

**PRE-DEVELOPMENT AGREEMENT
(Somera Road)**

THIS PRE-DEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of the ____ day of January, 2023 (the “**Effective Date**”) by and between the **CITY OF KANSAS CITY**, a Missouri municipal corporation (the “**City**”) and **WEST BOTTOMS–PROPCO MASTER, LLC**, a Delaware limited liability company, including its successors and assigns (the “**Developer**”). City and Developer are also referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties.**”

WHEREAS, the Developer proposes a project for development utilizing a various economic development tools available and consisting of residential, retail, hotel, and office development in multiple phases across approximately 21.85 acres at the Area as reflected in the UR Plan; and

WHEREAS, Developer plans for 296 units of residential development in multiple phases from adaptive reuse of existing structures and 954 units of residential development from new structures; and

WHEREAS, Developer plans for 186,781 square feet of Class A office development in multiple phases from adaptive reuse of existing structures; and

WHEREAS, Developer plans for 139,593 square feet of retail development in multiple phases from adaptive reuse of existing structures and 27,531 square feet of retail development in multiple phases of new structures; and

WHEREAS, Developer plans for 50 rooms of hotel development in one phase from adaptive reuse of existing structures; and

WHEREAS, Developer currently owns the property needed for the Project; and

WHEREAS, Developer anticipates the Project will result in 1,080 temporary jobs and 630 permanent jobs in the West Bottoms; and

WHEREAS, the total private cost of the Project is approximately \$400,000,000.00 and Developer’s investment in the Project requires and is contingent upon substantial economic incentives; and

WHEREAS, Developer and City anticipate that economic activity will be created at the property more particularly described in Exhibit A and Exhibit B (the “**Property**”), that will result in tax revenues to the City, including without limitation tax revenues from (i) expenditures of funds by Developer to construct, rehabilitate, remodel and improve the Property; (ii) substantial new investment in the development project property for tenant use; (iii) increased consumption of goods, services and utilities by new employees; and (iv) activities of employees in the City while located at or traveling to or from the Property such as, but not limited to, retail purchases, consumption of goods and services and patronage of restaurant, entertainment and other facilities in the City; and

WHEREAS, the City finds that the Project serves a public purpose in that it will promote economic development in the City and serve as a catalyst for additional investment and development; and

WHEREAS, the City and Developer intend to enter into future agreements to provide additional obligations and benefits for both parties related to the Project; and

WHEREAS, the City and Developer now desire to enter into this Agreement for the purpose of setting forth initial covenants, agreements, and obligations of the Parties to make possible the development project.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement hereby agree as follows:

ARTICLE I

GENERAL PROVISIONS, DEFINITIONS & EXHIBITS

Section 1.01. Recitals. The Recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

Section 1.02. Scope of Agreement. The purpose of this Agreement is to provide a coordinated and clear outline of the obligations contemplated of City and Developer and agreement to negotiate in good faith concerning the incentives necessary to complete the development Project.

Section 1.03. Defined Terms.

“Area” means the area in the City’s West Bottoms generally bounded by Liberty Street on the West, 12th Street on the South, Beardsley Road on the East, the UP railroad tracks on the Northwest, beginning at the intersection of the off-ramp from US Highway 70 onto Beardsley Road, the UP railroad tracks and continuing Southwest to the point where the rail road track intersect an extension of the west line of Liberty street.

“Code” means the Code of Ordinances, City of Kansas City.

“Development Site” means the area defined on Exhibit A.

“Incentives” means the financial incentives which may include a tax abatement, sales tax exemption on construction materials, in whole or in part, of real property taxes and sales taxes, the capture and redirection of certain tax revenues, tax credits, or such combination of the foregoing as the City Council and PIEA may elect to extend to the development project.

“Infrastructure Improvements” means the public infrastructure construction outlined in Section 3.05.

“MFI” Kansas City metropolitan area median family income.

“PIEA” means The Planned Industrial Expansion Authority of Kansas City, Missouri.

“PIEA Act” means Section 100.300, et seq., of the Revised Statutes of Missouri 2000, as amended.

“PIEA Redevelopment Corporation” means The Planned Industrial Expansion Authority of Kansas City, Missouri Redevelopment Corporation.

“Plan Map” means the map of the area with proposed improvements, attached hereto as Exhibit B.

“Private Development” means the private construction and development as outlined in Section 3.04.

“Project” means the Private Development outlined in Subsection 3.04 and the Infrastructure Improvements outlined in Subsection 3.05.

“Public Gathering Open Spaces” open spaces to be primarily available to the public at large in the Area, specifically 4,500 square feet of space at 1226 Union Avenue, 15,600 square feet of space at the Northwest corner of 11th Street and Santa Fe Street (to be known as Union Plaza), and 95,000 square feet of space located north of 1000 W 12th Street between the railroad tracks (to be known as the Grove).

“Reasonable Delay” means good faith justifiable reasons for delays, including, but not limited to, acts of God, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Developer.

“Redevelopment Entity” means any entity with the authority to recommend to the city tax increment financing as that term is used in RSMo § 99.800 et seq or any entity authorized by statute to issue tax abatements, including corporations organized under RSMo § 353.010 et seq. for the purpose of redevelopment within the city limits, land clearance for redevelopment authority with an area of operation within the city, enhanced enterprise zone boards with an area of operation within the city and planned industrial expansion authority for the city.

“TIF Commission” means the Tax Increment Financing Commission of Kansas City, Missouri.

“UR Plan” means the Urban Renewal Plan approved by Ordinance No. 220555.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 City Representations and Warranties.

1. **Organization, Authorization.** The City (1) is a constitutionally chartered city validly

existing under the laws of the State of Missouri; (2) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder, and (3) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

2. **Effect on Prior Agreements.** The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the City or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.
3. **Litigation.** To the best knowledge of the City, there is no action, threatened or pending, against the City, which would prevent or impair the City's performance hereunder.
4. **Warranty.** The City represents and warrants to the Developer that the foregoing items (1), (2) and (3) are true, accurate and complete as of the Effective Date and agrees that upon closing any transaction contemplated by this Agreement, the City shall confirm that the foregoing items (1), (2) and (3) shall be accurate, true and complete as of the Closing Date of such transaction.

Section 2.02 Developer Representations and Warranties.

1. **Organization, Authorization.** The Developer (1) is a limited liability company validly existing under the laws of the State of Missouri; (2) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; and (3) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.
2. **Prior Agreements.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms or conditions hereof do not and will not conflict with or result in a breach of any terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.
3. **Litigation.** To the best knowledge of Developer, there is no action, threatened or pending, against the Developer which would prevent or impair the Developer's performance hereunder.
4. **Warranty.** The Developer represents and warrants to the City that the foregoing items (a), (b) and (c) are true, accurate and complete as of the Effective Date and agrees that upon closing any transaction contemplated by this Agreement the Developer shall confirm that

the foregoing items (a), (b) and (c) shall be accurate, true and complete as of the Closing Date of such transaction.

5. Based on the analysis completed thus far and the information available to Developer at this time, Developer has a good faith belief that the development project will provide a minimum of 1,080 temporary jobs and 630 permanent jobs for the City.

ARTICLE III

THE DEVELOPMENT PROJECT

Section 3.01. Parking. The Parties shall jointly undertake an analysis to determine the parking needed to support each phase of the Project as contemplated by the UR Plan. The cost of such analysis shall be born by the Developer. If the Parties determine that additional parking facilities are needed beyond the 1488 parking stalls outlined in Section 3.04, the City shall agree, subject to the appropriation of funds for this purpose, to design and construct the required facilities and to acquire any property needed for the facilities. Any resulting parking facility shall be a public facility and Developer shall have no ownership interest in the facility. However, City agrees that the Parties may enter into a future parking agreement for the purpose of establishing terms by which the City leases parking spaces to Developer at a rate mutually acceptable to both Parties, and the City may also provide financing and/or financial incentives to Developer to support the construction of a shared, structured parking facility.

Section 3.02. Incentives. Project assistance available to this project may include real property tax abatement, personal property tax abatement, sales tax exemption on construction materials, and/or redirection of tax increment from new economic activity generated by the project for eligible project expenses. These benefits are available through various Redevelopment Agencies administered by the Economic Development Corporation of Kansas City, Missouri and directly through the City of Kansas City, Missouri. Applications for incentives shall be made as further described in Sections 4.01.2 and 4.02.1.

Section 3.03. Vacations, Land Dedications and Property Transfers. The Parties agree that any street vacations, other land dedications and property transfers desired by Developer for the Project will occur pursuant to the City's Code of Ordinances and other relevant policies and laws.

Section 3.04. Private Development Phases. The Developer anticipates completing the following "Private Development" in the area in four phases. Individual projects in the phases are as follows:

(a) Phase 1:

- i. One seven-story adaptive reuse residential building with 127 residential units and ground floor retail located on Block E, Lot 4, as shown on the Plan Map;
- ii. One three-story adaptive reuse mixed-use building located on Block B, Lot 3, as shown on the Plan Map;

- iii. One five-story adaptive reuse mixed-use buildings, located on Block E, Lot 2, as shown on the Plan Map;
- iv. One seven-story hotel located on Block H, Lot 2, as shown on the Plan Map;
- v. One new five-story residential building with approximately 266 residential units located on Block B, Lot 1, as shown on the Plan Map; and
- vi. Approximately 233 new permanent surface parking stalls located on Block F Lot 1, and Block c, Lot 2, as shown on the Plan Map, and approximately 477 temporary surface parking stalls located on Block D, Lots 1 and 2, Block A, Lot 1, and Block C, Lot 1, as shown on the Plan Map.

(b) Phase 2:

- i. Two new up to fifteen-story mixed use residential buildings each with 150 residential units and located on Lots 1 and 2 of Block D, as shown on the Plan Map, to include 380 new parking stalls in a structured parking garage, built pursuant to Section 3.01 herein.

(c) Phase 3:

- i. One new six-story new mixed-use residential building with 31 residential units located on Block G, Lot 1, as shown on the Plan Map; and
- ii. One new up to fifteen-story mixed use residential building with 236 residential units located on Block G, Lot 3, as shown on the Plan Map, to include 185 new parking stalls in a structured parking garage.

(d) Phase 4:

- i. One two-story adaptive, mixed use residential building with 12 residential units, located on Block D, Lot 5, as shown on the Plan Map;
- ii. One five-story adaptive, mixed use residential building with 45 residential units, located on Block G, Lot 2, as shown on the Plan Map;
- iii. One single story mixed-use building Block I, Lot 1, as shown on the Plan Map; and
- iv. Two new up to fifteen-story mixed use residential buildings each with 72 residential units each located on Block A, Lot 1 and Block C, Lot 1, as shown on the Plan Map, to include approximately 190 new parking stalls.

(c) Phase 5:

- i. One four-story adaptive, mixed use residential building located on Block D, Lot 3, as shown on the Plan Map;
- ii. One three-story adaptive, mixed use residential building, located on Block D, Lot 4, as shown on the Plan Map;
- iii. One four-story adaptive, mixed use building Block J, Lot 1, as shown on the Plan Map; and
- iv. Approximately 40 new parking stalls located on Block J, Lot 2, as shown on the Plan Map.

Section 3.05. Public Infrastructure Phases. The City anticipates completing the following “Infrastructure Improvements” in two or more phases in coordination with the Developer:

(a) Phase 1a:

- i. New water mains along Santa Fe from 9th Street to 12th Street;
- ii. New water mains along Union Ave. from Mulberry Street to appoint approximately 475 feet east of Santa Fe Street;
- iii. New sanitary sewers along Santa Fe Street from 9th street to 12th street, from Union Ave. from Mulberry to a point approximately 150 east of Santa Fe and along 11th Street from Mulberry to Santa Fe;
- iv. Conversion of existing combined sewer system to separate storm sewer system along Santa Fe from 9th to 12th street with storm sewer trunks at Union Ave. and 11th Street;
- v. Construction of regional detention basins;
- vi. Construction of the Public Gathering Open Spaces;
- vii. Reconstruction of streets, curbs, sidewalks, alleys, along Santa Fe from 9th to 12th Street, Union Ave. and 11th Street;
- viii. Installation of modern street light systems; and
- ix. Installation of street trees and other amenities.

(b) Phase 1b:

- i. Reconstruction of streets, curbs, sidewalks, driveways and associated streetscape improvements along Mulberry Street, 11th Street, and

Liberty Street, including intersection improvements at the intersection of 12th Street and Liberty; and

- ii. Rehabilitation of sanitary sewers and storm sewers along the same streets Mulberry Street, 11th Street, and Liberty Street.

(c) Phase 2:

- i. Reconstruction of streets, curbs, sidewalks, driveways and associated streetscape improvements along 12th Street from Santa Fe to Hickory, and along Hickory from Union to 12th Street; and
- ii. Reconstruction of east/west alley between Santa Fe and Hickory
- iii. Reconstruction of east/west alley between Union and 11th Street.

ARTICLE IV

ADDITIONAL OBLIGATIONS OF THE PARTIES

Section 4.01. Developer Obligations. Developer agrees to undertake and complete the following:

1. Within 90 days of execution of this Agreement, provide to the City the following Predevelopment Documents:
 - (a) A copy of any completed general development plan prepared for the TIF, PIEA or any other incentive purpose. The development plan shall include:
 - i. A future land use plan showing proposed uses of the project area; and
 - ii. A statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, building codes and ordinances, and amendments to adopted land use plans; and
 - iii. A statement as to the kind and number of additional public facilities or utilities which will be required in the area after completion of the plan; and
 - iv. A schedule indicating the estimated length of time needed for completion of each phase of the plan; and
 - (b) A copy of any marketing study prepared for financing or incentive purposes.
 - (c) A copy of a financing plan that includes a budget of all costs to complete the improvements related to the phases identified by the development plan and the option being exercised, as well as evidence of commitments to fund each source identified in the financing plan; and

(d) A blight study that includes the Real Property and has been completed within 2 years of delivery to the City.

The City shall have no obligations under this Agreement, including those contained in Article III, until the obligations of Developer in this Section 4.01.1 are fulfilled. Failure to comply with this subsection shall relieve the City of any of its obligations under this Agreement. Should the City elect to commence with its obligations such commencement shall not be seen as a waiver of any of Developer’s obligations under this subsection.

2. **PIEA.** The Developer will pursue economic development incentives available for its Project through the PIEA and shall comply with all requests and policies of the PIEA. Any application to the PIEA under this Agreement shall be made within 15 days of the City submitting its application to the Tax Increment Financing Commission pursuant to Section 4.02.1 of this agreement.
3. **Phase 1 Construction.** Subject to Reasonable Delay, if the City completes Phase 1 of the Infrastructure Improvements, as outlined in Section 4.02.2, Developer will break ground on Phase 1 the Private Development as described in Section 3.04 within 90 days of completion of the Phase 1 Infrastructure Improvements. Developer will complete the Phase 1 Private Development within two years of breaking ground. Subject to Reasonable Delay, if Developer does not deliver Phase I private development in substantial form to that described in Section 3.04 within five years of the completion of the Phase I Infrastructure Improvements, City will be released from any obligations under this agreement. This schedule may be superseded under terms of a development agreement between the Developer and the PIEA, provided that the superseded schedule is consented to the by the City Manager, such consent not to be unreasonably withheld.
4. **Later Phase Construction.** Subject to Reasonable Delay, the later phase construction shall be completed as follows:

Phase	Developer Breaks Ground	Developer completion date
Phase 2	Within 90 days of the City’s completion of the Phase 2 Infrastructure Improvements	By December 31, 2026
Phase 3	By June 31, 2026	By December 31, 2028
Phase 4	By June 31, 2029	By December 31, 2030
Phase 5	By June 31, 2035	By December 31, 2035

This schedule may be superseded under terms of a development agreement between the Developer and the PIEA, provided that the superseded schedule is consented to the by the City Manager, such consent not to be unreasonably withheld.

5. **Private Capital.** The Developer will be responsible for obtaining private capital in an amount sufficient, when added to the Incentives, to finance the Project. The Developer, along with other equity partners and participants, will be prepared to fund, subject to Incentives and private capital, the amount of private equity necessary to complete the financing of the Project.
6. **AdvanceKC.** Throughout the incentive process, Developer shall also comply with the City's AdvanceKC policies and with statutory processes concerning incentives sought.
7. **Infrastructure Design.** Developer agrees to coordinate for and solely bear the cost of the design for the public infrastructure Developer desires for the Project. Provided however, such costs shall be included as a reimbursable project cost under the City's application to the TIF Commission. Developer or its designee shall consult with the City on the design of the infrastructure and shall present to City its final plan within 90 days of the Effective Date of this Agreement.
8. **Affordable Housing.** The Developer shall comply with the affordable housing set-aside requirement outlined in Code § 74-11. To the extent that this requirement may cause a financial gap for the project, City and Developer agree to identify a funding source, amount, and terms that will assist Developer in complying with the requirement.
9. Developer will convey and record a permanent public access easement for the Public Gathering Open Spaces within 180 days of the execution of this agreement, pursuant to Section 4.01(3) herein. The Parties acknowledge and agree that the Public Gathering Open Spaces are to be used for, and accessible to, the public consistent with other public parks within the city.
10. Throughout the incentive process, and subject to the terms of this Agreement, Developer shall comply with the City's AdvanceKC policies and with statutory processes concerning Incentives sought.
11. Developer agrees to comply with all City policies applicable to the construction of improvements including, without limitation, M/WBE and Construction Workforce requirements, prompt pay, (bonding, OSHA 10-hour certifications,) E-Verify, (public competitive procurements) and prevailing wage for the Projects and all future projects within the Development Site for which they receive incentives in the form of tax increment financing, tax abatement or tax redirection, except to the extent that the prevailing wage requirements outlined in Code § 3-622 are waived by the PIEA in accordance with Ordinance No. _____. Developer further agrees to meet or exceed all M/WBE goals set for any private improvements contemplated by the project.
12. Notwithstanding anything in this Agreement to the contrary, any and all Incentives that may be extended to the development project shall be subject to City Council Ordinances 200497, which may require a qualified financial analysis that measures the impact to the taxing jurisdictions. Nevertheless, the City acknowledges that any property that is a local or national landmark or contributes to a historic district that is also developed as part of the

Project, as outlined in Section 3.04, meets the Extraordinary Qualifications outlined in Ordinance 200497, and the City agrees that waiver of those requirements is appropriate. The Developer may in its sole discretion determine whether Incentives recommended through the City's AdvanceKC process are sufficient to proceed with the Project. It is anticipated that such Incentives may exceed those set forth in Ordinance 200497.

Section 4.02. City Obligations. City agrees, subject to all laws and regulations, to undertake and complete the following:

1. **TIF Application.** City shall apply with the TIF Commission to receive incentives available under Sections 99.800 et seq. RSMo. to be used to fund the Public Infrastructure outlined in Section 3.05. City shall be deemed the applicant for any TIF incentives.
2. **Public Infrastructure Improvement Construction.** Subject to the appropriation of funds for this purpose, the City shall undertake construction of the Phase 1a and 1b Infrastructure Improvements by June 30, 2023, completing such improvements by December 31, 2025. If the Developer then completes Phase 1 of the Private Development, and provides the City notice of its intent to proceed with the further phases of Private Development, the City shall undertake construction of the Phase 2 Public Improvements by the earlier of (1) within one year of receiving such notice, subject to the appropriation of funds, or (2) the Phase 2 Public Improvements commencement date specified in the development agreement between the PIEA and the Developer, provided that the City Manager consents in writing to the date specified in the development agreement between the PIEA and the Developer. City agrees to review Developer's submitted design for public infrastructure and, upon agreement that the improvements are necessary, to make such improvements to City-controlled infrastructure, subject to the appropriation of funds for that purpose. The City Manager or his designee shall seek an appropriation for such contribution from City Council in an amount to be agreed upon by the Parties. The City shall have ultimate discretion to determine necessity of such improvements and the timing of any installation of the improvements.
3. **Public Gathering Outdoor Space Construction.** City agrees to review Developer's submitted design for Public Outdoor Gathering Spaces and to make such improvements subject to the appropriation of funds for that purpose. The City shall have ultimate discretion to determine necessity of such spaces and the timing of any installation of the improvements. The City Manager or his designee shall seek an appropriation for such contribution from City Council in an amount to be agreed upon by the Parties. Maintenance obligations for any Public Gathering Outdoor Spaces shall be determined by future agreement. Construction of the Union Plaza Public Gathering Outdoor Space will occur at the same time as the Phase 1 Public Infrastructure Improvements.
4. The City agrees to reasonably cooperate with Developer for any application Developer may make for incentives, community improvement district formations under the authority of Sections 67.1401 to 67.1571 of the Missouri Revised Statutes, or transportation development district formations under the authority of Sections 238.200 to 238.280 of the Missouri Revised Statutes.

5. The City shall assist in blight remediation and demolition of the Weld Wheel building located at Block B, Lot 1 and Lot 2 in the Area. The City shall provide such financial assistance to the developer directly or through a cooperative agreement or redevelopment agreement through an appropriate redevelopment agency, subject to future approval of the City Council if required.
6. The City agrees that the City Manager or their designee will request of the City Council any funding appropriations necessary to complete the City's obligations under this agreement. In case of such decline, the City will have no obligation to provide the funding.
7. City Manager or their designee will request the City Council grant the approvals, licenses, or transactions necessary to complete the following:
 - (a) Formation of an entertainment district and an open container district, pursuant to City Ordinance and any other laws or regulations.
 - (b) Assist Developer in evaluating the feasibility of a railway quiet zone, and, if feasible, work with the Developer and the Railroad to obtain a quiet zone designation.
 - (c) As required for the final approval, permitting and/or construction of the Project and to the extent that the City has an interest in the following properties and subject to the normal vacation process, the vacation of:
 - i. 2,510 square feet of right of way on the southwest corner at the intersection of Santa Fe and 11th Street.
 - ii. 3,845 square feet of alley in Block 53, running East to West between Mulberry and Hickory Streets, South of 11th Street and North of 12th Street.
 - iii. 2,300 square feet of St. Louis Avenue and alley north of St. Louis Avenue along the South side of block 29.
 - iv. 18,815 feet of St. Louis Ave. between Santa Fe Street and Mulberry Street.
 - v. 805 square feet of alley running East to West from Mulberry Street to the intersection of UP railroad tracks, North of Union Street.
 - vi. 18,815 square feet of St. Louis Avenue running Northeast to Southwest, east of Santa Fe Street.
 - vii. 63,700 square feet of right of way between Union Ave and Forester Ave, east of Santa Fe Street
 - viii. 5,155 square feet of right of way running along the north side of Forester Avenue

- (d) Assist Developer to achieve compliance with the parkland dedication requirements through Code § 88-408-E, Private Development and Operation of Recreational Open Space, including supporting crediting the Public Gathering Open Spaces towards satisfaction of the requirements of Code § 88-408, to the extent permitted by statute and city ordinance. This agreement does not supersede any requirements or conditions that may have been adopted by Ordinance No. 220555.

ARTICLE V

MISCELLANEOUS

5.1 **No Tax Representations or Warranties.** The Parties hereby agree that neither the Developer nor the City is making any representations or warranties to the other about the tax treatment, implications or treatment of the transactions contemplated in this Agreement. The City does not agree to offset, credit or pay to the Developer any amount for any loss of benefit anticipated by the Developer in the event that any sales tax exemptions are denied by third parties or by an order of a court. In such event, there shall be no sales tax exemption and sales taxes will be due and owing on any Construction Materials purchased under sales tax exemption.

5.2 **Determination of Liability.** If sales taxes are due and owing under the terms of this Agreement, then Developer shall cooperate with City and shall provide City and any third party charged with enforcement of the state's sales tax laws and regulations access to such records as Developer is obligated to retain for the purpose of enabling City or third party to determine with reasonable certainty the amount of sales taxes due and owing and shall remit such sums as directed by City or third party within thirty (30) days of the determination. In the event that Developer fails to retain the records or otherwise fails to provide access to the same for the purposes contemplated herein, City or third party shall have the right to estimate the sales tax liability and Developer shall be bound by such estimate.

5.3 **Records Retention.** Developer shall retain all records related to the sale of, and its purchase of, construction materials for a period of no less than three (3) years following the date of sale or such longer term as may be required pursuant to the terms of any subsequent agreements executed by the City and the Developer in connection with the Bond Issuance.

5.4 **Extension of Time of Performance.** Developer shall be entitled to a reasonable extension of the time of performance under this Agreement, the length of which shall be determined by the City Manager of the City, for delays to its performance that are in no way the fault or responsibility of Developer; provided, however, that no such extension shall be granted unless a written request, setting forth in detail the grounds therefor, is received by the City Manager within a reasonable amount of time following the events giving rise to such alleged delay. The City Manager shall not unreasonably withhold its consent should the Developer seek an extension.

5.5 **Changes to Project's Schedule.** Developer and City may agree to modify the schedules specified in Article III of this Agreement for either Party's performance as a modification to this Agreement and will confirm such modifications in writing.

5.6 **Notices.** All notices shall be sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight delivery service. Any notice sent by (a) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States Mail; (b) personal messenger shall be deemed delivered when actually received; and (c) 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:

If to City:	Office of City Manager City of Kansas City, Missouri Attn: City Manager 414 East 12th Street, 29th Floor Kansas City, Missouri 64106
With a copy to:	Law Department City of Kansas City, Missouri Attn: City Attorney 414 East 12th Street, 28th Floor Kansas City, Missouri 64106
And a copy to:	Finance Department City of Kansas City, Missouri Attn: Tammy Queen, Finance Director 414 E. 12th Street, 3rd Floor Kansas City, Missouri, 64106
If to the Developer:	Minnie Bellomo SomeraRoad, Inc. 130 West 42 nd Street, 22 nd Floor New York, New York 10036 Telephone: 646-880-6128 Email: minnie@someraroadinc.com
With a copy to:	Charles G. Renner Husch Blackwell LLP 4801 Main Street, Suite 1000 Kansas City, MO 64112 Telephone: 816-329-4702 Email: Charles.renner@huschblackwell.com

Such address may be changed by a party by giving the other party ten (10) days' notice of such change in writing.

5.7 **Assignments.** This Agreement may not be assigned by Developer without the prior written consent of City, which consent may be granted, denied or conditioned in the sole discretion of City; provided, however, the City shall not unreasonably withhold its consent should the Developer seek to assign this agreement to a subsidiary.

5.8 **Further Actions.** The City and Developer acknowledge that this Agreement contemplates the execution of further agreements, that the objectives of this Agreement necessitate such further agreements being executed. City and Developer agree to negotiation in good faith to enter into necessary future agreements. The Parties agree that, except where modification is authorized in this Agreement, all other agreements and other documents to be executed by the parties to effectuate the transactions contemplated in this Agreement shall be consistent with the terms and conditions of this Agreement.

5.9 **Severability.** If any term, covenant, condition, or provision of this Agreement, or the application to any person or circumstance shall, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall (except to the extent such result is clearly unreasonable) not be affected thereby, and under such circumstances each term, covenant, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, insofar as such enforcement is not clearly unreasonable. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

5.10 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

5.11 **Venue.** Any lawsuit, action, or proceeding arising under this shall, to the extent there is federal jurisdiction over the parties and subject matter, be brought exclusively in either the federal courts of the United States located in the Western District of Missouri or the circuit court of Jackson County, Missouri at Kansas City.

5.12 **Negation of Partnership.** It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture between the City and the Developer or as constituting the Developer as the agent or representative of the City for any purpose or in any manner under this Agreement, it being understood that the Developer is an independent contractor hereunder.

5.13 **Conflict of Terms.** It is the intention of the City and the Developer that if any provision of this Agreement is capable of two constructions, one of which would render this provision valid and enforceable, then the provision shall have the meaning which renders it valid and enforceable.

5.14 **No Waiver.** No failure on the part of the City or the Developer to enforce any covenant or provision contained in the Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.

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

CITY OF KANSAS CITY, MISSOURI

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Title: _____

WEST BOTTOMS – PROPCO MASTER, LLC

By: _____ Name: _____
Title: _____

Exhibit A

A TRACT OF LAND BEING PART OF THE NORTHEAST QUARTER, THE SOUTHWEST QUARTER, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 49 NORTH, RANGE 33 WEST, TURNER AND CO'S ADDITION, PART OF BLOCKS 39, 40, 42, 43, 44, 45, 53, 54, 57 AND 58, WEST KANSAS ADDITION PART OF BLOCKS 28 AND 29, ALL IN THE CITY OF KANSAS CITY, JACKSON COUNTY, MISSOURI DESCRIBED AS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 16, OF BLOCK 3 OF WEST KANSAS 2ND ADDITION IN SAID SOUTHWEST QUARTER; THENCE NORTH 03°17'20" EAST 35.35 FEET TO THE SOUTHWEST CORNER OF BLOCK 58 OF SAID TURNER AND CO'S ADDITION; THENCE NORTH 02°01'25" EAST 414.37 FEET TO THE SOUTHWEST CORNER OF LOT 32 OF BLOCK 44 OF SAID TURNER AND CO'S ADDITION; THENCE NORTH 87°40'37" WEST ALONG THE SOUTH LINE OF SAID BLOCK 45 AND THE EXTENSION THEREOF, 293.28 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER; THENCE SOUTH 01°56'54" WEST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SOUTHWEST QUARTER 2.30 FEET; THENCE NORTH 87°14'33" WEST 38.24 FEET TO A POINT 2.01 FEET SOUTH OF THE SOUTH LINE OF SAID BLOCK 45; THENCE NORTH 01°55'20" EAST 61.92 FEET; THENCE NORTH 64°55'20" EAST 43.05 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER, SAID POINT BEING 79.72 FEET NORTH OF THE SOUTH LINE OF SAID BLOCK 45; THENCE NORTH 65°18'55" EAST 19.42 FEET TO A POINT ON THE WEST LINE OF LOT 25 OF SAID BLOCK 45; THENCE NORTH 63°05'10" EAST 27.43 FEET TO A POINT ON THE EAST LINE OF LOT 25 OF SAID BLOCK 45, 18.69 FEET SOUTH OF THE NORTHEAST CORNER OF LOT 25 OF SAID BLOCK 45; THENCE NORTH 74°37'13" EAST 25.15 FEET TO A POINT ON THE EAST LINE OF LOT 24 OF SAID BLOCK 45, 11.03 FEET SOUTH OF THE NORTHEAST CORNER OF LOT 24 OF SAID BLOCK 45; THENCE NORTH 02°02'41" EAST 11.03 FEET TO THE NORTHEAST CORNER OF LOT 24 OF SAID BLOCK 45; THENCE SOUTH 87°39'09" EAST ALONG THE NORTH LINE OF LOT 23 OF SAID BLOCK 45, 9.84 FEET; THENCE NORTH 02°20'59" EAST 10.00 FEET TO A POINT ON THE SOUTH LINE OF LOT 10 OF SAID BLOCK 45; THENCE NORTH 60°08'56" EAST ALONG THE SOUTHERLY LINE OF THE UNION PACIFIC RAILROAD COMPANY, 186.23 FEET TO A POINT ON THE EAST LINE OF LOT 16 OF SAID BLOCK 45, SAID POINT BEING 21.59 FEET SOUTH OF THE NORTHEAST CORNER OF LOT 16 OF SAID BLOCK 45; THENCE NORTH 86°40'53" EAST 60.17 FEET TO A POINT ON THE WEST LINE OF LOT 1 OF SAID BLOCK 44; THENCE NORTH 45°53'39" EAST 21.67 FEET TO A POINT ON THE NORTH LINE OF LOT 1 OF SAID BLOCK 44; THENCE NORTH 51°13'28" EAST 106.53 FEET TO A POINT ON THE SOUTH LINE OF BLOCK 39 OF SAID TURNER AND CO'S ADDITION; THENCE SOUTH 87°41'45" EAST 144.31 FEET TO THE SOUTHEAST CORNER OF LOT 23 OF SAID BLOCK 39; THENCE NORTH 02°11'01" EAST ALONG THE EAST LINE OF SAID LOT 23 86.70 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF THE UNION PACIFIC RAILROAD; THENCE NORTH 61°16'47" EAST ALONG THE SOUTHERLY RIGHT OF WAY OF SAID UNION PACIFIC RAILROAD, 223.37 FEET; THENCE SOUTH 87°44'54" EAST 60.49 FEET TO A POINT ON THE WEST LINE OF LOT

3 OF BLOCK 40 OF SAID TURNER AND CO'S ADDITION; THENCE NORTH 02°07'16" EAST 50.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 3; THENCE SOUTH 87°44'54" EAST ALONG THE NORTH LINE OF SAID LOT 3, 20.36 FEET; THENCE NORTH 61°34'43" EAST 137.22 FEET TO A POINT ON THE SOUTH LINE OF BLOCK 29 OF SAID WEST KANSAS ADDITION; THENCE SOUTH 87°44'54" EAST 78.65 FEET TO THE SOUTHEAST CORNER OF LOT 23 OF SAID BLOCK 29; THENCE NORTH 02°14'35" EAST ALONG THE EAST LINE OF SAID LOT 23, 46.64 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SAID UNION PACIFIC RAILROAD; THENCE NORTH 61°36'35" EAST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID UNION PACIFIC RAILROAD 371.36 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 6, THENCE NORTH 62°00'01" EAST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID UNION PACIFIC RAILROAD, 711.10 FEET; THENCE SOUTH 28°01'41" EAST 88.22 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF BRUCE FORESTER VIADUCT; THENCE SOUTH 61°56'44" WEST ALONG THE NORTH RIGHT OF WAY LINE OF SAID BRUCE FORESTER VIADUCT, 284.38 FEET; THENCE NORTH 27°48'46" WEST ALONG THE NORTH RIGHT OF WAY LINE OF SAID BRUCE FORESTER VIADUCT, 0.39 FEET; THENCE SOUTH 62°11'14" WEST ALONG THE NORTH LINE OF SAID BRUCE FORESTER VIADUCT, 231.79 FEET; THENCE WESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 340.00 FEET AND AN ARC LENGTH OF 175.51 FEET; THENCE NORTH 87°49'35" WEST 3.28 FEET; THENCE SOUTH 60°32'12" WEST 48.72 FEET TO A POINT ON THE WEST LINE OF SAID NORTHEAST QUARTER; THENCE SOUTH 01°55'54" WEST ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, 87.66 FEET; THENCE SOUTH 48°21'39" EAST 33.26 FEET TO A POINT ON THE NORTH RIGHT OF WAY OF ST. LOUIS AVE. AS NOW ESTABLISHED; THENCE SOUTH 42°11'21" WEST ALONG THE NORTH RIGHT OF WAY LINE OF SAID ST. LOUIS AVE., 105.23 FEET; THENCE NORTH 87°44'54" WEST ALONG THE NORTH RIGHT OF WAY LINE OF SAID ST. LOUIS AVE., 78.00 FEET TO A POINT ON THE EAST LINE OF SANTA FE STREET AS NOW ESTABLISHED; THENCE SOUTH 02°14'17" WEST ALONG THE EAST LINE OF SAID SANTA FE STREET 387.93 FEET TO THE NORTHWEST CORNER OF BLOCK 42 OF SAID TURNER AND CO'S ADDITION; THENCE SOUTH 87°58'19" EAST 122.02 FEET TO THE NORTHEAST CORNER OF LOT 5 OF SAID BLOCK 42, SAID POINT BEING ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 6; THENCE NORTH 50°11'21" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF UNION AVE., 258.03 FEET; THENCE SOUTH 39°53'30" EAST 102.55 FEET; THENCE SOUTH 50°11'21" WEST PARALLEL WITH THE SOUTH RIGHT OF WAY LINE OF SAID UNION AVE., 250.65 FEET; THENCE SOUTH 37°32'32" WEST 80.98 FEET; THENCE SOUTH 49°27'54" WEST 35.74 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 6, POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 6 OF BLOCK 42 OF SAID TURNER AND CO'S ADDITION; THENCE NORTH 87°53'02" WEST 123.19 FEET TO THE SOUTHWEST CORNER OF SAID LOT 6, SAID POINT BEING ON THE EAST RIGHT OF WAY LINE OF SAID SANTA FE STREET; THENCE SOUTH 02°12'54" WEST ALONG THE EAST RIGHT OF WAY LINE OF SAID SANTA FE STREET, 366.14 FEET; THENCE SOUTH 24°50'22" WEST 194.76 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF 12TH STREET IN THE SOUTHWEST QUARTER OF SAID SECTION 6; THENCE NORTH 87°25'13" WEST ALONG THE SOUTH RIGHT OF WAY LINE OF SAID 12TH STREET, 448.86 FEET TO THE

NORTHEAST CORNER OF LOT 1, BLOCK 3 WEST KANSAS 2ND ADDITION; THENCE NORTH 87°25'28" WEST 383.69 FEET TO THE POINT OF BEGINNING.

A TRACT OF LAND BEING PART OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 49 NORTH, TOWNSHIP 33 WEST, IN THE CITY OF KANSAS CITY, JACKSON COUNTY, MISSOURI DESCRIBED AS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 6; THENCE SOUTH 87°21'11" EAST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER, 91.21 FEET; THENCE NORTH 02°38'49" EAST 30.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF WEST 12TH STREET AND THE POINT OF BEGINNING; THENCE NORTH 15°37'19" EAST 406.35 FEET; THENCE SOUTH 87°21'11" EAST 339.92 FEET; THENCE SOUTH 15°37'19" WEST 406.35 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID WEST 12TH STREET; THENCE NORTH 87°21'11" WEST 339.92 FEET TO THE POINT OF BEGINNING.

EXCEPT

LOTS 1 THROUGH 8 BLOCK 43; LOTS 6, 7, 8 IN BLOCK 44; LOTS 14, 15, 16 AND THE NORTH HALF OF ALLEY ADJACENT TO SAID LOTS ALSO LOTS 17, 18 AND THE SOUTH HALF OF ALLEY ADJACENT TO LOTS IN BLOCK 53; LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, THE SOUTH HALF OF LOTS 13, 14, 15, 16, LOTS 17, 18, 19, 20, 21, 22, 23, 24, 25, THE EAST 4.95 OF LOT 26, LOTS 31, 32, AND THE 10.0' ALLEY IN BLOCK 54, IN TURNER AND CO'S ADDITION TO SAID CITY OF KANSAS CITY.

CONTAINING IN ALL 21.85 ACRES OF LAND MORE OR LESS.

Exhibit B

