

**DOWNTOWN HOUSING FINANCIAL ASSISTANCE AGREEMENT**

THIS DOWNTOWN HOUSING FINANCIAL ASSISTANCE AGREEMENT (this "Agreement") is made as of the 28th day of November, 2012 (the "Effective Date") by and between the **CITY OF KANSAS CITY**, a Missouri municipal corporation (the "City"), the **ECONOMIC DEVELOPMENT CORPORATION OF KANSAS CITY, MISSOURI**, a Missouri nonprofit corporation in good standing (the "EDC") and the **EDC LOAN CORPORATION**, a Missouri nonprofit corporation in good standing (the "EDC Loan Corp"), which may be collectively referred to as the "Parties."

**RECITALS**

A. Rental rates, land costs and the need for structured parking, in certain circumstances, have created the need for public investment in multifamily residential development.

B. The City issued its 2012B Special Obligation Taxable Bonds for the purpose of supporting multifamily residential development in downtown Kansas City, Missouri.

C. The City currently has two million dollars (\$2,000,000.00) in available bond proceeds for such purposes.

D. The EDC, City, and The Downtown Council, a Missouri nonprofit corporation in good standing, have been actively working together to promote multifamily residential development and develop a process for identifying those multifamily residential projects that should receive a public financial investment.

E. The parties desire to enter into this Agreement for the purpose of setting forth the covenants, agreements and obligations of the Parties with respect to the utilization of the bond proceeds.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement hereby agree as follows:

**ARTICLE I**

**REPRESENTATIONS**

**Section 1-1.** The Parties represent and warrant to each other that:

(a) *Organization and Authority.* Each of them is duly organized and lawfully existing under applicable law, possesses lawful power and authority to enter into, execute and deliver this Agreement and to carry out their obligations hereunder, and by all necessary actions have been duly authorized to execute and deliver this Agreement acting by and through their respective duly authorized officers.

(b) *No Defaults or Violations of Law.* The execution and delivery of this Agreement will not result in a breach of any of the terms of, or constitute a default under, any indenture or other agreement or instrument to which any of the Parties hereto is a party.

(c) *Public Purpose.* Performance under this Agreement will further a public purpose.

(d) *No Litigation.* There is no litigation or proceeding pending or threatened affecting their respective right to execute or deliver this Agreement or the ability to comply with its obligations under this Agreement. Neither the execution nor delivery of this Agreement, nor compliance with the obligations under this Agreement, requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

## ARTICLE II

### TRANSFER OF BOND PROCEEDS

**Section 2-1.** The City shall transfer the sum of two million dollars (\$2,000,000.00) (“**City’s Contribution**”) to the EDC Loan Corp by depositing such sum into one or more interest-bearing accounts identified by the EDC Loan Corp or through such other process as the City and the EDC Loan Corp may mutually agree to utilize. The EDC Loan Corp shall provide the City such information as City may require for the purposes of completing the transfer provided for herein, and shall provide City with such additional information as City may reasonably require from time-to-time as to the status of City’s Contribution until the same has been fully expended or returned to City in accordance with this Agreement.

**Section 2-2.** The EDC Loan Corp shall receive City’s Contribution and maintain the same intact for use as provided in this Agreement. In no event shall the EDC Loan Corp utilize or allow any other person, including but not limited to the EDC, to utilize any portion of City’s Contribution except as provided within this Agreement. City’s Contribution shall be segregated on the books and records of the EDC Loan Corp and shall be kept separate and apart on the books and records of the EDC Loan Corp from all other moneys, revenues, funds and accounts of the EDC Loan Corp and shall not be commingled with any other moneys, revenues, funds and accounts of the EDC Loan Corp.

## ARTICLE III

### REQUEST FOR PROPOSALS

**Section 3-1.** EDC, in cooperation with Downtown Council and City, shall develop a request for proposals (“**RFP**”) for the purpose of soliciting proposals for the development of multifamily housing within the geographical boundaries of the Kansas City Downtown Streetcar Transportation Development District, and shall advertise such RFP in a manner intended to identify one or more qualified developers with proven experience, financial resources and professional expertise to develop one or more high-quality, high-density, multi-family, market-rate residential developments within such geographical boundaries. EDC shall make any revisions to the RFP prior to solicitation, and shall issue any addendum to the RFP, as may be

requested by City. In no event shall EDC issue any RFP or addendum to any RFP to which City has not approved.

**Section 3-2.** EDC, in cooperation with Downtown Council and City, shall develop defined criteria to be utilized in selecting the best proposal(s) in response to the RFP. Those criteria shall include, at a minimum, consideration of the location(s) proposed to be developed, with preference to be given to projects in close proximity to locations in which the City has made substantial financial investments; project size, with preference given to projects that will maximize the number of units on the proposed site(s); the identity of the developer, with preference given to developers able to demonstrate a proven track record of successful multi-family residential development free of pending litigation and who are current in all taxes; time frame, with preference given to those developers demonstrating the ability to complete the project(s) within any defined time limits; and financial capacity, with preference given to those project(s) that have secured funding sufficient to complete the project and have leveraged other available incentives and state or federal financial assistance. EDC shall form a selection committee for purposes of selecting the best developer(s) in response to the RFP. City shall be entitled to appoint a representative to such selection committee and the City's appointee shall be entitled to participate, without restriction, in any discussions or vote. EDC shall ensure that the City's appointee is notified of any meeting in sufficient time for the City's appointee to fully participate.

**Section 3-3.** City shall be entitled to participate in the negotiation of any development agreement. EDC shall negotiate in good faith to incorporate such terms as City requires be included in any development agreement. Any development agreement financed with any portion of City's Contribution shall be presented to the City Council for its consideration prior to execution, and no such development agreement shall be executed unless and until the same has been approved by the City Council. The City Council shall not be obligated to approve any development agreement to which it objects. In the event that the City Council elects not to approve a development agreement, the Parties may elect to negotiate revisions to such development agreement and present it to the City Council for its further consideration at a future date, or terminate negotiations and begin negotiating one or more development agreements with the next best proposer(s).

**Section 3-4.** Neither EDC nor EDC Loan Corp shall execute any development agreement with any developer to which the City has identified a reasonable objection until such time as the objection has been resolved to City's satisfaction as determined by City in writing and the development agreement has been approved by the City Council. The EDC Loan Corp shall not release any portion of City's Contribution to EDC, to any developer selected by EDC in response to any RFP, or to any other person whatsoever, unless EDC shall have included City as provided in this Article III and City shall have consented to such transfer, in writing, subsequent to the execution of this Agreement.

## ARTICLE IV

### REQUIRED TERMS IN ANY DEVELOPMENT AGREEMENT

**Section 4-1.** Any development agreement funded with any portion of City's Contribution shall include terms reflecting the provisions of this Section, and such requirements shall be included within the body of the RFP. The requirements of this Section are not exhaustive and City may require that any such development agreement contain additional terms as City may direct.

(a) *Prevailing wage.* Developer shall pay prevailing wages in compliance with Sections 290.210 – 290.340, RSMo, and the regulations adopted thereunder. The development agreement shall provide that City shall have the right to monitor and audit the developer's compliance with the prevailing wage requirement and to require that the developer submit such reporting as City may reasonably require, but City shall not be obligated to take any action hereunder.

(b) *M/WBE.* Developer shall comply with the terms of City's minority and women's business enterprise program as codified at Sections 38-84 – 38-100.8, Code of Ordinances, as the same may be amended or recodified from time-to-time, and the regulations and procedures implemented by the City's Human Relations Department for the purpose of implementing such program. The development agreement shall provide that City shall have the right to monitor and audit the developer's compliance with the M/WBE requirements and to require that the developer submit such reporting as City may reasonably require, but City shall not be obligated to take any action hereunder.

(c) *Construction Workforce.* Developer shall comply with the terms of City's construction workforce program as codified at Sections 38-83.1 – 38-83.13, Code of Ordinances, as the same may be amended or recodified from time-to-time, and the regulations and procedures implemented by the City's Human Relations Department for the purpose of implementing such program. The development agreement shall provide that City shall have the right to monitor and audit the developer's compliance with the construction workforce requirements and to require that the developer submit such reporting as City may reasonably require, but City shall not be obligated to take any action hereunder.

(d) *Affirmative Action.* Developer shall comply with the terms of City's affirmative action requirements as codified at Section 38-2, Code of Ordinances, as the same may be amended or recodified from time-to-time, and the regulations and procedures implemented by the City's Human Relations Department for the purpose of implementing such program.

(e) *Discriminatory Practices.* Developer shall be precluded from engaging in discriminatory practices as codified at Sections 38-131 – 38-137, Code of Ordinances, as the same may be amended or recodified from time-to-time.

(f) *Insurance.* Developer shall procure and maintain, and shall require its contractors to procure and maintain, in effect throughout the duration of the development agreement, insurance coverage not less than the types and amounts specified below. Developer shall ensure that City, the EDC, and the EDC Loan Corp are named as additional insureds.

1. Commercial General Liability Insurance: with limits of \$2,000,000 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 or, where not available, the aggregate limit shall be \$2,000,000.
- d. No Contractual Liability Limitation Endorsement
- e. Additional Insured Endorsement, ISO form CG2010, current edition, or its equivalent.

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

Workers' Compensation	Statutory
Employers' Liability with limits of:	\$100,000 each accident
	\$500,000 disease –policy limit
	\$100,000 disease - each employee

3. Commercial Automobile Liability Insurance: with a limit of \$2,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto 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 agreement.

4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$2,000,000.

Regardless of any approval by City, it will be the responsibility of the developer to ensure that the required insurance coverage is procured and maintained in effect at all times. In the event developer fails to ensure that the required insurance is procured and maintained in effect, or that City, the EDC, and the EDC Loan Corp are named as additional insureds, City may order that the construction of the development project immediately stop.

(g) *Indemnification* Developer shall defend, indemnify, and hold harmless City, the EDC, the EDC Loan Corp, and any of their agencies, 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 performance under the development agreement, caused in whole or in part by developer, developer's employees, agents, or contractors, or others for whom developer is legally liable, regardless of whether or not caused in part by any act or omission of City, the EDC, the EDC Loan Corp, their agencies, officials, officers or employees. Developer's contracts with every contractor shall also require such persons or entities to defend, indemnify, and hold harmless the City, the EDC, the EDC Loan Corp, and any of their agencies, officials, officers and employees to the same extent that developer is required to defend, indemnify, and hold harmless City, the EDC, the EDC Loan Corp, and any of their agencies, officials, officers and employees.

(h) *Bonds.* Developer shall furnish a payment bond, performance bond and maintenance bond guaranteeing the developer's faithful performance of each and every term of its development agreement, including those terms under which developer is obligated to pay legally required wage rates including the prevailing hourly rate of wages in the locality, as determined by the Department of Labor and Industrial Relations or by final judicial determination, for each craft or type of workman required to construct the development project as provided herein; guaranteeing the payment of all obligations as provided in Section 107.170 RSMo 2000, as amended; and guaranteeing the services and work against faulty workmanship and faulty materials for the period of at least two (2) years following completion of the development project. The bonds shall name City, the EDC and EDC Loan Corp as co-obligees.

## ARTICLE V

### GENERAL COVENANTS AND PROVISIONS

**Section 5-1.** No portion of City's Contribution shall be expended outside the boundaries of the Kansas City Downtown Streetcar Transportation Development District.

**Section 5-2.** Any portion of City's Contribution not obligated by November 28, 2014, shall be returned to City by EDC Loan Corp.

**Section 5-3.** Any portion of City's Contribution recovered by EDC or EDC Loan Corp from any developer awarded any portion of such funds, regardless of the basis upon which such funds were recovered, shall be utilized as provided in this Agreement or returned to City as provided in Section 5-2.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

**Section 6-1.** If any party to this Agreement shall be in default or breach of any provision of this Agreement, the non-defaulting or non-breaching party or parties may terminate this Agreement, suspend their performance and invoke any other legal or equitable remedy after giving the defaulting or breaching party notice and reasonable opportunity to correct such default or breach.

**Section 6-2.** No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon an event of default shall impair any such right or power.

**Section 6-3.** No failure on the part of the City, EDC or EDC Loan Corp to enforce any covenant or provision contained in the Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of any other party to this Agreement to enforce the same in the event of any subsequent default.

## **ARTICLE VII**

### **MISCELLANEOUS PROVISIONS**

**Section 7-1. Notices.** All notices shall be sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight delivery service. Any notice sent by (a) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States Mail; (b) personal messenger shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the business day following the date the notice is deposited with the overnight delivery service addressed as specified below:

If to City:                      Office of City Manager  
    City of Kansas City, Missouri  
    City Manager  
    414 East 12<sup>th</sup> Street, 29<sup>th</sup> Floor  
    Kansas City, Missouri 64106

With a copy to:                Law Department  
    City of Kansas City, Missouri  
    City Attorney  
    414 East 12<sup>th</sup> Street, 28<sup>th</sup> Floor  
    Kansas City, Missouri 64106

And a copy to:                City Development Department  
    City of Kansas City, Missouri  
    City Development Director  
    414 E. 12<sup>th</sup> Street, 15<sup>th</sup> Floor  
    Kansas City, Missouri 64106

If to the EDC:                Economic Development Corporation of Kansas  
    City, Missouri  
    1100 Walnut, Suite 1700  
    Kansas City, Missouri 64106  
    Attention: President/CEO

With a copy to:                    Martinez Madrigal & Machicao, LLC  
616 West 26<sup>th</sup> Street  
Kansas City, Missouri 64108  
Attention: Robin S. Martinez

If to the EDC Loan  
Corp:                                    EDC Loan Corporation  
1100 Walnut, Suite 1700  
Kansas City, MO 64106  
Attention: Executive Director

Such address may be changed by a party by giving the other party ten (10) days' notice of such change in writing.

**Section 7-2. Assignment.** No party may assign this Agreement or any portion of the obligations without the prior written consent of every other party to this Agreement.

**Section 7-3. Entire Agreement.** This Agreement incorporates all prior negotiations and discussions between the Parties regarding its subject matter and represents the entire agreement of the Parties. This Agreement may only be modified by written instrument executed by the Parties.

**Section 7-4. Headings.** The captions and section headings contained in this Agreement are for convenience of reference only and shall not be considered in any interpretation of the provisions of this Agreement.

**Section 7-5. 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 Parties.

**Section 7-6. Representatives not Individually Liable.** No member, official, representative or employee of the City, EDC or EDC Loan Corp shall be personally liable in the event of any default or breach of any obligations under the terms of the Agreement.

**Section 7-7. 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 7-8. 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.

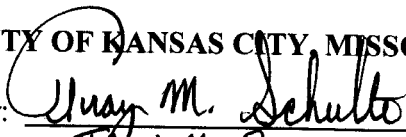
**Section 7-9. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

**Section 7-10. Venue.** Any lawsuit, action, or proceeding arising under this shall be brought exclusively in the Circuit Court of Jackson County, Missouri.

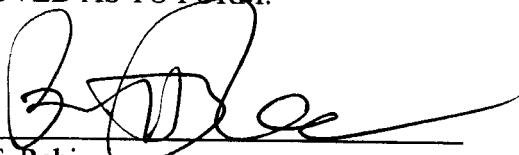
**Section 7-11. Electronic Transactions.** The parties agree that the transaction described herein may be conducted and related documents, including signatures of parties to documents, may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.


**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**


**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF KANSAS CITY, MISSOURI**  
By:   
Name: TROY M. SCHULTE  
Title: CITY MANAGER

APPROVED AS TO FORM:

By:   
Brian T. Rabineau  
Assistant City Attorney

**ECONOMIC DEVELOPMENT  
CORPORATION OF KANSAS CITY,  
MISSOURI**  
By:   
Name: BURDETTE FULLERTON  
Title: PROS. MGMT / CEO

**EDC LOAN CORPORATION**  
By:   
Name: TOM KENAGY  
Title: EXECUTIVE DIRECTOR