

PRE-DEVELOPMENT AGREEMENT

THIS PRE-DEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of the ___ day of June, 2023 (the “**Effective Date**”) by and between the **CITY OF KANSAS CITY**, a Missouri municipal corporation (the “**City**”) and **HISTORIC NORTHEAST LOFTS, LLC**, a Missouri limited liability company, including its successors and assigns (the “**Developer**”). City and Developer are also referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties.**”

WHEREAS, the Developer proposes a project for development utilizing various economic development tools available and consisting of residential, retail, and community services development across approximately 22 acres at the Area as reflected in Exhibit A; and

WHEREAS, Developer plans for approximately 589 units of residential development from adaptive reuse of existing structures, with a minimum of 75% of the units being restricted to families who earn between 30-80% of the Median Family Income; and

WHEREAS, Developer plans for 30,000 square feet of daycare, early childhood development and afterschool space from adaptive reuse of existing structures; and

WHEREAS, Developer plans for approximately 75,000 square feet of retail development in multiple phases from adaptive reuse of existing structures; and

WHEREAS, Developer plans for a farmers market development in one phase from new structures; and

WHEREAS, Developer currently has an option to purchase the property needed for the Project; and

WHEREAS, Developer anticipates the Project will result in 500 temporary jobs and 250 permanent jobs in the Historic Northeast Neighborhood; and

WHEREAS, the total cost of the Project is approximately \$224,991,531.00 and Developer’s investment in the Project requires and is contingent upon substantial economic incentives; and

WHEREAS, Developer and City anticipate that economic activity will be created at the property more particularly described in Exhibit A and Exhibit B (the “**Property**”), 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 Property; (ii) substantial new investment in the development project property for tenant use; (iii) increased consumption of goods, services and utilities by new employees; and (iv) activities of employees in the City while located at or traveling to or from the Property such as, but not limited to, retail purchases, consumption of goods and services and patronage of restaurant, entertainment and other facilities in the City; and

WHEREAS, the City finds that the Project serves a public purpose in that it will promote economic development in the City, remediated blight, and serve as a catalyst for additional investment and development; and

WHEREAS, the City and Developer intend to enter into future agreements to provide additional obligations and benefits for both parties related to the Project, as more particularly described in Exhibit C; and

WHEREAS, the City and Developer now desire to enter into this Agreement for the purpose of setting forth covenants, agreements, and obligations of the Parties to make possible the development project.

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

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. Defined Terms.

“Area” means the area in the City’s Historic Northeast generally bounded by Hardesty on the West, the railroad on the Southeast, and Independence Ave on the North.

“Code” means the Code of Ordinances, City of Kansas City..

“Incentives” means the financial incentives which may include a tax abatement, sales tax exemption on construction materials, in whole or in part, of real property taxes and sales taxes, the capture and redirection of certain tax revenues, tax credits, or other City funding sources, or such combination of the foregoing as the City Council and PIEA may elect to extend to the development project.

“Infrastructure Improvements” means the public infrastructure construction outlined in Section 3.03.

“MFI” Kansas City metropolitan area median family income.

“PIEA” means The Planned Industrial Expansion Authority of Kansas City, Missouri.

“Plan Map” means the map of the area with proposed improvements, attached hereto as Exhibit B.

“Private Development” means the private construction and development as outlined in Section 3.02.

“Project” means the Private Development outlined in Subsection 3.02 and the Infrastructure Improvements outlined in Subsection 3.03.

“Reasonable Delay” means good faith justifiable reasons for delays, including, but not limited to, acts of God, governmental restrictions, stays, judgments, orders, decrees, enemy actions, civil commotion, fire, casualty, strikes, work stoppages, shortages of labor or materials or other causes beyond the reasonable control of Developer.

“Redevelopment Entity” means any entity with the authority to recommend to the city tax increment financing as that term is used in RSMo § 99.800 et seq or any entity authorized by statute to issue tax abatements, including corporations organized under RSMo § 353.010 et seq. for the purpose of redevelopment within the city limits, land clearance for redevelopment authority with an area of operation within the city, enhanced enterprise zone boards with an area of operation within the city and planned industrial expansion authority for the city.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.01 City Representations and Warranties.

1. **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.
2. **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.

3. **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.
4. **Warranty.** The City represents and warrants to the Developer that the foregoing items (1), (2) and (3) 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 (1), (2) and (3) shall be accurate, true and complete as of the Closing Date of such transaction.

Section 2.02 Developer Representations and Warranties.

1. **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.
2. **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.
3. **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.
4. **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.
5. Based on the analysis completed thus far and the information available to Developer at this time, Developer has a good faith belief that the development project will provide a minimum of 500 temporary jobs and 250 permanent jobs for the City.

ARTICLE III

THE DEVELOPMENT PROJECT

Section 3.01. Incentives. Project assistance available to this project may include, but not limited to real property tax abatement, personal property tax abatement, sales tax exemption on construction materials, redirection of tax increment from new economic activity generated by the project for eligible project expenses, and redirection of EAT's. These benefits may be available through various Redevelopment Agencies administered by the Economic Development Corporation of Kansas City, Missouri and directly through the City of Kansas City, Missouri.

Applications for incentives shall be made as further described in Sections 4.01.2 and 4.02.1.

Section 3.02. Private Development Phases. The Developer anticipates completing the following “Private Development” in the Area in three phases. Individual projects in the phases are as follows:

- (a) Phase 1 (to be commenced by January 1, 2024 and completed within 36 months of commencement of Phase 1):
 - i. One 12-story adaptive reuse residential building with approximately 389 residential units, ground floor daycare, and a ground floor coffee shop, as shown on the Plan Map;
 - ii. Core and shell of two one-story adaptive reuse mixed-use buildings labeled 3a and 6, as shown on the Plan Map;
- (b) Phase 2 (to be commenced within 36 months of commencement of Phase 1 and completed within 36 months of commencement of Phase 2):
 - i. Two two-story adaptive reuse mixed-use buildings with approximately 124 residential units and ground floor commercial space in Buildings 10 and 11, as shown on the Plan Map;
 - ii. One outdoor farmers market, as shown on the Plan Map;
 - iii. Approximately 25,000 SF restaurants and service retail space in Building 10 and 11, as shown in the Plan Map;
- (c) Phase 3 (to be commenced within 36 months of commencement of Phase 2 and completed within 36 months of commencement of Phase 3)
 - i. One two story adaptive reuse mixed-use building with approximately 74 residential apartments;
 - ii. Approximately 21,000 SF of service retail space;
 - iii. One indoor 10,830 SF food hall.

Notwithstanding the foregoing, Developer shall comply with Code § 74-12 (b), Incentivized Project Construction Timeline, for all phases of the Project. Developer may seek City Council approval of a modification of the timeline provided in Code § 74-12(b) in the future.

Section 3.03. Acquisition, Blight Removal and Public Infrastructure Phases. The Developer anticipates completing the following during the Acquisition, Blight Removal, and Public Infrastructure Phases:

- i. Site acquisition;
- ii. Blight remediation and selective site demolition;
- iii. Environmental remediation; and

Additional public infrastructure.

ARTICLE IV

ADDITIONAL OBLIGATIONS OF THE PARTIES

Section 4.01. Developer Obligations. Developer agrees to undertake and complete the following:

1. **PIEA.** The Developer will continue to pursue economic development incentives available for its Project through the PIEA and shall comply with all requests and policies of the PIEA.
2. **Phase 1 Construction.** Subject to Reasonable Delay and approval of incentives, Developer will break ground on Phase 1 of the Private Development as described in Section 3.02 by January 1, 2024. Developer will complete Phase 1 of the Private Development within three years of breaking ground. This schedule may be superseded under terms of a development agreement between the Developer and the PIEA, provided that the superseded schedule is consented to the by the City Manager, such consent not to be unreasonably withheld.

This schedule may be superseded under terms of a development agreement between the Developer and the PIEA, provided that the superseded schedule is consented to the by the City Manager, such consent not to be unreasonably withheld.

3. **Private Capital.** The Developer will be responsible for obtaining private capital in an amount sufficient, when added to the Incentives, to finance the Project. The Developer, along with other equity partners and participants, will be prepared to fund, subject to Incentives and private capital, the amount of private equity necessary to complete the financing of the Project.
4. **AdvanceKC.** Throughout the incentive process, Developer shall also comply with the City's AdvanceKC policies and with statutory processes concerning incentives sought.
5. **Affordable Housing.** The Developer shall set aside a minimum of 75% of the units for households earning between 30% and 80% of the MFI.
6. Throughout the incentive process, and subject to the terms of this Agreement, Developer shall comply with the City's AdvanceKC policies and with statutory processes concerning Incentives sought.
7. Developer agrees to comply with all City ordinances and policies applicable to the construction of improvements including, without limitation, M/WBE, Construction Workforce requirements, Affirmative Action, prompt pay, (bonding, OSHA 10-hour certifications,) and E-Verify. The prevailing wage requirements outlined in Code § 3-622 are waived in accordance with Committee Substitute for Ordinance No. 230439. Developer further agrees to use good faith efforts to meet or exceed all M/WBE goals set for any private improvements contemplated by the project.
8. Notwithstanding anything in this Agreement to the contrary, Incentives that may be extended to the development project shall be subject to City Council Ordinances 200497.

Nevertheless, the City acknowledges that any property that is a local or national landmark or contributes to a historic district that is also developed as part of the Project, as outlined in Section 3.02, meets the Extraordinary Qualifications outlined in Ordinance 200497, and the City agrees that waiver of those requirements is appropriate. It is anticipated that such Incentives may exceed those set forth in Ordinance 200497.

Section 4.02. City Obligations. City agrees, subject to all laws and regulations, to undertake and complete the following:

1. **Incentives and TIF.** It is anticipated that a portion of the Incentives will be derived from a TIF plan. The City shall cooperate in good faith with Developer in preparing and obtaining approvals for the TIF plan.
2. **Missouri Brownfields Redevelopment Program.** The City intends to provide additional assistance for the Project through the Kansas City Brownfields Revolving Loan Fund, subject to satisfaction of the conditions identified in Brownfields Commission Resolution No. 001-2023, and approval by the City Council. It is anticipated that the Parties will enter into separate agreements in the form of a loan to remediate contaminates regarding the facilitation of the Kansas City Brownfields Revolving Loan Fund funds.

ARTICLE V

MISCELLANEOUS

5.1 **No Tax Representations or Warranties.** The Parties hereby agree that neither the Developer nor the City is making any representations or warranties to the other about the tax treatment, implications or treatment of the transactions contemplated in this Agreement. The City does not agree to offset, credit or pay to the Developer any amount for any loss of benefit anticipated by the Developer in the event that any sales tax exemptions are denied by third parties or by an order of a court. In such event, there shall be no sales tax exemption and sales taxes will be due and owing on any Construction Materials purchased under sales tax exemption.

5.2 **Determination of Liability.** If sales taxes are due and owing under the terms of this Agreement, then Developer shall cooperate with City and shall provide City and any third party charged with enforcement of the state's sales tax laws and regulations access to such records as Developer is obligated to retain for the purpose of enabling City or third party to determine with reasonable certainty the amount of sales taxes due and owing and shall remit such sums as directed by City or third party within thirty (30) days of the determination. In the event that Developer fails to retain the records or otherwise fails to provide access to the same for the purposes contemplated herein, City or third party shall have the right to estimate the sales tax liability and Developer shall be bound by such estimate.

5.3 **Records Retention.** Developer shall retain all records related to the sale of, and its purchase of, construction materials for a period of no less than three (3) years following the date of sale or such longer term as may be required pursuant to the terms of any subsequent agreements executed by the City and the Developer in connection with the Bond Issuance.

5.4 **Extension of Time of Performance.** Developer shall be entitled to a reasonable extension of the time of performance under this Agreement, the length of which shall be determined by the City Manager of the City, for delays to its performance that are in no way the fault or responsibility of Developer; provided, however, that no such extension shall be granted unless a written request, setting forth in detail the grounds therefor, is received by the City Manager within a reasonable amount of time following the events giving rise to such alleged delay. The City Manager shall not unreasonably withhold its consent should the Developer seek an extension.

5.5 **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 Attn: City Manager 414 East 12th Street, 29th Floor Kansas City, Missouri 64106
With a copy to:	Law Department City of Kansas City, Missouri Attn: City Attorney 414 East 12th Street, 28th Floor Kansas City, Missouri 64106
And a copy to:	Finance Department City of Kansas City, Missouri Attn: Tammy Queen, Finance Director 414 E. 12th Street, 3rd Floor Kansas City, Missouri, 64106
If to the Developer:	Jonathan Arnold Historic Northeast Lofts LLC 5401 Independence Ave, Kansas City, MO 64102 Telephone: 816-529-7010 Email: jarnold@arnolddevelopmentgroup.com

With a copy to:

Charles Renner
Husch Blackwell LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112
Telephone: 816-329-4702
Email: Charles.renner@huschblackwell.com

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

5.6 **Assignments.** This Agreement may not be assigned by Developer without the prior written consent of City, which consent may be granted, denied or conditioned in the sole discretion of City; provided, however, the City shall not unreasonably withhold its consent should the Developer seek to assign this agreement to a subsidiary.

5.7 **Further Actions.** The City and Developer acknowledge that this Agreement contemplates the execution of further agreements, that the objectives of this Agreement necessitate such further agreements being executed. City and Developer agree to negotiation in good faith to enter into necessary future agreements. The Parties agree that, except where modification is authorized in this Agreement, all other agreements and other documents to be executed by the parties to effectuate the transactions contemplated in this Agreement shall be consistent with the terms and conditions of this Agreement.

5.8 **Severability.** If any term, covenant, condition, or provision of this Agreement, or the application to any person or circumstance shall, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall (except to the extent such result is clearly unreasonable) not be affected thereby, and under such circumstances each term, covenant, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, insofar as such enforcement is not clearly unreasonable. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

5.9 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

5.10 **Venue.** Any lawsuit, action, or proceeding arising under this shall, to the extent there is federal jurisdiction over the parties and subject matter, be brought exclusively in either the federal courts of the United States located in the Western District of Missouri or the circuit court of Jackson County, Missouri at Kansas City.

5.11 **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.

5.12 **Conflict of Terms.** It is the intention of the City and the Developer that if any provision of this Agreement is capable of two constructions, one of which would render this provision valid and enforceable, then the provision shall have the meaning which renders it valid and enforceable.

5.13 **No Waiver.** No failure on the part of the City or the Developer 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 the other party to enforce the same in the event of any subsequent default.

[Remainder of Page Intentionally Left Blank - Signature Page Follows]

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: Brian Platt
Title: City Manager

APPROVED AS TO FORM:

By: _____
Title: _____

HISTORIC NORTHEAST LOFTS, LLC

By: _____
Name: _____
Title: _____

Exhibit A

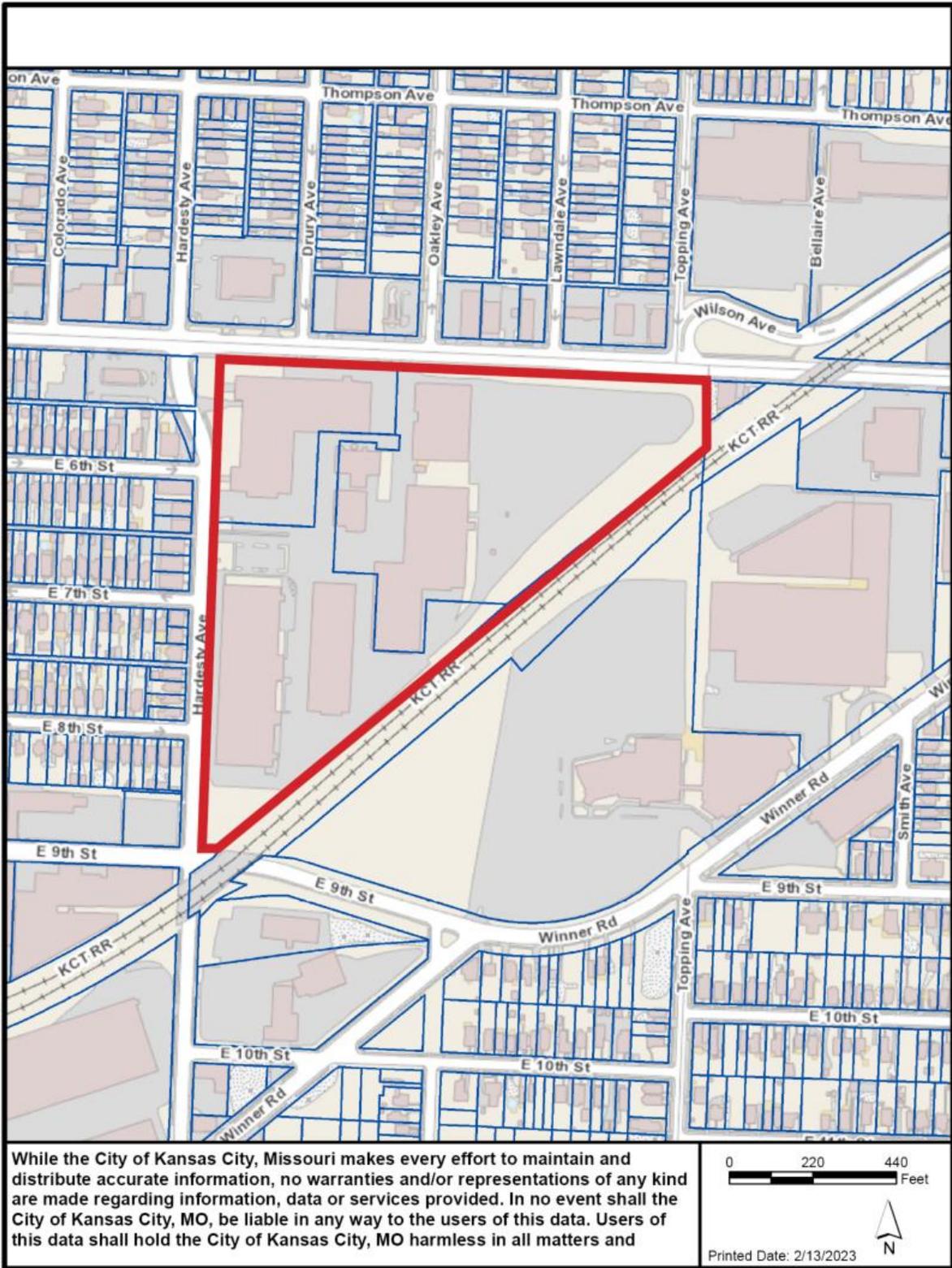


Exhibit B

SITE PLAN

(Exhibit B to be added)

EXHIBIT C
(Exhibit C to be added)