

**FUNDING AGREEMENT**

**BETWEEN**

**THE TAX INCREMENT FINANCING COMMISSION  
OF KANSAS CITY, MISSOURI**

**AND**

**THE CITY OF KANSAS CITY, MISSOURI,**

**FOR THE WIDENIG OF NE 48 STREET**

**AS PROVIDED FOR BY**

**THE PARVIN ROAD TAX INCREMENT FIANCNING PLAN**

**February** \_\_\_\_, 2023

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## **FUNDING AGREEMENT**

THIS FUNDING AGREEMENT is made as of this \_\_\_\_ day of **February** \_\_, 2023, between the TAX INCREMENT FINANCING COMMISSION OF KANSAS CITY, MISSOURI (the “Commission”) and the CITY OF KANSAS CITY, MISSOURI (the “City”), with respect to the following facts and objectives:

A. Pursuant to the Real Property Tax Increment Financing Allocation Act, Section 99.800 RSMo. 1988, et seq., as amended (“Act”), on December 14, 2000, the City Council of Kansas City, Missouri (the “Council”), by way of Ordinance No. 001638, approved the Parvin Road Tax Increment Financing Plan, which has been amended from time to time (the (“Plan”); and

B. The Plan provides, among other things, for the design and the construction of certain roadways and other public infrastructure improvements within and adjacent to the Redevelopment Area, as necessary to accommodate an expansion of the existing above ground industrial park and its underground industrial and commercial complex known as the Subtropolis, including the widening of NE 48 Street, beginning at Worlds of Fun Drive and continuing east approximately 3,600 linear feet (the “Road Improvements”) as described on **Exhibit A**, attached hereto, pursuant to the Plan; and

C. In order to assist in financing the installation of the Road Improvements, the City, pursuant to **Ordinance No. \_\_\_\_\_**, has expressed an interest in contributing Five Million Dollars (\$5,000,000) toward the cost of the Road Improvements, as such costs are described on **Exhibit B** (the “City’s Contribution”), attached hereto; and

D. The Commission desires to receive the City’s Contribution and deposit it into an account dedicated for the purpose of paying or reimbursing costs related to the Road Improvements; and

E. At the request of the Hunt Midwest Real Estate Development, Inc. (“Hunt Midwest”) and pursuant to the Thirteenth Amendment to the Plan, the City and the Commission desire to enter into this Agreement for funding \$5,000,000 of costs related to the Road Improvements.

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

### **ARTICLE I DEFINED TERMS**

**Section 1.1 Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

(a) “Act” shall mean Real Property Tax Increment Allocation Redevelopment Act, Mo. Rev. Stat. § 99.800 et seq. (1982, as amended).

(b) “Agreement” shall mean this Funding Agreement.

(c) “City” shall mean the City of Kansas City.

(d) “City’s Contribution” shall mean \$5,000,000 to be paid by the City to the Commission for the purpose of financing certain costs related to the Road Improvements.

(e) “Commission” shall mean the Tax Increment Financing Commission of Kansas City, Missouri.

(f) “Plan” shall mean the Parvin Road Tax Increment Financing Plan adopted by the City Council of the City, pursuant to Ordinance No. 001638 on December 14, 2000, and as amended from time to time.

(g) “Project Account” shall mean an account maintained by the Commission that is separate and apart from the Commission’s Special Allocation Fund, in which the Commission shall deposit City’s Contribution.

**Section 1.2 Undefined Terms.** Any capitalized terms undefined by this Article shall the meanings ascribed to them under the Act.

## **ARTICLE II REPRESENTATIONS**

**Section 2.1 Representations by the Commission.** The Commission represents and warrants to the City as follows:

(a) No Defaults or Violations. The execution and delivery of this Agreement by the Commission will not result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the Commission is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory laws, rules or regulations applicable to the Commission or its property.

(b) No Litigation. To the knowledge of the Commission, there is no litigation or proceeding pending or threatened against the Commission or any other person affecting the right of the Commission to execute or deliver this Agreement or the ability of the Commission to comply with its obligations under this Agreement. Neither the execution and delivery of this Agreement by the Commission, nor compliance by the Commission with its obligations under this Agreement, require the approval of any regulatory body, any parent company, or any other entity, which approval has not been obtained.

**Section 2.2 Representations by the City.** The City represents and warrants to the Commission as follows:

(a) Organization and Authority. The City (i) is a special chartered municipal corporation validly existing under the laws of the State of Missouri, (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations

hereunder, and (iii) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) No Defaults or Violations. The execution and delivery of this Agreement by the City will not conflict with or result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any of the laws, rules or regulations applicable to the City or its property.

(c) No Litigation. To the knowledge of the City, there is no litigation or proceeding pending or threatened against the City or any other person affecting the right of the City to execute this Agreement or to otherwise comply with the obligations under this Agreement. Neither the execution and delivery of this Agreement by the City, nor compliance by the City with its obligations under this Agreement, require the approval of any regulatory body or any other entity, which approval has not been obtained.

**Section 2.3 Survival of Representations.** All representations of the City and Commission contained in this Agreement or in any certificate or other instrument delivered by the City or the Commission pursuant to this Agreement, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof.

### **ARTICLE III FUNDING OF PROJECT COSTS**

**Section 3.1 Deposit by the Commission.** As soon as reasonably practicable after the receipt of the City's Contribution, the Commission agrees to deposit such money into the Project Account, which (a) shall be segregated on the books and records of the Commission from all other money, revenue, funds and accounts of the Commission, (b) shall be utilized to pay \$5,000,000 of the costs related to the Road Improvements, which have been certified by the Commission, pursuant to its Certification of Costs and Reimbursement Policy, attached hereto as Exhibit C and as may be amended from time to time by the Commission (the "Certification Policy").

**Section 3.2 Covenants of the Commission.** The Commission hereby covenants and agrees:

(a) to pledge all right, title and interest in, to and under the subaccount of the Project Account containing the City's Contribution to the payment of costs related to the Road Improvements;

(b) the Commission shall amend that certain Amended and Restated Agreement (the "Redevelopment Agreement"), dated June 8, 2013, as amended, between the Commission and Hunt Midwest to incorporate the City's Contribution as an additional source to fund the Road Improvements and shall exert reasonable efforts to cause Hunt Midwest to cause the Road Improvements to be completed in accordance with Exhibit A, attached hereto, and reimburse certain costs related to the Road Improvements, up to the amounts identified in the Redevelopment Agreement, to the extent all such costs have been certified in accordance with the Certification Policy and are available and on deposit in the Project Account; and

(c) in no event shall any portion of the City's Contribution be expended for any purpose other than for the payment of the Road Improvements.

**Section 3.3 Covenants of the City.** The City hereby covenants and agrees that the City, subject to appropriation, shall pay the City's Contribution to the Commission by **July 1, 2023.**

## **ARTICLE IV MISCELLANEOUS**

**Section 4.1 Term of Agreement.** This Agreement shall be effective from and after its execution and delivery and shall continue in full force and effect until the earlier of (a) the reimbursement of the City's Contribution, or (b) the termination of this Agreement in accordance with Section 4.3 (the "Term").

**Section 4.2 Breach; Compliance.** If any party (the "Breaching Party") does not comply with provisions of this Agreement, in that the Breaching 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 ten (10) days after notice of such default by any one of the other parties (the "Non Breaching Party"), the Breaching 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 ten (10) day period, then the Non Breaching 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 by the Breaching Party.

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 Non Breaching 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. No waiver made by the Non Breaching Party shall apply to obligations beyond those expressly waived.

If any action is instituted by any party hereto to enforce this Agreement, the prevailing party or parties shall be entitled to recover any and all costs, fees and expenses, including reasonable attorneys' fees incurred, in addition to any other damages that may be awarded in that action.

**Section 4.3 Termination of Agreement.** In the event that prior to the payment of the City's Contribution, the Commission is unable to enter into an amendment to the Redevelopment Agreement to cause Hunt Midwest to complete the Road Improvements or the Redevelopment Agreement is otherwise terminated prior to the payment or reimbursement of an amount equal to the City Contribution, the parties hereto agree that this Agreement shall terminate and the Commission shall reimburse to the City the amount of the City's Contribution paid to the Commission and not utilized for the payment of the Road Improvements.

**Section 4.4 Notices.** All written notices required by this Agreement shall be in writing and shall be served either personally or by certified mail, or by any other delivery service which obtains a receipt for delivery unless any such notice is required by law and such law provides a different form of delivery or service. Any such notice or demand served personally shall be delivered to the party being served (provided that such notice may be delivered to the receptionist

or any other person apparently in charge of such party's office at its address hereinafter set forth), and shall be deemed complete upon the day of actual or attempted delivery, as shown by an affidavit of the person so delivering such notice. Any notice so served by certified mail shall be deposited in the United States Mail with postage thereon fully prepaid and addressed to the party or parties so to be served at its address hereinafter stated, and service of any such notice by certified mail shall be deemed complete on the date of actual or attempted delivery as shown by the certified mail receipt. Service of any such notice by another delivery service shall be deemed complete upon the date of actual or attempted delivery as shown on the receipt obtained by such delivery service.

Any notice to the Commission shall be addressed to the Secretary of the Commission at:

Tax Increment Financing Commission  
of Kansas City, Missouri  
300 Wyandotte, Suite 400  
Kansas City, Missouri 64105

with a copy to:

Bryan Cave Leighton Paisner LLP  
3800 One Kansas City Place  
1200 Main Street  
Kansas City, Missouri 64105  
Attn: Wesley O. Fields, Esq.

Notices to the City shall be addressed to:

City of Kansas City, Missouri  
City Hall  
414 E. 12<sup>th</sup> Street, 29<sup>th</sup> Floor  
Kansas City, Missouri 64105  
Attn: City Manager

with copies to:

City of Kansas City, Missouri  
Law Department, City Hall  
414 E. 12<sup>th</sup> Street, 23<sup>rd</sup> Floor  
Kansas City, Missouri 64106

City of Kansas City, Missouri  
City Hall  
414 E. 12<sup>th</sup> Street, 18<sup>th</sup> Floor  
Kansas City, Missouri 64105  
Attn: Nicolas Bosonetto

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 4.5 Audit.** The City Auditor, the City's Internal Auditor and the Aviation Department shall have the right to audit this Agreement and all books, documents and records relating thereto. The Commission shall maintain all its books, documents and records relating to this Agreement during the Term of this Agreement and for three (3) years thereafter. The books, documents and records of the Commission in connection with this Agreement shall be made available to the City Auditor, the City's Internal and the Aviation Department, within ten (10) days after the written request is made.

**Section 4.6 Performance Date Not a Business Day.** If any date for the taking of any action hereunder is on a Saturday, Sunday or business holiday of the City, then such action shall be taken, on the first business day thereafter with the same force and effect as if made on the date fixed for payment or performance.

**Section 4.7 Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the City and the Commission and their respective successors and assigns.

**Section 4.8 Amendments, Changes and Modifications.** This Agreement may not be effectively amended, changed, modified, altered or terminated without the prior concurring written consent of all the parties hereto.

**Section 4.9 Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 4.10 No Pecuniary Liability.** All covenants, obligations and agreements of the City and the Commission contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the City or the Commission in other than their official capacity.

**Section 4.11 Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior oral agreements or written agreements, arrangements, and understandings relating thereto.

**Section 4.12 Severability.** If any provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into or taken thereunder, or any application of such provision, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Such illegality or invalidity of any application thereof shall not affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.



**Section 4.13 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed pursuant to due authority as of the date first above set forth.

TAX INCREMENT FINANCING COMMISSION  
OF KANSAS CITY, MISSOURI

ATTEST:

\_\_\_\_\_  
Heather A. Brown, Secretary

By: \_\_\_\_\_  
Alissia R. Canady, Chair

Approved as to form:

\_\_\_\_\_  
Counsel to the Commission

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF JACKSON    )

BE IT REMEMBERED, that on this \_\_\_\_ of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Alissia R. Canady, Chair of the Tax Increment Financing Commission of Kansas City, Missouri, a commission duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said commission, and such person duly acknowledged the execution of the same to be the act and deed of said commission.

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

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

THE CITY OF KANSAS CITY, MISSOURI,

By: \_\_\_\_\_  
Brian Platt, City Manager

Approved as to form and legality:

\_\_\_\_\_  
Dustin Johnson, Assistant City Attorney

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, sufficient to meet the obligation hereby incurred, and that there is a balance, otherwise unencumbered, and a cash balance sufficient to meet the obligation hereby incurred from which payment is to be made.

By: \_\_\_\_\_  
Tammy Queen, Director of Finance

STATE OF MISSOURI       )  
  ) ss.  
COUNTY OF JACKSON    )

BE IT REMEMBERED, that on this \_\_\_\_ of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Brian Platt, City Manager of the City of Kansas City, Missouri, a special chartered city of the State of Missouri, of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said commission, and such person duly acknowledged the execution of the same to be the act and deed of said commission.

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

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

## **Exhibit A**

### **Description of Road Improvements**

NE 48<sup>th</sup> Street will be widened to a 3 lane standard per the plans approved by Kansas City, Missouri from Worlds of Fun Drive and continuing east approximately 3,600 linear feet Typical construction items will include but not be limited to:

1. Construction related services such as inspections, design, reporting, permitting and staking
2. Local, State and Federal Permitting
3. Right of Way Acquisition
4. Utility Relocation
5. Geotechnical Testing and Inspections
6. Bidding
7. Grading, Erosion Control and Seeding
8. Storm Sewer and Box Culvert Construction
9. Asphalt, Concrete Pavement and Curb Construction
10. Sidewalk Construction
11. Waterline Construction
12. Streetlights
13. Striping and signage
14. Traffic Control
15. Landscaping
16. Construction Inspection
17. Engineering and Design
18. Project Administration
19. Any other construction and administration related activities to be determined throughout the design and bidding process

**Exhibit B**

**Description of Costs Related to Road Improvements**

<b>Item</b>	
Construction	\$4,742,858
Project Management	\$ 237,142
Interest	\$ 10,000
TIF Administration	\$ 10,000
<b>Total</b>	<b>\$5,000,000</b>

**Exhibit C**

**Certification of Costs and Reimbursement Policy**