to any person, corporation partnership, joint venture, or other party that has an interest in the property, provided the Developer shall notify the City, in writing, within thirty (30) days prior to the transfer of such property and provided that the transferee provides City with written acceptance of the terms and conditions of this agreement within thirty (30) days of transfer. However, Developer shall not be released from its obligations unless and until the Director of Public Works releases Developer.
- 6) **Termination.** The rights and obligations of City and Developer shall terminate upon the happening of any one of the following events:
 - a) Developer removes the decorative lights from City street right of way and installs conventional street lights to be approved and permitted by the City at the Developer's expense, or
 - b) City requires the use of the street right of way for a public purpose within

its sovereign authority, or

c) Developer fails to provide the maintenance satisfactory to the City in accordance with standards for maintenance set forth in 2 (c) and 3 (d) above; provided, however, prior to termination of the rights and obligations of the parties under this subsection. City shall send notice to Developer that, in the opinion of City the standards of maintenance are not being met. Developer shall have fourteen (14) days from the date of the notice to correct such deficiencies or to provide information to City disputing the City's findings concerning maintenance.

- 7) **Removal and Restoration.** If any of the conditions enumerated in paragraph (c) above occur, City shall notify Developer of the occurrence of such an event and Developer shall remove the decorative lights within (60) days notice thereof, install standard City street lights approved and permitted by the City. Such removal shall include but not be limited to the removal of the poles, fixtures, bases, conduits and other items not utilized for the standard lights and restoration all surfaces to City standards.
- 8) **Recourse.** If Developer fails to remove the decorative lights and install standard street lights in accordance with paragraph 7, above, the City shall have the right to remove the decorative lights. In such event, the City shall be vested with title for the disposal of the decorative lights as compensation for the cost of removal.
- 9) **Effective Date.** This Agreement shall become effective after all requirements of law have been met.
- 10) **Runs With Land.** This Agreement shall run with the legal land description described by the **(Plat)**.
- 11) **Notice.** Any notice required by this Agreement shall be deemed to be given if it is mailed by United States certified mail, postage prepaid, and addressed as herein specified to:

- a) City
Director of Public Works
City Hall, 414 East 12th Street
Kansas City, Missouri 64106
- b) Developer
Kirkwood Realty Company, LLC
333 W. 11th Street, Suite 101
Kansas City, Missouri 64105
Fax Number : (816) 435-8210

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

- 12) **Severability.** The provisions of this Agreement shall be deemed severable. In the

event that any provisions of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions of this Agreement shall remain valid unless the court finds that the valid provisions are so essentially and inseparably connected with and so dependent upon the invalid provision that it cannot be presumed that the parties hereto have agreed to the valid provisions of this Agreement; or unless the court finds that the valid provisions, standing alone, are incompatible and incapable of being executed in accordance with the contracting parties intent.

- 13) **Recording.** The Developer shall cause this Agreement to be filed in the office of the Department of Records of Clay County, Missouri, at Liberty, within thirty (30) days after the effective date of this Agreement.
- 14) **Persons Bound.** This Agreement shall be binding upon and ensure to the benefit of the parties hereto, their successors and assigns.
- 15) **Amendment.** The terms of this Agreement shall not be amended, canceled, abrogated or released without the prior written consent of all parties.

KANSAS CITY, MISSOURI

By:

City's Director of Public Works

ATTESTATION BY CITY CLERK:

City Clerk

Approved as to form and legality:

Assistant City Attorney

STATE OF MISSOURI)
)ss.
COUNTY OF JACKSON)

BE IT REMEMBERED that on this ____ day of _____, 2005, before me, the undersigned, a notary public in and for the county and state aforesaid, came _____, Director of Public Works, of Kansas City, Missouri, a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and _____, City Clerk of Kansas City, Missouri, who are personally known to me to be the same persons who executed, as officials, the within instrument on behalf of Kansas City, Missouri, and such persons duly acknowledge the execution of the same to be the act and deed of said Kansas City, Missouri.

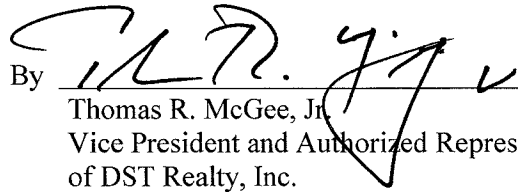
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

Notary Public

My commission expires:

KIRKWOOD REALTY COMPANY, LLC,
a Missouri limited liability company

By: DST REALTY, INC.,
a Missouri corporation, Member and Manager

By 
Thomas R. McGee, Jr.
Vice President and Authorized Representative
of DST Realty, Inc.

STATE OF MISSOURI)

) SS.

COUNTY OF JACKSON)

On this 3rd day of February, 2005, before me, Thomas R. McGee, Jr., to me personally known, who being by me duly sworn, did say that he is the President of DST Realty, Inc., a Missouri corporation, a Member and Manager of KIRKWOOD REALTY COMPANY, LLC, a Missouri limited liability company, and that he is the Authorized Representative of said DST Realty, Inc. pursuant to the operating agreement (the "Operating Agreement") of said KIRKWOOD REALTY COMPANY, LLC, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors as an Authorized Representative of said DST Realty, Inc., pursuant to the Operating Agreement, and said Thomas R. McGee, Jr. acknowledged said instrument to be his free act and deed as the Authorized Representative of DST Realty, Inc., pursuant to the Operating Agreement, the free act and deed of said DST Realty, Inc. as Member of said KIRKWOOD REALTY COMPANY, LLC and the free act and deed of KIRKWOOD REALTY COMPANY, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Kansas City, Missouri, the day and year last above written.


Notary Public

My Commission Expires:

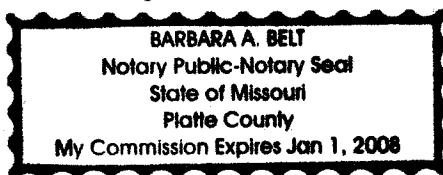


Exhibit A

Kirkwood Blocks 1 through 3 a subdivision in Kansas City, Jackson County, Missouri.

Exhibit B

KANSAS CITY, MISSOURI STREET LIGHTS

Energy Rate - Ballast Factors - Annual Energy & Maintenance Cost In KCPL Service Territory

Nominal Rating	Ballast Loss Factor* (blf)	Annual Burn	Energy Blocks	Energy** Rate	Annual Maintenance Rate**
150 Watt HPS	1.073	4100 Hrs	First 100 Watts x blf Next 50 Watts x blf	\$0.046/kwh \$0.044/kwh	\$34.77/light
* The ballast loss % from factory tests is applied to calculate the energy charge. ** Rates to be adjusted to match City's actual cost for the payment year. Pro-rated monthly amount is one-twelfth of the annual amount.					

Computation of Annual cost uses the basic formula:

$$(\text{Lamp watts}) \times (\text{blf}) \times (\text{hrs/yr}) \times (1 \text{ kwh}/1000 \text{ watt hrs}) \times (\text{rate/kwh}) = \text{annual cost}$$

For lamps with Energy Block discounts, split wattage as in example below.

150 Watt High Pressure Sodium

First 100 Watts @ Price Block 1 plus 50 watts @ Price Block 2

$$(100 \text{ watts} \times 1.073 \text{ blf} \times 4100 \text{ hrs}) \times (1 \text{ kwh}/1000 \text{ watt-hrs}) \times \$0.046 \text{ per kwh} = \$20.24/\text{yr.}$$

$$(50 \text{ watts} \times 1.073 \text{ blf} \times 4100 \text{ hrs}) \times (1 \text{ kwh}/1000 \text{ watt-hrs}) \times \$0.044 \text{ per kwh} = \$9.66/\text{yr.}$$

Total Annual cost for a 150 Watt Lamp = \$29.90 per year

Public Works Engineering
Kansas City, Missouri