

## FUNDING AND PROPERTY TRANSFER AGREEMENT

This Funding and Property Transfer Agreement is made and entered into and shall be effective as of the 25th day of May, 2010, by and between the City of Columbia, Missouri, a municipal corporation (the "City"), and Columbia Area Jobs Foundation, a Missouri not-for-profit corporation ("CAJF").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in view of the recitals of facts contained herein, the City and CAJF agree as follows:

1. **Definitions:** In this Agreement, the following terms will have the following meanings:

a. "Building" means that certain building located at 2810 LeMone Industrial Boulevard, Columbia, Missouri 65201, consisting of ninety-one thousand nine hundred ninety-seven (91,997) gross square feet which CAJF will acquire and improve pursuant to the Construction Contract and Lease to IBM.

b. "CAJF" means Columbia Area Jobs Foundation, a Missouri not-for-profit corporation, 1103 East Broadway, Columbia, Missouri 65201.

c. "Chapter 100 Bonds" means the issuance of Industrial Revenue Bonds pursuant to Chapter 100 of the Revised Statutes of Missouri, the issuance of which will have the effect of causing the Tenant's interest in certain personal property located on the Property to be partially exempt from ad valorem personal property taxes.

d. "City" means the City of Columbia, Missouri, a municipal corporation, 701 East Broadway, Columbia, Missouri 65201.

e. "City's Payment to CAJF" means the payment by the City to CAJF in the amount of Five Hundred Thousand Dollars (\$500,000.00) for use by CAJF in making the initial payment to the Seller of Five Hundred Thousand Dollars (\$500,000.00) towards the purchase of the Property from the Seller.

f. "Conditions Precedent" means the contingencies or conditions precedent to the City's obligations under this Agreement which are described in paragraph 3 of this Agreement.

g. "Construction Contract" means the Contract for the Construction of the Improvements to be entered into between CAJF and the Contractor. A copy of the Construction Contract is attached hereto as Exhibit A.

h. "Contractor" means Little Dixie Construction Company, L.L.C., 3316 LeMone Industrial Boulevard, Columbia, Missouri 65201.

i. "Environmental Law" means all existing and future statutes, ordinances, codes, regulations, rules, rulings, orders, decrees, directives, and other law and policies pertaining to environmental protection including any requirements by the City, the State of Missouri's Department of Natural Resources, and the Environmental Protection Agency of the United States Government.

j. "Escrow Agreement" means the separate Escrow Agreement between the City, Boone County National Bank, and CAJF which relates to the depositing of City Funds in a segregated account at the Boone County National Bank which will be used to fund payments due pursuant to the Seller's Lien Documents if not otherwise paid by the City in accordance with the terms thereof.

k. "IBM" means International Business Machines Corporation, a New York corporation, New Orchard Road, Armonk, New York 10504.

l. "Improvements" means the Building, appurtenant parking lot, driveways, curbs, sidewalks, landscaping, and all other modifications to the Property which are to be constructed pursuant to the Construction Contract and which will become fixtures or which will be affixed to the Property and made a part of the Building. The Improvements are described in the attachments to the Lease.

m. "Lease" means the Lease Agreement between CAJF and IBM dated May 14, 2010. A conformed copy of the Lease, with all exhibits thereto, is appended hereto and incorporated herein by reference as Exhibit B.

n. "Lender" means Boone County National Bank, 720 East Broadway, Columbia, Missouri 65201, and its participants.

o. "Loan" means the Loan to CAJF by the Lender in the approximate amount of Ten Million Dollars (\$10,000,000.00), the proceeds of which will be used to fund the construction of the Improvements to the Building pursuant to the Construction Contract as well as to pay the costs related to the acquisition of the Property by CAJF and the Loan.

p. "Loan Documents" means the documents which confirm and establish the Loan to CAJF by the Lender, including the Deed of Trust which secures payment of the Loan, copies of which are appended to this Agreement and incorporated herein by reference as Exhibit C.

q. "Management Contract" means the contract to be entered into between CAJF and the Manager for the management of the Property during the term of the Lease and

subsequent to the completion of the Improvements and the occupancy of the Property by IBM. A copy of the Management Contract is attached hereto as Exhibit D.

r. "Manager" means Wilgate-LDC Management, LLC, or any other management firm acceptable to the City, CAJF, and IBM.

s. "PILOTS" means "Payments in lieu of Taxes" which will become part of the additional rental due from IBM to CAJF pursuant to the Lease.

t. "Plans and Specifications" means the architectural and engineering plans and related specifications for the modifications, additions, and structural changes to the Building which have been approved by IBM and which will govern the manner in which the Building is made ready and suitable for IBM's occupancy pursuant to the Lease. Copies of the Plans and Specifications are appended to the Lease.

u. "Property" means the real estate located at 2810 LeMone Industrial Boulevard, Columbia, Missouri, which is legally described as follows:

Lot 2, Carfax Plat 2 as shown by the Administrative  
Plat recorded in Book \_\_\_\_\_ Page \_\_\_\_\_  
of the Records of Boone County, Missouri.

The term "Property" also means the Building and all Improvements now located or to be located on the above-described real estate, as well as all plans and specifications relating to the construction of said Improvements, and all tangible and intangible benefits of owning the above-described real estate, including access to adjacent rights of way, beneficial easements, and the like.

v. "Seller" means the Robert M. LeMone Trust u/t/a dated January 27, 2004, as amended, Central Trust and Investment Company, Trustee, 720 East Broadway, Columbia, Missouri 65201.

w. "Seller's Lien" means the lien of the Deed of Trust which secures the remaining indebtedness owed by CAJF to the Seller in connection with the acquisition by CAJF of the Property from the Seller, and which will remain a lien against the Property until paid in full in accordance with the terms thereof. The Seller's Lien will be subordinated to the Loan in favor of the Lender, and will secure an indebtedness of Two Million Five Hundred Fifty Thousand Dollars (\$2,550,000.00).

x. "Seller's Lien Documents" means the documents which pertain to the acquisition of the Property by CAJF and financing of a portion of the Purchase Price for the Property payable to the Seller pursuant to the Seller's Lien Documents, conformed copies of which are appended to this Agreement as Exhibit E.

y. "This Agreement" means this document and all attachments and exhibits hereto.

2. **Recitals of Pertinent Facts:** This Agreement has been entered into in view of the following facts, which the City and CAJF believe are true and accurate, to-wit:

a. IBM is a large publicly traded business corporation with international sales and business activities. IBM is admired and respected internationally, and IBM provides employees with highly competitive salaries and benefits.

b. The State of Missouri and the City have solicited IBM to locate a large facility within the city limits of the City because of their understanding and belief that IBM will hire at least six hundred (600) full-time employees who will become long-term residents of the Columbia area and who will, accordingly, benefit the City through their presence and their economic relationships to the various businesses in the City.

c. In order to induce IBM to locate a large office and technical support facility within the City's limits, the State of Missouri has offered IBM various economic incentives in the form of income tax credits. However, the incentives offered by the State of Missouri alone were not deemed sufficient by IBM to induce it to locate its technical support facility in the State of Missouri.

d. In order to complete the economic incentive package required by IBM for IBM to locate its new office and technical support facility within the City, the City agrees to provide certain substantial and additional economic incentives to IBM. In order to provide some of these incentives and in order to fulfill the commitments made to IBM by various representatives of state and local economic development organizations, it will be necessary for CAJF to acquire the Property, to enter into the Lease with IBM, to contract with the Contractor for the Improvements to be located in the Building, to arrange for the financing of such Improvements through the Lender, to arrange for the management of the Building and Improvements subsequent to the completion thereof through the Manager, and to assist the City in providing certain other economic incentives to IBM as hereafter described or as are described in the Lease.

e. It is necessary for CAJF to both acquire and then develop the Property as set forth above. However, in order for the economic benefits which have been represented as being available to IBM following the completion of the Improvements, it will be necessary for the City to hold title to the Property and to act as "Landlord" under the Lease subsequent to IBM's occupancy of the Property. However, IBM requires that before CAJF transfers the Property to the City, the various undertakings, obligations, and promises by CAJF which are described in the Lease, the Seller's Lien Documents, and the Loan be completed, that the

Management Contract be binding, and that any transfer of the Property to the City be subject to said promises and that the City assume said obligations.

f. Neither CAJF nor the City will have any responsibility for securing for IBM the various tax credit benefits to be received by IBM from the State of Missouri. However, the Lease is contingent until June 30, 2010, upon IBM's verification that said State tax benefits will be afforded to IBM, in fact.

g. CAJF has made arrangements through the City and the Boone County Industrial Development Authority for a Chapter 100 Bond issue in order to achieve certain reductions in personal property taxes otherwise payable by IBM while it occupies the Property during the Initial Term of the Lease.

h. During the time the Property is owned by the City, it will be free from assessment for real estate tax purposes. However, IBM has agreed to make certain "Payments in lieu of Taxes" ("PILOTS") in the amount of Twenty-Five Thousand Five Hundred Dollars (\$25,500.00) per year for each of the ten (10) years of the initial Lease term. In the event the Lease term is extended as prescribed in the Lease (for more than the 10 year Initial Term), then said PILOTS will be equal to the real estate taxes which otherwise would be payable as if the Property were not owned by the City but instead were owned by IBM.

i. In order to provide the funding required for the acquisition by CAJF of the Property pursuant to the Seller's Lien Documents, the City has agreed to pay CAJF Five Hundred Thousand Dollars (\$500,000.00) in accordance with the provisions of this Agreement.

j. During the course of the construction of the Improvements, CAJF will obtain the City's consent to any such change order(s) during the course of the construction of the Improvements if the effect of said change order(s) will be to increase the cost of said Improvements above the amount allocated from the Loan Proceeds to pay for same, all as hereafter prescribed in the exhibits to this Agreement.

k. The City's obligations under this Agreement are subject to the Conditions Precedent hereafter set forth in paragraph 3.

l. Upon the satisfaction of the Conditions Precedent, CAJF and the City will consider this as a binding contract and obligation between them. Good and valuable consideration exists to support each of the promises and obligations hereafter set forth and imposed by this Agreement.

3. **Conditions Precedent:** The City's obligations under this Agreement, other than the obligation to make the payment described under paragraph 4, shall be contingent upon each of the following Conditions Precedent. Each of these Conditions Precedent is for the benefit of the City

and may be waived by the City at any time, in the City's discretion. Each of the following contingencies or Conditions Precedent will be deemed waived by the City unless the City elects to terminate this Agreement on or before midnight on July 6, 2010, or when IBM waives its contingencies under section 5.06 of the Lease, whichever occurs first. If the City fails to give notice to CAJF as to the City's election to terminate this Agreement on or before midnight on July 6, 2010, then this Agreement shall be binding upon CAJF and the City. The Conditions Precedent to the City's obligations under this Agreement shall be each of the following:

- a. Acquisition of title to the Property by CAJF from the Seller pursuant to the Seller's Lien Documents;
- b. The obtaining of the Loan from the Lender pursuant to the Loan Documents;
- c. The waiver by IBM of the contingencies set forth in section 5.06 of the Lease within the time period allowed for such waiver by IBM;
- d. The receipt by the City of a commitment from the First American Title Insurance Company to issue a title insurance policy insuring the City's title to the Property in a form and amount reasonably acceptable to the City upon transfer of the Property to the City;
- e. The execution of the Construction Contract by the Contractor;
- f. The receipt by the City of a copy of the payment and performance bond required pursuant to the Construction Contract naming the City as an additional insured thereon and in an amount deemed adequate to the City;
- g. The execution by CAJF and the Manager of the Management Contract whereby the Manager agrees to manage the Property following the completion of the Improvements for the term of the Lease;
- h. The receipt by the City of a commitment to issue a Builder's Risk Insurance policy and such other policies of insurance insuring the Property and activities on the Property during the construction of the Improvements and thereafter in form and with coverages and content reasonably satisfactory of the City; and
- i. Such other additional Conditions Precedent as the City's City Counselor and City Manager deem appropriate and pertinent under the circumstances.

4. **City's Payment to CAJF:** The City agrees to pay CAJF the sum of Five Hundred Thousand Dollars (\$500,000.00) contemporaneously with the execution of this Agreement. Said sum of Five Hundred Thousand Dollars (\$500,000.00) shall be utilized by CAJF to effect the purchase of the Property from the Seller pursuant to the separate purchase agreement between CAJF

and Seller. In the event CAJF is unable to close the transaction contemplated by the separate agreement between CAJF and the Seller for the purchase of the Property, then said sum of Five Hundred Thousand Dollars (\$500,000.00) shall be immediately and forthwith returned by CAJF to the City. In the event CAJF purchases the Property from Seller, but thereafter fails to improve it pursuant to the terms of the Lease, then CAJF shall immediately pay the City the sum of Five Hundred Thousand Dollars (\$500,000.00).

5. **Commitment to Manage, Improve, Lease, Develop, Manage, and Finance Property:** In consideration of the payment by the City to CAJF, and the other benefits which will accrue to CAJF pursuant to this Agreement, CAJF agrees to undertake, perform, and satisfy each of the following obligations:

- a. CAJF agrees to acquire the Property from Seller pursuant to the Seller's Lien Documents and through the use of the City's Payment to CAJF;
- b. CAJF agrees to obtain the Loan from the Lender pursuant to the terms of the Loan Documents;
- c. CAJF agrees to enter into the Lease with IBM pursuant to the terms of the Lease;
- d. CAJF agrees to enter into the Construction Contract with the Contractor and thereafter to cause the Contractor to proceed expeditiously with the construction of the Improvements;
- e. CAJF agrees to enter into the Management Contract with the Manager prescribing the management duties and responsibilities of the Manager subsequent to the completion of the Improvements and the occupancy of the Property by IBM during the term of the Lease;
- f. CAJF agrees to take all reasonable steps to supervise the Contractor and approve construction loaned disbursements from the Loan to be made by the Lender and to help assure the prompt completion of the Improvements in order to meet the requirements of the Lease and to obtain the occupancy of the Property by IBM;
- g. CAJF agrees to obtain the City's consent to any and all material change orders to the Plans and Specifications during the entire period of the Construction of the Improvements;
- h. CAJF agrees to take reasonable and timely steps to arrange for the issuance of occupancy permits permitting IBM to occupy and utilize the Property pursuant to the Lease as soon as the Improvements are complete; and

i. On or before December 31, 2010, CAJF agrees to transfer title to the Property (subject to the "Assumed Obligations" as hereafter defined) to the City by CAJF's warranty deed and in the manner required by this Agreement.

6. **Transfer of Property to City Upon Completion of Improvements:** As soon as reasonably practicable and possible after the completion of the Improvements, and after the issuance of a final occupancy permit and the commencement of IBM's occupancy under the Lease (but in no event later than December 31, 2010), CAJF shall convey the Property to the City by Missouri Warranty Deed in proper and recordable form. At the time of such conveyance, CAJF shall also shall assign, deliver, and transfer to the City:

- a. the Lease;
- b. the Management Contract;
- c. the Construction Contract together with all warranties, indemnities, insurance contracts, and any other tangible or intangible benefit associated with the Improvements;
- d. conformed copies of all change orders, plans and specifications, documents pertaining to loan disbursements, documents pertaining to the manner in which the plans and specifications appended to the Lease were modified or amended in any respect, and any other documents which relate to, pertain to, or are in any manner germane to the Lease, the Loan, the Seller's Lien Documents, the Improvements, the Construction Contract, insurance pertaining to the Property, or otherwise. Upon receipt of the foregoing, the City shall assume the "Assumed Obligations" (hereafter defined and described) and shall indemnify and hold CAJF harmless with respect to same; and
- e. all other documents, certified resolutions, deposits, and any other benefit attributable to the Property.

7. **Assumed Obligations:** Upon the transfer of the Property pursuant to the provisions of this Agreement (and paragraph 6, above) by CAJF to the City, the City agrees to assume and discharge in accordance with the terms thereof the "Assumed Obligations" (as said term is hereafter defined). The term "Assumed Obligations" means each of the following:

- a. CAJF's obligations to the Seller pursuant to the Seller's Lien Documents;
- b. The Lease;
- c. The Loan and the Loan Documents;
- d. The Management Contract;



e. The obligation under the Lease to provide IBM the economic benefits relating to the Chapter 100 Bonds (as same pertain to a partial abatement of personal property taxes); and

f. An abatement of real estate taxes except for the PILOTS due from IBM as additional rent.

The City agrees that CAJF's obligations for each of the Assumed Obligations shall cease and terminate upon the transfer by CAJF of title to the Property to the City pursuant to the terms and conditions specified above in this Agreement.

8. **Due Authority:** The officer of CAJF who has executed this Agreement on behalf of CAJF represents that he has been duly empowered and authorized by the Board of Directors of CAJF to enter into this Agreement on behalf of CAJF and to bind CAJF in accordance with the terms hereof.

9. **Escrow Account:** The City agrees to deposit City funds in the Escrow Account described in the Escrow Agreement in an amount equal to the unpaid balance due pursuant to the Seller's Lien Documents. Such deposit shall occur no later than June 30, 2010. Thereafter, the amount in the Escrow Account shall be no less than the remaining amount due to the Seller pursuant to the Seller's Lien Documents, and shall be held and disbursed in accordance with the Escrow Agreement.

10. **Miscellaneous:**

a. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the respective successors to heirs, and legal representatives of the parties hereto.

b. **Missouri Contract:** This Agreement shall be deemed a Missouri contract and construed according to the laws of such state, regardless of whether this Agreement is being executed by any of the parties hereto in other states or otherwise. The proper venue for any action concerning this Agreement shall be Boone County, Missouri.

c. **Counterparts:** This Agreement may be executed in several counterparts, each of which shall be deemed an original.

d. **Time:** Time is of the essence in this Agreement. If the final day of any period which is set forth in this Agreement falls on a Saturday, Sunday, or legal holiday under the laws of the United States or the state of Missouri, then in such event, the duration of such period shall be extended to the next day which is not a Saturday, Sunday, or other legal holiday. Any reference to a time of day (e.g., 12:00 noon) shall refer to the time of day applicable to the location of the Property.

e. Construction: The paragraph headings, captions, or abbreviations are used for convenience only and shall not be resorted to for interpretation of this Agreement. Whenever the context so requires, the masculine shall refer to the feminine, the singular shall refer to the plural, and vice versa.

f. Waiver: Except as otherwise specified herein, no waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted, and any such waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

g. No Adverse Inference: This Agreement shall not be construed more strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

h. Survival: Except as otherwise expressly provided herein, this Agreement shall survive the closing and shall not be merged therein or in the closing documents.

i. Entire Agreement: This Agreement and the attachments and exhibits hereto set forth all the promises, covenants, agreements, conditions, and understandings between the parties hereto and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, expressed or implied, oral or written, except as herein contained. This Agreement may be modified only by an agreement in writing signed by the parties to this Agreement.

j. Notices: Any notice given or required to be given, unless otherwise provided, shall be in writing and shall be deemed to have been delivered, whether actually received or not, three (3) days after being deposited in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to Buyer or Sellers, as the case may be, as shown below:

If To City: City of Columbia  
c/o H. William Watkins, City Manager  
701 East Broadway  
Columbia, MO 65201

With A Copy To: Fred Boeckmann, City Counselor  
City of Columbia  
701 East Broadway  
Columbia, MO 65201  
(Attorney for City)

If To CAJF:

Columbia Area Jobs Foundation  
City of Columbia  
701 East Broadway  
Columbia, MO 65201

With a copy to:

Erick Creach  
Van Matre, Harrison, Hollis, Pitzer and Taylor, PC  
1103 East Broadway  
P. O. Box 1017  
Columbia, MO 65205-1017  
(Attorney for CAJF)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 25<sup>th</sup>  
day of May, 2010.

The City of Columbia, ("City")

Attest:

By:

By:

  
Sheela Amin, City Clerk

  
H. William Watkins, City Manager

Approved as to form:

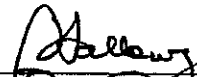
  
Fred Boeckmann, City Counselor

Columbia Area Job Foundation, ("CAJF")

By:

Name:

Title:

  
Ben C. Toway  
Secretary