

## INTERGOVERNMENTAL COOPERATIVE AGREEMENT

This Intergovernmental Cooperative Agreement (the "**Agreement**") is entered into the \_\_\_\_ day of \_\_\_\_\_, 2020 (the "**Effective Date**"), by and among the CITY OF KANSAS CITY, MISSOURI ("**City**"), a constitutionally chartered municipal corporation, and the PORT AUTHORITY OF KANSAS CITY, MISSOURI ("**Port KC**"), a political subdivision of the State of Missouri created pursuant to Section 68.010 *et seq.*, RSMo (collectively, the "**Parties**").

WHEREAS, City owns certain real property in the River Market, a portion of which is described on **Exhibit A**, attached hereto and incorporated herein (the "**Subject Property**"); and

WHEREAS, City has leased said real property, including portions of the Subject Property, to the Planned Industrial Expansion Authority of Kansas City, Missouri (the "**PIEA**") since September 1, 1989, and that lease arrangement is currently governed by the terms of that certain Amended and Restated City Market Site Lease dated September 1, 1998, as subsequently modified by that certain First Amendment to Amended and Restated City Market Site Lease dated April 1, 2010 (collectively, the "**Lease**"), the term of which expires at midnight on April 15, 2025; and

WHEREAS, the PIEA caused said real property to be redeveloped as a market for the sale of fruits, vegetables, and other farm or dairy products, *i.e.*, the "City Market," pursuant to the provisions of a redevelopment plan adopted under the Planned Industrial Expansion Law, and the Subject Property currently provides public parking in support of the City Market; and

WHEREAS, the PIEA issued its \$11,530,000 Taxable Lease Revenue Bonds (City Market Project) Series 1989 (the "**Series 1989 Bonds**") to finance a portion of the City Market project, which Series 1989 Bonds were subsequently refunded and defeased by the PIEA's \$14,980,000 Taxable Lease Revenue Refunding Bonds, Series 1998 (City Market Project) (the "**Series 1998 Bonds**"), which Series 1998 Bonds were subsequently refunded and defeased by a discrete portion of the City's Taxable Special Obligation Refunding Bonds (Kansas City, Missouri, Projects) Series 2010C (the "**Allocated Series 2010C Bonds**") (collectively, the "**Bonds**"); and

WHEREAS, the PIEA's leasehold interest in the Subject Property was pledged as security for the repayment of the Series 1998 Bonds and Allocated Series 2010C Bonds pursuant to a certain Leasehold Deed of Trust and Security Agreement dated September 1, 1998, as subsequently modified by that certain First Amendment to First Leasehold Deed of Trust and Security Agreement dated April 1, 2010 in favor of First Bank of Missouri ("**First Bank**") (collectively, the "**Deed of Trust**"); and

WHEREAS, the Bonds have been refunded and defeased or otherwise retired, such that the PIEA's leasehold interest in the Subject Property no longer serves as security for the Bonds; and

WHEREAS, the development of the Subject Property serves a predominantly public municipal purpose because, without limitation, vertical development will (i) enhance the tax base of Subject Property and surrounding area; (ii) retain and generate jobs; (iii) promote economic development in the area of the City in which the Subject Property is located; (iv) result in generation of tax revenues to the City from the conduct of business and other activities in the City that would not otherwise occur; (v) serve as a catalyst for additional investment in and further redevelopment and rehabilitation of the area of the City in which the Subject Property is located;

(vi) further the City's policy of encouraging economic stability and growth; and (vii) preserve and enhance public parking in a strategic area of the City; and

WHEREAS, City will convey the Subject Property to Port KC, to be used by Port KC in compliance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, the Parties hereby mutually agree as follows:

## **ARTICLE I**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 1.1 Representations, Warranties and Covenants of City. City represents, warrants and covenants that:

(a) City is a constitutionally chartered city validly existing under the laws of the State of Missouri and has lawful power and authority to enter this Agreement and to carry out its obligations under this Agreement. City by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) No officer or employee of City shall have any personal interest in the subject matter of or transactions contemplated by this Agreement.

Section 1.2 Representations, Warranties and Covenants of Port KC. Port KC represents, warrants and covenants that:

(a) Port KC is a political subdivision of the State of Missouri, validly existing under the laws of the State of Missouri and has lawful power and authority to enter this Agreement and to carry out its obligations under this Agreement. Port KC by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) No officer or employee of Port KC shall have any personal interest in the subject matter of or transactions contemplated by this Agreement.

Section 1.3 Survival of Representations, Warranties and Covenants. All representations, covenants and warranties of City and Port KC contained in this Agreement, in any certificate or other instrument delivered by City or Port KC pursuant to this Agreement, or otherwise made in conjunction with the transactions contemplated by this Agreement shall survive the execution and delivery of this Agreement.

## **ARTICLE II**

### **PRE-TRANSFER OF SUBJECT PROPERTY**

Section 2.1 Pre-Transfer Actions. City shall:

A. Engage the PIEA for purposes of further amending the Lease to exclude the Subject Property from the PIEA's leasehold, and shall request the PIEA to engage First Bank for

purposes of further modifying the Deed of Trust to formally document the removal of the Subject Property therefrom; and

- B. Terminate any right, that can lawfully be done so, currently residing with any third party to develop any portion of the Subject Property.

Section 2.2 Timing of Pre-Transfer Actions. The actions to be taken pursuant to Section 2.1 of this Agreement shall be completed not later than sixty (60) calendar days following the Effective Date of this Agreement unless the Parties shall agree, in writing, upon a longer period of time.

Section 2.3 Costs. All costs incurred by City pursuant to this Article II shall be paid by City.

### **ARTICLE III**

#### **TRANSFER OF SUBJECT PROPERTY**

Section 3.1 Conveyance. City hereby agrees to convey to Port KC, and Port KC agrees to acquire from City, the Subject Property pursuant to a special warranty deed in substantially the form of **Exhibit B**, attached hereto and incorporated herein (the “**Deed**”). The conveyance of the Subject Property and the consummation of the transactions contemplated by this Agreement are being undertaken by City and Port KC in furtherance of their mutual goals and public purposes.

Section 3.2 Timing. The closing will take place upon a date determined by the Parties which shall in no event be later than thirty (30) calendar days following delivery of notice to the City by Port KC that the condition precedent to the transfer as provided in Section 4.2 of this Agreement shall have been satisfied, unless the Parties shall agree, in writing, upon a longer period of time.

Section 3.3 Closing. The following actions shall be taken at closing:

A. City shall:

- (i) Execute and deliver the Deed; and
- (ii) Deliver to Port KC or title company certified copies of resolutions authorizing the execution and delivery of this Agreement and Deed and all other writings, affidavits, documents, consents, certificates, and instruments as Port KC or title company may reasonably require in connection with: (a) the closing; (b) the issuance to Port KC of an owner’s policy of title insurance; and (c) closing instructions to the title company, the form of which shall be reasonably acceptable to Port KC.

B. Port KC shall:

- (i) Execute the acceptance of the Deed; and
- (ii) Deliver to City or title company certified copies of resolutions authorizing the execution and delivery of this Agreement and Deed and all other writings, affidavits, documents, consents, certificates, and instruments as

City or title company may reasonably require in connection with: (a) the closing; (b) the issuance to Port KC of an owner's policy of title insurance; and (c) closing instructions to the title company, the form of which shall be reasonably acceptable to City.

- (iii) Deliver to City or title company the purchase price of Ten Dollars and 00/100 cents (\$10.00).

Section 3.4 Transfer of Possession. After the grant of the license describe hereinafter, Port KC shall have immediate and exclusive possession of the Subject Property upon the closing, and shall hold title to the Subject Property for purposes of developing the same in compliance with the terms of this Agreement. Prior to taking possession of the Subject Property, Port KC will grant to City a license to use the Subject Property for transient public, City Market and neighborhood parking until the Subject Property is transferred by Port KC to a new owner.

Section 3.5 Condition of Subject Property. The Parties acknowledge that the Subject Property will be conveyed "AS IS," and without any representations or warranties, except as specifically provided in this Agreement and related instruments.

Section 3.6 Closing Costs. All costs of City associated with its conveyance of the Subject Property to Port KC shall be paid by City, including all costs associated with identifying, describing and documenting any easements to be reserved by City. All costs of Port KC associated with its acquisition of the Subject Property from City shall be paid by Port KC.

## ARTICLE IV

### DEVELOPMENT OF SUBJECT PROPERTY

Section 4.1 Developer Selection. Port KC, through its real estate broker, has tentatively identified Flaherty & Collins Properties ("F&C") as the entity to develop the Subject Property for Port KC. Port KC is currently engaged in negotiations with F&C as to the terms of the development of the Subject Property should Port KC acquire title to the Subject Property as contemplated by this Agreement. In the event that Port KC and F&C are unable to agree upon terms consistent with this Agreement or F&C is otherwise unable or elects not to develop the Subject Property for any reason, Port KC shall identify an alternate developer. F&C or such alternate developer shall be deemed the "**Developer**" for purposes of this Agreement.

Section 4.2 Due Diligence Materials. Within ten (10) City business days after the Effective Date, City will deliver to Port KC all documents, records and information relating to the Subject Property in City's possession or within City's control and available to City for review and evaluation by Port KC or its respective agents and designees, including, but not limited to: (i) existing title insurance policies, commitments, surveys and utility maps covering the Subject Property or any part thereof; (ii) bills for real estate taxes and assessments; (iii) operating agreements and other agreements affecting the Subject Property, recorded and unrecorded; (iv) soil and engineering reports and information; (v) information and reports concerning the environmental condition of the Subject Property and any underground structures or utilities which may be present on the Subject Property, including any environmental assessments, reports or test results, tank permits or tank registrations, and (vi) any notices, claims or government proceedings regarding the Subject Property.

Section 4.3 Roles of the Parties in Development. Port KC shall contract with the Developer and City shall not be a party to any development agreement executed by Port KC, unless the City is to be obligated to provide, or cause to be provided, public incentives. Port KC shall be solely responsible for the development of the Subject Property following the transfer of the same to Port KC by City. Notwithstanding the foregoing, should City elect to extend any public incentives to the development of the Subject Property in accordance with its policies and procedures, the Parties shall cooperate for purposes of integrating the same into the development agreement as appropriate.

Section 4.4 Reversion of Subject Property to City. In the event that Port KC shall not have transferred the Subject Property to the Developer or otherwise caused the development of the same to be commenced within twenty-four (24) months from the Effective Date of this Agreement, Port KC shall re-convey the Subject Property to City and this Agreement shall thereafter be deemed null and void. Port KC may elect to request that City affirm this reversion has not triggered prior to the expiration of the allotted time period. The City Manager shall have the sole right to make such determination on behalf of City and his written determination shall conclusively establish the same.

## ARTICLE V

### SPECIAL DEVELOPMENT TERMS

Section 5.1 Mandatory Terms. Port KC shall not convey the Subject Property to the Developer or otherwise authorize development of the same to commence unless the development agreement executed in conjunction therewith includes the following special terms:

- A. Any development must include the construction of not less than one hundred sixty (160) parking stalls within a structured parking facility to be constructed by the Developer on the Subject Property and such spaces shall be dedicated to transient public parking for a period of not less than twenty-five (25) years (the “**Public Parking**”). The Developer may impose charges for the use of the Public Parking but such charges shall not exceed the rates charged by Developer to its tenants.
- B. The Developer shall fund a traffic study for purposes of analyzing the impact to the streetcar system created by vehicles traveling to and from the Subject Property from 5<sup>th</sup> Street and 3<sup>rd</sup> Street. Such traffic study must be reviewed by the Kansas City Streetcar Authority and no construction will be permitted to commence unless and until the Kansas City Streetcar Authority has granted its consent, which shall not be unreasonably withheld.
- C. The Developer shall be required to ensure that at least fifteen percent (15%) of the total number of residential housing units being constructed on the Subject Property shall be leased at a rate that is affordable to those households having an income equal to seventy percent (70%) of the median income for all households within Kansas City, Missouri as estimated and reported by the most current American Community Survey 5-Year Estimate, for the duration of any period of real property tax exemption of the Subject Property.

- D. The Developer shall be required to work in good faith with Port KC towards the construction of a Low Income Housing Tax Credit (LIHTC) project, or an otherwise substantively comparable project, on Parcel 13 of Port KC's Master Planned Development approved by the City's governing body pursuant to Ordinance No. 140583.

Port KC may elect to request that City affirm the development agreement is compliant with the provisions of Section 5.1 of this Agreement. The City Manager shall have the sole right to make such determination on behalf of City and his written determination that the provisions of Section 5.1 of this Agreement have been satisfied shall conclusively establish Port KC's compliance with the same.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

Section 6.1 Choice of Law. This Agreement shall be construed and governed in accordance with the laws of the State of Missouri.

Section 6.2 No Waiver. No consent or waiver, express or implied, by any party to this Agreement to or of any breach or default by any other party in the performance by such other party of its obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement.

Section 6.3 Modification of Agreement. This Agreement may not be amended, modified, terminated or waived orally, but only by a writing signed by the Parties.

Section 6.4 Force Majeure. For the purpose of any of the provisions of this Agreement, no party shall be considered in breach of or default in any of its obligations in the event of Force Majeure. The Parties agree that in the event of the occurrence of any delays as a result of Force Majeure, the time or times for the performance of the covenants, provisions, and agreements of this Agreement shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay). The affected party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; provided, however, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected party, and the affected party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to the affected party. Notwithstanding the above, (a) no party may rely on its own acts or omissions as grounds for delay in its performance, and (b) the absence of immediately available funds shall not be grounds for delay.

Section 6.5 Entire Agreement. This Agreement incorporates all prior negotiations and discussions between the Parties regarding its subject matter and represents the entire agreement of the Parties.

Section 6.6 Severability of Provisions. Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with, and so dependent upon, the invalid provision(s) that it cannot be presumed that the Parties could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the Parties.

Section 6.7 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that except as otherwise provided herein, no party shall assign this Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

Section 6.8 No Partnership. It is expressly understood that the Parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of another in performance of this Agreement.

Section 6.9 No Third Party Beneficiaries. The provisions of this Agreement shall not be deemed to create any third party benefit hereunder for any member of the public or to authorize anyone not a party hereto to make a claim or file any action in connection with the execution hereof or the performance or non-performance of the terms hereof.

Section 6.10 Execution in Counterparts. This Agreement may be executed by the Parties on separate counterparts, which, when taken together, shall constitute one and the same instrument. This Agreement may be executed at different times and in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signed pdf or electronic versions of this Agreement shall be treated as originals and shall be fully binding on and enforceable against the Parties. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

Section 6.11 Notices. All notices hereunder shall be in writing and shall be sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any notice sent by (i) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (ii) personal messenger shall be deemed delivered when actually received; and (iii) an overnight delivery service shall be deemed delivered on the business day following the date the notice is deposited with the overnight delivery service addressed as specified below:

To City: City of Kansas City, Missouri  
414 E. 12<sup>th</sup> St., 29<sup>th</sup> Floor  
Kansas City, MO 64106  
Attention: City Manager

With a copy to: City of Kansas City, Missouri  
414 E. 12<sup>th</sup> St., 23<sup>rd</sup> Floor  
Kansas City, MO 64106  
Attention: City Attorney

To Port KC: Port KC  
110 Berkley Plaza  
Kansas City, MO 64120  
Attention: President & CEO

With a copy to: Port KC  
110 Berkley Plaza  
Kansas City, MO 64120  
Attention: General Counsel

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

Section 6.12 Further Acts and Assurances. The Parties will do, execute, acknowledge and deliver such further acts, instruments and assurances as may reasonably be required for accomplishing the purposes of this Agreement.

Section 6.13 Representatives Not Individually Liable. No member, official, representative, or employee of City shall be personally liable to Port KC in the event of any default or breach by City of any obligations under the terms of the Agreement. No member, official, representative, or employee of Port KC shall be personally liable to City in the event of any default or breach by Port KC of any obligations under the terms of the Agreement.

Section 6.14 Payment or Performance on Saturday, Sunday, or Holiday. Whenever the provisions of this Agreement call for the performance of any act on or by a date that is a Saturday, Sunday, or legal holiday of the City, as specified in Section 2-1098, Code of Ordinances, then such payment or such performance shall be required on or by the immediately succeeding day that is not a Saturday, Sunday, or legal holiday of the City, as specified in Section 2-1098, Code of Ordinances.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the day and year first above written.

**CITY OF KANSAS CITY, MISSOURI**

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City Manager

Approved as to form:

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City Attorney

**PORT AUTHORITY OF KANSAS CITY,  
MISSOURI**

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Jon D. Stephens  
President & CEO

Approved as to form:

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Brian T. Rabineau  
Deputy General Counsel

**EXHIBIT A**

Lots 165 through 169, Block 17, TOWN OF KANSAS (commonly called OLD TOWN), a subdivision, not in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, refiled for record July 28, 1896.

**EXHIBIT B**

**DEED**

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(Space Above Reserved For Recorder of Deeds Certification)

**MISSOURI SPECIAL WARRANTY DEED**

THIS SPECIAL WARRANTY DEED is made as of \_\_\_\_\_, 2020, by and between the CITY OF KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("Grantor"), with an address of 414 E. 12<sup>th</sup> Street, Kansas City, Missouri, 64106, and the PORT AUTHORITY OF KANSAS CITY, MISSOURI, a political subdivision of the State of Missouri ("Grantee"), with an address of 110 Berkley Plaza, Kansas City, Missouri 64120.

WITNESSETH, that Grantor, for and in consideration of the sum of TEN DOLLARS (\$ 10.00) and other good and valuable consideration, to Grantor paid by Grantee (the receipt of which is hereby acknowledged) does by these presents, SELL AND CONVEY, unto Grantee and Grantee's successors and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the County of Jackson and State of Missouri, to wit:

See Exhibit A attached hereto and incorporated herein by reference.

SUBJECT TO: (a) encumbrances, easements, restrictions, declarations, reservations, agreements, instruments and other matters of record, if any; (b) taxes and assessments, general

and special; and (c) rights of the public in and to the parts thereof in streets, roads or alleys, if any.

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining unto Grantee and Grantee's successors and assigns, forever; Grantor hereby covenanting that the said premises are free and clear from any encumbrance done or suffered by Grantor, except as set forth herein; and that Grantor will warrant and defend the title to said premises unto Grantee and Grantee's successors and assigns, forever, against the lawful claims and demands of all persons claiming under Grantor, but none other, and except as set forth herein.

IN WITNESS WHEREOF, Grantor has executed these presents as of the day and year first above written.

THE CITY OF KANSAS CITY, MISSOURI

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

) SS.

COUNTY OF \_\_\_\_\_

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of the City of Kansas City, Missouri, and that said instrument was signed on behalf of said city and is the free act and deed of said city.

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

\_\_\_\_\_

[SEAL]

My Commission Expires: \_\_\_\_\_

GRANTEE ACCEPTANCE

Grantee, the PORT AUTHORITY OF KANSAS CITY, MISSOURI, a political subdivision of the State of Missouri created pursuant to Section 68 010 et seq., RSMo, hereby accepts the foregoing Missouri Special Warranty Deed, effective as of \_\_\_\_\_.

PORT AUTHORITY OF KANSAS CITY,  
MISSOURI

By: \_\_\_\_\_

Name: Jon D. Stephens

Title: President and CEO

STATE OF MISSOURI

) SS.

COUNTY OF JACKSON

On this day of \_\_\_\_\_, 2020, before me, the undersigned, personally appeared Jon D. Stephens, to me personally known, who being by me duly sworn did say that he is the President and CEO of the Port Authority of Kansas City, Missouri, a political subdivision of the State of Missouri created pursuant to Section 68.010 et seq., RSMo, and that the within instrument was signed on behalf of said Port Authority pursuant to due authority, and said Jon D. Stephens acknowledged said instrument to be the free act and deed of said Port Authority.

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

\_\_\_\_\_

[SEAL]

My Commission Expires: \_\_\_\_\_

Exhibit A

Lots 165 through 169, Block 17, TOWN OF KANSAS (commonly called OLD TOWN), a subdivision, not in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, refiled for record July 28, 1896.

