

FOURTH AMENDMENT TO COOPERATIVE AGREEMENT

FOR DESIGN AND CONSTRUCTION

THIS FOURTH AMENDMENT TO THE COOPERATIVE AGREEMENT FOR DESIGN AND CONSTRUCTION is entered into and effective upon the execution hereof, by and among the **CITY OF KANSAS CITY, MISSOURI**, a constitutionally chartered municipal corporation of the State of Missouri (hereinafter, the "City"), the **PERFORMING ARTS COMMUNITY IMPROVEMENT DISTRICT**, a political subdivision of the State of Missouri (hereinafter, the "CID"), **KAUFFMAN CENTER FOR THE PERFORMING ARTS** (formerly The Metropolitan Kansas City Performing Arts Center), a Missouri not-for-profit corporation (hereinafter, the "KCPA") and **PAC HOLDING, INC.**, a Missouri not-for-profit corporation (hereinafter "PAC").

RECITALS

A. City, CID, KCPA and PAC entered into a Cooperative Agreement for Design and Construction, executed by the City on June 12, 2008, and approved by Second Committee Substitute for Ordinance No. 071045, as amended, passed April 10, 2008 (the "Agreement").

B. The Agreement was subsequently amended by the First Amendment to the Agreement to provide additional funding for the completion of design work for the Parking Garage and for related excavation work and the repayment of same from bond funds or other sources available to City, to extend the time for completion of the Parking Plan and to modify the requirements related to LEED certification (the "First Amendment").

C. The Agreement was amended a second time for the purpose of clarifying the flow of revenue from the Parking Garage and the use of revenue from the Parking Garage (the "Second Amendment").

D. The Agreement was amended a third time for the purpose of clarifying the City's contribution to additional costs based on modifications to the design and construction of the Parking Garage requested by the City (the "Third Amendment").

E. The Agreement, the First Amendment, the Second Amendment and the Third Amendment are hereafter referred to collectively as the "Amended Agreement".

F. The parties now desire to modify the Amended Agreement for the purpose of clarifying additional payments by the City to the CID to supplement any potential lost revenues of the CID caused by the removal of certain property from the bounds of the CID.

NOW, IN CONSIDERATION of the premises and of the mutual covenants and agreements hereinafter expressed, the parties mutually agree as follows:

AGREEMENT

A. Section 6(g) of the Amended Agreement is hereby amended and restated in its entirety to modify the obligations of the City to supplement any lost revenues of the CID caused by the removal of certain real property from the bounds of the CID:

6. Obligations of City. City agrees to take the following actions under this Cooperative Agreement:

g. Supplemental Payment by City to CID.

(i) In addition to the foregoing and notwithstanding the provisions of Section 3 as to the liability of PAC, City agrees to pay to the CID the Supplemental Payment within thirty (30) days of receiving the Supplemental Payment Notice; provided, that, the City shall not be required to make the Supplemental Payment to the CID for any fiscal year in which the CID's operating bank account has an account balance of greater than \$750,000, as of the end of the prior fiscal year. The following terms used herein shall have the following meanings:

(A) "Prior FY Sales Tax Revenue" means, (1) for purposes of the first calculation of the Supplemental Payment, all Sales Tax Revenue for the fiscal year ending April 30, 2021, and (2) for purposes of calculating the Supplemental Payment for all following fiscal years, all Sales Tax Revenue for the most recently ended fiscal year.

(B) "Applicable Maximum Payment" means that amount set forth in the attached **Exhibit F** for the applicable fiscal year.

(C) "Sales Tax Revenue" means all sales taxes collected by the CID in any fiscal year.

(D) "Supplemental Payment" means the greater of (1) an amount *equal to* the Applicable Maximum Payment *less* Prior FY Sales Tax Revenue, or (2) zero.

(E) "Supplemental Payment Notice" means that notice provided by CID to the City setting for the calculation of the Supplemental Payment for the applicable fiscal year, including information regarding the CID's average operating account balance for the applicable fiscal year.

(ii) In order to ensure the City's ability to make the Supplemental Payment under this Section, the City Manager 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 City Council, at minimum an amount equal to the Applicable Maximum Payment for the ensuing fiscal year; it being the intention of the City that the decision to appropriate or not to appropriate

under this Cooperative Agreement shall be made solely by the City Council and not by any other official of the City.

(iii) The City intends, subject to the provisions above respecting the failure of the City to budget or appropriate funds sufficient to make the Supplemental Payment or any other such amount mutually agreed upon by the City and the CID, to pay all routine operational, administrative and capital maintenance costs of the Parking Garage. The City reasonably believes that legally available funds in an amount sufficient to make the Supplemental Payment or any other such payments mutually agreed by the City and the CID during any Fiscal Year can be obtained.

(iv) City further intends to do all things lawfully within its power to obtain and maintain funds from which the Supplemental Payment may be made, including making provision for such payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of the City. Notwithstanding the foregoing, the decision to budget and appropriate funds is to be made in accordance with the City's normal procedures for such decisions.

B. All other terms and conditions of the Amended Agreement shall remain in full force and effect except as specifically modified by this Fourth Amendment to Cooperative Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Fourth Amendment to the Cooperative Agreement for Design and Construction as of the day and year as indicated below.

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| <p>Dated: _____, 2019</p> | <p>CITY OF KANSAS CITY, MISSOURI</p> <p>By: _____ Name: Title:</p> |
| <p>ATTEST</p> <p>_____</p> <p>City Clerk</p> | |
| <p>Approved as to form:</p> <p>_____</p> <p>City Attorney</p> | |
| <p>Dated: _____, 2019</p> | <p>KAUFFMAN CENTER FOR THE PERFORMING ARTS, a Missouri not-for-profit corporation</p> <p>By: _____ Name: Title:</p> |
| <p>Dated: _____, 2019</p> | <p>PAC HOLDING, INC., a Missouri not-for-profit corporation</p> <p>By: _____ Name: Title:</p> |
| <p>Dated: _____, 2019</p> | <p>PERFORMING ARTS COMMUNITY IMPROVEMENT DISTRICT, a political subdivision of the State of Missouri</p> <p>By: _____ Name: Title:</p> |

EXHIBIT F

APPLICABLE MAXIMUM PAYMENT

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For any fiscal year ending after April 30, 2040, the Maximum Applicable Payment shall be an amount equal to the prior year Maximum Applicable Payment *multiplied by* the CPI-U. The “CPI-U” shall mean the Consumer Price Index for all Urban Consumers (CPI-U) for the Kansas City, Missouri and Kansas City, Kansas metropolitan area.