

DEVELOPMENT AGREEMENT

Between

City of Kansas City, Missouri

And

Cas-KC-neda, LLC

Dated _____, 2023

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of the ___ day of _____, 2023 (the “**Effective Date**”), by and between the **CITY OF KANSAS CITY, MISSOURI**, a constitutionally chartered municipal corporation of the State of Missouri (the “**City**”) and **Cas-KC-neda, LLC** a Missouri limited liability company, (the “**Developer**”) (collectively, the “**Parties**”).

RECITALS

A. Reference is made to certain properties owned by Developer in Jackson County, Kansas City, Missouri, and generally located at 1108-1110 Grand Avenue (the “**Project Area**”) as shown on the site plan attached hereto as **Exhibit A** (the “**Site Plan**”) and legally described on **Exhibit B**.

B. Developer has proposed a project in the Project Area to provide for the rehabilitation of the historic Mason Building to become The Kindler—Kansas City, a 35 room urban hotel, with a lobby cocktail lounge (the “**Kindler Hotel**”).

C. The historic Mason Building comprising the Project Area has become significantly deteriorated, due to, among other things: the upper floors having been vacant and in poor condition for many years, the original copper façade having become unrecognizable and in need of restoration, the existence of asbestos, lead paint and mold and significant deferred maintenance by prior owners of the Project Site, and the structural deterioration of the utility vaults under the sidewalk, all as described in detail in a report by Sterrett Urban LLC provided to the City.

D. The Kindler Hotel rehabilitation includes restoring the historic façade and performing extensive renovations to the Project Area consistent with the U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties.

E. The Developer has requested City assistance to defray the cost of the Development Project through (1) the ad valorem property tax exemption attendant to the City’s ownership of the Project Site under the auspices of an Industrial Development Plan; (2) the periodic remittance to Developer of Eligible Project Funds to pay Reimbursable Expenses (as those terms are defined below); (3) the issuance of a Sales Tax Exemption Certificate with respect to the purchase of construction materials to be used in the construction of the Development Project; and (4) funds from a source yet to be identified to pay for the repair and sealing of the existing underground vault in the public right of way below the sidewalk in front of the Project Site (the “**Vault Work**”).

F. The Kindler Hotel is anticipated to create twenty (20) new permanent jobs and ninety (90) construction jobs.

G. The Developer and the City anticipate that economic activity will be created at the Kindler Hotel that will result in tax revenues to the City, including without limitation tax revenues from (i) expenditures of funds by Developer to construct, rehabilitate, remodel and improve the area; (ii) additional visitor lodging capacity within the City, particularly for high-demand events, reducing sales tax leakage in such circumstances; and (iii) operation of the Kindler Hotel, including

its proposed lounge, resulting in increased consumption of goods, services and utilities, such as, but not limited to, retail purchases and patronage of service providers and restaurant/bar, entertainment and other facilities in the City by patrons of the Kindler Hotel or its proposed lounge while located at or traveling to or from the Project Area.

H. The City believes that utilizing a portion of the City's net new revenues generated by the Kindler Hotel will advance multiple primarily public purposes including, but not limited to, (i) the elimination of blighting conditions, (ii) the retention and/or creation of high-quality jobs, and (iii) improvement of area infrastructure.

I. The City and the Developer desire to enter into this Agreement for the purpose of setting forth their respective covenants, agreements and obligations.

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 hereby agree as follows:

ARTICLE I

GENERAL PROVISIONS, DEFINITIONS & EXHIBITS

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

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

Section 1.03 Definition, and Rules of Interpretation. Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

(a) The terms defined in this Agreement which 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.

(b) 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 and exhibit 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.

(c) 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 1.04 Defined Terms. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth as follows:

- (a) “**City**” means City of Kansas City, Missouri.
- (b) “**City Council**” means the City Council of the City of Kansas City, Missouri.
- (c) “**Code**” means the Municipal Code of Ordinances for the City of Kansas City, Missouri.
- (d) “**Developer**” means Cas-KC-neda, LLC, a Missouri limited liability company, its permitted successors and assigns.
- (e) “**Development Project**” means redevelopment of a six-story, 38,600 (+/-) square foot building to a 35-key hotel with a restaurant/lounge generally as depicted on **Exhibit C**.
- (f) “**Eligible Reimbursement Funds**” means an amount equal to 1.25 percent (1.25%) of the net new annual taxable retail sales, thirty-five percent (35%) of the net new annual taxes related to Convention and Tourism Tax for Food Establishments and thirty-five percent (35%) of the net new annual taxes related to Convention and Tourism Tax for Hotels made in the Project Area. Such amounts shall be net of any fees or discounts applied or granted by the State of Missouri for the retail sales tax or the City of Kansas City, Missouri for the Convention and Tourism Taxes. For purposes of this Agreement, net new with respect to annual taxable sales shall be the difference between the total taxable sales made during the applicable year of the Reimbursement Period and the total taxable sales made in calendar year 2022.
- (g) “**Industrial Development Plan**” means the plan for the redevelopment of the Project Area through the development of the Development Project.
- (h) “**Lease Agreement**” means the Lease Agreement entered into by the City, as lessor, and the Developer, as lessee, to implement the Industrial Development Plan.
- (i) “**Ordinance**” means Committee Substitute for Ordinance 230403, passed by the City Council on _____, 2023, authorizing this Agreement.
- (j) “**Reimbursable Expenses**” means expenditures by Developer for those line items of costs of the Development Project identified on the attached **Exhibit D**.
- (k) “**Reimbursement Period Commencement Date**” means the first day of the calendar month in which the City first receives Eligible Reimbursement Funds generated by the operations of the Kindler Hotel at the Project Area.
- (l) “**Reimbursement Period**” means the period beginning on the Reimbursement Period Commencement Date and ending upon the earlier to occur of (i) the date upon which the Developer has received Eligible Reimbursement Funds in an aggregate amount equal to the Reimbursement Amount, or (ii) the date on which the City makes the first distribution of Eligible

Reimbursement Funds that is made after the twentieth (20th) annual anniversary of the Reimbursement Period Commencement Date.

(m) **“Reimbursement Amount”** means an amount equal to one hundred percent (100%) of the Reimbursable Expenses incurred for the Development Project, provided that such expenditure shall not exceed Two Million Eight Hundred Thirty Six Thousand Seven Hundred and Thirty-Five Dollars (\$2,836,735), which amount shall be subject to the provisions of Section 4.02 of this Agreement, and which amount shall be reduced by the amount of any Right of Way Improvement Funds appropriated by the City Council and disbursed to Developer.

(n) **“Right of Way Improvement Funds”** means funds in the amount of \$375,000 that are needed to pay the cost of the Vault Work, which amount is within the total amount of the Eligible Reimbursement Funds.

(o) **“Substantial Completion”** means the issuance of a certificate of occupancy or temporary certificate of occupancy for the Development Project, whichever is issued first.

Section 1.05 Term. This Agreement shall become effective on the Effective Date, and shall remain in full force and effect until the earlier of payment of all Eligible Reimbursement Funds or the last day of the Reimbursement Period, unless sooner terminated in accordance with the provisions hereof.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 City Representation and Warranties.

(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) **Effect on Prior Agreements.** The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the City or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

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

(d) **Warranty.** The City represents and warrants to the Developer that the foregoing items (a), (b) and (c) are true, accurate and complete as of the Effective Date and agrees that upon closing any transaction contemplated by this Agreement, the City shall confirm that the foregoing items (a), (b) and (c) shall be accurate, true and complete as of the Closing Date of such transaction.

Section 2.02 Developer Representation and Warranties.

(a) **Organization, Authorization.** The Developer (1) is a limited liability company validly existing under the laws of the State of Missouri; (2) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; and (3) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) **Prior Agreements.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms or conditions hereof do not and will not conflict with or result in a breach of any terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

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

(d) **Warranty.** The Developer represents and warrants to the City that the foregoing items (a), (b) and (c) are true, accurate and complete as of the Effective Date and agrees that upon closing any transaction contemplated by this Agreement the Developer shall confirm that the foregoing items (a), (b) and (c) shall be accurate, true and complete as of the Closing Date of such transaction.

ARTICLE III

OBLIGATIONS OF DEVELOPER

Section 3.01 In General.

(a) **Compliance with this Agreement.** The Developer will finance, design, develop, construct and cause to be operated and maintained the Development Project in accordance with the terms of this Agreement to the extent governed hereby.

(b) **Blight Remediation.** The Developer will perform general long-standing blight remediation as part of the Development Project.

(c) **Developer Ownership.** The Developer shall be responsible for construction, maintenance, and operations for the Development Project.

(d) **Financing.** The Developer is responsible for obtaining private capital in an amount sufficient, when added to the Eligible Reimbursement Funds, to finance the Development Project.

The Developer, along with other equity partners and participants, will be prepared to find the amount of private equity necessary to complete the financing of the Development Project.

(e) **Good Faith and Best Efforts.** Developer shall exercise good faith and reasonable best efforts in performing its obligations under this Agreement.

(f) **Compliance with Law.** Developer shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the Development Project, subject to the right to contest in good faith the asserted application thereof to the Developer or the Development Project.

(g) **ADA Accessible.** The Development Project will be constructed according to applicable ADA accessibility requirements.

Section 3.02 Incentive Applications.

(a) **CID.** Developer has caused the submission to the City of a Petition seeking the establishment of a Missouri Community Improvement District encompassing the Project Area, and will prepare and submit all other necessary applications, forms and materials required for the formation of such district.

(b) **Industrial Development Plan.** Developer has requested that the City approve the Industrial Development Plan for the Development Project. City agrees to cooperate in good faith in considering the Industrial Development Plan. Developer agrees that the terms of this Agreement will be incorporated into the Lease Agreement, which shall also provide that a breach of this Agreement shall be a breach of the Lease Agreement.

Section 3.03 Non-Discrimination.

The Developer shall itself not and shall require that contractor on the Development Project not discriminate against any employee or candidate for employment on the basis of an individual's race, hair texture or hair style associated with an individual's race, color, sex, religion, national origin, including limited English proficiency, or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of the Code. Developer shall itself not and shall require that any contractor not engage in any discrimination as prohibited by Chapter 3 of the Code. Furthermore, Developer shall comply with Title VI of the Civil Rights Act of 1964.

Section 3.04 Affirmative Action.

(a) Developer shall itself and shall require that all contractors utilized in connection with this Agreement maintain in effect, throughout the duration of this Agreement, an Affirmative Action Program in accordance with the provisions of Chapter 3, Article IV, Division 1 of the Code and the rules and regulations relating thereto, as amended.

(b) If Developer or its contractors fail, refuse or neglect to comply with the provisions of Chapter 3 and the rules and regulations relating thereto, then such action shall be deemed a total breach of this Agreement, and this Agreement may be terminated, canceled or suspended, in whole or in part, and the contractor or Developer may be declared ineligible for any further contracts

funded by City for a period of one (1) year.

Section 3.05 Ban the Box in Hiring and Promotion. Developer shall itself and shall require that all subcontractors working on the Development Project comply with Code § 38-104 regarding criminal records in employment.

Section 3.06 MBE/WBE.

(a) Developer will comply fully with the City's Minority and Women's Business Enterprise Program (as codified in Chapter 3, Article IV, Divisions 2 and 3 of the Code) and with the Instructions for Tax-Incentivized Construction Contracts, a copy of which is attached hereto as **Exhibit E**.

(b) Developer will allow the City's Civil Rights and Equal Opportunity Department (or its designee) to monitor the MBE/WBE achievement levels through reporting and onsite monitoring. This includes access to all books and records of Developer at reasonable times after reasonable advance notice.

(c) If the Developer fails to make good faith efforts (as defined in Chapter 3, Article IV of the Code) to achieve the goals for MBE/WBE, the City could sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate those damages, the monetary difference between either (1) the amount of the MBE/WBE goals set forth in the Contractor Utilization Plan, as amended, or (2) the goals established (whichever is lower) and the amount actually paid to qualified MBEs and WBEs for performing a commercially useful function will be deducted from the Developer's payments as liquidated damages. In determining the amount actually paid to qualified MBEs and WBEs, no credit will be given for the portion of participation that was not approved by the Director of the City's Civil Rights and Equal Opportunity Department, unless the Director determines that the Developer acted in good faith. No deduction for liquidated damages will be made when, for reasons beyond the control of the Developer, the MBE/WBE participation stated in the Contractor Utilization Plan, as amended and approved by the Director is not met. Such determination shall be subject to the provisions of the appeal procedure outlined in Chapter 3, Article IV, Division 2 of the Code.

Section 3.07. Quality Services Assurance Act. The Developer shall itself and shall require that all contractors working on the Development Project pay all employees who will work on the Development Project in the city limits of Kansas City, Missouri at least \$15.00 per hour, in the manner provided in Code § 3-66. Developer agrees that Developer and all contractors working on the Development Project shall submit the information and documentation required for city service contracts in Code § 3-66.

Section 3.08. Construction Completion Timeline. Pursuant to Code § 74-12, all incentive granted pursuant to this agreement, including the Eligible Reimbursement Funds, are contingent on the Developer achieving Substantial Completion the Development Project within three (3) years of July 13, 2023, unless the City Council hereafter specifically modifies the time period for completion by ordinance or resolution. If the Developer has not achieved Substantial Completion of the Development Project within three years of July 13, 2023 and the City Council has not specifically modified the time period for completion by ordinance or resolution, then Developer

shall forfeit all right to any incentives authorized by this agreement, and shall be required to pay to the City any Eligible Reimbursement Funds or Right of Way Improvement Funds that were previously paid for the Development Project. Such repayment shall be made within sixty (60) days of the City notifying Developer of their failure to achieve Substantial Completion of the Development Project within the time provided by this Agreement.

ARTICLE IV

FINANCING AND INCENTIVES FOR DEVELOPMENT PROJECT

Section 4.01 Good Faith. The City agrees to work in good faith with Developer to administer Developer's applications for receipt of qualifying incentives.

Section 4.02 Incentives. The City, in good faith, agrees to support Developer in capturing certain revenues for reimbursements as follows:

(a) Reimbursement. In order to make possible the Development Project and to support the resulting economic development, the City agrees, subject to the annual appropriation of funds, to reimburse Developer with the Eligible Reimbursement Funds generated by the Development Project up to the Reimbursement Amount during the Reimbursement Period.

- (i) City Agreement to Reimburse. Subject to subsection 4.02(a)(viii), the City will, during the Reimbursement Period, pay to the Developer all Eligible Reimbursement Funds (defined Section 1.04) received by the City, until the Developer has received payment in full of the Reimbursement Amount. Notwithstanding the foregoing, in the event that the Eligible Reimbursement Funds shall generate less than the full Reimbursement Amount during the Reimbursement Period, the City shall not be obligated to fund the difference.
- (ii) Payment of Reimbursement Amount. The City during the Reimbursement Period shall bi-annually transfer these funds to the Developer within 90 days of receipt of required Sales and Convention & Tourism Tax data, subject to certification of expenditures by City of the Development Project's costs as stated in 4.02(b).
- (iii) Sales and Convention & Tourism Tax Data. Developer shall furnish to the City bi-annually on each July 31 and January 31 during the Term, , such information in such format as the City may reasonably require with respect to tax revenues generated within the Project Area during the respective six-month period ending the immediately preceding June 30 and December 31, as applicable, for purposes of calculating the amount of Eligible Reimbursement Funds covered to be remitted pursuant to this Agreement. Notwithstanding anything herein to the contrary the City shall not be required to budget or contribute any Eligible Reimbursement Funds in the absence of the Developer's full compliance with its obligations under this Agreement (subject to Developer's right to cure such lack of compliance).
- (iv) Tenant Reporting. In connection with this Agreement, if applicable, Developer shall require all tenants to provide the City with access to such parties' sales, or other appropriate tax returns for economic activities located in or generated by the

Development Project, and shall provide such related information reasonably requested by the City in connection therewith, including certification of the number of employees and total payroll (not to include production of individual income tax returns).

- (v) Annual Budget Request. The chief executive of the City or other officer of the City at any time charged with the responsibility of formulating budget proposals shall include in the budget proposals submitted to the Council, in each fiscal year in which this Agreement shall be in effect, a budgeted amount to be paid under this Agreement for the ensuing fiscal year; it being the intention of the City that the decision to budget or not to budget under this Agreement shall be made solely by the respective governing body and not by any other official of the City.
 - (vi) Restriction on Use of Proceeds. Notwithstanding any provision of this Agreement to the contrary, the parties acknowledge and agree that the Eligible Reimbursement Funds may include sums generated from sales taxes that are restricted in their use to such purposes as are included within the terms of those statutes and ordinances authorizing the imposition and collection of such sales taxes. In the event that a court of competent jurisdiction shall have finally determined that any portion of the Eligible Reimbursement Funds may not lawfully be made for the purposes of reimbursing or paying certain costs related to the implementation of the Development Project, then the City shall not be required to budget or contribute such portions.
 - (vii) Eligible Reimbursement Funds to Constitute Current Expense. The parties acknowledge and agree that the Eligible Reimbursement Funds shall constitute currently budgeted expenditures of the City, and shall not in any way be constructed or interpreted as creating a liability or a general obligation or debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of general credit, tax revenues, funds or money of the City. The City's payment obligations under this Agreement shall be from year to year only, and shall not constitute a mandatory payment obligation of the City in any ensuing fiscal year beyond the then current fiscal year.
 - (viii) Certification of Costs – Notwithstanding anything herein to the contrary, no costs or expense incurred by Developer shall be eligible for reimbursement under this Agreement, and no such cost or expense shall be payable to Developer under this Agreement, until such costs or expense has been certified pursuant to the Certification of Costs and Reimbursement Policy attached hereto as **Exhibit F**. The reasonable costs of such Cost Certification will be paid by Developer or, in the alternative, by the City in the form of a deduction against those amounts otherwise disburseable to Developer pursuant to this Agreement.
- (b) STECM Certificates. The City agrees to issue to Developer and/or its contractors one or more Sales Tax Exemption Certificates as requested from time to time, for use by or on behalf of Developer with respect to the purchase of construction materials for the Development

Project, provided that the issuance is permitted by law and Developer is not in breach of this Agreement.

ARTICLE V

DEFAULT AND REMEDIES

Section 5.01 Event of Default. A party (the “**Defaulting Party**”) to this Agreement shall be in default of this Agreement upon the happening of any of the following events within thirty (30) days after notice of the happening of any of the following events by any other party to this Agreement (a “**Non-Defaulting Party**”) to the Defaulting Party, the Defaulting Party shall not have cured such a default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period (each, an “**Event of Default**”):

(a) Any party does not comply with the provisions of this Agreement, in that a party shall do, permit to be done, or fail to omit to have done anything contrary to or required of it by this Agreement;

(b) The suspension or revocation of any act, power, license, permit or authority that has the effect of preventing and stopping Developer or City from performing under this Agreement;

(c) The failure of any party to perform its materials obligations under this Agreement.

Section 5.02 Breach; Compliance. Upon an Event of Default, a Non-Defaulting Party shall have the option to pursue any one or more or all of the following remedies, without notice or demand whatsoever, except as otherwise provided for herein:

(a) The Non-Defaulting Party, at its option, may terminate this Agreement and the Non-Defaulting Party shall be entitled to pursue any other rights or remedies at law or in equity as a result of such Event of Default.

(b) A Non-Defaulting Party may maintain this Agreement in full forces and effect, in which case the Parties shall perform all of their respective obligations hereunder, subject to a Non-Defaulting Party’s right to elect to terminate this Agreement at any time, provided any such Event of Default remains uncured.

(c) A Non-Defaulting Party may do whatever a Defaulting Party is obligated to do under the terms of this Agreement, in which event the Defaulting Party shall reimburse the Non-Defaulting Party on demand for any expenses, including, without limitation, reasonable attorney’s fees, which the Non-Defaulting Party may incur and this effecting satisfaction and performance or, or compliance with, the Defaulting Party’s duties and obligations under this Agreement.

(d) Pursuit by the Non-Defaulting Party of any foregoing remedies shall not preclude pursuit by the Non-Defaulting Party of any other remedies herein provided or any other remedies provided by law (all such remedies being cumulative), nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver or any amounts then due to the Non-Defaulting Party hereunder or of any amounts accruing to the Non-Defaulting Party by reason of the violation of

any terms, provisions, and covenants herein contained. No waiver by the Non-Defaulting Party of any violation or breach of any terms, provisions or covenants herein contained shall be deemed or construed to constitute a waiver of any violation or breach of any of the terms, provisions or covenants herein contained. Forbearance by the Non-Defaulting Party in enforcing one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such default or of the Non-Defaulting Party's right to enforce any such remedies with respect to any such default of any subsequent default. In case suit be part of Developer or the City to be kept or performed, and a breach is established, the prevailing party shall be entitled to recover all expenses incurred in connection with such suit, including reasonable attorney's fees.

(e) 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. No waiver made by was party shall apply to obligations beyond those expressly waived.

ARTICLE VI

MISCELLANEOUS

Section 6.01 Modification. The terms, conditions and provisions of this Agreement can be neither modified, amended nor eliminated, except by written agreement of each signed by the Developer and the City.

Section 6.02 No Gratuities and Kickbacks. The provisions of Code § 3-303 prohibiting gratuities to City employees, and kickbacks by contractors, and §§ 3-307 and 3-309, imposing sanctions and penalties for violations shall apply to this Agreement.

(a) Gratuities. No party to this Agreement has or will offer or give any City employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefor.

(b) Kickbacks. City and Developer certify that no payment, gratuity, offer of employment or benefit has been or will be made or on behalf of or solicited from any third-party contractor under a contract to City or Developer has an inducement for the award of a subcontract or order in connection with the subject matter of this Agreement.

Section 6.03 Conflicts of Interest. Code § 3-301, prohibiting City officers and employees from having a personal financial interest in any contract with the City, and §§ 3-307 and 3-309, imposing sanctions and penalties for violations, shall apply to this Agreement. City and Developer each certify that no officer or employee of City or Developer has, or will have, a direct or indirect financial interest in this Agreement which is incompatible with the officer's or employee's discharge of official duties in the public interest, and that no officer or employee of City or

Developer, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of City or Developer in this Agreement.

Section 6.04 Anti-Discrimination against Israel. Developer shall itself certify and shall require that all contractors working on the Development Project certify that they are not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

Section 6.05 Notice. All 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 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 herein after 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 the notice. Any notice so served by certified mail shall be deposited in the United States Mail with postage 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. Notices shall be addressed as follows:

City: City Manager
City Hall, 29th Floor
414 E. 12th Street
Kansas City, Missouri 64106

with a copy to: City Attorney
City Hall, 23rd Floor
414 E. 12th Street
Kansas City, Missouri 64106

with a copy to: Finance Department
City Hall, 3rd Floor
414 E. 12th Street
Kansas City, Missouri 64106

Developer: Cas-KC-neda, LLC
906 Olive Penthouse Suite 3
St Louis, Missouri 63101

with a copy to: Lewis Rice LLC

1010 Walnut Suite 500
Kansas City, Missouri 64106
Attn: Douglas Stone, Esq.

Any Party may change its address for notices by ten (10) days' advance written notice to that effect.

Section 6.06 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 to delete or modify, in whole or in part, in 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) 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 6.07 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. This Agreement sets forth the entire agreement between the Parties in regard to the subject matter hereof and supersedes any and all prior agreements between the Parties in regard to the subject matter hereof.

Section 6.08 Time of the Essence. Time and exact performance are of the essence of this Agreement. Developer and City agree to diligently seek to finalize this agreement so Developer can confidentially share with financing parties.

Section 6.09 Binding Effect, Entirety.

(a) Binding Effect. This Agreement shall be binding upon the Parties hereto and upon their assigns, transferees and successors in interest, provided no party may assign this Agreement or the rights or obligations hereunder without the express written consent of the other Parties.

(b) Entirety. This Agreement sets forth the complete understanding of City and Developer and supersedes all previous negotiations, representations and agreements between them and their agents.

Section 6.10 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 6.11 Continued Cooperation of Parties.

(a) The City and Developer agree, upon the request of another party, 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.

(b) The Parties acknowledge that Developer is still seeking a funding source from the City for the Vault Work. The City agrees to work in good faith to assist Developer in obtaining funding for the Vault Work. The City's good faith cooperation shall not require the City to give Developer preference for the use of funds that might be available from City funding sources. Notwithstanding the foregoing, the City Manager's office, through the Capital Improvement Plan, will give good faith consideration to including an amount necessary to pay the Right of Way Improvement Funds as part of a future City bond issue that would finance repairs to public improvements.

Section 6.12 Indemnification. Developer shall defend, indemnify, and hold harmless City and any and all of its officials, officers and employees from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the Development Project and/or performance of its obligations under this Agreement, caused in whole or in part by the Developer or the contractors selected by the Developer ("**Contractors**"), except for any claims, damages, liability, losses, costs and expenses incurred due to the negligence or willful misconduct of City or its agencies, officials, officers or employees. Developer shall require all its Contractors to defend, indemnify, and hold harmless City and any and all of its officials, officers and employees from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with this Agreement, caused in whole or in part by the Contractors, except for any claims, damages, liability, losses, costs and expenses incurred due to the negligence or willful misconduct of City or its agencies, officials, officers or employees.

Section 6.13 Insurance. Developer shall maintain the following insurance policies in the amounts and subject to the terms hereof during the term, provided, however, that so long as the Lease is in effect, the terms of the Lease shall control Developer's obligations with respect to insurance:

A. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Contractual Liability
- c. Per Project Aggregate Liability limit
- d. No Contractual Liability Limitation Endorsement

e. Additional Insured Endorsement, ISO form CG20 10 and CG20 37, current edition, or their equivalent.

B. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers Liability \$1,000,000 accident with limits of:

\$1,000,000 disease-policy limit

\$1,000,000 disease-each employee.

C. Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000, covering owned, hired, and non-owned automobiles. The policy shall provide coverage on an "any auto" basis and on an "each accident" basis. This insurance policy will be written on a Commercial Automobile Liability form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Development Project and/or performance of Developer's obligations under this Agreement by Developer or its Contractors.

The Commercial General Liability Insurance specified above shall provide that City and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds, including completed operations, for the Development Project. Developer shall provide to the City a certificate of insurance showing all required coverage and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

All insurance policies must be provided by Insurance Companies that have an A.M. Best's rating of "A-V" or better, and are licensed or authorized by the State of Missouri to provide insurance in Missouri.

Developer's failure to maintain the required insurance coverage will not relieve Developer of its contractual obligation to indemnify the City. If the coverage afforded is cancelled or changed or its renewal is refused, Developer shall give at least thirty (30) days prior written notice to the City. In the event Developer fails to maintain the required insurance coverage in effect, the City may order Developer or its Contractors to stop work.

In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions and by law.

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

manner under this Agreement, it being understood that the Developer is an independent contractor hereunder.

[Signature Page Follows]

CITY:

CITY OF KANSAS CITY, MISSOURI

By: _____
Brian Platt, City Manager

Approved as to form:

Emalea Kaye Black
Assistant City Attorney

DEVELOPER:

CAS-KC-NEDA, LLC

By: _____
Nicolas Castaneda, Manager

INDEX OF EXHIBITS

- A SITE PLAN
- B LEGAL DESCRIPTION
- C DEVELOPMENT PROJECT DESIGN DEPICTIONS
- D REIMBURSABLE COSTS
- E HRD INSTRUCTIONS FOR TAX-INCENTIVIZED CONSTRUCTION CONTRACTS
- F CERTIFICATION OF COSTS AND REIMBURSEMENT POLICY

EXHIBIT A

SITE PLAN

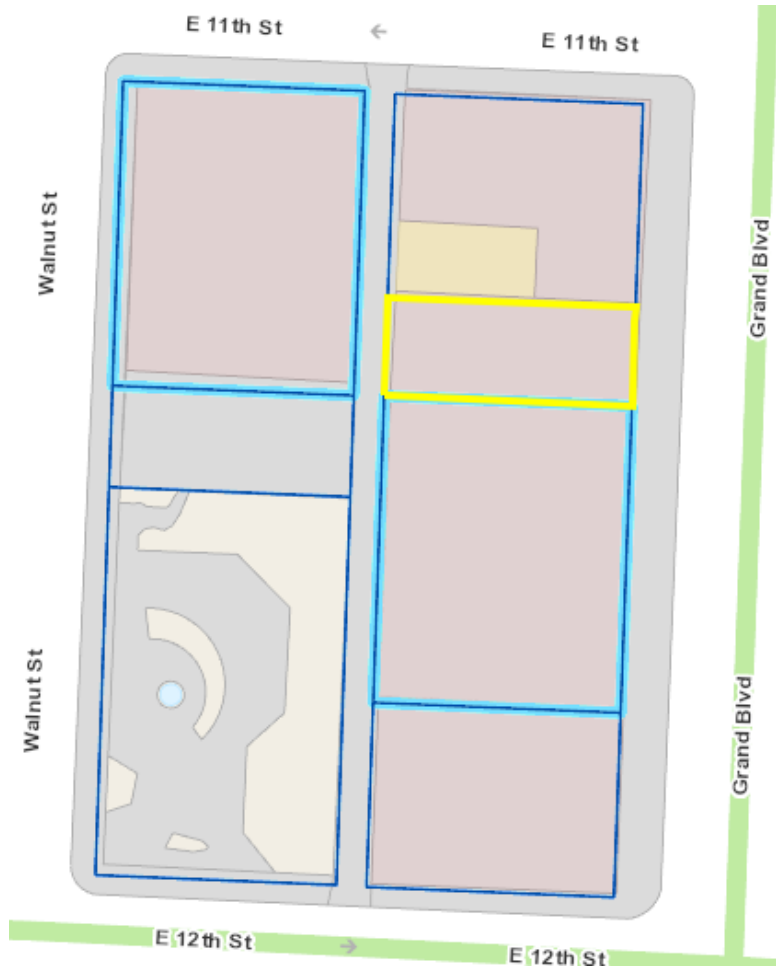


EXHIBIT B

LEGAL DESCRIPTION

29-220-49-11-00-0-00-000

1110 Grand Blvd

ALL THAT PART OF LOT 81, LYING NORTH OF A LINE DRAWN EAST AND WEST THROUGH THE CENTER OF THE SOUTH WALL OF THE 6 1/2 STORY BUILDING NOW SITUATED THEREON EXTENDING TO THE EAST AND WEST BOUNDARY LINES OF SAID LOT, AS SAID WALL IS DESCRIBED IN THE PARTY WALL AGREEMENT FILED FOR RECORD ON JANUARY 15, 1910, AS DOCUMENT NO. 740232, AND RECORDED IN BOOK B-1264 AT PAGE 438, ALL IN SWOPE'S ADDITION, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

EXHIBIT C

DEVELOPMENT PROJECT DESIGN DEPICTIONS

EXHIBIT D

REIMBURSABLE COSTS

EXHIBIT E

CREO INSTRUCTIONS FOR TAX-INCENTIVIZED CONSTRUCTION CONTRACTS

EXHIBIT F

CERTIFICATION OF COSTS AND REIMBURSEMENT POLICY

Policy Statement: The purpose of this Certification of Costs and Reimbursement Policy is to outline the procedure and set forth all such requirements and obligations that must be observed and complied with as a requirement of any contribution of sales taxes to any development project.

Actions Required Prior to Certification

1. The City Council must have authorized, by ordinance, the execution of the agreement pursuant to which sales tax revenues are to be contributed.

2. The City and the relevant developer must have properly executed an agreement identifying the improvements for which the Developer will incur costs and seek reimbursement. Costs shall not be certified or reimbursed if the Developer is in breach of such agreement, or any other agreement related to the Development Project executed by any public entity pursuant to which real and/or personal property taxes are to be abated or exempted.

Obligation of Developer Prior to Reimbursement

1. Prior to the City's reimbursement of any eligible reimbursable costs, the Developer shall submit two (2) copies of all documentation, as reasonably requested by the City or the Cost Certifier, to substantiate that such costs were incurred and have not been reimbursed or otherwise paid from any other public source.

2. The Developer may be requested to meet with City staff or the Cost Certifier to address questions or concerns that may arise concerning a certification request, in which event, Developer shall attend such meeting.

Obligation of City Staff During Certification Process

1. City staff will forward to the Cost Certifier the certification request as stated by the Developer, along with the original documentation submitted by the Developer and any other information requested by the Cost Certifier.

2. In the event questions or requests for additional documentation arise during the review process, City will maintain a copy of all additional documentation provided to the Cost Certifier.

3. The City shall not consider requests for reimbursement from the Developer (a) that are not submitted pursuant to this policy and (b) that are not submitted to the City within eighteen (18) months from the date such costs were incurred by the Developer.

Cost Certifier's Review and Report: Certification

1. Upon the Cost Certifier's receipt of a request for certification, the Cost Certifier shall review all documentation provided with such request and will issue a report noting the amount recommended for certification by the City, and any disallowed or questioned costs.

2. City will notify the Developer of disallowed or questioned costs and the reason for the questioned costs included in the recommendation from Cost Certifier. In the event the Developer is able to address the disallowed or questioned costs, City will cooperate with the Developer and Cost Certifier to answer the questions and complete the report.

3. The certification of costs shall be made by the City's Director of Finance or their Designee. Following such certification the amounts so certified shall be distributed in accordance with the terms of the applicable agreement under which the sales taxes are being contributed.

Selection of Cost Certifier

The City shall select the Cost Certifier to be used hereunder from the list of Cost Certifiers providing such services to the Tax Increment Financing Commission of Kansas City, Missouri.