

SALES TAX CONTRIBUTION AGREEMENT

THIS SALES TAX CONTRIBUTION AGREEMENT (the “**Agreement**”) is made as of _____ 2019, by and between the CITY OF KANSAS CITY, MISSOURI (the “**City**”) and Trillium Industrial No. 1, LLC (the “**Developer**”) (City and Developer collectively referred to herein as the “**Parties**”).

RECITALS

WHEREAS, Developer proposes the redevelopment of the existing KC Holiday Inn generally situated at the southeast corner of Main Street and East 45th Street and bounded on the east by Walnut Street in Kansas City, Missouri (the “**Property**”) which currently consists of a five-story hotel tower on the southeast side of the Property, a two-story hotel wing on the east side of the Property, a two-story wing on the north side of the Property, and a hotel lobby, meeting room space and a parking structure on the west side of the Property; and

WHEREAS, Developer proposes the redevelopment of this existing KC Holiday Inn into a new Kimpton brand hotel that includes the complete renovation of all of the existing rooms in the five-story hotel tower and the east two-story hotel wing, the replacement of the northern two-story hotel wing with a new five-story hotel tower, the complete renovation of the hotel lobby, meeting rooms, public space and kitchen and back-of-the house areas, and the refurbishing of the parking structure and other parking areas (the “**Project**”); and

WHEREAS, the City Council, by Ordinance No. 19____, agreed to provide certain financial assistance for the redevelopment of the Property by committing, subject to annual appropriation and actual collection, a sum equal to certain additional revenue from taxes which are imposed by the City and generated by economic activities within the Project area, which would otherwise be deposited into the City’s general municipal funds; and

WHEREAS, extraordinary site costs and parking requirements particular to the Project have created added financial demands that render the Project infeasible but for the infusion of public assistance; and

WHEREAS, Developer has agreed to eliminate all points of ingress and egress of vehicular traffic along Main Street directly from the Project site in furtherance of the City’s plans for streetcar expansion; and

WHEREAS, Developer has agreed to a community benefit agreement whereby it has agreed to enhance the streetscape to create a “gateway” from the northern and northeastern boundaries of the Project to the Kemper Contemporary Art Museum, the Kansas City Art Institute and the Southmoreland neighborhood; and

WHEREAS, the City desires to assist by providing public assistance for the purposes of offsetting certain Project expenses as it has determined that the redevelopment of this existing KC Holiday Inn into a new Kimpton brand hotel as more specifically described above will primarily serve a public purpose by providing positive economic impacts for the community through the creation of jobs, promoting the City as a convention, visitors and tourist center and thereby promoting convention and tourism business within the City as a whole, reducing the number of points of ingress and egress of vehicular traffic along Main Street in furtherance of the City’s plans for streetcar expansion and agreeing to enhance the streetscape to create a “gateway” from the northern and northeastern boundaries of the Project to the Kemper Contemporary Art Museum, the Kansas City Art Institute and the Southmoreland neighborhood; and

WHEREAS, the Parties hereto now desire to set forth their agreements regarding the utilization of the City's financial assistance and the inclusion of the entirety of the Project when calculating the maximum amount of same; and

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:

1. Definitions, and Rules of Interpretation.

(a) All capitalized words or terms used in this Agreement shall have the meanings set forth in the Recitals or as set forth herein.

(b) Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

(i) 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 the express terms of this Agreement.

(ii) 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.

(iii) 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.

(iv) 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.

2. Mutual Assistance and Conditions. The parties hereto agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be 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.

3. Estimated Redevelopment Project Costs. The total estimated costs to the Developer to implement the Project are approximately Ninety Five Million and 00/100 Dollars (\$95,000,000.00).

4. City Contribution. In accordance with Ordinance No. 19____ and in furtherance of promoting the City's interest in the promotion of convention and tourism business, the City's plans for expansion of the streetcar and the creation of a "gateway" from the northern and northeastern boundaries of the Project to the Kemper Contemporary Art Museum, the Kansas City Art Institute and the Southmoreland neighborhood the City agrees to contribute an amount equal to:

(a) Fifty percent (50%) of the total retail sales taxes generated from the City's 1.00% capital improvements sales tax pursuant to Section 68-446 of the City's Code of Ordinances (or any successor provision thereto) from sales occurring within the boundaries of the Property; plus

(b) Twenty-five percent (25%) of that portion of the retail sales taxes generated from the City's 7.50% convention and tourism sales tax imposed on sales or charges for hotel rooms pursuant to Section 68-551 of the City's Code of Ordinances (or any successor provision thereto) from sales occurring within the boundaries of the Property and not otherwise allocated pursuant to Section 92.336(1) and (2), RSMo or Section 68-551 of the City's Code of Ordinances, as the same may be amended from time to time; plus

(c) Fifty percent (50%) of the total retail sales taxes generated from the City's 2.00% convention and tourism sales tax imposed on the retail sales of food and beverages pursuant to Section 68-551 of the City's Code of Ordinances (or any successor provision thereto) from sales occurring within the boundaries of the Property.

The sum derived from the addition of the foregoing (a), (b) and (c) shall be deemed the "City Contribution".

5. City Contribution Cap. Notwithstanding the provisions of Section 4 of this Agreement, in no event shall the City Contribution exceed the total amount of Twenty-Five Million Nine Hundred Forty-Three Thousand Dollars (\$25,943,000). Furthermore, if the City Contribution shall generate less than said total amount during the term of this Agreement, the City shall not be obligated to fund the difference from any other source.

6. Budget for City Contribution. The City intends, on or before the last day of each City fiscal year, to budget, specifically with respect to this Agreement, money sufficient to fund the City Contribution with respect to the next succeeding fiscal year. City's obligation to budget the City Contribution shall expire at the end of term as provided for in Section 13 of this Agreement. If Developer enters into a similar agreement with the CVA regarding the contribution of CVA revenues, in no event shall City be responsible for budgeting or redirecting such CVA revenues, nor shall City be liable for any damages sustained by Developer as a result of the CVA's failure or election not to budget such CVA revenues.

7. Annual City 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 of the City Contribution 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. The City agrees, subject to the provisions above respecting the failure of the City to budget, to contribute the City Contribution in accordance with this Agreement. The City agrees to do all things lawfully within its power to obtain and maintain funds from which the City Contribution may be made, including making provision for such amounts to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of the City.

8. Restriction on Use of Proceeds. Notwithstanding any provision of this Agreement to the contrary, the Parties acknowledge and agree that the City Contribution 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 City Contribution may not lawfully be made for the purposes of reimbursing costs related to the implementation of the Project, then the City shall not be required to budget or contribute such portions of the City Contribution.

9. City Contribution to Constitute Current Expense. The parties acknowledge and agree that the City Contribution shall constitute currently budgeted expenditures of the City and shall not in any way be construed 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.

10. Obligations of Developer. The Developer shall utilize the City Contribution solely and exclusively for the purposes of reimbursing expenses incurred by and for, the redevelopment of the Property for the Project. Any other expenses shall be ineligible for reimbursement from the City Contribution; including, but not limited to Developer's or management fees.

11. Reporting. Developer is aware that the calculation of the City Contribution will necessitate the provision of such data to the City as it may reasonably require with respect to the total sales, inclusive and exclusive of hotel rooms, occurring at the Property so that the City is able to properly and accurately calculate the amount of the City Contribution due in any given year. Developer shall submit the Economic Activity Tax Summary Form, attached hereto as Exhibit A and incorporated herein by reference, to City not less than twice per year at such times as have been provided for therein. Developer shall further provide, or require such persons as may subsequently own or occupy the Property and whom transact sales thereon to provide, such additional information, and supplements thereto, as the City may reasonably require for purposes of performing City's obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, the City assumes no obligation hereunder to compel or to take any action or institute any proceeding to compel the production of such information in the event that it is not voluntarily submitted to the City, and the City shall not be obligated to budget or contribute any sum for which it has not been provided such information.

12. Audit. Developer shall maintain, for the Term of this Agreement, such bills, contracts, invoices or records of a similar nature with respect to the costs incurred in preparing the site for development and constructing the Project, so that City may independently verify that expenses to which the City Contribution may be applied pursuant to this Agreement have been incurred. Developer shall provide such documents to the City's Director of Finance, or his or her designee, within ten (10) days following any written request tendered by the City. In the event that Developer expends any portion of the City Contribution in a manner inconsistent with the terms of this Agreement, the amount so spent shall be disgorged and the City shall be entitled to pursue such additional remedies as may be appropriate pursuant to Section 16 of this Agreement.

13. Effective Date; Term. This Agreement shall become effective upon execution (the "Effective Date") and shall continue in effect thereafter (the "Term") until such time as a period of twenty (20) years, commencing on and from such date as a certificate of occupancy allowing for the opening of any portion of the Project for the sale and occupancy of rooms to the public shall have been issued by the

City (the “CofO Date”), shall have elapsed or an amount equal to the City Contribution Cap as set forth in Section 5 of this Agreement shall have been contributed by the City, whichever shall first occur.

14. Modification. The terms, conditions and provisions of this Agreement can be neither modified nor eliminated except by written agreement between the parties.

15. 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. 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 a party shall apply to obligations beyond those expressly waived.

16. 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 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. Notices shall be addressed as follows:

CITY: Director of Finance City Hall, 3rd Floor
414 E. 12th Street
Kansas City, MO 64106

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

DEVELOPER: Trillium Industrial No. 1, LLC
c/o Janko Group, LLC
Attn: Gary Janko
2610 Lake Cook Road, Suite 100
Riverwoods, IL 60015

with a copy to: Dentons US LLP
Attn: David Fenley
4520 Main Street, Suite 1100
Kansas City, MO 64111-7700

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.

17. Validity and Severability. If any provisions of this Agreement or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18. 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.

19. 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.

20. Assignment. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns; provided, however, that the Developer shall not have the right to assign this Agreement without the consent of the City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Developer shall have the right to assign this Agreement with notice to the City (a) as collateral to lenders providing financing or refinancing for the Project from time to time, and (b) to an entity that is under the common control or ownership as Developer.

21. Estoppel. Each party agrees to provide from time to time to another party upon request certification in writing, for the benefit of the requesting party, and its actual or prospective lenders, transferees and other interested third parties (i) that this Agreement is in full force and effect, (ii) that there are no defaults or unperformed obligations hereunder on the part of a party (or if such defaults or unperformed obligations are believed to exist, specifying the nature and extent thereof), (iii) a history of sums paid toward the City Contribution prior to such certification, and (iv) such other matters as may be reasonably requested to be certified, all in form and content as reasonably requested by the requesting party.

22. Continued Cooperation of Parties. Each party agrees that, upon the request of the other from time to time, it will provide such other information, documents or instruments and/or undertake such further actions as may be reasonably requested in order to give full force and effect to the intent of the provisions, terms and covenants of this Agreement or in order to allow, subject to applicable law, for confirmation that the City Contribution has been properly computed.

[SIGNATURE PAGES FOLLOW]

Trillium Industrial No. 1, LLC

By: _____

Title: _____

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ____ day of _____, 2019 before me, a Notary Public in and for said state, personally appeared _____, of Trillium Industrial No. 1, LLC, personally known by me to be the person who executed the within instrument in behalf of said entity and acknowledged to me that they executed the same for the purposes therein stated.

Notary Public

My Commission Expires:

Exhibit A

**Kimpton Hotel Redevelopment Project
Economic Activity Tax Summary Form**

Period/s of Submission:

1st Half calendar year (Jan. – June, **due July 31st**)

2nd Half calendar year (July – Dec., **due January 31st**)

Business Name (dba):

Business Address (local):

Contact Name/Telephone:

E-Mail Address:

Individual Earnings Tax, Net Profits Tax, Convention & Tourism Tax:

Federal Identification Number (FEIN): _____

1. Total Employees Working in Kansas City, MO: _____

2. Total Employees Working in Plaza Hotel Project: _____

Percentage of Employees in Plaza Hotel Project (divide line 2 by line 1):

Missouri Sales and Use Tax:

Missouri Tax Identification Number (8 digits): _____

Business Location Code: Sales Tax (38000-XXX-XXXX) (as shown on MO DOR Sales Tax Return Form): _____

I/We, _____ (insert name of signator for business), in my capacity as the _____ (insert title of signator), hereby certify that I am authorized by _____ (insert authorizing entity), to release such confidential tax information referenced herein to the City of Kansas City, Missouri, and that such records are true and correct, as of _____ (insert date), and in the event any such records should be proven incorrect, I will notify the City via the addresses shown below.

(Signature)

(Date)

Please PDF email or Mail ONE copy of this completed and signed form to:

Email: Sean.Carroll@kcmo.org **Mail:** City of Kansas City, MO
Development Finance
Attn: Sean Carroll, Financial Manager
414 E. 12th Street, 3rd Floor
Kansas City, Missouri 64106