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**MASTER DEVELOPMENT FINANCING AGREEMENT**  
**AMONG**  
**THE CITY OF KANSAS CITY, MISSOURI,**  
**THE PORT AUTHORITY OF KANSAS CITY, MISSOURI**  
**AND**  
**POWER TOWER BLOCK 124, LP**  
**DATED AS OF JULY \_\_\_\_\_, 2019**

## MASTER DEVELOPMENT FINANCING AGREEMENT

THIS MASTER DEVELOPMENT FINANCING AGREEMENT (this “**Agreement**”) is made as of July \_\_\_\_\_, 2019 (“**Effective Date**”), by and between **CITY OF KANSAS CITY, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri (“**City**”), **PORT AUTHORITY OF KANSAS CITY, MISSOURI**, a political subdivision of the State of Missouri created pursuant to Section 68.010 et seq., RSMo, as amended (“**Port KC**”), and **POWER TOWER BLOCK 124, LP**, a Missouri limited partnership (“**Developer**”). Capitalized terms have the meaning given to such terms in the attached **Appendix A**, provided that certain terms may be defined in the body of this Agreement, including the Recitals, for ease of understanding context but also defined in **Appendix A**. In the event of a conflict between a term described in the Agreement and as defined in the Appendix, the meaning of such term in the Appendix shall control.

### RECITALS

A. Pursuant to that certain Declaration of Condominium - Block 124 K.C. Live Condominium dated June 26, 2006, and recorded in the Office of the Recorder of Deeds for Jackson County, Missouri (the “**Office of the Recorder**”) on July 6, 2006 as Instrument Number 2006E0054189, as amended by First Amendment to Declaration of Condominium - Block 124 K.C. Live Condominium, dated July 14, 2006, and recorded in the Office of the Recorder on July 14, 2006 as Instrument Number 2006E0058725 (the “**Condominium Declaration**”), the declarant thereof established the Block 124 K.C. Live Condominium (the “**Condominium**”).

B. The Condominium is located in Kansas City, Missouri, within Port KC’s port district and the City’s downtown restaurant, shopping, residential, office and entertainment district known as the Power and Light District, generally bounded by Baltimore Avenue on the west, Grand Boulevard on the east, 12<sup>th</sup> Street on the north and Interstate 670 on the South (the “**P&L District**”).

C. The Condominium is comprised of three units: Unit 1, Unit 2 and Unit 3, Block 124, Replat of K.C. Live, a condominium subdivision in Kansas City, Jackson County, Missouri; each of which is further defined and described in **Appendix A**.

D. Unit 1 is owned by the City and is presently developed as a predominately subterranean parking garage.

E. Unit 2 (hereinafter the “**Current Unit 2**”) is owned by Kansas City Live Block 124 Retail, LLC, a Maryland limited liability company, and is a predominately one-story structure presently developed with commercial uses, and also includes the area of the ground-floor lobby and other common areas.

F. Unit 3 (hereinafter the “**Current Unit 3**”) is owned by City and is presently an undeveloped parcel of air rights located above a portion of the predominately one-story structure

existing within Current Unit 2 on the Effective Date of this Agreement (the “**Existing Unit 2 Building**”).

G. The 1200 Main/South Loop Tax Increment Financing Plan initially adopted by the City on March 4, 2004, by Ordinance No. 040154 (the “**TIF Plan**”) contemplates, among other things, the development of the P&L District generally and Current Unit 3 as an office building and parking garage.

H. Certain other agreements exist relating to the development of Current Unit 3 as an office building and parking garage.

I. In order to facilitate the development of Current Unit 3, City desires to (i) subdivide Current Unit 3 into two units, hereinafter referred to as “Replatted Unit 3” and, beneath Replatted Unit 3, “Unit G”, (ii) subdivide Current Unit 2; and (iii) amend various provisions of the Condominium Declaration to facilitate the use and development thereof (collectively, the “**2019 Replat,**” as more specifically described on **Exhibits A and B** and in Article III below).

J. Upon completion of the replat of the real property comprising Current Unit 2 and Current Unit 3 of the Condominium into Replatted Unit 2, Replatted Unit 3 and Unit G, each as described in Appendix A (the “**2019 Replat**”), Developer desires to develop and construct (i) an approximately 16-story, 250,000 square foot office building (the “**Office Building**”) to be located within Replatted Unit 3 (the “**Office Building Project**”), and (ii) a 7-story parking garage containing approximately 750 parking spaces (the “**New Garage**”) to be located within Unit G (the “**Garage Project**”) (together, the Office Building Project and the Garage Project are the “**Project**”).

K. The development and construction of the Office Building and the New Garage will result in numerous public benefits, as together, they will among other benefits: (i) satisfy certain obligations described in the City’s Committee Substitute For Ordinance No. 180982, As Amended, adopted on January 10, 2019 (“**Ordinance 180982**”), (ii) attract new and expanding businesses to the Downtown Loop, (iii) retain and/or attract high quality jobs and workforce, (iv) generate additional new tax revenues, (iv) meet the needs of employers with a workforce wanting to be located in an urban environment; and (v) increase the number of downtown employees who are likely to patronize commercial establishments in the P&L District, and who may choose to reside within the P&L District and the greater downtown area (each and together, the “**City Benefits**”).

L. In consideration of the City Benefits and other good and valuable consideration, the City desires to provide support and assistance to Developer on its development, construction, and financing of the Office Building and to Port KC, on its development, construction and financing of the New Garage, as more particularly set forth in this Agreement.

M. The City’s execution and delivery of this Agreement, consummation of the transactions contemplated by this Agreement on the part of the City, and execution and delivery of the documents contemplated by this Agreement and in Ordinance 180982 (collectively referred to as the “**Transaction Documents**”), to which the City is a party, have been authorized and

approved by the City's Ordinance No. 190498, passed by the City Council of the City on July 11, 2019 (the "**City Authorizing Ordinance**").

N. Developer and the City desire that Port KC provide certain financial and other support and assistance to Developer, in connection with its development and construction of the Office Building, upon the terms more particularly set forth in this Agreement and as to be further set forth in a development agreement hereafter entered into between Port KC and Developer (the "**Port KC Office Development Agreement**").

O. Developer and the City also desire that Port KC provide certain financial and other support and assistance to Developer, in connection with its development and construction of the New Garage, upon the terms more particularly set forth in this Agreement and as to be further set forth in a development agreement hereafter entered into between Port KC and Developer (the "**Port KC Garage Development Agreement**").

P. Port KC desires to enter into the Port KC Office Development Agreement and the Port KC Garage Development Agreement (together, the "**Port KC Development Agreements**"), in consideration of various monetary and other benefits to Port KC, and in furtherance of implementing Port KC's statutory purpose to promote development within the port district, encourage private capital investment, and issue its negotiable revenue bonds or notes and tax-exempt bonds and make such other expenditures which are incidental and necessary to carry out its purposes and power.

Q. Port KC's execution and delivery of this Agreement, consummation of the transactions contemplated by this Agreement (the "**Transaction**") on the part of Port KC, and the inducement of the hereinafter defined "**Office Building Bonds**" and the "**Garage Bond**" (when referenced together, the "**Bonds**") which are the subject of the Transaction Documents and this Agreement have been approved and authorized by the Port KC's inducement Resolution No. 2018-12-5, passed by the Board of Commissioners of Port KC on December 13, 2018 (the "**Port KC Authorizing Resolution**").

## AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE I GENERAL PROVISIONS, DEFINITIONS & EXHIBITS

**Section 1.01 Definitions, Rules of Interpretation and Items Incorporated.** Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

(a) All defined terms used in the Recitals, as well as terms used below which are not defined in the Recitals, are given the meaning set forth in Appendix A.

(b) Terms defined in this Agreement that refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided that, nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement other than in accordance with this Agreement.

(c) The words “hereof, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection, exhibit and appendix references are to this Agreement, unless otherwise specified. Whenever an item or items are listed after the word “including”, such listing is not intended to be a listing that excludes items not listed.

(d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, limited liability companies, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

(e) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**Section 1.02 Exhibits.** The following Exhibits and Appendices are attached to and incorporated into this Agreement:

- (a) **Appendix A** – Glossary of Definitions.
- (b) **Exhibit A** – Unit dimensions for the 2019 Replat.
- (c) **Exhibit B** – Plat Specifications.
- (d) **Exhibit C** – Strata AIM Zone New Jobs Projections.
- (e) **Exhibit D** – Form of Strata AIM Zone Declaration.

## ARTICLE II TRANSACTION STRUCTURE

**Section 2.01 The Office Building Transaction.** The following sets out the parties’ agreement on the structure of the transactions relative to the Office Building:

(a) **Title Transfer.** Fee simple title to undeveloped Replatted Unit 3 will be transferred to Port KC by City, H&R Block Services, Inc., a Missouri corporation (“**HRB**”) or Developer (as

directed by Developer), on the date or dates and time or times, individually or together, as applicable (the “**Bond Closing Date**”) on which Port KC issues and consummates the sale of:

i. a private placement, draw-down conduit bond or other debt instrument to be issued by Port KC, as requested by Developer, in the approximate amount of Sixty-Nine Million Dollars (\$69,000,000) plus costs of issuance, capitalized interest and reserve funds (the “**Series A Office Building Bond**”), the proceeds of which will be used to finance a portion of the cost to construct and complete the Office Building Project to be owned by Developer, and will be purchased by Developer utilizing a combination of Developer equity and the proceeds of a loan obtained by Developer from a bank or other financial institution, the proceeds of which are used to pay a portion of the costs of the Office Building Project (the “**Developer Private Loan**”); and

ii. a private placement, draw-down conduit bond or other debt instrument to be issued by Port KC for the Office Building Project, as requested by Developer, in the amount of Twenty-Seven Million Dollars (\$27,000,000), plus the costs of issuance, capitalized interest and reserve funds (the “**Series B Office Building Bond**”), the proceeds of which will be used to finance a portion of the costs to construct and complete the Office Building Project, and may be purchased by one or more third-party purchasers identified by Developer, with the input and consent of the City, on financial terms reasonably acceptable to the City; (together, the Series A Office Building Bond and the Series B Office Building Bond are hereinafter the “**Office Building Bonds**”). The Bond Closing Date for the Office Building Bonds shall be no more than 45 days after the date established by Developer and agreed to by Port KC, the City, and the qualified entity selected by Port KC and Developer to act as the trustee with respect to the Office Building Bonds (the “**Office Building Bond Trustee**”), as the date of the Bond Closing (the “**Projected Bond Closing Date**”), the request for which shall be given by Developer to City, Port KC, and the Office Building Bond Trustee, no fewer than 45 days prior to the Projected Bond Closing Date;

(b) Creation of AIM Zone. If it is not earlier established, on the Bond Closing Date for the Office Building Bonds, Port KC will establish an Advanced Industrial Manufacturing Zone, pursuant to Section 68.075, RSMo, as amended, upon the Office Building, Replatted Unit 3, the New Garage and Unit G (the “**Strata AIM Zone**”), for a term designated by Port KC which shall in no event end earlier than the later to occur of (i) the end of the term of the Office Building Bonds, or (ii) the 30<sup>th</sup> anniversary of the Bond Closing Date for the Office Building Bonds;

(c) Construction of Office Building Project. Developer will develop and construct the Office Building within Replatted Unit 3, in its capacity as a limited scope agent of Port KC, pursuant to and as and when required by the Port KC Office Development Agreement and all of the contracts and other documents required to close on the Office Building Bonds (the “**Office Building Bond Documents**”), utilizing the project fund established for the Office Building with proceeds derived from the sale of the Office Building Bonds. Developer will commence construction of the Office Building Project within two years and 180 days following the signing of the Office Building Bond Documents, which shall in no event be more than six (6) months following the date on which Developer, Port KC and City sign the Garage Bond Documents, if the signing of the Garage Bond Documents precedes the signing of the Office Building Bond Documents;

(d) Use and Leasing of Office Building Project. Upon the Bond Closing of the Office Building Bonds, Port KC will exclusively lease the Office Building and Replatted Unit 3 to Developer, pursuant to a lease agreement whereby Developer, among other things, will (1) agree to cause the development and construction of the Office Building on behalf of Port KC utilizing the proceeds of the Office Building Bonds, (2) pay rent equal to the debt service on the Series A Office Building Bond, and (3) have the right and obligation to acquire the Office Building from Port KC upon the expiration or termination of such lease (the **“Office Building Master Lease Agreement”**). The Office Building Master Lease Agreement will commence upon the Bond Closing Date for the Office Building Bonds and expire twenty-two (22) years thereafter, subject to earlier termination or extension as provided therein;

(e) New Jobs Commitment. Developer will exercise reasonable good faith efforts to cause the Office Building to be continuously occupied throughout the term of the Garage Bond and any extensions or renewals thereof, to the maximum extent reasonably possible, by persons with New Jobs. A covenant to this effect, along with covenants concerning collecting and reporting payroll tax revenue derived from the Strata AIM Zone (the **“Strata AIM Zone Revenue”**) and other reasonable requirements will be included in the lease to Developer and will be required of any successor or assignee thereof, and will be a covenant which runs with the land, all as more fully set forth in the **“Strata AIM Zone Declaration”** (as more fully described in Appendix A). As used herein, the term **“New Jobs”** means the full-time employees located at the Office Building Project and the Garage Project which exceed the base employment at the Office Building Project and the Garage Project prior to the date on which a notice of intent to create the AIM Zone is provided to the Missouri Department of Revenue, less any decrease in the number of full-time employees at related facilities below the related facility base employment, as more fully described and defined in RSMo 68.075.2(3). A memorandum of the Strata AIM Zone Declaration acceptable to Port KC, the City, and Developer shall be placed of record in the Office of the Recorder on the Bond Closing Date.

(f) Allocation of Office Building Project Costs. The costs of the Office Building Project will be paid from the proceeds of the Office Building Bonds issued by Port KC (and, if applicable, Developer’s capital). Each requisition certificate submitted to the Office Building Bond Trustee to pay Office Building Project costs shall be drawn-down: (i) 72% from the Series A Office Building Bond, and (ii) 28% from the Series B Office Building Bond; provided, however, when all proceeds of the Series B Office Building Bond have been applied to pay Office Building Project costs and no Series B Office Building Bond proceeds remain, the Office Building Project costs will be paid solely from the proceeds of the Series A Office Building Bond and by Developer.

(g) Repayment of Series A Office Building Bond. The Series A Office Building Bond, including debt service reserves and other financial obligations applicable to the Series A Office Building Bond while the Series A Office Building Bond is outstanding, all as set forth in the Office Building Bond Documents (collectively, the **“Series A Office Building Bond Debt Service”**) will be paid by Developer from funds of Developer and third-parties and the proceeds of its subleasing of the Office Building Project, pursuant to the Office Building Master Lease Agreement.



(h) Repayment of Series B Office Building Bond; Draw-Down Covenant; Developer Allocation. The Series B Office Building Bond, including debt service reserves and other financial obligations applicable to the Series B Office Building Bond while the Series B Office Building Bond is outstanding (collectively, the “**Series B Office Building Bond Debt Service**”) will be paid by the City with 50% of the appropriation (the “**Earnings Tax Revenue Appropriation**”) of the tax on earnings and net profits (the “**Earnings Tax Revenue**”) the City anticipates it will derive from its levy on the Office Building Project, pursuant to Section 68-382 of the City Code”).

i. For the period commencing on the Bond Closing Date of the Office Building Bonds and ending twenty-two (22) years thereafter or such longer period as is necessary for City to collect all of the Earnings Tax Revenue generated at or from the Office Building and the Office Building Project during the Earnings Tax Revenue Allocation Period (the “**Office Building Earnings Tax Revenue**”) generated during such twenty-two (22) year period (the “**Earnings Tax Revenue Allocation Period**”), City will determine, in good faith, the amount of Office Building Earnings Tax Revenue City anticipates it will receive in the applicable fiscal year (the “**Earnings Tax Revenue Appropriation Estimate**”). A draft Earnings Tax Revenue Appropriation Estimate will be prepared by the City Treasurer, provided to Port KC and Developer, and submitted the City Council for approval. Such approval will be considered no more than 21 days following the expiration of the Quarterly Reporting Period during the Earnings Tax Revenue Allocation Period.

ii. Within 14 days following the final approval of the Earnings Tax Revenue Appropriation Estimate, the City agrees to appropriate the Earnings Tax Revenue Appropriation. Upon the City Council’s final approval of the Earnings Tax Revenue Appropriation, the City agrees to and will pledge, redirect, distribute and allocate: (a) 50% of the Earnings Tax Revenue Appropriation to the Office Building Bond Trustee (the “**City Earnings Tax Revenue Allocation**”), within 30 days following the final approval of the Earnings Tax Revenue Appropriation, for the Office Building Bond Trustee to pay the Series B Office Building Bond Debt Service and reduce the principal amount of the Series B Office Building Bond outstanding, and (b) to Developer the remaining 50% of the Earnings Tax Revenue Appropriation to Developer (each, a “**Developer Earnings Tax Revenue Allocation**”). Developer may use the Developer Earnings Tax Revenue Allocation at its discretion including, among other things, to pay Series A Office Building Bond Debt Service and the Developer Private Loan, subject, however to any rights to the Developer Earnings Tax Revenue Allocation of any lender or bond owner to whom Developer has pledged, or caused to be pledged, the Developer Earnings Tax Revenue Allocation.

iii. The City’s obligation to distribute the Developer Earnings Tax Revenue Allocation will be conditioned upon the following: (A) there being no material default of Developer under this Agreement, the Port KC Office Building Development Agreement or the Office Building Bond Documents at the time the Developer Earnings Tax Revenue Allocation would be due and payable to Developer; (B) Developer shall have expended an amount of the Series A Office Building Bond and/or Developer’s capital, the sum of which is 71% or more of the then incurred costs of the Office Building Project; (C) Developer will have submitted to Port KC, for transmittal to the Office Building Bond Trustee, a project requisition certificate for each draw down from the Series B Office Building Bond, in accordance with the Office Bond Documents; (D) Port KC will have approved and validated, in accordance with the Port KC Office Bond Documents, that the expenditure set forth in each project requisition certificate is in furtherance of



the Office Building Project, (E) Port KC will have authorized the Office Building Trustee to disburse the Series B Office Building Bond proceeds, solely in the amount of the applicable approved project requisition certificate; and (F) Developer's representation to the City that each project requisition certificate and draw-down from the Series B Office Building Bond made by Developer is limited to the amount of Series B Office Building Bond proceeds as are reasonable or customary to implement the Office Building Project.

(i) Statement of Actual Earnings Tax Revenue; Comment and Protest. Subsequent to disbursing the Earnings Tax Revenue Appropriation as provided above (and, if applicable, the Developer Earnings Tax Revenue Allocation), the City will prepare an Earnings Tax Revenue Statement. The City will provide a written summary (each, an **"Earnings Tax Revenue Statement"**) of the actual Office Building Earnings Tax Revenue received by the City in the applicable fiscal year of the City during the applicable Earnings Tax Revenue Allocation Period (the **"Earnings Tax Revenue (Actual)"**) to Developer no later than 30 days following the conclusion of the City's fiscal year or such later date upon which the actual Office Building Earnings Tax Revenue has been conclusively determined (**"Earnings Tax Revenue Statement Deadline"**). Developer will have 180 days following the date of Developer is provided the Earnings Tax Revenue Statement (the **"Earnings Tax Revenue Comment Period"**) in which to provide comments to or protest the Earnings Tax Revenue (Actual) set forth in the Earnings Tax Revenue Statement. In such event, the City and Developer will work in good faith, until the expiration of 30 days following the Earnings Tax Revenue Comment Period (the **"Earnings Tax Revenue Comment Response Period"**), to address and resolve Developer's comments or protests to the Earnings Tax Revenue (Actual) set forth in the Earnings Tax Revenue Statement.

(j) Reimbursements; Excess Earnings Taxes. Following the expiration of the Earnings Tax Revenue Comment Response Period, the City will retain the Earnings Tax Revenue (Actual), up to the amount of the City Earnings Tax Revenue Allocation, to reimburse itself, in whole or in part, for advancing the City Earnings Tax Revenue Allocation to the Office Building Bond Trustee, and advancing the Developer Earnings Tax Revenue Allocation to Developer, before the Earnings Tax Revenue (Actual) was available to pay the then due and owing Office Building Bond Debt Service and Developer Earnings Tax Revenue Allocation; provided, however, in the event the Earnings Tax Revenue Statement indicates the Earnings Tax Revenue (Actual) exceeds the Earnings Tax Revenue Appropriation (each, an **"Earnings Tax Revenue (Excess)"**), then, in such event, within 30 days following the expiration of the Earnings Tax Revenue Comment Response Period, the City will pay (a) 50% of the Earnings Tax Revenue (Excess) to the Office Building Bond Trustee, which the Office Building Bond Trustee will use to pay the Series B Office Building Bond Debt Service, and (b) 50% of the Earnings Tax Revenue (Excess) will be paid to Developer, which Developer may use at its discretion, including, but not limited to, pay Series A Office Building Bond Debt Service, the Developer Private Loan or for other purposes, subject, however to any rights to the Developer Earnings Tax Revenue Allocation of any lender or bond owner to whom Developer has pledged, or caused to be pledged, the Developer Earnings Tax Revenue Allocation.

(k) Developer Distributions. Following the Bond Closing of the Office Building Bonds, Developer may periodically distribute money to a general or limited partner of Developer with proceeds which arise out of or are related to a financing, refinancing or excess funds of

developer in connection with the Office Building Project (each, a “**Developer Distribution**”). Prior to making a Developer Distribution, Developer will pay amounts which are due and owing from Developer to Port KC and the Office Building Bond Trustee, if any, pursuant to the Port KC Office Development Agreement and the Office Building Bond Documents. Thereafter, ~~Developer will pay~~ prior to Developer making any Developer Distribution, Developer shall distribute to City, the Funds that would otherwise be available for a Developer Distribution until City receives distributions in the amount equal to Five Hundred Thousand and No/100 Dollars (\$500,000) (the “**Initial City Investment Return Payment**”). After the Initial City Investment Return Payment is paid in full, Developer or its designee shall receive all of the Developer Distributions until it has received \$1,285,714, and thereafter Developer will distribute to City an amount equal to twenty-eight percent (28%) of each subsequent Developer Distribution (the “**City Investment Return Payment**”); ~~provided, however,~~ Notwithstanding anything herein to the contrary, the aggregate amount of all Initial City Investment Return Payments and City Investment Return Payments shall be capped (the “**City Investment Return Payment Cap**”) in an amount not exceed the amount generated from the initial sale of the Series B Office Building Bond that is available to Developer to pay costs of the Office Building Project (the “**City Contribution**”) plus twenty percent (20%) per annum of the unpaid balance, not compounded, of the City Contribution from the date of the issuance of the Series B Office Building Bond until the earlier of (1) the date on which the City Contribution has been repaid in full, or (2) the date on which there occurs a “**Developer Disposition**” (as such term is defined in Appendix A). Any Developer Distribution remaining after paying the City Investment Return Payment will, subject to the City Investment Return Payment Cap, be retained by Developer or a party designated by Developer. Any Developer Disposition shall be subject to the terms, requirements, and limitations on assignment and sale set forth in the Office Building Bond Documents.

(l) Priority Developer Return. If Developer receives monies from a general or limited partner of Developer after the Bond Closing of the Office Building Bonds (“**Developer Additional Capital**”) and spends such Developer Additional Capital on costs related to the Office Building Project, Developer will have a priority right to receive the proceeds of a Developer Distribution to repay such Developer Additional Capital, prior to making a City Investment Return Payment.

(m) City Guaranty of Series B Deficiency. As and when due pursuant to a notice delivered by the Office Building Bond Trustee to the City delivered within thirty (30) days following the anniversary of the Bond Closing Date for each year during the term of the Office Building Bonds, the City will pay the Office Building Bond Trustee any Series B Office Building Bond Debt Service deficiency.

**Section 2.02 The New Garage Transaction.** The following sets out the parties’ agreement regarding the structure of the transactions relative to the New Garage:

(a) Garage Bond Issuance. Port KC will issue a private placement, draw-down bond or other debt instrument, as requested by Developer and approved by the Board of Commissioners of Port KC, in the approximate amount of Thirty-Six Million Dollars (\$36,000,000), plus the costs of issuance and the amount of capitalized interest and reserve funds, the proceeds of which are to be used to finance the cost to construct and complete the Garage Project (the “**Garage Bond**”). The

Garage Bond will be marketed for sale to one or more third-party purchasers identified by Developer and acceptable to Port KC;

(b) Title Transfer. Fee simple title to undeveloped Unit G will be transferred to Port KC by the City, HRB or Developer (as directed by Developer), on the Bond Closing Date for the Garage Bond;

(c) Construction of Garage Project. Developer will develop and construct the Garage Project, in its capacity as a limited scope agent of Port KC, pursuant to the Port KC Garage Development Agreement and all of the contracts and other documents required to close on the Garage Bond (the “**Garage Bond Documents**”), utilizing the project fund established with proceeds derived from the sale of the Garage Bond. Developer will commence construction of the Garage Project within two years and 180 days following the signing of the Garage Bond Documents, which shall in no event be more than six (6) months following the date on which Developer, City and Port KC sign the Office Building Bond Documents, if the signing of the Office Building Bond Documents precedes the signing of the Garage Bond Documents;

(d) Use and Leasing of Garage Project. Upon completion thereof, Developer and its successors and assigns will manage and operate the New Garage and Unit G pursuant to a management agreement with Port KC (the “**Garage Management Agreement**”). The Garage Management Agreement will be for a term that will commence upon the Bond Closing Date for the Garage Bond and continue until the maturity date or earlier cancellation of the Garage Bond, subject to earlier termination as provided in the Garage Management Agreement;

(e) Creation of AIM Zone. If not earlier established, Port KC will establish the Strata AIM Zone over Unit G, pursuant to Section 68.075, RSMo, as amended, on the Bond Closing Date of the Garage Bond;

(f) New Jobs Commitment. Developer will exercise commercially reasonable good faith efforts to cause the New Garage to generate New Jobs. A covenant to this effect, along with covenants concerning collecting and reporting Strata AIM Zone Revenue and other requirements will be included in the Garage Management Agreement with Developer and will be required of any successor or assignee thereof, and will be a covenant which runs with Unit 3 in the recorded Strata AIM Zone Declaration when Port KC obtains title to Unit G from Developer, HRB, or the City, as applicable;

(g) Use of AIM Zone Revenue. The Strata AIM Zone Revenue will be collected annually by the Missouri Department of Revenue. Subject to the Port KC’s receipt of a disbursement of Strata AIM Zone Revenue from the “Port Authority AIM Zone Fund” (as such term is defined in RSMo 68.075.5) (each, a “**Strata AIM Zone Disbursement**”), and consistent with Port KC policies and all applicable provisions of all constitutions, treaties, statutes, laws (including, but not limited to, the common law), rules, regulations, ordinances, codes or orders of any government, and all unappealable orders, decisions, injunctions, judgments, awards and decrees of any court with jurisdiction over the parties (each and collectively, “**Applicable Law**”), Port KC will deposit the Strata AIM Disbursement with the qualified entity selected by Port KC and Developer to act as the trustee with respect to the Garage Bond (the “**Garage Bond Trustee**”). The Garage Bond Trustee will use the Strata AIM Zone Revenue included in the Strata

AIM Zone Disbursement to pay, in the following sequence: (i) debt service then due and owing on the Garage Bond; and (ii) any and all Garage Bond reserve account requirements and other Garage Bond requirements established under the Garage Bond Documents (together, the “**Garage Bond Debt Service**”);

(h) AIM Zone Deficiency and Surplus. If, after the Garage Bond Trustee makes the Strata AIM Zone Disbursement in accordance with Section 2.02(g) above:

i. there is a surplus of Strata AIM Zone Revenue not needed for Garage Bond Debt Service (a “**Strata AIM Zone Revenue Surplus**”), then 50% of the Strata AIM Zone Revenue Surplus will be placed in or added to the Garage Bond reserve account to pay future Garage Bond Debt Service (notwithstanding lesser reserve account requirements set forth in the Garage Bond Documents), and 50% will be deposited by the Garage Bond Trustee into an account established pursuant to the Garage Bond Documents for the purposes of paying (a) the capital maintenance costs and liabilities related to the New Garage which accrue and are the liability of Port KC, following the maturity or earlier expiration of the Garage Bond and (b) or costs arising from or related the New Garage which are due and owing pursuant to the Second Condominium Declaration Amendment (the “**New Garage Maintenance Reserve Fund**”).

ii. additional funds are needed to satisfy Garage Bond Debt Service and amounts due and owing to the Garage Bond Trustee (each, a “**Strata AIM Zone Revenue Deficiency**”), the Garage Bond Trustee will provide a written notice to City and Port KC, setting forth the amount of the Strata AIM Zone Revenue Deficiency (each, an “**Strata AIM Zone Deficiency Notice**”). Within fifteen (15) days following its receipt of an AIM Zone Deficiency Notice, City will pay the Strata AIM Zone Revenue Deficiency to the Garage Bond Trustee, in an amount equal to the Strata AIM Zone Revenue Deficiency set forth in the AIM Zone Deficiency Notice.

(i) Developer’s Efforts. City will provide Developer a copy of City’s Strata AIM Zone Revenue Deficiency Notice within seven (7) days of City’s receipt thereof. Within 30 days following its receipt of the Strata AIM Zone Revenue Deficiency Notice, Developer will provide documentary evidence to City to demonstrate Developer has exercised reasonable good faith efforts to cause the Office Building and the New Garage to continuously generate New Jobs, to the extent reasonably practicable. Developer’s “commercially reasonable good faith efforts” shall be predicated upon, among other things, (i) then applicable market conditions; (ii) Developer’s demonstrated efforts to lease the Office Building to one or more lessees capable of producing a sufficient number of New Jobs during any given period for which New Jobs are determined in support of a Strata AIM Zone Disbursement (the “**Strata AIM Zone Reporting Period**”) while the Garage Bond is outstanding; (iii) Developer’s continuous engagement of a Missouri licensed real estate broker; (iv) the actual New Jobs included in the report produced by the Missouri Department of Revenue in connection with its disbursement of payroll taxes to Port KC from the Port Authority AIM Zone Fund (as such term is defined in RSMo 68.075.5 (each, a “**Strata AIM Zone Report**”) for the applicable Strata AIM Zone Reporting Period compared to the Strata AIM Zone New Jobs Projections prepared by Developer and set forth on Exhibit C (taking into consideration changes in conditions and circumstances since the Effective Date of this Agreement); and (v) such other criteria as may be determined as mutually acceptable to City and Developer, from time to time; provided, however, notwithstanding anything to the contrary, the

parties agree that Developer will not be responsible for, and no negative conclusion shall be made or supported by, tenants or other occupants of Developer not hiring people and/or firing people, terminating jobs, restructuring workforce and/or positions, hiring people who do not meet the AIM Zone criteria and/or other similar factors.

(j) City Determination of Developer's Efforts. Within 14 days after City receives Developer's documentary evidence of Developer's commercially reasonable good faith efforts, the City will make a written reasonable determination of Developer's commercially good faith efforts to generate New Jobs in the Strata AIM Zone upon the conclusion of the applicable Strata AIM Zone Reporting Period (each, a "**Strata AIM Zone Effort Determination**"), which Strata AIM Zone Effort Determination shall set forth, with particularity, the basis of the City's determination, in good faith, but if City does not make such Strata AIM Zone Effort Determination within such 14 days after receipt by City of Developer's documentary evidence, City shall be estopped and prohibited from alleging or pursuing a Strata AIM Zone Revenue Deficiency and/or a reimbursement or payment of any such Strata AIM Zone Revenue Deficiency. If the City reasonably and timely concludes in its Strata AIM Zone Effort Determination that the Strata AIM Zone Revenue Deficiency exists:

i. notwithstanding Developer's commercially reasonable good faith efforts, Developer will have no liability to reimburse the City for the AIM Zone Revenue Deficiency for the applicable Strata AIM Zone Reporting Period.

ii. primarily due to Developer's failure to exercise commercially reasonable good faith efforts to generate New Jobs in the Strata AIM Zone, Developer shall, within 180 days after its receipt of the Strata AIM Zone Effort Determination, reimburse the City the amount of the Strata AIM Zone Revenue Deficiency paid by the City to the Garage Bond Trustee for the applicable Strata AIM Zone Reporting Period. In addition, thereafter, Developer will take steps to elevate its commercially reasonable good faith efforts, in order to increase the Strata AIM Zone Revenue for the next ensuing Strata AIM Zone Reporting Period.

(k) Third-Party and City Cure Rights. In addition to the required payments of debt service and as provided above, the Garage Bond Documents will provide that, in the event of a default on the Garage Bond, Developer's and the bond purchaser's lender(s) will have the right to cure such default and, in the event such parties fail to fully and timely cure such default, the City shall cure such Garage Bond default.

(l) Obligations Concerning Garage Revenue. The actual operating revenue received by Developer from the leasing and operating the New Garage, net of commercially reasonable operating expenses approved by Port KC and the monthly fee paid to Developer under the Garage Management Agreement (the "**Garage Revenue**") will be administered in accordance with Article V below.

(m) Repayment of Garage Bond; Draw-Down Covenant. The Garage Bond Debt Service resulting from Developer's draw-down of the Garage Bond (on behalf of Port KC) will be paid by City from (i) Strata AIM Zone Revenue, and (ii) Earnings Tax Revenue generated from the operation of the Garage Project; and (iii) subject to annual appropriation, an amount sufficient to pay the remaining and then due and owing Garage Bond Debt Service. Such obligation of the City



will be conditioned upon the following: (A) Developer will have submitted to Port KC, for transmittal to the Garage Bond Trustee, a project requisition certificate for each draw down from the Garage Bond, in accordance with the Garage Bond Documents; (B) Port KC will have approved and validated, in accordance with the Garage Bond Documents, that the expenditure set forth in each project requisition certificate is in furtherance of the Garage Project, (C) Port KC will have authorized the Garage Bond Trustee to disburse the Garage Bond proceeds, solely in the amount of the applicable and approved project requisition certificate; and (D) Developer's covenant to City that each project requisition certificate and draw-down from the Garage Bond made by Developer (on behalf of Port KC) is limited to the amount of Garage Bond proceeds as are reasonable or customary to implement the Garage Project.

### **ARTICLE III ADDITIONAL ACTIONS OF THE PARTIES**

**Section 3.01 Actions by the City.** The City shall at its expense take the following actions, among others, in furtherance of this Agreement:

(a) City Replat. No later than thirty (30) days after City receives or obtains a survey of the property to be replatted, the City will cause the 2019 Replat to be prepared generally consistent with **Exhibit A** and **Exhibit B**, but in consultation with and to the satisfaction of Developer and Port KC, and thereafter approved, executed, acknowledged and recorded in accordance with Applicable Law, provided, however, the 2019 Replat shall be recorded by the City no later than the earlier of (a) five days prior to the scheduled Bond Closing Date; or (b) 10 days after Developer notifying the City to record the 2019 Replat;

(b) City Condominium Amendment and Subordination. No later than September 1, 2019, the City will (i) amend and/or restate the Condominium Declaration, in form and substance acceptable to Developer and Port KC, which, among other things, will permit four units and owners (the "**Second Condominium Declaration Amendment**"); and (ii) obtain a duly authorized subordination of the Second Condominium Declaration Amendment to the 2019 Replat. The Second Condominium Declaration Amendment will be prepared in consultation with and to the satisfaction of Developer and Port KC, and thereafter approved, executed, acknowledged and recorded in accordance with Applicable Law, provided, however, that the Second Condominium Declaration Amendment shall be recorded by the City in the Office of the Recorder no later than the earlier of (a) five days before the scheduled Bond Closing Date; or (b) 10 days after Developer notifying the City to record the 2019 Replat;

(c) City Grant of Option Rights. No later than 30 days prior to the Projected Bond Closing Date, the City will identify, obtain and deliver to Developer, in consultation with and to the satisfaction of Developer and Port KC, executed and acknowledged documentation in accordance with Applicable Law that grants HRB, Developer, and/or Port KC (as directed by Developer) the right to acquire Replatted Unit 3 and Unit G, and that grants Developer and/or Port KC the right to construct, develop, operate and manage the Office Building and the New Garage;

(d) City Preliminary Transfer of Replatted Unit 3; Encumbrances. On the Bond Closing Date of the Office Building Bonds, the City will convey to HRB, Developer, or Port KC (as directed by Developer) good and marketable fee title to Replatted Unit 3, free and clear of all

liens, encumbrances and restrictions, except the Second Condominium Declaration Amendment and other liens, encumbrances and restrictions acceptable to HRB, Developer and Port KC;

(e) City Preliminary Transfer of Unit G; Encumbrances. On the Bond Closing Date of the Garage Bond, the City will convey (as directed by Developer) to HRB, Developer, or Port KC at the Bond Closing, good and marketable fee title to Unit G, free and clear of all liens, encumbrances and restrictions, including, but not limited to, any agreement which may survive the expiration of the Garage Management Agreement or the Garage Bond, but such conveyance will be subject to the Second Condominium Declaration Amendment and other liens, rights, encumbrances and restrictions acceptable to Developer and Port KC; and

(f) City TIF Termination. Within 21 days after notice by Developer to City, cause the preparation and introduction of, and, subject to applicable laws, consider passage of an ordinance terminating tax increment financing with respect to the Redevelopment Project described in the TIF Plan and in Second Committee Substitute for Ordinance No. 040161 (“**Redevelopment Project 7**”), which termination shall, at the request of Developer, be (i) contingent upon the occurrence of the Bond Closing prior to or within nine (9) months after the passage of such ordinance, and (ii) effective upon the occurrence of the Bond Closing (the “**TIF Project Termination Ordinance**”).

**Section 3.02 Actions by Developer.** Developer shall at no cost to the City take the following actions, among others, in furtherance of this Agreement:

(a) Developer Contracts with Port. Developer will enter into the Port KC Development Agreements, subject to the negotiation thereof;

(b) Developer Project Financing. Developer will use commercially reasonable efforts to obtain from a bank or other financial institution a written commitment satisfactory to Developer with respect to the Developer Private Loan;

(c) Developer Payments to City. Developer will pay the City Investment Return Payment from any Developer Distribution with respect to which a City Investment Return Payment is payable, consistent with the terms of this Agreement;

(d) Developer Plat and Condominium Activities. Commencing upon the Effective Date, Developer will negotiate with the City and Port KC to finalize the 2019 Replat and the Second Condominium Declaration Amendment on or before no fewer than 30 days prior to the Projected Bond Closing Date;

(e) Third-Party Bond Purchasers. Developer will use commercially reasonable efforts to procure one or more purchasers for the Series B Office Building Bond and the Garage Bond; and

(f) Developer Corporate Approvals. On or before no fewer than 30 days prior to the Projected Bond Closing Date, Developer will make commercially reasonable efforts to obtain all approvals required for Developer to perform Developer’s obligations under this Agreement, in addition to the Office Building Bond Documents and the Garage Bond Documents (when referenced together, the “**Bond Transaction Documents**”).



**Section 3.03 Actions by Port KC.** Port KC shall, at no expense to Port KC, take the following actions, among others, in furtherance of this Agreement:

(a) Port KC Contracts with Developer. Prior to earlier of the Closing Date of the Office Building Bonds or the Garage Bond, Port KC will enter into the Port KC Development Agreements, subject to the negotiation thereof and final approval of the Port KC Board of Commissioners;

(b) Port KC Plat and Condominium Activities. Commencing upon the Effective Date, Port KC will negotiate with and assist the City and Developer to finalize the 2019 Replat and the Second Condominium Declaration Amendment on or before no fewer than 30 days prior to the Projected Bond Closing Date; and

(c) Port KC Approvals. No later than 30 days prior to the Projected Bond Closing Date, Port KC will cause the preparation and introduction of, and consider passage of a resolution approving this Agreement and the Bond Transaction Documents.

#### **ARTICLE IV PLEDGE OF EARNINGS TAX REVENUE**

**Section 4.01 Payment of Series B Office Building Bond and Garage Bond; Pledge of Earnings Tax Revenue and Covenant to Request Appropriation; City Guaranty.**

(a) Pledge to Apply City Earnings Tax Revenue. As referenced in Section 2.01 above, provided that the Bond Closing on the Office Building Bonds occurs, the City hereby agrees, subject to annual appropriation, to apply the City Earnings Tax Revenue Allocation to the repayment of the Series B Office Building Bond, but in any event only for so long as any of the Series B Office Building Bond Debt Service is outstanding.

(b) City Guaranty of Series B Office Building Bond Debt Service Deficiency. As referenced in Section 2.01 above, provided that the Bond Closing on the Office Building Bonds occurs, the City agrees (i) to pay the Office Building Bond Trustee any and all amounts necessary to pay the Office Building Bond Debt Service pursuant to the Office Building Bond Documents, if and to the extent the City Earnings Tax Revenue Allocation is insufficient to satisfy such Office Building Bond Debt Service obligations; and (ii) to direct Developer to pay all or portions of the City Investment Return Payment, if any, to the Office Building Bond Trustee as may be needed to pay any Series B Office Building Bond Debt Service deficiency.

(c) Budgeting Earnings Tax Revenue Appropriation Estimate. As referenced in Section 2.01 above, the City intends, on or before the last day of each fiscal year of the City while the Series B Office Building Bond is outstanding, to make the Earnings Tax Revenue Appropriation for the next fiscal year by budgeting and appropriating for the next fiscal year, an amount equal to the Earnings Tax Revenue Appropriation Estimate. The City covenants and agrees that the Treasurer of the City, or such other officer at any time charged with the responsibility of formulating budget proposals, is hereby directed to include in the budget proposal submitted to the City's City Council, for each fiscal year of the City, for so long as any of the Series B Office Building Bond is outstanding, a request for an appropriation of sufficient revenues

for the payment of an amount equal to the Earnings Tax Revenue Appropriation Estimate for the ensuing fiscal year. The City will exhaust all available reviews and appeals in the event such portion of the budget is not approved, and the City's Treasurer, or such other officer at any time charged with the responsibility of formulating budget proposals, is directed to exhaust all available reviews and appeals in the event such portion of the budget or a supplemental appropriation is not approved.

**Section 4.02 Payment of Developer Earnings Tax Revenue Allocation; Pledge of Revenue and Covenant to Request Appropriation.**

(a) Pledge to Pay Developer Earnings Tax Revenue Allocation. As referenced in Section 2.01, provided that the Bond Closing on the Office Building Bonds occurs, the City agrees, subject to the City Council's approval of each annual Earnings Tax Revenue Appropriation, to pay the Developer Earnings Tax Revenue Allocation, until the end of the Earnings Tax Revenue Allocation Period.

(b) Estimated Earnings Tax Revenue; Appropriation. As referenced in Section 2.01, the City intends, on or before the last day of each fiscal year of the City prior to the end of the Earnings Tax Revenue Allocation Period, to make the Earnings Tax Revenue Appropriation for the next fiscal year by budgeting and appropriating for the next fiscal year an amount equal to the Developer Earnings Tax Allocation Estimate. The City covenants and agrees that the Treasurer of the City, or such other officer at any time charged with the responsibility of formulating budget proposals, is hereby directed to include in the budget proposal submitted to the City's City Council for each fiscal year of the City prior to the end of the Earnings Tax Revenue Allocation Period a request for an appropriation of sufficient revenues for the payment of an amount equal to the Developer Earnings Tax Revenue Allocation Estimate for the ensuing fiscal year. The City further intends to exhaust all available reviews and appeals in the event such portion of the budget is not approved, and the City's Treasurer, or such other officer at any time charged with the responsibility of formulating budget proposals, is directed to exhaust all available reviews and appeals in the event such portion of the budget or a supplemental appropriation is not approved.

**Section 4.03 Reporting and Disbursement of Office Building Earnings Tax Revenue.**

(a) AIM Zone Reporting. So long as the Series B Office Building Bond is outstanding, Developer shall provide Port KC and the City, in writing, the business name, trade name (if different), business address in the City and FEIN for each business leasing space or otherwise conducting business in the Office Building, within thirty (30) days after such business first commences the conduct of business in the Office Building, as more fully set forth in the Strata AIM Zone Declaration.

(b) Earnings Tax Revenue Estimate and Disbursement. The City agrees to calculate the Office Building Earnings Tax Revenue received by the City during the preceding quarter on a quarterly basis (each, a “**Quarterly Reporting Period**”). The Quarterly Reporting Period dates shall be set forth in the Office Building Bond Transaction Documents. Within 21 days following the expiration of the Quarterly Reporting Period (each, a “**Quarterly Reporting Date**”), the Office Building Earnings Tax Revenue received by the City during the preceding Quarterly Reporting Period will be disbursed by City to the Office Building Bond Trustee, in accordance with the requirements of Article II above. Written notice of all such Office Building Earnings Tax Revenue will be timely provided to Port KC.

## **ARTICLE V PLEDGE OF GARAGE REVENUE**

**Section 5.01 Description of Monthly Parking Garage Revenue and Monthly Modified Parking Garage Revenue.** Garage Revenue will be generated by the leasing and operation of the Garage Project, and will include (a) revenue derived from Developer, the Office Building Project tenants, and their respective occupants, agents, licensees, contractors, guests, subtenants, customers and invitees (individually and collectively, the “**Developer Occupants**”) which utilize the New Garage pursuant to a monthly or annual agreement (“**Monthly Parking Garage Revenue**”) and there shall be a subcategory of the Monthly Parking Garage Revenue which shall be referred to as the “**Monthly Modified Parking Garage Revenue**” which shall be calculated at a monthly rate of \$75.00 multiplied by the number of monthly and annual Developer Occupants (notwithstanding the actual amount paid by the Developer Occupants to use the New Garage); and (b) revenue derived from all other Developer Occupants which use the New Garage without a monthly or annual agreement (the “**General Parking Garage Revenue**”), which General Parking Garage Revenue shall be calculated at the then applicable market rate for comparable parking facilities,

### **Section 5.02 Garage Revenue Accounting; Abatement; Covenant to Request Appropriation; City Guaranty.**

(a) Garage Revenue Notice. Within 30 days following the expiration of the applicable year during the thirty (30) year period commencing upon the expiration of the second anniversary of the Garage Bond Closing Date (the “**Garage Revenue Commitment Term**”), Developer will provide Port KC, the City, and the Garage Bond Trustee with a written summary setting forth the amount of Monthly Modified Parking Garage Revenue for the applicable year, along with supporting documentation which substantiates the accuracy of the Monthly Modified Parking Garage Revenue for such year of the Garage Revenue Commitment Term (the “**Garage Revenue Notice**”).

(b) Distribution of Monthly Parking Garage Revenue; Excess. The Garage Management Agreement shall require, among other things, that within 30 days following the expiration of the applicable year during the Garage Revenue Commitment Term, Developer will pay the Monthly Modified Parking Garage Revenue received during the immediately expiring year of the Garage Revenue Commitment Term (the “**Monthly Modified Garage Revenue Payment**”) to the Garage Bond Trustee. Upon receipt thereof, pursuant to the Garage Bond Transaction Documents, the Garage Bond Trustee will apply the Monthly Modified Garage

Revenue Payment to Garage Bond Debt Service. Each Monthly Modified Garage Revenue Payment will be accompanied by the applicable Garage Revenue Notice, and provided concurrently to the Garage Bond Trustee, Port KC and City. In the event the Monthly Modified Parking Garage Revenue exceeds the then due and owing Garage Bond Debt Service (the “**Garage Revenue Surplus**”), the Garage Bond Trustee will be directed by Port KC to deposit the Garage Revenue Surplus into the New Garage Maintenance Reserve Fund.

(c) Distribution of General Parking Garage Revenue. Contemporaneously with its distribution of a Garage Revenue Payment of the Monthly Modified Parking Garage Revenue to the Garage Bond Trustee (or within 30 days following the expiration of the applicable year during the Garage Revenue Commitment Term, if there is no Garage Revenue Payment of Monthly Modified Parking Garage Revenue), Developer will distribute all of the General Parking Garage Revenue and Monthly Parking Garage Revenue that is not Monthly Modified Parking Garage Revenue received during the immediately expiring year of the Garage Revenue Commitment Term: (i) fifty percent (50%) to City (the “**City Parking Revenue Payment**”), and (ii) fifty percent (50%) to Port KC (the “**Port KC Parking Revenue Payment**”). Each City Parking Revenue Payment and the Port KC Parking Revenue Payment will be accompanied by the applicable Garage Revenue Notice of Monthly Modified Parking Garage Revenue, and provided concurrently to Port KC and City.

(d) Partial Abatement of Garage Revenue; Exception. During the term of the Garage Management Agreement or for a period of 22 years after the last Bond Closing Date, whichever is later (the “**Free Parking Period**”), Developer Occupants shall be provided access to the New Garage to use, at no charge, the parking spaces in the New Garage during the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and 7:00 a.m. to 12:00 p.m. Saturday (the “**Free Parking Hours**”); provided, however, any of the Developer Occupants which enter into the New Garage but do not exit prior to the expiration of the Free Parking Hours shall park in the New Garage at no charge. Developer Occupants entering the New Garage after Free Parking Hours will pay the then applicable fair market rate for structured parking in downtown Kansas City for the use of the New Garage, as determined by Port KC, with the input of City and Developer. Garage Revenue derived from Developer Occupants entering the New Garage after Free Parking Hours shall constitute General Parking Garage Revenue.

(e) Application of Surplus Earnings Tax Revenue. City agrees that any Earnings Tax Revenue generated from the operation of the Garage Project will be timely paid to the Garage Bond Trustee, to apply to the Garage Bond Debt Service. If, pursuant to the Garage Bond Documents, such Earnings Tax Revenue is determined by the Garage Trustee to not be needed to pay Garage Bond Debt Service (written notice of which will be provided by the Garage Bond Trustee to City and Port KC), the Garage Bond Trustee will deposit such surplus into the New Garage Maintenance Reserve Fund.

(f) Garage Revenue Deficiency. If, following the conclusion of the applicable year during the Garage Revenue Commitment Term, (a) the Garage Revenue Payment and the Earnings Tax Revenue generated by the Garage Project and paid to the Garage Bond Trustee by Developer, and (b) the Strata AIM Zone Revenue Payment made by Port KC to the Garage Bond Trustee, together, are insufficient to pay the then due and owing Garage Bond Debt Service (the “**Garage**

**Revenue Deficiency**”), the Garage Bond Transaction Documents will require the Garage Bond Trustee to notify Port KC, City and Developer of such Garage Revenue Deficiency (each, a **“Garage Revenue Deficiency Notice”**). In the event of such Garage Revenue Deficiency, City agrees to and will tender to the Garage Bond Trustee an amount equal to the Garage Revenue Deficiency identified in the Garage Revenue Deficiency Notice (the **“Garage Revenue Guaranty Payment”**) within 30 days following the date on which the Garage Revenue Deficiency Notice is provided by the Garage Bond Trustee to Port KC, City and Developer (the **“Garage Revenue Guaranty”**). City may pay the Garage Revenue Deficiency, in whole or in part, with portions of the City Investment Return Payment, if any, then due and owing to City by Developer. In such event, City will direct Developer, in writing, to distribute all or a portion of the City Investment Return Payment to the Garage Bond Trustee, to apply toward such Garage Revenue Deficiency.

(g) Garage Revenue Dispute. If either Port KC or City dispute all or any portion of the Garage Revenue Payment, City Parking Revenue Payment, Port KC Parking Revenue Payment, Developer Parking Garage Revenue Payment (each, a **“Revenue Payment”**) or the content set forth in the Garage Revenue Notice (each and together, a **“Disputing Party”**), the Disputing Party shall notify Developer, in writing, within fifteen (15) days following receipt of the Garage Revenue Notice (the **“Dispute Notice”**). The Dispute Notice must set forth a basis for the dispute with sufficient detail so as to allow Developer to properly respond to the Dispute Notice, which Developer shall do in good faith, using commercially reasonable efforts. The Disputing Party agrees to act in good faith in contesting a Revenue Payment or Garage Revenue Notice. If a Disputing Party timely contests the Revenue Payment or Garage Revenue Notice and the contest is not resolved by within ten (10) days following the date of the Dispute Notice, the **“City Designated Representative”** (as such term is defined in Appendix A), the **“Port KC Designated Representative”** (as such term is defined in Appendix A), and Developer will meet within fourteen (14) business days after the date of the Dispute Notice (or such later date as may be mutually acceptable to the parties) to resolve the Revenue Payment or Garage Revenue Notice which is the subject of the dispute, working in good faith and with reasonable dispatch. In the event the disputed Revenue Payment or Garage Revenue Notice is resolved in favor of the Disputing Party, the non-Disputing Party will have five (5) business days after resolution of a dispute to pay the Disputing Party the Revenue Payment, as the same may be modified following resolution of the dispute, and if the non-Disputing Party is Developer and the disputed matter which is the subject of the Dispute Notice is resolved in favor of Developer, the Disputing Party shall have 5 business days to refund to Developer any amounts the parties determined by the resolution.

## ARTICLE VI PROJECT OBLIGATIONS

6.01 Office Building Project. As shall be more fully set forth in the Office Development Agreement, if, subject to an event of **“Force Majeure”** (as such term is defined in Appendix A): (a) Developer does not commence construction of the Office Building project within five years following the Bond Closing on the Series B Office Building Bond, (b) if Developer commences the Office Building Project but fails to complete the Office Building Project in accordance with the timeframes set forth in the Port KC Office Building Development Agreement, or (c) if Developer commences and thereafter abandons the Office Building Project (which abandonment shall be presumed if Developer does not diligently prosecute, exercising commercially reasonable efforts,



and complete construction of the Office Building Project within two years and 180 days following the Bond Closing for the Office Building Bond (an “**Abandonment of the Office Building Project**”), Developer agrees to timely pay any direct or indirect cost incurred by the City in connection with the Series B Office Building Bond, the Office Building Bond Debt Service, the Garage Bond, and the Garage Bond Debt Service, pursuant to invoices provided by City to Developer. The foregoing agreement of Developer and the provisions in this paragraph regarding Force Majeure will be set forth in the guaranty of Developer, the form of which will be mutually acceptable to City and Developer and will contain the draw-down covenant of Developer set forth in Section 2.01(h) above. If Developer is delayed in, or prevented from, the commencement or completion of the Office Building Project by reason of Force Majeure, then Developer will be entitled to a day-for-day extension (or such additional number of days as is reasonable under all of the circumstances and acceptable to the City) to perform its obligations regarding the Office Building Project. Developer shall make reasonable efforts to give City notice as promptly as is practical after Developer has knowledge of the Force Majeure occurrence.

6.02 Garage Project. As shall be more fully set forth in the Garage Development Agreement, if, subject to an event of Force Majeure, Developer, does not (a) commence construction of the Garage Project within two years and 180 days following the Bond Closing on the Garage Bond, (b) if Developer commences the Garage Project but fails to complete the New Garage in accordance with the timeframes set forth in the Garage Development Agreement, or if Developer effects an Abandonment of Garage Project, then, in any such event, Developer agrees to timely pay any direct or indirect cost incurred by the City in connection with the Garage Bond, the Garage Bond Debt Service, the Series B Office Building Bond, and the Office Building Bond Debt Service, pursuant to invoices provided by the City to Developer. The foregoing agreement of Developer and the provisions in this paragraph regarding Force Majeure will be set forth in the guaranty of Developer, the form of which will be mutually acceptable to City and Developer and will contain the draw-down covenant of Developer set forth in Section 2.02(m) above. If Developer is delayed in, or prevented from, the commencement or completion of the Garage Project by reason of Force Majeure, then Developer will be entitled to a day-for-day extension (or such additional number of days as is reasonable under all of the circumstances and acceptable to the City) to perform its obligations regarding the Garage Project. Developer shall make reasonable efforts to give City notice as promptly as is practical after Developer has knowledge of the Force Majeure occurrence.

## **ARTICLE VII PUBLIC PARTICIPATION**

**Section 7.01 Payment of City Investment Return Payment.** In consideration of the City making an Earnings Tax Revenue Appropriation which is equal to or greater than the Earnings Tax Revenue Estimate, and provided that there has been no prior adoption by the City of a budget for any fiscal year of the City during the Earnings Tax Revenue Allocation Period that did not contain, in whole or in part, an Earnings Tax Revenue Appropriation equal to or greater than the Earnings Tax Revenue Appropriation Estimate which remains unsatisfied, Developer agrees to pay the City Investment Return Payment to the City contemporaneous with each Developer Distribution with respect to which a City Investment Return Payment is payable, provided, however, that the aggregate amount of all City Investment Return Payments paid by Developer shall not exceed the

City Investment Return Payment Cap. The decision whether to make any Developer Distribution rests in the sole and absolute discretion of Developer.

**Section 7.02 Payment of Port KC Participation Payment.** In consideration of Port KC's issuance of the Office Building Bonds and the Garage Bond, each of which will further and enhance the City Benefits, City agrees to pay to Port KC, in immediately available funds: (a) ~~Three~~Two Hundred ~~Fifty~~ Thousand and No/100 Dollars (~~\$300,000~~250,000), upon the ~~commencement of the Garage Revenue Commitment Term, and (b) third anniversary of the Garage Bond Closing Date, (b) Three Hundred Fifty Thousand and No/100 Dollars (\$350,000), upon the fourth anniversary of the Garage Bond Closing Date, and (c) Five Hundred Thousand and No/100 Dollars (\$500,000), upon the expiration of the ~~second~~fifth anniversary of the Garage Bond Closing Date and each anniversary thereafter, until the later of expiration of the Garage Revenue Commitment Term; or maturity of the Garage Bond (the "**Port KC Participation Payment**"). Each such Port KC Participation Payment will be made by City to Port KC within 30 days following the expiration of the applicable year during the Garage Revenue Commitment Term, without deduction or set-off. Any failure of City, in any year during the Garage Revenue Commitment Term, to pay the Port KC Participation Payment, in full, shall accrue interest at the rate of twenty percent (20%) per annum of the unpaid balance of such Port KC Participation Payment, not compounded; provided, however, this twenty percent (20%) interest rate shall not apply to payment then currently delayed in accordance with this Section 7.02. Notwithstanding anything to the contrary, if the City Manager determines that City has not received sufficient revenues from the Project to pay a Port KC Participation Payment, which is due or will be due, the City Manager shall notify Port KC, at least 14 days prior to the Port KC Participation Payment being due, that City has not received sufficient revenues and will not be paying all or part, as the case may be, of the Port KC Participation Payment when it is due. For the first year through and including the fifth year, the City Manager can elect not to pay up to 100% of the Port KC Participation Payment and for the sixth and seventh years, the City Manager can elect for the City not to pay up to 50% of the amount due for the Port KC Participation Payment. Notwithstanding anything contained herein to the contrary, City shall then automatically be temporarily relieved of its obligation to make all or part of the next annual Port KC Participation Payments as specified in the notice. If the City is temporarily relieved of its obligation to make any Port KC Participation Payments under this Section 7.02, then the City shall commence to pay to Port KC any unpaid Port KC Participation Payments in future fiscal years beginning no later than the expiration of the eighth anniversary of the Garage Bond Closing Date and ending on or before the expiration of the Garage Revenue Commitment Term. In any year for which a payment (previously deferred pursuant to this Section 7.02) is due to Port KC from the City for a particular year or years, the City must pay at least 10% of the deferred payment for that year or years.~~

**Section 7.03 Payment to Taxing Jurisdictions.** In consideration of the support of the Office Building Project by the taxing districts of Jackson County, Missouri (each and collectively, the "**Taxing Jurisdictions**") and notwithstanding anything in this Agreement to the contrary, the parties agree as follows:

(a) commencing December 1 of the third year following the Bond Closing Date of the Office Building Bonds and thereafter, continuing for ten (10) years, to a date that is twelve (12) years following the Bond Closing Date on the Office Building Bonds (the "**Initial Taxing Jurisdiction Payment Term**"), Developer agrees to and shall pay the Taxing Jurisdictions, in



immediately available funds, the sum of One Hundred Thousand and No/100 Dollars (\$100,000) (the “**Developer Initial Taxing Jurisdiction Payment**”) and City agrees to and shall pay the Taxing Jurisdiction, in immediately available funds, the sum of Two Hundred Thousand and No/100 Dollars (\$200,000) (the “**City Initial Tax Jurisdiction Payment**”); and

(b) commencing December 1 of the thirteenth (13<sup>th</sup>) year following the Bond Closing Date of the Office Building Bonds and thereafter, continuing for ten (10) years until a date that is twenty-two (22) years following the Bond Closing Date of the Office Building Bonds (the “**Final Taxing Jurisdiction Payment Term**”), Developer agrees to and shall pay the Taxing Jurisdictions, in immediately available funds, the sum of One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000) (the “**Developer Final Taxing Jurisdiction Payment**”), and City agrees to and shall pay the Taxing Jurisdiction, in immediately available funds, the sum of Two Hundred Seventy Five Thousand and No/100 Dollars (\$275,000) (the “**City Final Taxing Jurisdiction Payment**”). In addition to City’s payment set forth in this subsection (b) above, on December 1 of each year during the Final Taxing Jurisdiction Payment Term, City agrees to and shall pay the Taxing Jurisdictions an amount equal to fifty percent (50%) of each City Investment Return Payment remaining after the City pays the City Investment Return Payment required for the Series B Office Building Debt Service. City’s obligation to make any (50%) City Investment Return Payment to the Taxing Jurisdictions, and Developer’s obligation to make any Developer Initial Taxing Jurisdiction Payment or Developer Final Taxing Jurisdiction Payment to the Taxing Jurisdictions, City’s obligation to make any City Initial Taxing Jurisdiction Payment or City Final Taxing Jurisdiction Payment to the Taxing Jurisdictions, and the Taxing Jurisdictions’ right to receive any and all such payments are discrete to and enforceable against City and Developer solely, and are not a joint and several obligation of Port KC. If any such (50%) City Investment Return Payment, Developer Initial Taxing Jurisdiction Payment or Developer Final Taxing Jurisdiction Payment is unpaid to the Taxing Jurisdictions, the Taxing Jurisdictions shall have no legal or equitable right, or other third-party beneficiary rights, to enforce this Agreement for such payments against Port KC.

## **ARTICLE VIII CITY PERMITS AND APPROVALS**

**Section 8.01 Zoning, Permits and Inspections; Governmental Approvals.** The City will process or cause to be processed the zoning, permitting, and inspections for all phases of the Project in good faith. By execution of this Agreement, the City authorizes and directs the City Manager and Director of City Planning and Development to proceed in good faith with the review and approval process for all zoning, permitting, inspections and review and approvals for all phases of the Project. The City agrees to cap all City construction permit and inspection fees with respect to the initial construction of the exterior and interior of the Office Building and the New Garage at \$200,000 in the aggregate. The City will cooperate in good faith with and assist Developer in obtaining all federal, state and local governmental approvals necessary for the Project.

**Section 8.02 Continued Cooperative of Parties; Further Actions.** The City, Port KC and Developer agree, upon the request of the other, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications and provide such other information as may be reasonably requested, necessary or appropriate to carry out the terms,

provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent and to give full force and effect to the intent of the provisions, terms and covenants of this Agreement. The parties acknowledge that this Agreement contemplates the execution of further agreements, that the objectives of this Agreement necessitate such further agreements being executed, that the purpose and intent of this Agreement will be frustrated, to the mutual detriment of the parties, if such further actions do not occur as contemplated herein, and that the contractual expectations arising under this Agreement will be impaired unless such further actions shall proceed on a timely basis. Therefore, and as provided by the City Authorizing Ordinance, the City Manager is authorized and directed, without further City Council approval, to take such further actions as are consistent with realizing the objectives of this Agreement, including but not limited to executing the Transaction Documents and any further documents which might be necessary or beneficial in the implementation of this Agreement and the transactions contemplated hereby, and to amend or waive any provision of this Agreement or any Transaction Document.

## **ARTICLE IX BOND CLOSING**

**Section 9.01 Bond Closing; Notice to City.** The Bond Closing on the Office Building Bonds shall occur on the Bond Closing Date set forth in the Office Building Bond Documents, and the Bond Closing on the Garage Bond shall occur on the Bond Closing Date set forth in the Garage Bond Documents, and in any event, each Bond Closing shall occur on or before two years and 180 days after the signing of the Bond Documents for the applicable Bonds, or such later date as may be mutually acceptable to and authorized by the parties.

**Section 9.02 City Actions at Bond Closing.** At the Bond Closing, in addition to the other obligations of the City at the Bond Closing set forth in this Agreement and the other agreements executed in connection with the transaction, the City shall, at its expense (except as set forth in paragraph (d) below):

- (a) execute, acknowledge and deliver its special warranty deed in customary form, conveying good and marketable fee title to Replatted Unit 3 to HRB, Developer, or Port KC (as directed by Developer), and provide Port KC with an owner's policy of title insurance with respect to Replatted Unit 3 with such coverages and exceptions as are acceptable to Port KC and to Developer, as applicable;
- (b) provide Developer with a leasehold policy of title insurance, including any endorsements reasonably requested by Developer, with respect to Replatted Unit 3 with such coverages and exceptions as are acceptable to Developer;
- (c) execute, acknowledge and deliver its special warranty deed in customary form, conveying good and marketable fee title to Unit G to HRB, Developer, or Port KC (as directed by Developer), Port KC, and provide Port KC with an owner's policy of insurance with respect to Unit G with such coverages and exceptions as are acceptable to Port KC;
- (d) provide the Developer with a leasehold of title insurance with respect to Unit G with such coverages and exceptions as are acceptable to Port KC and the Developer, as applicable;

provided, however, any such leasehold policy shall be at the sole cost and expense to the Developer;

(e) deliver to Developer a copy of the duly recorded 2019 Replat, together with proof of recordation;

(f) deliver to Developer a copy of the duly recorded Second Condominium Declaration Amendment;

(g) deliver to Developer a certified copy of the City Authorizing Ordinance;

(h) execute and deliver to Developer and Port KC a reaffirmation of the City's representations and warranties set forth in Section 10.02 below; and

(i) execute and deliver such Transaction Documents to Developer and Port KC or as instructed by Developer and Port KC, and take such actions, as are necessary in order to consummate the transactions contemplated by this Agreement.

**Section 9.03 Developer and Port KC Actions at Bond Closing.** Developer and Port KC, and their respective agents, representatives, and legal counsel, at Developer's cost and expense, shall deliver all such documents, writings, agreements, notices, affidavits, and statements as may be reasonably requested and required by the parties, the Office Building Bond Trustee, and the Garage Bond Trustee (when referenced together, as applicable, the "**Bond Trustee**") to effectuate each Bond Closing and the other transactions contemplated by this Agreement. At each Bond Closing, Developer and Port KC shall execute and deliver to City a reaffirmation of their respective representations and warranties set forth in Sections 11.01 and 11.03, respectively, of this Agreement.

## **ARTICLE X TERM AND TERMINATION**

**Section 10.01 Term.** This Agreement shall become effective on the Effective Date, and unless terminated in accordance with the provisions of this Article shall remain in full force and effect until the expiration or earlier termination of the Earnings Tax Revenue Allocation Period.

**Section 10.02 Developer's Right to Terminate.** Developer shall have the right to terminate this Agreement by written notice to the City and Port KC in the event: (a) Developer determines that it is unable to obtain the Developer Private Loan, (b) Developer and Port KC do not enter into the Port KC Development Agreement within one hundred eighty (180) days after the Effective Date, (c) the Bond Closing does not occur within the period required in Article VII, provided however, such period shall be extended for an additional period of ninety (90) days in the event Developer notifies the City in writing (with a copy to Port KC) prior to the last day of the period required in Article VII that Developer has a good faith belief that the Bond Closing will occur within such additional ninety (90) day period.

**Section 10.03 City's Right to Terminate.** The City shall have the right to terminate this Agreement by written notice to Developer and Port KC in the event that the Bond Closing does not occur within two (2) years after the Effective Date, provided however, such one year period shall

be extended for an additional period of ninety (90) days in the event Developer notifies the City in writing (with a copy to Port KC) prior to the last day of such five-year period that that Developer has a good faith belief that the Bond Closing will occur within such additional ninety (90) day period.

**Section 10.04 Port KC's Right to Terminate.** Port KC shall have the right to terminate this Agreement by written notice to Developer and the City in the event that: (a) the Bond Closing does not occur within two (2) years after the Effective Date, subject however, to the ninety (90) day extension on the part of Developer as provided in Section 9.03; (b) Developer and Port KC do not enter into the Port KC Development Agreements within one hundred eighty (180) days after the Effective Date; or (c) any of Developer's representations and warranties listed in Section 10.01 below are inaccurate or are deemed, following appropriate investigation and inquiry, to be materially misleading, Developer does not correct the inaccuracy or misleading aspect of the representation or warranty within 30 days after notice from Port KC, and Port KC is materially adversely affected by such revised representation or warranty, as the same may be reasonably determined by Port KC.

## **ARTICLE XI REPRESENTATIONS AND WARRANTIES**

**Section 11.01 Developer Representations and Warranties.** Developer hereby represents and warrants to the City and Port KC as follows:

(a) Organization; Authorization. Developer (1) is a limited partnership 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.

(b) Litigation. To the knowledge of Developer, there is no action, threatened or pending, against Developer which would prevent or impair Developer's performance hereunder.

(c) Authority. Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of Developer, enforceable in accordance with its terms.

(d) No Breach. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a material breach of any of the 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 material default under any of the foregoing. To its knowledge, Developer is not in default of its obligations under any other agreement.

(e) Anti-Terrorism. To the best of Developer's actual knowledge, no partner of Developer is engaged in any dealings or transactions, directly or indirectly: (i) in contravention of

any U.S., international or other money laundering regulations or conventions, including, without limitation, the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Trading with the Enemy Act (50 U.S.C. §1 et seq., as amended), or any foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto; or (ii) in contravention of Executive Order No. 13,244,66 Fed. Reg. 49,079 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time (“**Anti-Terrorism Order**”) or on behalf of terrorists or terrorist organizations, including those persons or entities that are included on any relevant lists maintained by the United Nations, North Atlantic Treaty Organization, Organization of Economic Cooperation and Development, Financial Action Task Force, U.S. Office of Foreign Assets Control, U.S. Securities & Exchange Commission, U.S. Federal Bureau of Investigation, U.S. Central Intelligence Agency, U.S. Internal Revenue Service, or any country or organization, all as may be amended from time to time. No partner of Developer is a person described in section 1 of the Anti-Terrorism Order and has not engaged in any dealings or transactions, or otherwise been associated with any such person. If at any time this representation becomes false, then it shall be considered a default of Developer of this Agreement.

Developer represents and warrants to the City and Port KC that the foregoing items (a) through (e) are true, accurate and complete as of the Effective Date and agrees that upon each Bond Closing, it shall confirm that the foregoing items (a) through (e) and any and all other representations and warranties required by Port KC and the City shall be accurate, true and complete as of the date of the Bond Closing.

**Section 11.02 City Representations and Warranties.** The City represents and warrants to Developer and Port KC as follows:

(a) 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.

(b) Taxes/Special Assessments. All ad valorem taxes and installments of special assessments assessed against Replatted Unit 3 and Unit G (including by reason of Replatted Unit 3 or Unit G having been part of Current Unit 2) for any tax year through and including the tax year in which the City transfers Replatted Unit 3 and Unit G to Developer or Port KC, as the case may be, shall be paid in full as of the date of such transfer. To the best of City’s knowledge, there are no special assessments, fees or charges (including any “impact fees” or charges in the nature thereof) of any kind or nature whatsoever levied or assessed or pending or contemplated against Current Unit 3 by any governmental authority having jurisdiction.

(c) Litigation. To the knowledge of the City, there is no action, threatened or pending, against the City, which would prevent or impair the City’s performance hereunder.

(d) No Breach. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a material breach of any of the terms or conditions of any governmental or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a material default under any of the foregoing. To its knowledge, City is not in default of its obligations under any other agreement.

The City represents and warrants to Developer and Port KC that the foregoing items (a) - (d) are true, accurate and complete as of the Effective Date and agrees that upon each Bond Closing, it shall confirm that the foregoing items (a) - (d) shall be accurate, true and complete as of the date of the Bond Closing.

**Section 11.03 Port KC Representations and Warranties.** Port KC hereby represents and warrants to the City and Developer as follows:

(a) Organization; Authorization. Port KC (1) is a political subdivision 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, including the Port KC Authorizing Resolution, has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) Litigation. To the knowledge of the Port KC, there is no action, threatened or pending, against Port KC which would prevent or impair Port KC's performance hereunder.

Port KC represents and warrants to the City and Developer that the foregoing items (a) and (b) are true, accurate and complete as of the Effective Date and agrees that upon each Bond Closing, it shall confirm that the foregoing items (a) and (b) shall be accurate, true and complete as of the date of the Bond Closing.

## **ARTICLE XII MISCELLANEOUS**

**Section 12.01 Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties, and in the case of Developer, its successors and assigns.

**Section 12.02 Acceptance, Approval, Consent of the City.** Any consent, approval or acceptance by the City permitted or required pursuant to this Agreement, shall be exercised in the reasonable discretion of the City Manager without City Council approval.

**Section 12.03 Modification or Waiver.** This Agreement may not be amended, modified, terminated or waived orally, but only by a writing signed by the party sought to be charged thereby.

**Section 12.04 Breach; Compliance.** If any party does not comply with the provisions of this Agreement, in that a party shall do, permit to be done, or fail or omit to do, or fail or omit to have done, anything contrary to or required of it by this Agreement, and if within thirty (30) days after notice of such default by any party, the party shall not have cured such default or commenced



such cure and be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period, then any party may institute such proceedings as may be necessary in its opinion to cure the default including, but not limited to, proceedings to compel specific performance. If any action is instituted by any party hereunder, the non-prevailing party shall pay all costs, fees and expenses, including reasonable attorneys' fees incurred by the prevailing party in enforcing this Agreement. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach.

**Section 12.05 Notice.** All notices required by this Agreement shall be in writing and shall be served either by certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service which provides a receipt for delivery, marked for next business day delivery. Any notice served by certified mail shall be deemed given on the date deposited with the United States Postal Service. Service of such notice by overnight delivery service shall be deemed given on the next business day after deposit with such delivery service. Regardless of the date notice is deemed given, the time for any grace, cure or other period commencing shall not occur until the notice is received at the address in this Agreement or as changed pursuant to this Agreement. Notices shall be addressed as follows:

If to the City:	City Manager City Hall, 29th Floor 414 E. 12th Street Kansas City, MO 64106	with a copy to:	City Attorney City Hall, 28th Floor 414 E. 12th Street Kansas City, MO 64106
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If to Developer:	c/o Copaken Brooks 11000 Walnut, Ste. 2000 Kansas City, MO 64106 Attn: Jon Copaken	with a copy to:	Lewis Rice LLC 1010 Walnut, Suite 500 Kansas City, MO 64105 Attn: Charles Miller
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and to: Ron Jury  
c/o Jury & Associates  
5750 W. 95th Suite 200  
Overland Park, KS 66207

and to: H&R Block Services, Inc.  
One H&R Block Way  
Kansas City, MO 64105  
Attn: Daniel Rieger



If to Port KC: 110 Berkley Plaza with a copy to: 110 Berkley Plaza  
Kansas City, MO 64120 Kansas City, MO 64120  
Attn: CEO Attn: 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' written notice thereof.

**Section 12.06 Validity and Severability.**

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

(b) If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder, In the event any provision of this Agreement is capable of more than one interpretation, one which would render the provision invalid and one which would render the provision valid, the provision shall be interpreted so as to render it valid.

**Section 12.07 Choice of Law.** The interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Missouri. Venue for any cause of action arising out of or in connection with this Agreement shall be in Jackson County, Missouri.

**Section 12.08 Multiple Counterparts.** This Agreement may be executed in multiple counterpart copies, each of which will be considered an original and all of which shall constitute but one and the same instrument, binding on all parties hereto, even though all the parties are not signatory to the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages which together contain the signatures of all parties hereto shall be deemed for all purposes a fully executed original.

**Section 12.19 Conflicting Provisions.** In the event of a conflict between the terms of this Agreement and the Transaction Documents, the Transaction Documents shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

## APPENDIX A DEFINITIONS

**“2019 Replat”** means the replat of the real property comprising Current Unit 2 and Current Unit 3 of the Condominium into Replatted Unit 2, Replatted Unit 3 and Unit G generally consistent with **Exhibits A and B**, but in consultation with and to the satisfaction of Developer and Port KC, and amendment of the Condominium Declaration.

**“Abandonment of Garage Project”** means Developer does not diligently prosecute, exercising commercially reasonable efforts, and complete construction of the Garage Project within five (5) years following the Bond Closing for the Garage Bond in connection with the Garage Project.

**“Abandonment of Office Building Project”** means Developer does not diligently prosecute, exercising commercially reasonable efforts, and complete construction of the Office Building Project within five (5) years following the Bond Closing for the Office Building Bonds, in connection with the Office Building Project.

**“Applicable Law”** means all applicable provisions of all constitutions, treaties, statutes, laws (including, but not limited to, the common law), rules, regulations, ordinances, codes or orders of any government, and all unappealable orders, decisions, injunctions, judgments, awards and decrees of any court with jurisdiction over the parties.

**“Bond Closing”** means the closing on the sale of the Office Building Bonds and Garage Bond, individually or together, as applicable.

**“Bond Closing Date”** means the actual date or dates and time or times on which the Bond Closing(s) occur, which shall be no more than 45 days after the Projected Bond Closing Date.

**“Bond Trustee”** means the Office Building Bond Trustee and/or the Garage Bond Trustee, when referenced together and as applicable.

**“Bonds”** means the Office Building Bonds and the Garage Bond, when referenced together.

**“Bond Transaction Documents”** means the Office Building Bond Documents and the Garage Bond Documents, when referenced together.

**“City Authorizing Ordinance”** means Ordinance No. 190498 adopted by the City Council of the City on July 11, 2019, authorizing and approving the execution and delivery of this Agreement, consummation of the transactions contemplated by this Agreement, and execution and delivery of the Transaction Documents on the part of the City.

**“City Benefits”** means the public benefits to the City likely to result from increasing the number of downtown employees who may patronize commercial establishments in the P&L District, and who may choose to reside within the P&L District and the greater downtown area.

**“City Designated Representative”** means the staff person of the City designated from time to time as the lead point of contact to facilitate all City reviews and approvals for the Project,

including but not limited to zoning, permitting and inspections. The City Designated Representative as of the Effective Date is Kerrie Tyndall.

**“City Earnings Tax Revenue Allocation”** means the 50% of the Earnings Tax Revenue Appropriation pledged by the City to pay the Series B Office Building Bond Debt Service and reduce the principal amount of the Series B Office Building Bond outstanding.

**“City Earnings Tax Revenue Appropriation”** means the appropriation by the City of the amount equal to Earnings Tax Revenue the City anticipates it will receive from its levy on the Office Building Project, pursuant to Section 68-382 of the City Code, as set out in the Earnings Tax Revenue Appropriation Estimate.

**“City Investment Return Payment”** means twenty-eight percent (28%) of each Developer Distribution.

**“City Investment Return Payment Cap”** means that amount of funds generated from the initial sale of the Series B Office Building Bond that is available to Developer to pay costs of the Office Building Project, anticipated to be in the approximate amount of Twenty-Seven Million Dollars (\$27,000,000) plus twenty percent (20%) per annum of the unpaid balance, not compounded, of the amount generated from the initial sale of the Series B Office Building Bond, from the date of the issuance of the Series B Office Building Bond until the earlier of (1) the date on which the amount generated from the initial sale of the Series B Office Building Bond has been repaid in full, or (2) the date on which there occurs a Developer Disposition.

**“City Parking Revenue Payment”** means the payment to the City by Developer at the direction of Port KC of fifty percent (50%) of the General Parking Garage Revenue and Monthly Parking Garage Revenue that is not Monthly Modified Parking Garage Revenue.

**“Condominium”** means the Block 124 K.C. Live Condominium, established by the Condominium Declaration.

**“Condominium Declaration”** means the Declaration of Condominium - Block 124 K.C. Live Condominium, dated June 26, 2006, and recorded in the Office of the Recorder on July 6, 2006 as Instrument Number 2006E0054189, as amended by First Amendment to Declaration of Condominium - Block 124 K.C. Live Condominium, dated July 14, 2006, and recorded in the Office of the Recorder on July 14, 2006 as Instrument Number 2006E0058725, as cited in Recital A.

**“Current Plat”** means the Replat of K.C. Live, a condominium subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, recorded in the Office of the Recorder on July 6, 2006 as Instrument Number 2006E0053180; provided that notwithstanding the future replatting of the Units through the 2019 Replat, the term Current Plat shall not refer to or include the 2019 Replat.

**“Current Unit 2”** means that parcel of real estate established and created as Unit 2 of the Condominium by the Current Plat, and any improvements to it now or hereafter constructed or existing.

**“Current Unit 3”** means that parcel of real estate established and created as Unit 3 of the Condominium by the Current Plat, and any improvements to it now or hereafter constructed or existing.

**“Developer Additional Capital”** means the total aggregate amount of money contributed to Developer by a general or limited partner of Developer after the Bond Closing of the Office Building Bonds.

**“Developer Disposition”** means (1) the sale in an arm’s length transaction of Developer’s leasehold interest under the Office Building Master Lease Agreement (or the fee interest in Unit 3, if Developer owns the fee interest in Unit 3), or (2) a “Change of Control” of Developer whereby, whether through one of a series of transactions, more than fifty percent (50%) of the Developer’s equity interests or voting rights that represent the power to control Developer (as of the Effective Date) is transferred to a person or entity which is not a constituent of Developer as of the date of the Bond Closing. As used herein, “Change of Control” shall exclude transfers of interests in Developer by a constituent: (1) to any Family Member; (2) to a trust if such trust is primarily for the Developer constituent’s benefit and/or the benefit of any Family Member of such constituent; (3) if such Developer constituent is a trust, to the beneficiaries of such trust by operation of, or authority under, its governing instrument; (4) if such Developer constituent is a corporation, limited liability company or partnership, to effect the distribution of its interest to its partners existing as of the Effective Date; (5) to any other Developer constituent or Family Member of any other Developer constituent; and/or (6) to any partnership, limited liability company or corporation, 100% of the beneficial ownership of which is owned, directly or indirectly, by such Developer constituent and/or other Developer constituent interest holders existing as of the Effective Date and/or any of the parties described in (1), (2) or (5) above in this paragraph. For purposes of this definition, the term “Family Member” shall mean and include a spouse, child, spouse of a child, grandchild, sibling, or parent (each a **“Close Relative”**) of the Developer constituent in question or a lineal descendant of any such Close Relative.

**“Developer Distribution”** means any distribution of money by Developer to a general or limited partner of Developer which arises out of or is related to a financing, refinancing or draw of developer fee made in connection with the Office Building Project, except to the extent such distribution is a return of Developer Additional Capital.

**“Developer Earnings Tax Revenue Allocation”** means the 50% of the Earnings Tax Revenue Appropriation allocated to Developer that is remaining after the City Earnings Tax Revenue Allocation.

**“Developer Occupants”** mean, individually and collectively, the Office Building Project tenants, and their respective occupants, agents, licensees, contractors, guests, subtenants, customers and invitees which use the New Garage.

**“Developer Private Loan”** means a loan obtained by Developer from a bank or other financial institution, the proceeds of which are used to pay a portion of the costs of the Office Building Project.

**"Dispute Notice"** means the written notice of a Disputing Party.

**“Disputing Party”** means a party to this Agreement which disputes the contents of any Garage Revenue Notice.

**“Earnings Tax Revenue”** means the tax on earnings and net profits levied pursuant to Section 68-382 of the Kansas City, Missouri Code of Ordinances or any successor provision thereof which is of substantially similar import or effect.

**“Earnings Tax Revenue (Actual)”** means the actual Office Building Earnings Tax Revenue received by the City in the applicable fiscal year of the City during the applicable Earnings Tax Revenue Allocation Period.

**“Earnings Tax Revenue Allocation Period”** means the period of time during which Developer will receive its Developer Earnings Tax Allocation, commencing on the Bond Closing Date of the Office Building Bonds and ending twenty-two (22) years thereafter and such longer period thereafter as is necessary for the City to collect Office Building Earnings Tax Revenue generated during such twenty-two (22) year period.

**“Earnings Tax Revenue Appropriation”** means the appropriation by the City in an amount not less than the Earnings Tax Revenue Appropriation Estimate.

**“Earnings Tax Revenue Appropriation Estimate”** means the City’s good faith estimate of the amount of Office Building Earnings Tax Revenue anticipated to be received by the City in the applicable fiscal year of the City during the Earnings Tax Revenue Allocation Period.

**“Earnings Tax Revenue Comment Period”** means 180 days following the date of Developer is provided the Earnings Tax Revenue Statement.

**“Earnings Tax Revenue Comment Response Period”** means 30 days following the Earnings Tax Revenue Comment Period.

**“Earnings Tax Revenue (Excess)”** means the measure by which the Earnings Tax Revenue (Actual) exceeds the Earnings Tax Revenue Appropriation.

**“Earnings Tax Revenue Statement”** means the summary of the actual Earnings Tax Revenue accumulated during the applicable year of the Earnings Tax Revenue Allocation Period.

**“Earnings Tax Revenue Statement Deadline”** means 30 days following the conclusion of the City’s fiscal year or such later date upon which the actual Office Building Earnings Tax Revenue has been conclusively determined.

**“Existing Unit 2 Building”** means that predominately one-story structure existing within Current Unit 2 on the Effective Date of this Agreement.

**“Force Majeure”** means an event, including an act of God, fire, earthquake, tornado, hurricane, flood, natural catastrophe, weather related delay, explosion, other casualty, war, act of terrorism, insurrection, riot, mob violence, police action, strike, lockout, labor troubles, failure of power, inability to procure materials, changes after the date hereof in applicable laws, delay in any governmental authority in giving any necessary consent or approval in a timely manner with

respect to any application made by Developer or its agent or employee relating to the Project, or the commencement of litigation affecting the Project or any other similar event beyond the reasonable control of Developer which materially and adversely affects Developer's and its agent's and employee's performance obligations under this Agreement, provided that such event (or the effects of such event) (a) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer and/or its agents and employees, and (b) is not a result of the negligence, willful misconduct, or breach of applicable law Developer and its agents and employees.

**“Free Parking Hours”** the hours of Free Parking in the New Garage, 7:00 a.m. to 6:00 p.m. Monday through Friday and 7:00 a.m. to 12:00 p.m. Saturday.

**“Free Parking Period”** means 22 years after the last Bond Closing Date of the Office Building Bonds or the Garage Bond, whichever is later.

**“Garage Bond”** means the draw-down bond or other debt instruments to be issued by Port KC, as requested by Developer and approved by the Board of Commissioners of Port KC, in the approximate amount of Thirty-Six Million Dollars (\$36,000,000), plus the costs of issuance and the amount of capitalized interest and reserve funds, the proceeds of which are to be used to finance the costs of the Garage Project.

**“Garage Bond Debt Service”** means the debt service obligations on the Garage Bond, including debt service reserves and other financial obligations applicable to the Garage Bond while the Garage Bond is outstanding, all as set forth in the Garage Bond Documents.

**“Garage Bond Documents”** means all of the contracts and other documents required to close on the Garage Bond.

**“Garage Bond Trustee”** means the qualified entity selected by Port KC and Developer to act as the trustee with respect to the Garage Bond.

**“Garage Management Agreement”** means the agreement between Port KC and Developer and its successors and assigns related to Developer's management of the New Garage.

**“Garage Project”** means the development and construction of the New Garage in Unit G.

**“Garage Revenue”** means the actual operating revenue generated from the leasing and operating the New Garage, net of the monthly fee and other commercially reasonable operating expenses approved by Port KC which is received by Developer under the Garage Management Agreement from Monthly Parking Garage Revenue and General Parking Garage Revenue.

**“Garage Revenue Commitment Term”** means the thirty (30) year period commencing upon the expiration of the second anniversary of the Garage Bond Closing Date.

**“Garage Revenue Deficiency”** means the amount by which the Monthly Parking Garage Revenue, Strata AIM Zone Payments, and Earnings Taxes from the Garage Project, collectively, are less than Garage Bond Debt Service.



**“Garage Revenue Deficiency Notice”** means the written notice by the Garage Bond Trustee to Port KC, City and Developer of a Garage Revenue Deficiency.

**“Garage Revenue Guaranty”** means the City’s guarantee to pay any Garage Revenue Deficiency to the Garage Bond Trustee, during the Garage Revenue Commitment Term.

**“Garage Revenue Guaranty Payment”** means the City’s payment of a Garage Revenue Deficiency, in the amount set forth in a Garage Revenue Deficiency Notice, to the Garage Bond Trustee.

**“Garage Revenue Notice”** means the written summary and supporting documentation which substantiates the accuracy of the Garage Revenue Payment.

**“Garage Revenue Payment”** means the distribution by Developer of the Garage Revenue, if any.

**“Garage Revenue Surplus”** means the amount by which the Monthly Modified Parking Garage Revenue exceeds the then due and owing Garage Bond Debt Service.

**“General Parking Garage Revenue”** means the monies derived from Developer Occupants which use the New Garage without a monthly or annual agreement.

**“HRB”** means H&R Block Services, Inc., a Missouri corporation.

**“Initial City Investment Return Payment”** means the initial \$500,000 of the distribution to be paid by Developer to the City prior to Developer making any Developer Distribution.

**“Monthly Modified Garage Revenue Payment”** means the annual payment by Developer to Garage Bond Trustee pursuant to Section 5.02, paragraph (b).

**“Monthly Modified Parking Garage Revenue”** means the Garage Revenue received by Developer from Developer Occupants which utilize the New Garage pursuant to a monthly or annual agreement and is calculated at a rate of \$75.00 per month multiplied by the number of monthly and annual Developer Occupants which paid to park for a particular month (notwithstanding the actual amount paid by the Developer Occupants to use the New Garage).

**“Monthly Parking Garage Revenue”** means the Garage Revenue received by Developer from Developer Occupants which utilize the New Garage.

**“New Garage”** means an approximately 7-story parking garage containing approximately 750 parking spaces to be located within Unit G.

**“New Garage Maintenance Reserve Fund”** means the account established pursuant to the Garage Bond Documents for the purposes of paying the capital maintenance costs and liabilities related to the New Garage which accrue and are the liability of Port KC, following the maturity or earlier expiration of the Garage Bond.

**“New Jobs”** means the full-time employees located at the Office Building Project and the Garage Project which exceed the base employment at the Office Building Project and the Garage Project



prior to the date on which a notice of intent to create the AIM Zone is provided to the Missouri Department of Revenue, less any decrease in the number of full-time employees at related facilities below the related facility base employment, as more fully described and defined in RSMo 68.075.2(3).

**“Office Building”** means an approximately 16-story, 250,000 square foot office building to be located within Replatted Unit 3.

**“Office Building Bond Debt Service”** means the Series A Office Building Bond Debt Service and the Series B Office Building Bond Debt Service.

**“Office Building Bond Documents”** means all of the contracts and other documents required to close on the Office Building Bonds.

**“Office Building Bond Trustee”** means the qualified entity selected by Port KC and Developer to act as the trustee with respect to the Office Building Bonds.

**“Office Building Bonds”** means the Series A Office Building Bond and the Series B Office Building Bond.

**“Office Building Earnings Tax Revenue”** means all of the Earnings Tax Revenue generated at or from the Office Building and the Office Building Project during the Earnings Tax Revenue Allocation Period.

**“Office Building Project”** means the development and construction of the Office Building.

**“Office Building Master Lease Agreement”** means the Lease Agreement to be entered into at the Bond Closing between Port KC, as lessor, and Developer, as master lessee, whereby, among other terms and provisions, Developer will (1) master lease Replatted Unit 3 and the Office Building from Port KC, (2) agree to cause the development and construction of the Office Building on behalf of Port KC utilizing the proceeds of the Office Building Bonds, (3) pay rent equal to the debt service on the Series A Office Building Bond, and (4) have the right and obligation to acquire the Office Building from Port KC upon the expiration or termination of such lease.

**“Office of the Recorder”** means the office of the Jackson County, Missouri Recorder of Deeds.

**“Ordinance 180982”** means City’s Committee Substitute for Ordinance No. 180982, As Amended, adopted on January 10, 2019.

**“P&L District”** means the dining, shopping, residential, office and entertainment district in Downtown Kansas City, Missouri, generally bounded by Baltimore Avenue on the west, Grand Boulevard on the east, 12<sup>th</sup> Street on the north and Interstate 670 on the South.

**“Port KC Authorizing Resolution”** means Resolution No. 2018-12-5, passed by the Board of Commissioners of Port KC on December 13, 2018.

**“Port KC Designated Representative”** means the staff person of Port KC designated from time to time as the lead point of contact to facilitate all Port KC reviews and approvals for the Project, as

required by the Port KC Development Agreements and the Transaction Documents. The Port KC Designated Representative as of the Effective Date is \_\_\_\_\_.

**“Port KC Development Agreements”** means the Port KC Office Development Agreement and the Port KC Garage Development Agreement.

**“Port KC Garage Development Agreement”** means the Development Agreement to be entered into at the Bond Closing on the Garage Bond between Port KC and Developer relating to the Garage Project, including the financing of the costs thereof and the management, use and operation of the New Garage.

**“Port KC Office Development Agreement”** means the Development Agreement to be entered into at the Bond Closing on the Office Building Bonds between Port KC and Developer relating to the Office Building Project, including the financing of the costs thereof and the management, use and operation of the Office Building.

**“Port KC Parking Revenue Payment”** means fifty percent (50%) of the General Parking Garage Revenue and Monthly Parking Garage Revenue that is not Monthly Modified Parking Garage Revenue which is payable to Port KC by Developer.

**“Port KC Participation Payment”** means the payment by the City to Port KC, in consideration of its duties and obligations in this Transaction and its contribution to the City Benefits, in the amount of \$300,000, upon the commencement of the Garage Revenue Commitment Term, and (b) \$500,000, upon the expiration of the second anniversary of the Garage Bond Closing Date and each anniversary thereafter, until the later of expiration of the Garage Revenue Commitment Term, or maturity of the Garage Bond.

**“Port KC Revenue Agreements”** mean, collectively, the agreements which set forth a right of Port KC to receive a payment (or right to receive for or direct a required payment to third-parties) pursuant to any or all of the Port KC Development Agreements and the Garage Revenue Guaranty.

**“Project”** means, together, the Office Building Project and the Garage Project.

**“Projected Bond Closing Date”** means the Bond Closing Date (or initial Bond Closing Date, if the Bonds do not have a concurrent Bond Closing Date) established by Developer and agreed to by Port KC, the City, and the Bond Trustee, request for which shall be given by Developer to City, Port KC, and the applicable Bond Trustee no fewer than 45 days prior to the Bond Closing Date.

**“Quarterly Reporting Date”** means the quarterly dates on which the City shall distribute the Office Building Earnings Tax Revenue to the Office Building Bond Trustee.

**“Quarterly Reporting Period”** means each quarterly period for which the City shall calculate the Office Building Earnings Tax Revenue received by the City.

**“Redevelopment Project 7”** means that Redevelopment Project described in the TIF Plan and in Second Committee Substitute for Ordinance No. 040161 adopted by the City on February 20, 2014.

“**Replatted Unit 2**” means that parcel of real estate to be established and created as Unit 2 of the Condominium by the 2019 Replat and the Second Condominium Declaration Amendment, and any improvements to it now or hereafter constructed or existing.

“**Replatted Unit 3**” means that parcel of real estate to be established and created as Unit 3 of the Condominium by the 2019 Replat and the Second Condominium Declaration Amendment, and any improvements to it now or hereafter constructed or existing.

“**Revenue Payments**” mean the Garage Revenue Payments, City Parking Revenue Payment, the Port KC Parking Revenue Payment, and the Developer KC Parking Revenue Payment.

“**Second Condominium Declaration Amendment**” means an amended and/or restated Condominium Declaration, in form and substance acceptable to Developer, which, among other things, will permit four units and owners.

“**Series A Office Building Bond**” means the draw-down bond or other debt instrument to be issued by Port KC, as requested by Developer, in the approximate amount of Sixty-Nine Million Dollars (\$69,000,000) plus costs of issuance capitalized interest and reserve funds, to be owned by Developer and repaid solely from the rent payable by Developer under the Office Building Master Lease Agreement, the proceeds of which are to be used to finance a portion of the cost to construct and complete the Office Building Project.

“**Series A Office Building Bond Debt Service**” means the debt service, debt service reserves and other financial obligations applicable to the Series A Office Building Bond while the Series A Office Building Bond is outstanding.

“**Series B Office Building Bond**” means the draw-down bond or other debt instrument to be issued by Port KC for the Office Building Project, as requested by Developer, in the amount of Twenty-Seven Million Dollars (\$27,000,000), plus the costs of issuance and the amount of capitalized interest and reserve funds on or with respect to either series of the Office Building Bond, the proceeds of which are to be used to finance a portion of the costs and completion of the Office Building Project, to be repaid, subject to annual appropriation, from the City Earnings Tax Revenue Allocation and any other revenues as Port KC may elect.

“**Series B Office Building Bond Debt Service**” means the debt service, debt service reserves and other financial obligations applicable to the Series B Office Building Bond while the Series B Office Building Bond is outstanding.

“**Strata AIM Zone**” means the Advanced Industrial Manufacturing Zone to be established by Port KC pursuant to Section 68.075, RSMo, as amended, upon the Office Building, Replatted Unit 3, the New Garage, and Unit G and any real property on or in which any of them are located.

“**Strata AIM Zone Declaration**” means the agreement to be entered into by and among City, Developer and Port KC concerning the Strata AIM Zone, the Strata AIM Zone Revenue, the Strata AIM Zone Surplus, and City and Developer’s obligations to Port KC related to the Strata AIM Zone, a form of is attached and incorporated by reference as Exhibit D, shall run with the land for the term stated therein, which shall be no less than the term of the Garage Bond and will include a 10-year extension, if, during the term of the Garage Bond, the AIM Zone has been

underperforming, in the reasonable discretion of Port KC, with input from the City, and to accommodate a refinancing of the Garage Bond.

**“Strata AIM Zone Deficiency Notice”** means the notice transmitted by the Garage Bond Trustee to the City (and the City to Developer) of a Strata AIM Zone Revenue Deficiency.

**“Strata AIM Zone Effort Determination”** means the written reasonable determination made by the City of Developer’s commercially reasonable good faith efforts to generate New Jobs in the Strata AIM Zone upon the conclusion of the applicable Strata AIM Zone Reporting Period, which determination shall set forth, with particularity, the basis of the City’s determination in good faith.

**“Strata AIM Zone Revenue Deficiency”** means the difference between the Strata AIM Zone Revenue and the amount of money needed to satisfy Garage Bond Debt Service and amounts due and owing to the Bond Trustee.

**“Strata AIM Zone Disbursement”** means the disbursement of Strata AIM Zone Revenue by the Missouri Department from the “Port Authority AIM Zone Fund” (as such term is defined in RSMo 68.075.5).

**“Strata AIM Zone Report”** means the report produced by the Missouri Department of Revenue in connection with its disbursement of payroll taxes to Port KC from the Port Authority AIM Zone Fund (as such term is defined in RSMo 68.075.5).

**“Strata AIM Zone Reporting Period”** means the period for which New Jobs are determined in support of a Strata AIM Zone Disbursement.

**“Strata AIM Zone Revenue”** means the payroll tax revenue derived from the Strata AIM Zone, which shall be pledged to the payments of principal, interest, and other amounts due under the Garage Bond.

**“Strata AIM Zone Revenue Surplus”** means the difference between the Strata AIM Zone Revenue needed for the debt service on the Garage Bond (as the same is established by the Garage Bond Documents) and the actual Strata AIM Zone Revenue generated during the applicable year during the term of the Garage Bond.

**“TIF Plan”** means the 1200 Main/South Loop Tax Increment Financing Plan, initially adopted by the City on March 4, 2004 by Ordinance No. 040154.

**“TIF Project Termination Ordinance”** means an ordinance terminating tax increment financing with respect to Redevelopment Project 7 of the TIF Plan, which termination shall at the request of the Developer, be (i) contingent upon the occurrence of the Bond Closing prior to or within nine (9) months after the passage of such ordinance, and (ii) effective upon the occurrence of the Bond Closing.

**“Transaction”** means the transactions contemplated by this Agreement and as to be provided in the Port KC Office Development Agreement and the Port KC Garage Development Agreement.

**“Transaction Documents”** means those documents, such as the Bond Transaction Documents and the Port KC Revenue Agreements to be executed by Developer, Port KC, the City, the Bond Trustee and/or others, as applicable, which are necessary or contemplated by this Agreement and/or the City Authorizing Ordinance to set forth the agreements of such parties to implement the Transaction.

**“Unit 1”** means (1) that parcel of real estate established and created as Unit 1 of the Condominium by the Current Plat, and any improvements to it now or hereafter constructed or existing (prior to the 2019 Replat), and (2) that parcel of real estate established and created as Unit 1 of the Condominium by the 2019 Replat and the Second Condominium Declaration Amendment, and any improvements to it now or hereafter constructed or existing (following the 2019 Replat).

**“Unit 2”** means that parcel of real estate established and created as Unit 2 of the Condominium by the Current Plat, and any improvements to it now or hereafter constructed or existing (prior to the 2019 Replat).

**“Unit 3”** means that parcel of real estate established and created as Unit 3 of the Condominium by the Current Plat, and any improvements to it now or hereafter constructed or existing (prior to the 2019 Replat).

**“Unit G”** means that parcel of real estate to be established and created as Unit G of the Condominium by the 2019 Replat and the Second Condominium Declaration Amendment, and any improvements to it now or hereafter constructed or existing.

**“Units”** means (1) Unit 1, Current Unit 2 and Current Unit 3 (prior to the 2019 Replat), and (2) Unit 1, Replatted Unit 2, Replatted Unit 3 and Unit G (following the 2019 Replat).

**EXHIBIT A**  
**UNIT DIMENSIONS FOR THE 2019 REPLAT**

[To be Appended]



**EXHIBIT B**  
**PLAT SPECIFICATIONS**

[To be appended]

**EXHIBIT C**

**STRATA AIM ZONE NEW JOBS PROJECTIONS**

[To be Appended]

**EXHIBIT D**  
**FORM OF STRATA AIM ZONE DECLARATION**

[To be Appended]

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