

RESOLUTION NO. 6- -23

RESOLUTION OF THE LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI AUTHORIZING THE ASSIGNMENT AND AMENDMENT OF PROJECT DOCUMENTS AND THE AMENDMENT OF BOND DOCUMENTS, INCLUDING THE CANCELLATION AND EXCHANGE OF A BOND TO FACILITATE A TRANSFER TO A NEW REDEVELOPER; AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS AND RELATED ACTIONS IN CONNECTION WITH THE BOND AND THE PROJECT.

WHEREAS, the Land Clearance for Redevelopment Authority of Kansas City, Missouri (“Authority”) is a public body corporate and politic created by the Land Clearance for Redevelopment Authority Law, Section 99.300, *et seq.*, RSMo (“LCRA Act”), is transacting business and exercising the powers granted by the LCRA Act by virtue of Committee Substitute for Ordinance No. 16120, duly passed by the City Council (“City Council”) of the City of Kansas City, Missouri (“City”), on November 21, 1952, and is authorized and empowered under the LCRA Act and for the purposes set forth in the LCRA Act to issue revenue Bond for the purpose of providing funds to pay the costs of projects, and to lease or sell such projects to others upon such terms and conditions as the Authority shall deem advisable; and

WHEREAS, on November 26, 1968, the Authority initially approved the Central Business District Urban Renewal Plan, as amended from time to time, (the “Plan”) for the Central Business District Urban Renewal Area, as amended from time to time (the “Plan Area”); and

WHEREAS, by Ordinance No. 36287 passed on January 17, 1969, the City Council initially approved by the Plan for the Plan Area; and

WHEREAS, pursuant to Section 99.450 of the LCRA Act, the Authority issued and published a Request for Redevelopment Contract Proposals for the implementation of a redevelopment project for certain real property within the Plan Area (the “Project Area”); and

WHEREAS, Pedersen Development Redeveloper, L.L.C., a Colorado limited liability Redeveloper (the “Pedersen”) submitted a redevelopment contract proposal (the “Proposal”) to implement a redevelopment project within the Project Area consisting of acquisition and construction of: (1) a multi-story, extended-stay hotel with approximately 154 guest rooms, approximately 2,500 square feet of meeting space, and approximately 6,000 square feet of common area that will be available to hotel guests and the public; (2) an automated parking system that will accommodate approximately 100 vehicles on a .17 acre parking lot located on the west side of the adjacent north-south alley; and (3) other related improvements located at 900 Broadway and the west side of the adjacent north-south alley in Kansas City, Missouri (the “Project”), the Proposal is on file at the office of the Authority and, by reference, incorporated herein; and

WHEREAS, the Authority received no other redevelopment contract proposals to implement the Project and the Authority selected the Redeveloper as the redeveloper for the Project by Resolution No. 11-1-19 dated November 28, 2018; and

WHEREAS, Pedersen, in coordination with its investment partners and lenders, created an ownership structure involving the following limited liability companies: (A) 900 Broadway KC LLC, a Missouri limited liability company (the “Land Developer”), as tenant under the Land Lease Agreement for the purpose of leasing from the Authority the real property upon which the Project will be constructed (the “Land”); and (B)(i) 900 Broadway KC Development Company LLC, a Missouri limited liability company (“900 Broadway Dev. Co.”); (ii) Oak Holdings LLC, a Missouri limited liability company (“Oak Holdings”); and (iii) REMSK, LLC, a Missouri limited liability company (“REMSK”), as tenants-in-common (collectively and jointly and severally, the “Original Redeveloper”) as tenant under the Improvements Lease Agreement for the purpose of leasing from the Authority the Project improvements to be constructed on the Land (the “Project Improvements”). The Original Redeveloper and the Land Developer, collectively, are referred to as the “Original Redeveloper Parties”; and

WHEREAS, as part of the changes to the ownership structure, the Project was modified to exclude the parking improvements. As modified, the “Project” is now defined to include: (1) a multi-story, extended-stay hotel with approximately 154 guest rooms, approximately 2,500 square feet of meeting space, and approximately 6,000 square feet of common area that will be available to hotel guests and the public; and (2) other related improvements to be accomplished on the Land in accordance with the Redevelopment Contract and the Urban Renewal Plan; and

WHEREAS, the Original Redeveloper Parties requested that the Authority (i) issue its taxable industrial revenue Bond in a principal amount not to exceed \$38,000,000 to finance the Project, (ii) acquire the Project and related property upon which the Project is to be built and lease the Land to the Land Developer and the Project Improvements to the Original Redeveloper, (iii) grant a sales tax exemption incentive on construction materials to facilitate construction of the Project on behalf of the Authority, (iv) grant tax abatement upon completion of the Project for fifteen (15) years as provided in the Redevelopment Contract (defined below), and (v) transfer title to the Land back to the Land Developer and the Project Improvements back to the Original Redeveloper upon expiration of the applicable lease, all for the purpose of eliminating blighting conditions found to exist in the Project Area and in accordance with and pursuant to the LCRA Act and subject to the terms and conditions of the Project documents; and

WHEREAS, pursuant to its Resolution No. 6-1-19 dated June 19, 2019, and the Trust Indenture (“Indenture”) dated October 1, 2019, between the Authority and BOKF, N.A. (“Bond Trustee”) the Authority issued on October 9, 2019 its Land Clearance for Redevelopment Authority of Kansas City, Missouri Taxable Industrial Revenue Bond (Hyatt House Hotel Project), Series 2019, in the original principal amount of \$38,000,000 (the “Bond”) to fund a redevelopment project within the Central Business District Urban Renewal Area consisting of acquisition and construction of the Project in accordance with the Redevelopment Contract and the Central Business District Urban Renewal Plan; and

WHEREAS, in connection with the Bond, the Authority entered into: (A) the Land Lease Agreement (“Land Lease”) dated as of October 1, 2019, with the Land Developer, as evidenced by the Memorandum of Land Lease Agreement recorded as Document No. 2019E0082242, for the purpose of leasing the real property upon which the Project will be constructed (the “Land”); (B) the Improvements Lease Agreement (“Improvements Lease”) dated as of October 1, 2019, with the Original Redeveloper, as evidenced by the Memorandum of Improvements Lease Agreement recorded as Document No. 2019E0082243 for the purpose of leasing the Project improvements to be constructed on the Land (the “Project Improvements”); and (C) the Sale/Leaseback and Redevelopment Contract with the Original Redeveloper Parties dated as of October 1, 2019, and recorded as Document No. 2019E0082240 (the “Redevelopment Contract”); and

WHEREAS, to assist in Project financing, the Original Redeveloper obtained a construction loan from AltosGroups, LLC, a Delaware limited liability company (aka Altos Funding Group) (the “Original Lender”), as evidenced by a Leasehold Deed of Trust recorded as Document No. 2019E0082244, and PACE loan financing, as evidenced by the PACE Assessment Contract recorded as Document No. 2019E0081621 (“PACE Financing”); and

WHEREAS, on June 2, 2020, the Original Redeveloper notified the Authority of a force majeure event under the Redevelopment Contract resulting from the Original Lender’s failure to fund the construction loan, which caused a halt in the construction of the Project; and

WHEREAS, the Authority adopted Resolution No. 9-1-20 dated September 30, 2020, approving a substitution of lenders from the Original Lender to BCP Hyatt House, LLC, an Arizona limited liability company, and new loan documents to facilitate a new construction loan intended to provide funds to re-start construction of the Project. The new construction loan did not close; and

WHEREAS, the work stoppage has resulted in the filing of multiple mechanic’s liens filed by contractors and materials suppliers who have not been paid and the Authority was served on or about January 26, 2021, as record owner of the property, with a Mechanic’s Lien Petition filed by Hayes Drilling, LLC (“HDI”) in Case No. 2116-CV01418 and in related cases filed by other contractors (collectively, the “Litigation”), alleging non-payment of services rendered by the Redeveloper Parties and related contractors. R.G. Brinkmann Company d/b/a Brinkmann Constructors (“General Contractor”) subsequently joined the Litigation, as did the following subcontractors, each asserting various claims and cross-claims: CECO Concrete Construction Delaware, LLC aka CECO Concrete Construction, LLC, Mid Continent Crane, LLC, Epic Concrete Construction, Inc., Logan Contractor’s Supply Inc. and Power-Up Electrical Contractors, LLC (collectively, plus HDI, the “Litigation Subcontractors”); and

WHEREAS, the General Contractor engaged the Litigation Subcontractors and various other subcontractors and suppliers (“Other Subcontractors”) to perform work on the Project. The Other Subcontractors and the Litigation Subcontractors are collectively referred to as the “Project Subcontractors”; and

WHEREAS, by Resolution No. 12-2-22 dated December 12, 2022, as modified by Resolution No. 5-3-23 dated May 23, 2023, the Authority approved assignment of the tax

incentives for the Project to HH KC Partners, LLC, a Missouri limited liability company (the “New Redeveloper”), which is a joint venture of O’Reilly Hospitality Management, LLC and Lotus Holdings, LLC, subject to certain conditions, provided, however, that the New Redeveloper and the Original Redeveloper intend to restructure ownership of the New Redeveloper giving the Original Redeveloper a minority ownership interest in the New Redeveloper; and

WHEREAS, the Original Redeveloper Parties filed a lawsuit against the Original Lender and obtained the Order of Default Judgment Against Defendants, Reserving Determination of Damage Issues issued on September 11, 2020, by the United States District Court for the Western District of Missouri of Missouri, Western Division, in Case No. 4:20-cv-00461-NKL, as recorded in the Office of the Recorder of Deeds for Jackson County, Missouri on September 18, 2020, as Instrument No. 2020E0084890, pursuant to which all rights, collateral, liens, and security interests of the Original Lender in and to the Property and the Project are and have been released, terminated, and discharged by including, without limitation: (i) Leasehold Deed of Trust dated October 7, 2019, and recorded as Document No. 2019E0082244; (ii) UCC Financing Statement (REMSK LLC as debtor) recorded as Document No. 2019E0082351; (iii) UCC Financing Statement (OAK Holdings LLC as debtor) recorded as Document No. 2019E0082352; (iv) UCC Financing Statement (900 Broadway KC Development Company LLC as debtor) recorded as Document No. 2019E0082353; (v) Collateral Assignment of Bond Documents and Trustee Acknowledgment dated October 7, 2019; and (vi) Collateral Assignment of Improvements Lease Agreement dated October 7, 2019; and

WHEREAS, the City Council adopted Ordinance No. 230494 dated June 15, 2023, approving an extension of the Project schedule; and

WHEREAS, New Redeveloper intends to obtain a loan (“Bridge Loan”) from Old Missouri Bank for the purpose of paying in full all outstanding liens and claims related to the Litigation and the PACE Financing (pursuant to a separate agreement with the PACE Financing lender), and the Authority desires to approve certain assignments and amendments to the Project documents to facilitate the Bridge Loan and support the New Redeveloper’s continuing efforts to obtain a construction loan to restart and complete construction of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI, AS FOLLOWS:

Section 1. Assignment. The assignment of the Original Redeveloper Parties’ separate and collective development rights in the Project to the New Redeveloper and the New Redeveloper’s assumption of the Original Redeveloper Parties’ separate and collective development rights in the Project, subject to the New Redeveloper’s agreements to undertake the Project in accordance with the Project documents referenced herein, including, but not limited to, the Authority Documents and the Funding Agreement dated June 2, 2023 between the Authority and the New Redeveloper, are approved.

Section 2. Findings and Determinations. The Board of Commissioners of the Authority hereby finds and determines that amendment of the Bond and related documents to facilitate the Bridge Loan obtained to remove existing liens and pay off existing debt encumbering the Property and the Project will be in furtherance of the public purposes set forth in the LCRA Act.

Section 3. Authorization of the Exchange of Bond. As permitted under Section 206 of the Indenture, the Authority anticipates that the Original Redeveloper, as the currently registered Bondowner, will surrender the Bond to the Bond Trustee for cancellation for the purpose of facilitating the transfer of the Bond to the New Redeveloper. Upon such cancellation, the Board of the Commissioners of the Authority authorizes each of the Chairman, Vice Chairman, and Executive Director to execute and deliver a Bond to be authenticated by the Bond Trustee and registered in the name of the New Redeveloper in exchange for the cancelled Bond, subject to the New Redeveloper's execution and delivery to the Authority and the Bond Trustee of an Investment Certificate in substantially the form of Exhibit B to the Indenture. Each of the Chairman, Vice Chairman and Executive Director is authorized to accept the final terms of the Bond in accordance with the Indenture as amended by the Omnibus Agreement (defined below), and the signatures of the officers of the Authority executing the Bond, as so amended, shall constitute conclusive evidence of their approval and the Authority's approval thereof. The Bond No. R-2 (as referenced below) shall be executed on behalf of the Authority by the manual or facsimile signature of its Chairman, Vice Chairman or Executive Director and attested by the manual or facsimile signature of its Secretary or Assistant Secretary and shall have the corporate seal of the Authority affixed thereto or imprinted thereon.

Section 4. Limited Obligations. Upon surrender for cancellation of the Bond No. R-1 issued to the Original Redeveloper, the Authority will execute and the Trustee will authenticate a bond exchanged for the Bond R-1 in the amount, bearing interest at such rate, maturing on such date, and subject to such terms as provided in the Indenture as amended by the Omnibus Agreement, and registered in the name of the New Redeveloper. The Bond No. R-2 shall be a limited obligation of the Authority payable solely from the sources and in the manner as provided in the Indenture, and shall be secured by a pledge and assignment of and a grant of a security interest in the Trust Estate (as defined in the Indenture) to the Bond Trustee and in favor of the holders of the Bond, as provided in the Indenture. The Bond No. R-2 and interest thereon shall not be deemed to constitute a debt or liability of the State of Missouri (the "State"), the City or of any political subdivision thereof within the meaning of any State constitutional provision or statutory debt limitation or restriction and shall not constitute a pledge of the full faith and credit of the State, the City or of any political subdivision thereof, but shall be payable solely from the funds provided for in the Amended Lease (defined below) and the Indenture. The Bond No. R-2 shall not, directly, indirectly or contingently, obligate the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. Neither the City nor the State shall be liable for the payment of the principal of, redemption premium, if any, or interest on the Bond No. R-2 or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the Authority.

Section 5. Authorization and Approval of Documents. The following documents are hereby approved in substantially the forms presented to and reviewed by the Authority at this meeting and attached to this Resolution (copies of which documents shall be filed in the records of the Authority), and the Authority is hereby authorized to execute and deliver each of such documents (the “Authority Documents”) with such changes therein as shall be approved by the officers of the Authority executing such documents, such officers' signatures thereon being conclusive evidence of their approval and the Authority's approval thereof:

(a) Omnibus Assignment and Amendment of Documents (the “Omnibus Agreement”) among the Authority, the New Redeveloper, the Original Redeveloper Parties, and the Bond Trustee dated as of the date set forth therein, under which the Redevelopment Contract, the Indenture, and related Bond documents will be assigned and amended as provided therein.

(b) Amended Lease Agreement (the “Amended Lease”) among the Original Redeveloper Parties, the Authority, and the New Redeveloper dated as of the date set forth therein, pursuant to which the Original Redeveloper Parties will assign the Land Lease and the Improvements Lease to the New Redeveloper, and the Land Lease and the Improvements Lease will be amended and replaced by combining them, as amended, into the Amended Lease as a single document. The Authority will lease the Property to the New Redeveloper pursuant to the Amended Lease.

(c) The Bond No. R-2 to be registered in the name of the New Redeveloper in exchange for the cancelled Bond No. R-1.

Section 6. Execution of Authority Documents. Each of the Chairman, the Vice Chairman and the Executive Director of the Authority is hereby authorized and directed to execute and deliver the Authority Documents for and on behalf of and as the act and deed of the Authority. The Secretary, Assistant Secretary, or other officer of the Authority is hereby authorized and directed to attest to the Authority Documents by manual or facsimile signature, and to attest to such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 7. Limited Liability. Any provision hereof to the contrary notwithstanding, nothing herein contained shall be construed to impose a charge against the general credit of the Authority or to impose any pecuniary liability upon the Authority except with respect to the proper application of the revenues and receipts to be derived by the Authority from any financing, leasing or sale of the Project. Nothing herein shall be deemed to restrict the Authority or the State of Missouri or any agency or any political subdivision thereof in determining the order or priority of the issuance of the Bond by the Authority or to require the Authority to give the Bond No. R-2 priority as to issuance or as to the time of issuance over any other Bond previously or subsequently approved by the Authority for issue.

Section 8. Further Authority. Counsel to the Authority, together with the officers and employees of the Authority, are hereby authorized to work with the Original Redeveloper Parties and the New Redeveloper, their respective counsel and others, to prepare for submission to

and final action by the Authority all documents necessary to effect the exchange and amendment of the Bond. The officers, agents and employees of the Authority are hereby authorized and directed to take such further actions contemplated hereunder in connection with the financing of the Project, and to execute and deliver such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, including, without limitation, documents required by the Redeveloper's lender (such as a deed of trust encumbering the Project and related property and other financing documents), and to carry out, comply with and perform the duties of the Authority with respect to the Bond No. R-2 and the Authority Documents, the signatures of the officers and employees of the Authority executing such documents, upon the advice of legal counsel, shall constitute conclusive evidence of their approval and the Authority's approval thereof.

Section 9. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Board of Commissioners of the Land Clearance for Redevelopment Authority of Kansas City, Missouri.

ADOPTED by the Land Clearance for Redevelopment Authority of Kansas City, Missouri this 27th day of June, 2023.

**LAND CLEARANCE FOR REDEVELOPMENT
AUTHORITY OF KANSAS CITY, MISSOURI**

By: _____
Rob Gardner, Chairman

ATTEST:

Daniel Moye, Secretary