

EXHIBIT 3A  
LCRA 10/13/23

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SECOND AMENDED AND RESTATED REDEVELOPMENT CONTRACT

Among

LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY  
OF KANSAS CITY, MISSOURI

And

COLUMBUS PARK DEVELOPMENT GROUP, LLC

And

COLUMBUS PARK DEVELOPMENT GROUP 2, LLC

DATED AS OF OCTOBER \_\_\_\_, 2023

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SECOND AMENDED AND RESTATED REDEVELOPMENT CONTRACT

This SECOND AMENDED AND RESTATED REDEVELOPMENT CONTRACT (this "**Contract**") is entered into effective as of the \_\_\_\_\_ day of October, 2023 ("**Effective Date**") by **LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI** (the "**Authority**"), a public body corporate and politic organized under the laws of Missouri and the ordinances of the City of Kansas City, Missouri, **COLUMBUS PARK DEVELOPMENT GROUP, LLC**, a Missouri limited liability company (the "**Redeveloper**"), and **COLUMBUS PARK DEVELOPMENT GROUP 2, LLC**, a Missouri limited liability company ("**Phase Two Redeveloper**") (each, a "**Party**" and together, the Authority and the Redeveloper are referred to as the "**Parties**").

RECITALS

A. The Authority is a public body corporate and politic created by the LCRA Law and is transacting business and exercising the powers granted by the LCRA Law by virtue of Committee Substitute for Ordinance No. 16120, duly passed by the City Council on November 21, 1952.

B. The Redeveloper and the Phase Two Redeveloper are affiliated entities with offices at 1220 Washington, Suite 200, P.O. Box 411299, Kansas City, Missouri 64141-1299.

C. The City Council approved the Urban Renewal Plan by Ordinance No. 36287 passed on January 17, 1969, the purpose of which is to eliminate and prevent the spread, development and recurrence of the blighted and insanitary conditions within the Urban Renewal Area.

D. On May 25, 2005, the Authority, by its Resolution No. 5-04-05, selected Columbus Park Developer, L.C., a Missouri limited liability company ("**Original Redeveloper**"), an affiliate of the Redeveloper and the Phase Two Redeveloper, as the redeveloper of the Project.

E. The Redeveloper has requested certain assistance for the Project from the Authority in the form of: (i) real property tax abatement for a period of up to ten (10) years, which ten (10) year period shall commence upon or timely after the date on which a particular phase of the Project has been completed; and (ii) property acquisition.

F. On August 3, 2005 the Authority and Columbus Park Developers, L.C., a Missouri limited liability company ("**Original Redeveloper**") entered into the Funding Agreement pursuant to which the Redeveloper agreed to pay to the Authority the funds necessary to enable the Authority to undertake the Project and in accordance with the requirements of the Funding Agreement, the Redeveloper paid to the Authority a deposit of Twenty Thousand Dollars (\$20,000.00).

G. The Authority and the Original Redeveloper entered into the Redevelopment Contract effective as of September 13, 2007 and recorded as Document No. 2007E0159420 ("**Original Contract**"). The Authority and Redeveloper subsequently entered into the Amended and Restated Redevelopment Contract effective as of August 25, 2015 and recorded as Document No. 2015E0081640 ("**First Amended and Restated Redevelopment Contract**") as amended by the Amendment to Amended and Restated Redevelopment Contract dated July 7, 2017 and recorded as Document No. 2017E0087115 ("**Amendment**"), and as amended by the Partial Release and Amendment to Redevelopment Contract dated October 25, 2021 and recorded as Document No. 2021E0128993 (collectively, the "**Redevelopment Contract**" or "**Contract**"), setting forth each party's rights and obligations regarding conveyance of the Property and development of the Project and the Project Improvements for each Phase.

H. The Original Contract required the significant input of the Housing Authority of Kansas City, Missouri (HAKC) when determining the satisfactory completion of various provisions of the Original Contract concerning HAKC’s ownership, control, and/or disposition of the HAKC Property (also known as Guinotte Manor Phase III) consistent with the Guinotte Cooperative Agreement and requirements of the Department of Housing and Urban Development; provided, however, that, on or about December 6, 2022, HAKC issued a Request for Proposals for the development of the HAKC Property and on or about August 28, 2023, HAKC selected a developer for such project. The HAKC Property is therefore removed from the Property for the purposes of the Project and the Redevelopment Contract, as shown by Exhibit A attached to this Contract and as amended hereby.

I. The Redeveloper, by and through an affiliate, secured a 9% low-income housing tax credit allocation from the Missouri Housing Development Commission (the “**Tax Credit Transaction**”) to implement the redevelopment of the Phase One Property, as described in the Assignment, Assumption and Ratification Agreement (“**Phase One Assignment**”) among the Authority, the Original Redeveloper, the Redeveloper, and CP Lofts, LP, a Missouri limited partnership (“**CP Lofts**”) dated August 25, 2015, and recorded as Document No. 2015E0090131, pursuant to which the Redeveloper assigned all of its right, title and interest under the Redevelopment Contract to CP Lofts as to the Phase One Property only.

J. The Authority sold the Phase One Property to CP Lofts by the Special Warranty Deed dated August 11, 2015 and recorded as Document Number 2015E0091881 and agreed to sell to the Redeveloper or the Redeveloper’s designee certain other property within the Urban Renewal Area in connection with Redeveloper’s efforts to redevelop such property and other property subject to the terms and conditions of the Redevelopment Contract and the Urban Renewal Plan, as amended.

K. Phase One is complete and the Authority has issued its Certificate of Qualification for Tax Abatement for the Phase One Property in accordance with this Contract and the LCRA Law.

L. The Redeveloper assigned all of its right, title and interest under the Redevelopment Contract to the Phase Two Redeveloper as to the Phase Two Property only as described in the Assignment, Assumption and Implementation Agreement (“**Phase Two Assignment**”) among the Authority, the Redeveloper, and the Phase Two Redeveloper dated July 7, 2017, and recorded as Document No. 2017E0087121.

M. The Authority sold the Phase Two Property to the Phase Two Redeveloper by the: (i) Special Warranty Deed dated September 6, 2017, and recorded as Document No. 2017E0111710; (ii) Special Warranty Deed dated May 28, 2020, and recorded as Document No. 2020E00434301; and (iii) Special Warranty Deed dated July 22, 2020, and recorded as Document No. 2020E0063264. The Authority does not own any property in connection with the Project.

N. As part of Phase Two, the Redeveloper has renovated the building located at 401 Charlotte (Parcel 10 in the attached Exhibit A) and has submitted its application for tax abatement for such property. In addition, the Redeveloper has requested that the Authority consent to an assignment of all of its right, title and interest under the Redevelopment Contract 5 Cherry, LLC, a Missouri limited liability company (“**5 Cherry**”) as to the Phase Two Assigned Property only, which property is shown as Parcels 5, 6, 7, and 12 in the attached Exhibit A. 5 Cherry intends to develop the following improvements on the Phase Two Assigned Property: [REDACTED] (“**Phase Two Assigned Property Improvements**”).

**Commented [BE1]:** Does 5 Cherry have a preliminary description of planned improvements?

O. Without amending in any way the Redevelopment Contract or the Phase One Assignment pertaining to the Redeveloper and CP Lofts as to Phase One, the parties desire to amend, update, and restate the Redevelopment Contract to provide for the assignment of the Phase Two Redeveloper's right, title and interest in the Redevelopment Contract to 5 Cherry as to the Phase Two Assigned Property only, subject to certain conditions set forth herein, to assist the Redeveloper, the Phase Two Redeveloper, and 5 Cherry in the development of the Phase Two Project Improvements, and to revise Exhibit A for the purpose of removing certain properties and updating legal descriptions. The Redevelopment Contract, as amended, updated, and restated by this Second Amended and Restated Redevelopment Contract, shall be referred to as the "Redevelopment Contract" or "Contract".

P. To further assist the Redeveloper, the Phase Two Redeveloper, and 5 Cherry, the Authority and the City Council for the City of Kansas City have approved the Urban Renewal Plan, which, subject to the Redeveloper's performance under the Redevelopment Contract, allows the Authority to consider a request for tax abatement from the Redeveloper for the Project in accordance with the LCRA Law, , and the Parties desire to amend, update, and restate the Redevelopment Contract, as more fully set forth below.

#### AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained in this Contract and other good and valuable mutual consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

#### ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01 Definitions. The following terms shall have the following meanings as used in this Contract:

**"5 Cherry"** means 5 Cherry, LLC, a Missouri limited liability company, and its successors and assigns as to the Phase Two Assigned Property. 5 Cherry is a joint venture of the Redeveloper and UC-B Properties, LLC, a Missouri limited liability company.

**"Affordable"** means housing for sale to persons with an income below 80% of the area median income and housing for rent to persons with an income below 60% of the area median gross income. Area median income will be based on current income guidelines published annually by the Department of Housing and Urban Development.

**"Affordable Housing Gap"** means the difference between the Affordable rental rates and sales prices for housing units and market rental rates and sales prices for the same housing units financial gap created from implementing the Affordable Housing Requirement for the applicable Phase of the Project.

**"Affordable Housing Requirement"** means 15% to 25% of the total housing units for the entire Project that will be Affordable and available for sale or for rent, pursuant to this Contract and the Guinotte Cooperative Agreement. The Affordable Housing Requirement is in furtherance of the Authority's objective, consistent with the Guinotte Cooperative Agreement, to provide Affordable housing and promote a diverse neighborhood as an integral part of the Project.

"**Amendment**" means the Amendment to Amended and Restated Redevelopment Contract dated July 7, 2017, and recorded as Document No. 2017E0087115 between the Authority and the Redeveloper for the purpose of amending, updating, and supplementing the Redevelopment Contract to facilitate the sale of the Phase Two Property.

"**Applicable Laws**" means all then applicable statutes, laws, rules, regulations, ordinances, decrees, writs, judgments, orders and administrative and judicial opinions enacted, promulgated and/or issued by any federal, state, county, municipal or local governmental, quasi- governmental, administrative or judicial authority, body, agency, bureau, department or tribunal.

"**Authority**" means the Land Clearance for Redevelopment Authority of Kansas City, Missouri, a public body corporate and politic created pursuant to the LCRA Law, and its successors and assigns and any surviving, resulting or transferee entity.

"**Authority Property**" means any parcel(s) of the Property or other property acquired by the Authority after the Effective Date of this Second Amended and Restated Redevelopment Contract, which parcel(s) shall become part of and referred to as the Authority Property, upon further amendment of this Contract. The Parties acknowledge and agree that the Authority previously acquired and sold the Phase One Property to CP Lofts pursuant to the Redevelopment Contract and the Phase One Assignment, and that the Authority previously acquired and sold the Phase Two Property to the Phase Two Redeveloper pursuant to the Redevelopment Contract and the Phase Two Assignment. The Parties further acknowledge and agree that the Authority does not own any property in connection with the Project and that it is not anticipated that the Authority will acquire any additional property in connection with the Project as provided herein.

"**Board**" means the Board of Commissioners of the Authority, which is the governing body of the Authority.

"**Campbell Street Infrastructure**" means the extension of Campbell Street between 4<sup>th</sup> Street and 3<sup>rd</sup> Street and the installation of sidewalks, curbs, streetlights, utilities and other public improvements as may be required by the City.

"**Certificate of Completion**" means the certificate issued by the Authority upon completion of all or a particular portion or portions of a particular Phase of the Project by the Redeveloper in accordance with this Contract, the Redevelopment Plan, and the Urban Renewal Plan.

"**Certificate of Occupancy**" means the certificate to be issued by the City upon completion of all or a particular portion or portions of a particular Phase of the Project by the Redeveloper.

"**Certificate of Qualification for Tax Abatement**" means the Certificate of Qualification for Tax Abatement issued by the Authority pursuant to Sections 99.700 to 99.715, RSMo, or such other City agency or redevelopment corporation authorized under Applicable Laws to provide tax abatement in furtherance of the Project.

"**City**" means the City of Kansas City, Missouri, a constitutional charter city and political subdivision of the State, and its successors and assigns.

"**City Code**" means the zoning and building codes and ordinances of the City applicable to the Project.

"**City Contract**" means any future funding contract(s) entered into between the Authority and the City. The Parties acknowledge and agree that the public funding contracts shown on the attached Exhibit B have expired and that no new or additional City or other public funding is anticipated for the Project.

"**City Council**" means the City Council of the City, which is the governing body of the City.

"**City Deadline Ordinance**" means Committee Substitute for Ordinance No. 230316 adopted by the City Council on April 13, 2023, as may be amended, which requires that incentivized projects, including the Project, be substantially complete within three (3) years of the incentive approval date. For purposes of Phase Two of the Project, the incentive approval date is October \_\_\_\_, 2023, which is the date that the Authority approved this Second Amended and Restated Redevelopment Contract.

"**Contract**" or "**Redevelopment Contract**" means this Second Amended and Restated Redevelopment Contract dated as of the Effective Date, entered into by the Authority, the Redeveloper, the Phase Two Redeveloper, and any subsequent amendments.

"**Cure Period**" means a period of sixty (60) days after written notice is given by a non-defaulting party to the defaulting party of an Event of Default, as defined in Article IX of this Contract, during which time the defaulting party may cure any such Event of Default.

"**Development Team**" means the Redeveloper, personnel from Redeveloper's members and qualified third-party consultants selected in accordance with the Predevelopment Agreement between the Authority and the Original Redeveloper October 26, 2005 ("**Predevelopment Agreement**") and this Contract with expertise in the design, architecture, engineering, and development of mixed-use urban projects that are of the same or higher caliber of the Project envisioned by the Authority and as may be needed from time to time for the Redeveloper to meet its obligations under this Contract.

"**Due Diligence Period**" means nine (9) months after the Effective Date of this Second Amended and Restated Redevelopment Contract, or on such other date as may be agreed to by the Parties, consent to which shall not be unreasonably withheld, conditioned or delayed.

"**Executive Order**" means Executive Order 11246 of September 24, 1965 which addresses equal employment opportunity.

"**Force Majeure Conditions**" means a condition by reason of which the construction of the Project Improvements or completion of all or any Phase of the Project is delayed, prevented or materially impeded through no fault of the Redeveloper, due to acts of God, prohibitive or seasonal weather conditions, strikes, lockouts, labor troubles, inability to procure materials, failure of power, extreme and extraordinary governmental delay, riots or other events or circumstances beyond such Party's control; provided, however that the Redeveloper has given written notice to the Authority of the existence of the condition within forty five (45) days after first becoming aware of the condition, and further provided that any delay in the substantial completion of the Project beyond October \_\_\_\_, 2026, will be subject to Authority and City Council approval as provided in the City Deadline Ordinance.

"**Funding Agreement**" means the funding agreement entered into by the Authority and the Redeveloper on July 7, 2017, as may be amended, pursuant to which the Redeveloper agreed to pay fees of, and costs incurred by, the Authority, including attorney's fees, in connection with the Project.  
\*\*[needs to amended]\*\*

**“Guinotte Cooperative Agreement”** means that certain Cooperative Agreement among HAKC, the City and Guinotte Manor Tenants Association dated May 1, 1997, as supplemented by the Memorandum dated June 29, 2004 to the Authority from the Guinotte Manor Cooperative Agreement members.

**"HAKC"** means the Housing Authority of Kansas City, Missouri.

**“HAKC Property”** means those properties owned by HAKC as of the Effective Date of this Second Amended and Restated Redevelopment Contract and as identified as Parcels 9, 10 and 11 in Exhibit A attached to the Original Contract. On or about December 6, 2022, HAKC issued a Request for Proposals for the development of the HAKC Property and on or about August 28, 2023, HAKC selected a developer for such project. The HAKC Property is therefore removed from the Property for the purposes of the Project and the Redevelopment Contract, as shown by the updated Exhibit A attached to this Second Amended and Restated Redevelopment Contract and as amended hereby.

**"Hazardous Substances"** means dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances as defined by federal, state or local law, regulation or ruling and also any urea formaldehyde, polychlorinated biphenyls, asbestos, asbestos-containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant, or contaminant which would subject the owner or mortgagee or any holder to any damages, penalties or liabilities under any applicable federal, state or local law, regulation or ruling.

**“Infrastructure”** means the “horizontal” or surface and subsurface improvements constructed and installed within, upon and beneath the Property and within public right-of-way, subject to City approval, to service the Project Improvements, including, without limitation, the Campbell Street Infrastructure.

**"LCRA Law"** means the Land Clearance for Redevelopment Authority Law, Sections 99.300 to 99.715, RSMo, as amended from time to time.

**“Original Contract”** means the Redevelopment Contract by and between the Authority and the Original Redeveloper dated September 18, 2007 and recorded as Document No. 2007E0159420.

**“Partial Release”** means the Partial Release and Amendment to Redevelopment Contract dated October 25, 2021 and recorded as Document No. 2021E128993.

**“Phase”** means, individually, any one of, and collectively, Phase One and Phase Two.

**"Phase Completion Date"** means the date on which the Redeveloper completes a particular Phase in accordance with this Contract, the Redevelopment Plan and the Urban Renewal Plan, which date shall be within thirty six (36) months after the Plan Approval Date of such Phase, or such other date as may be agreed to by the Parties, consent to which shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Phase Completion Date for Phase Two shall be no later than October \_\_\_\_, 2026, unless the Authority and the City Council approves an extension as required by the City Deadline Ordinance.

**“Phase Conceptual Plan”** means the plan for a Phase prepared in accordance with the provisions of Section 5.07 below.

“**Phase One**” means the Project Improvements developed by CP Lofts on the Phase One Property pursuant to the Redevelopment Contract.

“**Phase One Assignment**” means the Assignment, Assumption and Ratification Agreement by and among the Authority, the Original Redeveloper, the Redeveloper, and CP Lofts dated August 25, 2015, and recorded as Document No. 2015E0090131.

“**Phase Pro Forma**” means the pro forma produced by the Redeveloper in accordance with Section 4.01 hereof.

“**Phase One Sale Contract**” means Real Estate Sale Contract dated June 24, 2015, between the Authority and CP Lofts regarding the sale of the Phase One Property, as amended.

“**Phase Two**” means the Phase Two Project Improvements to be developed by the Phase Two Redeveloper and 5 Cherry on the Phase Two Property pursuant to the Redevelopment Contract.

“**Phase Two Assigned Property**” means Parcels 5, 6, 7, and 12 listed and legally described in the attached Exhibit A, which property is to be developed by 5 Cherry pursuant to the Redevelopment Contract and the Phase Two Assignment.

“**Phase Two Assignment Agreement**” means the Assignment, Assumption and Implementation Agreement by and among the Authority, the Redeveloper, and the Phase Two Redeveloper dated July 7, 2017, and recorded as Document No. 2017E0087121.

“**Phase Two Improvements**” means [REDACTED]

**Commented [BE2]:** Does 5 Cherry have a preliminary description of planned improvements?

“**Phase Two Property**” means Parcels 5, 6, 7, 10, 11, and 12 listed and legally described in the attached Exhibit A.

“**Phase Two Retained Property**” means Parcels 10 and 11 listed and legally described in the attached Exhibit A, which property is to be developed by the Phase Two Redeveloper pursuant to the Redevelopment Contract.

“**Phase Two Sale Contract**” means Real Estate Sale Contract dated July 7, 2015, between the Authority and the Phase Two Redeveloper regarding the sale of the Phase Two Property, as amended.

“**Phasing Plan**” means the conceptual phasing plan for Phase One and Phase Two based on the Redeveloper’s projection of market demand and financial feasibility, and the parameters of the Redevelopment Plan. It includes a Conceptual Plan for each phase, an indication of the number and type of units per phase, how many will be ownership or rental, how many will be affordable, and the projected beginning and completion date of each phase.

“**Phasing Schedule**” means a schedule of the projected dates of the beginning and completion of construction of each Phase in the Phasing Plan, and lease-up and/or sale of the units in each Phase.

“**Pre-Construction Activities**” mean the activities of the Redeveloper set forth in Article V hereof.

“**Project**” means Phase One and Phase Two to be completed in accordance with this Contract, the Redevelopment Plan, and the Urban Renewal Plan as part of a mixed-use, commercial and residential



"urban village" known as the Columbus Park/Guinotte Manor Phase III redevelopment project as shown in the URD Zoning Plan, as amended.

**"Project Completion Date"** means the date on which the Redeveloper substantially completes the entire Project in accordance with this Contract, the Redevelopment Plan and the Urban Renewal Plan, which date shall not be later than October \_\_\_\_\_, 2026, unless an extension is approved by the Authority and the City Council as provided in the City Deadline Ordinance.

**"Project Improvements"** means the vertical improvements constructed or to be constructed by CP Lofts as to the Phase One Property, the Redeveloper as to the Phase Two Retained Property, and 5 Cherry as to the Phase Two Assigned Property in accordance with this Contract, the Redevelopment Plan, and the Urban Renewal Plan, excluding the Infrastructure.

**"Property"** means all of the real property legally described in Exhibit A, attached to this Second Amended and Restated Redevelopment Contract, a copy of which is incorporated by reference.

**"Redeveloper"** means Columbus Park Development Group, LLC, a Missouri limited liability company, and its successors and assigns, subject, however, to: (i) the Redeveloper's assignment of all its rights, duties and obligations under the Redevelopment Contract, and CP Lofts' assumption of such rights, duties and obligations, as to the Phase One Property and as such assignment and assumption is described in the Contract and the Phase One Assignment; and (ii) the Redeveloper 's assignment of all its rights, duties and obligations under the Redevelopment Contract to the Phase Two Redeveloper, and the Phase Two Redeveloper's assumption of such rights, duties and obligations, as to the Phase Two Property and as such assignment and assumption is described in the Redevelopment Contract and the Phase Two Assignment; and (iii) the Phase Two Redeveloper's assignment of all its rights, duties and obligations under the Redevelopment Contract to 5 Cherry, and 5 Cherry's assumption of such rights, duties and obligations, as to the Assigned Phase Two Property and as such assignment and assumption is described in the Redevelopment Contract and the Second Phase Two Assignment. Unless otherwise indicated in this Contract in express terms or as is intended based on the context, all references to the "Redeveloper" shall apply generally to the Redeveloper and shall apply specifically to CP Lofts as to Phase One and the Phase One Property only and to 5 Cherry as to Phase Two with respect to the Phase Two Assigned Property only

**"Redevelopment Plan"** means the development of the Phase One Improvements and the Phase Two Improvements, together with the Affordable Housing Requirement, as is more fully set forth in the Guinotte Cooperative Agreement and the Redevelopment Contract.

**"Second Phase Two Assignment"** means the Second Assignment, Assumption and Implementation Agreement – Phase Two by and among the Authority, the Redeveloper, the Phase Two Redeveloper, and 5 Cherry dated contemporaneously as this Second Amended and Restated Redevelopment Contract.

**"State"** means the State of Missouri.

**"Term"** means the period beginning on the Original Contract and ending upon the date ten (10) years after the date of the Authority's issuance of the Certificate of Qualification for Tax Abatement for the final Phase of the Project, it being understood that as to each Phase, this Contract shall remain in effect only for so long as such the Property within such Phase is receiving tax abatement.

**"Transaction Documents"** means this Second Amended and Restated Redevelopment Contract, Original Contract, the First Amended and Restated Redevelopment Contract, the Amendment, the Partial Release, the Phase One Assignment, the Phase Two Assignment, the Second Phase Two Assignment, the Funding Agreement, the Urban Renewal Plan, the Certificate of Qualification for Tax Abatement, the Phase One Sale Contract, the Phase Two Sale Contract, and any other document related to the Project.

**"Urban Renewal Area"** means the Columbus Park Urban Renewal Area, as amended or modified from time to time.

**"Urban Renewal Plan"** means the Columbus Park Urban Renewal Plan, as amended or modified from time to time.

**"URD Zoning Plan"** means the urban redevelopment district zoning plan approved by the City pursuant to Committee Substitute for Ordinance No. 090441 on June 25, 2009, as amended, which includes the Property and other adjacent properties within the Urban Renewal Area.

**"Workable Program"** means The Workable Program of Land Clearance for Redevelopment Authority of Kansas City, Missouri, and the Rules for the Implementation of The Workable Program of Land Clearance for Redevelopment Authority of Kansas City, Missouri, approved by the Board by Resolution Nos. 10-9-00 and 10-10-00 dated October 4, 2000, as amended from time-to-time.

Section 1.02 Other Defined Terms. Words and phrases that are not capitalized shall have the meaning, if any, given to such words or phrases in the LCRA Law. If not defined in the LCRA Law, such terms shall be given their plain and ordinary meaning.

Section 1.03 Headings. The headings and captions of this Contract are for convenience and reference only, and in no way define, limit or describe the scope or intent of this Contract or any provision of this Contract.

Section 1.04 Accounting Terms. Accounting terms used in this Contract and not otherwise specifically defined shall have the meaning ascribed such terms by generally accepted accounting principles as from time to time in effect.

Section 1.05 Rules of Construction. 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, the words importing the singular shall include the plural and vice versa, and words importing person shall include entities, associations and corporations, including public bodies, as well as natural persons.

Section 1.06 Conflicting Provisions. In the event of any conflict between the terms of this Contract and the Redevelopment Plan, the terms of this Contract shall prevail.

## **ARTICLE II REPRESENTATION, WARRANTIES AND COVENANTS**

Section 2.01 Representations, Warranties and Covenants of the Redeveloper. The Redeveloper represents, warrants and covenants that:

(a) The Redeveloper is a Missouri limited liability company, duly created and existing, and in good standing under the laws of the State and is authorized to do business in the State.

(b) The Redeveloper has full power and authority to enter into this Contract and to carry out its obligations under this Contract, and, by proper actions of its members has been duly authorized to execute and deliver this Contract.

(c) This Contract will be the valid and binding obligation of Redeveloper, enforceable against the Redeveloper in accordance with its terms.

(d) Neither the execution and delivery of this Contract, nor the fulfillment of or compliance with the terms and conditions of this Contract, nor the consummation of the transactions contemplated by this Contract, conflicts with or results in a breach of the tent's, conditions or provisions of any restriction or any agreement or instrument to which the Redeveloper is now a party or by which the Redeveloper is bound.

(e) There is no litigation or other proceedings pending or threatened against the Redeveloper or any other person affecting the right of the Redeveloper to execute or deliver this Contract or the ability of the Redeveloper to comply with its obligations under this Contract.

(f) The Redeveloper shall comply with the requirements of the Workable Program.

(g) The Redeveloper shall timely pay or cause to be paid the property taxes or assessments assessed against any portion of the Property owned by the Redeveloper.

Section 2.02 The Phase Two Redeveloper represents, warrants and covenants that:

(a) The Phase Two Redeveloper is a Missouri limited liability company, duly created and existing, and in good standing under the laws of the State and is authorized to do business in the State.

(b) The Phase Two Redeveloper has full power and authority to enter into this Contract and to carry out its obligations under this Contract, and, by proper actions of its members has been duly authorized to execute and deliver this Contract.

(c) This Contract will be the valid and binding obligation of Phase Two Redeveloper, enforceable against the Phase Two Redeveloper in accordance with its terms.

(d) Neither the execution and delivery of this Contract, nor the fulfillment of or compliance with the terms and conditions of this Contract, nor the consummation of the transactions contemplated by this Contract, conflicts with or results in a breach of the tent's, conditions or provisions of any restriction or any agreement or instrument to which the Phase Two Redeveloper is now a party or by which the Phase Two Redeveloper is bound.

(e) There is no litigation or other proceedings pending or threatened against the Phase Two Redeveloper or any other person affecting the right of the Phase Two Redeveloper to execute or deliver this Contract or the ability of the Phase Two Redeveloper to comply with its obligations under this Contract.

(f) The Phase Two Redeveloper shall comply with the requirements of the Workable Program.

The Phase Two Redeveloper shall timely pay or cause to be paid the property taxes or assessments assessed against any portion of the Property owned by the Phase Two Redeveloper

Section 2.03 Representations, Warranties and Covenants of the Authority. The Authority represents, warrants and covenants that:

(a) The Authority is a public body corporate and politic duly organized under the laws of the State and ordinances of the City and has corporate power to enter into this Contract. The Board has duly authorized the negotiation, execution and delivery of this Contract.

(b) No commissioner of the Authority or any other officer of the Authority taking any official action with regard to this Contract or the Project has any conflicting interest (financial, employment or otherwise) in the Redeveloper, the Project or the transactions contemplated by this Contract.

(c) The Project will advance the purposes of the LCRA Law.

Section 2.03 Survival of Representations, Warranties and Covenants. All representations, covenants and warranties of the Redeveloper and the Authority contained in this Contract, in any certificate or other instrument delivered by the Redeveloper or the Authority pursuant to this Contract, or otherwise made in conjunction with the project transactions contemplated by this Contract shall survive the execution and delivery of this Contract.

### ARTICLE III RESTRICTIONS ON USE

Section 3.01 Use Restrictions.

(a) Redeveloper and its successors and assigns and every successor in interest to all or any part of the Property shall, upon acceptance of title thereto:

(1) devote all uses of the Property in accordance with and subject to the provisions regarding use set forth in Redevelopment Plan and the Urban Renewal Plan; and

(2) not discriminate on the basis of race, color, religion, sexual orientation, family status, handicap, sex or natural origin in the sale, lease or rental or in the use or occupancy of all or any part of the Property.

(b) It is intended and agreed that the covenants provided in this Section shall be covenants running with the land binding to the fullest extent permitted by law and equity for the benefit and in favor of and enforceable by: the Authority, its successors and assigns, the City, any successor in interest in the Property or any part of the Property, the owner of any other real estate or of any interest in real estate that is subject to the real estate use requirements and restrictions of the Urban Renewal Plan, and in regard to the use restriction provided in subsection (a)(2) of this Section, the United States, against the Redeveloper, its successors and assigns, and every

successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

(c) The covenant in subsection (a)(1) of this Section shall remain in effect for the duration of the Urban Renewal Plan, and any renewal period or periods thereof, at the end of which time it shall cease and terminate. The covenant provided in subsection (a)(2) of this Section shall remain in effect without limitation as to time.

#### **ARTICLE IV CONDITIONS PRECEDENT TO REDEVELOPER'S PERFORMANCE**

4.01 **Authority's Obligations.** The Redeveloper's performance of the terms and requirements of this Agreement, as to the construction of Project Improvements pursuant to Article VIII below for all of the Project and each Phase thereof, shall at all times be subject to the Authority's performance of all of the obligations set forth in this Article IV, which include:

(a) identifying and obtaining funds adequate for the Redeveloper to complete the pre-construction activities set forth in Article V below;

(b) identifying and obtaining funds required for the Authority to acquire all the Property needed for the applicable Phase of the Project;

(c) identifying and obtaining funds sufficient to:

(i) enable the Redeveloper, its assignee (as permitted hereunder) and contractor or subcontractors, at no cost to the Redeveloper, to: (a) perform any and all demolition, site preparation, environmental and other conditions investigation and remediation; and (b) subject to Section 6.01(b), construct all Infrastructure for the applicable Phase of the Project, all as is required to comply with the requirements of City Code and obtain a Certificate of Occupancy for such Phase of the Project (together, (a) and (b) are hereinafter referred to as the "**Land Development Activities**"); and

(ii) enable the Authority to:

A. satisfy the payment of any relocation costs related to the applicable Project Phase, as may be required by Applicable Laws; and

B. fill the Affordable Housing Gap for the applicable Phase of the Project, subject, however, to the Redeveloper's participation in such Affordable Housing Gap pursuant to Section 8.08 below.

(the funds required by the foregoing items (a) through (c) are together hereinafter referred to as the "**Authority Predevelopment Obligations**"). Projected estimates of such Authority Predevelopment Obligations, as well as potential sources of fund to pay such Authority Predevelopment Obligations, shall be set forth on the preliminary draft pro forma (the "**Phase Pro Forma**") prepared by the Redeveloper, with information provided to it by the Authority, for the applicable Phase of the Project, a copy of which shall be provided and materially agreed to by the Authority. The Phase Pro Forma for Phase One and Phase Two are attached hereto as Exhibit D. The Parties acknowledge that the estimates and sources to be set forth on the Phase Pro Forma are projections only. The Parties further acknowledge that the Authority, in its sole discretion,

may substitute funds between line items within the Phase Pro Forma as may be necessary to correspond with costs that fluctuate in the normal course of any Phase of the Project, and that the Authority may obtain funds in amounts and from sources that vary from the Phase Pro Forma or are not listed in the Phase Pro Forma. From each source of funding listed on the Phase Pro Forma or from such other sources as the Authority may obtain funding for any Phase of the Project, including, among other sources, the City Contract, the Authority shall exercise commercially reasonable efforts to either enter into a contract with such source, obtain a written commitment for funding evidencing the source, the amount of funds and when the funds will become available to the Authority to pay for the Authority Predevelopment Obligations applicable to such Phase of the Project, or work with the City's Brownfields Coordinator to identify funds for environmental investigations and remediation ("**Authority Funding Contracts**"). The Authority shall provide a copy of any and all such Authority Funding Contracts to the Redeveloper, if and when available. The Parties acknowledge that the Authority lacks a general source of funds to fund the Authority Predevelopment Obligations and that all funds obtained by the Authority to fund the Authority Predevelopment Obligations have been supplied under the City Contract, or, as to environmental investigation and remediation, with grants managed by the City's Brownfields Coordinator. The Parties further acknowledge and anticipate that the Authority will obtain future funds in the same manner, subject to the availability of, and approval by the City for the use of, such funds to fund the Authority Predevelopment Obligations. The Parties acknowledge and agree that as of the Effective Date, the Authority has satisfied all of its Authority Predevelopment Obligations as to Phase One of the Project. The Parties further acknowledge and agree that as of the Effective Date of this Second Amended and Restated Redevelopment Contract, the Authority has satisfied all of its Authority Predevelopment Obligations as to Phase Two of the Project, that the City Contracts and the Authority Funding Contracts have expired, and that the Authority has no, and shall not be deemed to have any, continuing or additional funding obligations for the Project under the City Contracts, the Authority Funding Contracts, or otherwise, except as provided in Section 6.01(b) as to the Campbell Street Infrastructure.

## **ARTICLE V PRE-CONSTRUCTION ACTIVITIES**

5.01 Redeveloper's Obligations. Subject to the Authority's material satisfaction of its Authority Predevelopment Obligations and prior to the Redeveloper's obligation to commence construction of the Project Improvements, the Redeveloper shall complete the following activities for each Phase of the Project (collectively, the "**Pre-Construction Activities**"):

(a) Redeveloper, at the Authority's cost and expense, shall prepare a permit and land use approval schedule ("**Governmental Approval Schedule**") for each Phase of the Project pertaining to the matters to be set forth in the Redevelopment Plan related to Land Development Activities. Such Governmental Approval Schedule shall be submitted to the Authority for approval and shall identify, generally, the permits, land use approvals, zoning requirements and related regulatory review requirements necessary to implement each phase of the Project ("**Governmental Approvals**"). The Authority's payment of any costs related to the Governmental Approval Schedule shall be subject to prior written approval of the Authority, consent to which shall not be unreasonably withheld. Prior to the Effective Date, the Redeveloper will prepare a revised phased site plan for implementation of the Project ("**Phasing Plan**"), the form of which was approved by the Authority, and a copy of which is attached and incorporated by reference as Exhibit E. Subsequent to the Effective Date, the Parties shall periodically (at least every six (6) months or such other regular period mutually acceptable to the Parties) review the Phasing Plan to ensure it is accurate in light of market conditions and, in the event the Parties determine the Phasing Plan is not accurate in light of such market conditions, the Phasing Plan shall be amended in writing by agreement of the Parties, consent to which shall not be unreasonably withheld, conditioned or

delayed. If amendments are not material (as determined in the reasonable discretion of the Authority's Executive Director), such amendments may be approved administratively, without the consent of the Board. Notwithstanding anything herein to the contrary, the Parties shall review and confirm the accuracy of or adjust the Phasing Schedule following the substantial completion of each Phase of the Project. The Authority acknowledges and agrees that as of the Effective Date, the Redeveloper has prepared a Phasing Plan and that such Phasing Plan has been approved by the Authority.

(b) The Redeveloper or its consultants shall develop a preliminary storm water management plan for each Phase of the Project in the context of the Property which reflects impacts to prospective site development components to meet the objective of achieving maximum infiltration and retention of storm water and minimizing the quantity of storm water run-off. Each such study shall be prepared at the cost and expense of the Authority in accordance with the funds available to the Authority as set forth in the Authority Funding Schedule and under the Authority Funding Contracts and pursuant to a separate scope of work and fee proposal to be prepared by the Redeveloper or its consultants and agreed to by the Authority in writing in advance of the preparation of the study by the Redeveloper or its consultants. The Authority acknowledges and agrees that as of the Effective Date, the Redeveloper has prepared a storm water management plan for Phase One of the Project.

(c) The Redeveloper or its consultants, if and as directed by the Authority for a particular Phase of the Project following Phase One, at the Redeveloper's sole cost and expense, shall prepare a plan setting forth specific guidelines for each Phase of the Project following Phase One that outline a strategy for sustainable development which addresses the implementation of the development, construction, and building standards and practices for the Project Improvements contemplated for any Project Phase including, but not limited to, water efficiency, energy efficiency, selection of materials and resources, and indoor environmental quality. The Parties acknowledge that the Redeveloper's strategy for sustainable development as to Phase One is included within the URD Zoning Plan.

(d) The Redeveloper, if and as directed by the Authority for a particular Phase of the Project following Phase One, at the Authority's cost and expense, shall prepare a plan setting forth specific guidelines for each Phase of the Project following Phase One that outline a strategy for sustainable development as it applies to Infrastructure including, but not limited to, water retention, streetscape, pedestrian circulation, 4th Street Greenway, storm drainage, and materials for pedestrian orientation. The Authority's payment of any costs related to the plan under this subsection shall be subject to prior written approval of the Authority, consent to which shall not be unreasonably withheld. The Parties acknowledge that the Authority's strategy for sustainable development of Infrastructure as to Phase One is included within the URD Zoning Plan.

(e) The Parties acknowledge and agree that, prior to the Effective Date, the Redeveloper prepared a market study for Phase One of the Project which took into account the specific project goals of achieving the Affordable Housing Requirement, and further acknowledge and agree that, upon the Phase Completion Date of Phase One of the Project, the Redeveloper achieved 15% of Affordable housing for the entire Project based on the Redeveloper's plan to construct an estimated total of 360 residential units within the entire Project, of which 54 Affordable units were constructed in Phase One. The Redeveloper constructed a total of 108 residential units (54 market rate units and 54 Affordable units) for Phase One.

**Commented [BE3]:** Updated unit count for the entire Project?

(f) The Redeveloper or its consultants shall prepare designs for infrastructure for each Phase of the Project, if and when required by City Code for development of such Project Phase, which infrastructure shall include, but not be limited to, open space design, conduits, sanitary and storm sewer lines, storm drainage and other utilities, streetscape, landscape and lighting improvements for the Property (collectively, "**Infrastructure**"), all of which Infrastructure shall be consistent with the studies

prepared pursuant to Section 5.02 and the URD Zoning Plan. Subject to the Redeveloper's or its consultants' engagement by the Authority, the Redeveloper or its consultants shall design the Infrastructure, at the cost and expense of the Authority, subject to Section 6.01(b) and funds available to the Authority as set forth in the Authority Funding Schedule and under the Authority Funding Contracts, pursuant to a separate scope of work and fee proposal to be prepared by the Redeveloper or its consultants and agreed to by the Authority in writing in advance of performance by the Redeveloper or its consultants. The Redeveloper shall ensure that any Infrastructure designed and/or constructed for a Phase of the Project is comprehensively integrated with all other Infrastructure for the whole of the Project, to ensure the overall efficiency of operation and construction costs of the Infrastructure and Project Improvements. The Parties acknowledge and agree that, prior to the Effective Date hereof, the Redeveloper, with the advance written approval by the Authority pursuant to the Redeveloper's work and fee proposals as described in the Management Agreement (defined below), prepared designs for Infrastructure for Phase One of the Project that comply in all respects with the provisions of this Contract.

(g) Prior to the Effective Date, the Redeveloper, with the input and at the cost of the Authority, prepared the URD Zoning Plan, a portion of which covers the Project, inclusive of Phase One and Phase Two, which URD Zoning Plan was reviewed and approved by both the Authority and HAKC. HAKC's approval is evidenced by the letter dated July 24, 2015 from Edwin Lowndes, HAKC Executive Director, confirming such approval ("**HAKC Approval Letter**"), a copy of which is attached hereto as Exhibit F. If and as Phases of the Project are mutually determined by the Authority and the Redeveloper as desirable and financially feasible, Redeveloper agrees to prepare, at the Authority's cost and expense, an updated conceptual plan for the scope of such feasible Phase (the "**Phase Conceptual Plan**") consistent with the URD Zoning Plan and the Columbus Park Urban Renewal Plan. The Phase Conceptual Plan shall provide a complete description of the applicable Phase or portion of the Project, including generally, such things as are required to secure all permits from the City for the Property that is the subject of the Phase Conceptual Plan, such as: (a) building uses; (b) gross building area; (c) gross leasable area; (d) parking requirements based on local zoning, regulations and market demand; (e) public transportation access; (f) infrastructure improvements required to implement the Phase of the Project; (g) identification of buildings within the Phase which are candidates for demolition; (h) the estimated time-frame in which the Phase of the Project shall be implemented; (i) the number of Affordable housing units to be included in the applicable Phase of the Project, which shall be a minimum of 15% and a maximum of 25% of the total number of units in the total Project; (j) proposed Infrastructure; and (k) the Phase Pro Forma related to the Phase Conceptual Plan. Notwithstanding the foregoing, any future amendment to the approved Phase Conceptual Plan or Redevelopment Plan shall be subject to the review and approval of the Authority, consent to which shall not be unreasonably withheld, conditioned or delayed, and the approval by HAKC, which consent the Authority shall use commercially reasonable efforts to expediently obtain. The Parties acknowledge and agree that, prior to the Effective Date, the Redeveloper completed a Phase Conceptual Plan for the Project, inclusive of Phase One and Phase Two of the Project, and that such Phase Conceptual Plan was approved by the Authority. The Parties further acknowledge that HAKC consented to the Phase Conceptual Plan, inclusive of Phase One and Phase Two of the Project, as evidenced by the HAKC Approval Letter, and that HAKC is in agreement with the amendments in this Contract concerning the assignment to 5 Cherry and the removal of the HAKC property from the terms of this Contract, as evidenced by email correspondence dated August 22, 2023 between the Authority and HAKC.

(h) The Redeveloper, at the Authority's sole cost and expense, following approval of the URD Zoning Plan and initial Phase Conceptual Plan and prior to the Effective Date, prepared a final plat for the Project to the City, inclusive of Phase One and Phase Two of the Project ("**Final Plat**") and submitted the Final Plat to the City for approval, in the name of the Authority. The Final Plat shall be consistent with the URD Zoning Plan. The Redeveloper acknowledges and agrees that the Authority has advocated timely approval of the Final Plat and has provided such written consents as are needed by the



Redeveloper to process such Final Plat. The Final Plat, and any subsequent rezoning or plat applications related to the Project, shall be prepared, filed and, as applicable, recorded by the Redeveloper, at the sole cost and expense of the Authority; provided, however, that the Authority shall approve in writing any such costs in advance. Any future amendment to the approved Final Plat shall be subject to the review and approval of the Authority, consent to which shall not be unreasonably withheld, conditioned or delayed, and by HAKC, which consent the Authority shall use commercially reasonable efforts to expediently obtain. The Authority acknowledges and agrees that the Final Plat was approved by the Authority prior to the Redeveloper's submittal to the City. The Parties acknowledge that HAKC consented to the Final Plat as evidenced by the HAKC Approval Letter.

Commented [BE4]: Is HAKC approval necessary for plat changes?

(i) Environmental Investigations and Remediation. At the Authority's sole cost and expense, subject to the funds available to the Authority as set forth in the Authority Funding Schedule and under the Authority Funding Contracts, the Authority shall cause all of the Property to be investigated through environmental site assessments and reporting conducted by qualified consultants and, as determined by the results of such investigations and consultations among the environmental consultant, the Authority, the Redeveloper and the City's Brownfields Coordinator, either remediated by qualified consultants of any Hazardous Substances in accordance with Applicable Laws or subject to deed restrictions or other safeguards to ensure that, in accordance with Applicable Laws, the planned use is not adversely impacted by and shall not exacerbate any Hazardous Substances. The Authority's obligation to remediate Hazardous Substances from the Property may be performed incrementally, on such portions of the Property as may be needed to develop a particular Phase of the Project. The remediation consultant selected by the Authority, upon the recommendation of the City's Brownfields Coordinator, shall be subject to the reasonable approval of Redeveloper and the Authority's contract with such approved remediation consultant shall require that Redeveloper be indemnified for any and all damages to Redeveloper and its members arising out of or related to the gross negligence or intentional misconduct of the remediation consultant in the performance of its remediation activities. A "no further action" letter issued by the Missouri Department of Natural Resources ("MDNR") stating that the applicable Phase is in compliance with the requirements of MDNR's Voluntary Cleanup Program and, if applicable, has been remediated or otherwise safeguarded in accordance with Applicable Laws ("Closure Letter") shall constitute a conclusive determination that the Authority has fulfilled its environmental investigation and remediation obligations under this Contract as to such portion of the Property identified in the Closure Letter; and from the date of such Closure Letter, the Authority shall have no further obligations or liability whatsoever with respect to the environmental condition of such portion of the Property identified in such Closure Letter. Notwithstanding anything herein to the contrary, the Redeveloper or any successor or assign thereof may, in its sole discretion, conclude the Authority has fulfilled its investigation and remediation obligations and in writing waive the Authority's obligation to obtain a Closure Letter from MDNR.

5.02 Management of Pre-Construction Activities. The Redeveloper or its consultants, with the input of the Authority, shall establish a method to manage all activities related to the development of the Project which precede construction of the Project Improvements. The terms and conditions of such management activities, including the compensation to be paid to the Redeveloper by the Authority to perform such activities, shall be set forth in one or more management agreements by and between the Redeveloper by the Authority. The Parties acknowledge and agree that as of the Effective Date, the Authority and the Redeveloper have entered into that certain Consulting Services Agreement dated September 18, 2007, as amended by Amendment No. 1 dated July 1, 2011, Amendment No. 2, dated September 24, 2013, Amendment No. 3 dated November 19, 2013, Amendment No. 4 dated May 23, 2014, and Amendment No. 5 dated March 27, 2015 with respect to the Redeveloper's management of Pre-Construction Activities for Phase One of the Project (collectively, the "Management Agreement"), and that such Management Agreement is in full force and effect and there is no default thereunder by either of the Parties.

Commented [BE5]: Is an amendment needed for Phase Two?

5.03 Satisfaction of Pre-Construction Activities. The Parties acknowledge and agree that as of the Effective Date, the Redeveloper and the Authority have satisfied all of its Pre-Construction Activities as to Phase One of the Project. The Parties further acknowledge and agree that as of the Effective Date of this Second Amended and Restated Redevelopment Contract, the Authority has satisfied all of its Pre-Construction Activities as to Phase Two of the Project, and that, upon delivery by the Redeveloper or 5 Cherry to the Authority of development plans and budgets and financing commitments for construction of the Phase Two Improvements on the Phase Two Assigned Property, which documents shall be attached to and incorporated into this Contract, the Redeveloper will have satisfied its Pre-Construction Activities as to Phase Two of the Project.

5.04 Limitation on the Authority's Costs and the Redeveloper's Obligations. Notwithstanding anything in Article V to the contrary: (a) the Redeveloper's obligations to perform pursuant to this Article V shall be subject to the Authority's payment of its costs, as required pursuant to this Article V; and (b) the Authority's liability to fund its obligations pursuant to this Article V or otherwise under this Contract shall not exceed the amount of funds available to the Authority as set forth in the finalized Phase Pro Forma and the Authority Funding Contracts. For the purposes of this Contract, the amount of funds available to the Authority pursuant to the Authority Funding Contracts shall mean those funds actually paid to the Authority or the City; provided, however, as to funds paid to the City, such funds must be subject to a contract between the Authority and the City requiring the City to transfer the funds to the Authority or third-party consultant in furtherance of the Project. The Redeveloper shall be responsible for any pre-construction activity costs the Redeveloper incurs within the Property that the Authority does not first approve in writing. The Parties acknowledge and agree that as of the Effective Date of this Second Amended and Restated Redevelopment Contract, the City Contracts and the Authority Funding Contracts have expired, and that neither the City nor the Authority has no, and shall not be deemed to have any, continuing or additional funding obligations under this Article V or this Contract as to Phase Two or the Project under the City Contracts, the Authority Funding Contracts, or otherwise, except as provided in Section 6.01(b) as to the Campbell Street Infrastructure.

## **ARTICLE VI CONSTRUCTION OF INFRASTRUCTURE**

### Section 6.01 Construction of Infrastructure.

(a) Following satisfaction and approval of each of the requirements of Article V above, as to the applicable Phase of the Project and prior to the construction of the Project Improvements proposed for such Phase, inclusive of all Infrastructure to be made within all or such Phase or portion of the Property, the Redeveloper or its consultants shall construct and install such Infrastructure, which has been designed, approved and as may be modified pursuant to Section 5.01 above. Subject to Section 6.01(b), any such Infrastructure shall be constructed and installed by the Redeveloper or its consultants at the cost and expense of the City, in accordance with the funds available to the Authority as set forth in the Phase Pro Forma and the Authority Funding Contracts and pursuant to a separate scope of work and fee proposal to be prepared by the Redeveloper or its consultants and agreed to in writing by the City or the Authority in advance of performance by the Redeveloper or its consultants. The Redeveloper's or its consultant's construction and installation of such Infrastructure shall at all times be subject to the Authority's funding thereof (subject to Section 6.01(b)), and shall further be limited to those portions of the Property which are owned by the Redeveloper, its successors, assigns or affiliates, the Authority or within the public right-of-way, subject to the City's approval. The Parties acknowledge and agree that, pursuant to the Management Agreement and based on confirmation from the City, the Redeveloper and its consultants completed the construction and installation of the Infrastructure required for Phase One and Phase Two of the Project, in accordance with the requirements of this Section 6.01, except for the Campbell Street Infrastructure.

(b) Notwithstanding anything in Section 6.01(a) or in this Contract to the contrary, the Parties acknowledge and agree that as of the Effective Date of this Second Amended and Restated Redevelopment Contract, the City Contracts and the Authority Funding Contracts have expired. The Authority agrees to cooperate with the Redeveloper to seek funding from the City and, if necessary, enter into one or more new City Contracts or Authority Funding Contracts to fund the Campbell Street Infrastructure. The City is the Authority's sole source of funding for the Campbell Street Infrastructure and any additional Infrastructure funding in the future. If the City decides (and not as an obligation) to provide funding for the Campbell Street Infrastructure or any other additional Infrastructure for the Project in the future, this Contract shall be amended to reflect the new funding and to reference any future funding agreement between the City and the Authority (or other party) in Exhibit B attached hereto. To provide maximum flexibility for the Project, the Parties acknowledge and agree that the City, in consultation with the Redeveloper and its consultants, may determine that all, a portion, or none of the Campbell Street Infrastructure is necessary for the Project and that the City may vacate all or a portion of the right-of-way for Campbell Street between 4<sup>th</sup> Street and 3<sup>rd</sup> Street. If all or any portion of such right-of-way for Campbell Street is vacated, any vacated property reverting to the ownership of the Redeveloper under Applicable Laws shall automatically be included as part of the Property.

Section 6.02 Project Financing. The Parties acknowledge that it is not feasible to identify the appropriate financing tool for all of the Project, prior to the Effective Date. The Redeveloper, in cooperation with the Authority, shall identify the financing tool that provides the funding and flexibility necessary to cover any remaining gap in financing for the applicable Phase of the Project. Such financing tools may include, but are not limited to, tax increment financing, neighborhood improvement district, port improvement district, community improvement district, various tax credits, or tax abatement or exemption provided by one or more political subdivisions or bodies corporate and politic of the State of Missouri (collectively, "**Incentives**"). The Redeveloper shall file an application and any other required documents as may be necessary to secure any of the Incentives. Revenue generated from any of the foregoing Incentives may be used to pay debt service on obligations issued for the Project (which amount shall be set forth in the Phase Pro Forma) to fund Project costs. Costs related to the Incentives and delegated to the Authority shall not exceed the amount of funds available to the Authority as set forth in the Phase Pro Forma and the Authority Funding Contracts, and shall be subject to prior written approval of the Authority. The Parties acknowledge and agree that, prior to the Effective Date and in connection with the Authority's approval of the Redevelopment Plan for Phase One, the Authority approved real property tax abatement authorized by the LCRA Law for Phase One by and through the Board pursuant to Resolution No. 1-04-14 dated January 22, 2014, subject to completion of Phase One in accordance with this Contract. The Parties acknowledge and agree that, contemporaneously with the Amendment Effective Date and in connection with the Authority's approval of the Redevelopment Plan for Phase Two, the Authority approved real property tax abatement authorized by the LCRA Law for Phase Two by and through the Board pursuant to Resolution No. 4-3-17 dated April 26, 2017, subject to completion of Phase Two in accordance with this Contract. Tax abatement for subsequent Phases shall be subject to separate Board approval based upon independent financial analysis prepared for each subsequent Phase in accordance with the Workable Program.

Commented [BE6]: Added by first amendment.

## ARTICLE VII PROPERTY TRANSFER

The Parties acknowledge and agree that (i) the Authority previously acquired and conveyed the Phase One Property to CP Lofts pursuant to the Redevelopment Contract and the Phase One Assignment, (ii) the Authority previously acquired and conveyed the Phase Two Property to the Phase Two Redeveloper pursuant to the Redevelopment Contract and the Phase Two Assignment, (iii) CP Lofts, or its successors and assigns, is the current owner of the Phase One Property, (iv) the Phase Two Redeveloper, or its successors and assigns, is the current owner of the Phase Two Property, (v) the

Authority does not own any property in connection with the Project, and (vi) neither the City nor the Authority has no, and shall not be deemed to have any, current or continuing obligation to contract for or to fund, pursuant to the City Contracts, the Authority Funding Contracts, or otherwise, the acquisition of any other property, including, without limitation, the HAKC Property, in connection with the Project. If the Redeveloper requests the conveyance of any portion of the Property to the Redeveloper's assignee or designee, the Authority shall first approve Redeveloper's assignee or designee, which approval shall not be unreasonably withheld, conditioned or delayed. Upon such approval and assumption by the Redeveloper's assignee or designee of the Redeveloper's obligations as "Redeveloper" under this Contract as to such portion of the Property, the Redeveloper shall be released of its obligations under this Contract as to such portion of the Property conveyed to such assignee or designee from the date of the assignment. Thereupon, the Redeveloper's assignee or designee shall be subject to the same obligations and restrictions as the Redeveloper under this Contract solely as to such portion of the Property conveyed, and shall assume, in a writing to the Authority, all such obligations and restrictions, the form of which assumption shall be reasonably acceptable to the Authority and the assignee or designee. The Parties acknowledge and agree that, as more fully set forth in Article VIII below, the Authority has agreed to consent to the Phase Two Redeveloper's conveyance of fee simple title to the Phase Two Assigned Property to 5 Cherry, as the Phase Two Redeveloper's assignee as to Phase Two Assigned Property only, and, pursuant to the Second Phase Two Assignment by and among the Authority, the Phase Two Redeveloper, and 5 Cherry ("**Second Phase Two Assignment**") dated of even date herewith: (i) the Phase Two Redeveloper assigned all rights, duties, and obligations to 5 Cherry and shall convey the Phase Two Assigned Property to 5 Cherry pursuant to a separate sale contract between the Phase Two Redeveloper and 5 Cherry and upon such terms and conditions as the Phase Two Redeveloper and 5 Cherry may agree; (ii) 5 Cherry assumed all of Phase Two Redeveloper's rights, duties and obligations under this Contract, as to the Phase Two Assigned Property; and (iii) the Authority ratified all prior actions related to such assignment and assumption, with respect to 5 Cherry, as assignee of this Contract as to the Phase Two Assigned Property, and the Phase Two Assigned Property conveyance.

**ARTICLE VIII  
REDEVELOPMENT PLAN &  
CONSTRUCTION OF PROJECT IMPROVEMENTS**

Section 8.01 Development of the Project.

(a) Subject to the satisfaction of each of the foregoing Articles IV, V, VI, and VII as to each particular Phase of the Project and any and all other contingencies set forth in this Contract (each, a "**Plan Approval Date**") which Plan Approval Date shall be evidenced by a resolution of the Authority's Board, but, notwithstanding anything herein to the contrary, at all times subject to the availability of funds pursuant to Authority Funding Contracts in accordance with the Phase Pro Forma and the Authority's prior approval to expend such funds, Redeveloper shall perform the following undertakings in accordance with the process ("**Process**") set forth below:

(i) Redeveloper shall exercise commercially reasonable efforts to complete all construction planning and the performance of due diligence ("**Due Diligence**") as to such Phase of the Project prior to the expiration of the Due Diligence Period.

(ii) Redeveloper shall exercise commercially reasonable efforts to obtain all Governmental Approvals for such Phase of the Project prior to the expiration of the Due Diligence Period;

(iii) Redeveloper shall prepare and complete marketing materials and begin pre-sale and pre-lease activities prior to the expiration of the Due Diligence Period;

(iv) Redeveloper shall prepare construction documents for such Phase after the conclusion of the Due Diligence Period;

(v) Redeveloper shall commence construction of the Project Improvements for such Phase of the Project in accordance with the Phasing Plan, subject to Force Majeure Conditions;

(vi) Subject to Force Majeure Conditions, Redeveloper shall substantially complete construction of the Project Improvements in the applicable Phase of the Project on or before the Phase Completion Date, subject to the approval of the Authority and the City Council pursuant to the City Deadline Ordinance;

(b) In no event shall the Redeveloper be in default under this Contract pursuant to this Section 8.01 in the event that the Authority or the Redeveloper is unable to complete any of the requirements of Articles IV, V, VI, and VII as the result of the Authority's inability to obtain funding for the activities for which the Authority is required to fund, provided that such funding is a prerequisite for the Authority's or the Redeveloper's performance of the requirements of Articles IV, V, VI and VII. The Parties acknowledge and agree that the City is the Authority's sole source of funding for the Project.

(c) The Redeveloper agrees that it will enter into the necessary contracts with contractors for the Project Improvements and cause those contracts to provide that all work performed under such contracts shall be in accordance with the URD Zoning Plan, the Redevelopment Plan, this Contract and the Urban Renewal Plan.

(d) Commencing upon the date construction of the Project Improvements for Phase One begins and thereafter, on a bi-annual basis prior to the Project Completion Date, the Redeveloper shall prepare and deliver to the Authority a written update regarding the status of the Process for each Phase of the Project which is then subject to the Process by Redeveloper at the time of delivering the status update. In the event the Authority identifies that an act or omission on the part of the Redeveloper in the performance of the Phase of the Project then being implemented by the Redeveloper may result in the Authority withholding the Certificate of Completion pursuant to Section 8.05 below and/or the Authority withholding the Certificate of Qualification for Tax Abatement, the Authority agrees to and shall timely provide the Redeveloper with a written statement indicating, in reasonable detail, such act or omission and the measures or acts necessary, in the reasonable opinion of the Authority, for the Redeveloper to take or perform in order to perform in such a manner to timely obtain a Certificate of Completion or the Certificate of Qualification for Tax Abatement pursuant to Section 8.05 below. The Parties shall meet on an as-needed basis to discuss the Project status report.

(e) Notwithstanding anything herein to the contrary: (i) the Redeveloper's obligation to construct and install any Project Improvements within the Property shall at all times be limited to those portions of the Property which are owned by the Authority, the Redeveloper or its designee, and, subject to Section 6.01(b), the City's funding of all required Infrastructure for the applicable Phase of the Project under the City Contract; and (ii) the Redeveloper's financial obligations pursuant to this Contract, except as may otherwise be provided in the Funding Agreement and for any costs incurred by the Redeveloper in connection with the Project that were not first approved by the Authority in writing, shall be limited to the Redeveloper's investment in the Project Improvements.

(f) The Parties acknowledge and agree the Plan Approval Date for Phase One of the Project is January 22, 2014, as is evidenced by the Authority's Resolution No. 1-04-14. The Parties acknowledge and agree the Plan Approval Date for Phase Two of the Project is April 26, 2017, as is evidenced by the Authority's Resolution No. 4-3-17.

Commented [BE7]: Added by first amendment.

#### 8.02 Assignment of Development Rights.

(a) In the event: (i) Redeveloper determines, in its sole and reasonable discretion and following completion of Due Diligence on a particular Phase of the Project, not to undertake the development of that particular Phase of the Project, the Redeveloper shall, timely following making such determination, exercise reasonable efforts to market the development of such Phase of the Project to a qualified, alternate redeveloper (an "**Alternate Developer**"); or (ii) Redeveloper desires to undertake the development of a particular Phase of the Project through one or more single-purpose entities that will be substantially controlled by the Redeveloper (each, an "**Affiliate**"), which Alternate Developer or Affiliate (each, a "**Assignee Developer**") shall be subject to the approval of the Authority in the Authority's sole and reasonable discretion. If Redeveloper, despite its reasonable efforts, is unable to identify an Assignee Developer acceptable to the Authority, Redeveloper shall remain bound by the terms and requirements of this Contract. Upon the Authority's approval of the Assignee Developer as to such phase of the Project, Redeveloper shall enter into an agreement with the Assignee Developer requiring the implementation of such Phase of the Project in accordance with the terms and requirements of this Contract, the URD Zoning Plan, the Redevelopment Plan and the Urban Renewal Plan ("**Assignment Contract**"). Such Assignment Contract shall be in a form and substance reasonably acceptable to the Authority and shall require, among other things, that the Redeveloper monitor the Assignee Developer's implementation of the Contract and use reasonable efforts to ensure the Assignee Developer's timely completion of Phase of the Project which is the subject of the Assignment Contract; provided, however, such Assignment Contract shall specifically state that a failure of the Assignee Developer to complete the Phase of the Project which is the subject of the Assignment Contract shall not constitute an event of default of the Redeveloper. The Assignment Contract shall further permit the Authority to enforce the terms and requirement of this Contract against the Assignee Developer and to pursue any remedies permitted under this Contract against the Assignee Developer.

(b) By execution hereof, the Authority hereby ratifies and consent to: (i) the assignment of this Contract and the rights and obligations hereunder, in whole, from the Original Redeveloper to the Original Redeveloper's parent, the Redeveloper; (ii) the Redeveloper's concurrent, limited assignment of the rights and obligations of this Contract, as to all of Phase One of the Project, to CP Lofts; (iii) the Redeveloper's concurrent, limited assignment of the rights and obligations of this Contract, as to all of Phase Two of the Project, to the Phase Two Redeveloper; and (iv) the Phase Two Redeveloper's concurrent, limited assignment of the rights and obligations of this Contract, as to the Phase Two Assigned Property, to 5 Cherry. The Phase Two Redeveloper retains all rights and obligations under this Contract as to the Phase Two Retained Property. The prior assignments by the Original Redeveloper to the Redeveloper, by the Redeveloper to CP Lofts, and by the Redeveloper to the Phase Two Redeveloper became effective as of the dates of the applicable Transaction Document and each such assignment remains in full force and effect. Except as expressly amended herein with respect to Phase Two, nothing in this Second Amended and Restated Redevelopment Contract is intended to amend, modify, or change the terms or conditions of any prior assignment, specifically including, without limitation, the assignment by the Redeveloper to CP Lofts as to Phase One and the Phase One Property. The assignment to 5 Cherry shall be effective upon the Effective Date of the Phase Two Assignment (the "**Assignment Effective Date**"). The assignment by the Phase Two Redeveloper to 5 Cherry shall require: (i) 5 Cherry assume, in whole and without exception, all of obligations of the Phase Two Redeveloper under this Contract as to the Phase Two Assigned Property only, from and after the Assignment Effective Date; and

(ii) the Authority to acknowledge, in writing, the Assignment Effective Date, which acknowledgment shall not be unreasonably withheld, conditioned or delayed.

Section 8.03 Redevelopment Plan; Modifications. The Redeveloper shall diligently pursue completion of the Project in conformance with the URD Zoning Plan, the Redevelopment Plan, this Contract, and the Urban Renewal Plan. Should the Redeveloper deem it necessary or desirable to amend the URD Zoning Plan or the Redevelopment Plan, the Redeveloper shall submit such proposed modifications to the Authority and HAKC, including plans and specifications for Project Improvements and a revised Phase Completion Date or Project Completion Date, if applicable. The Authority shall use commercially reasonable efforts to cause HAKC to timely review such modification within a reasonable time and shall send written notice of the Authority's and HAKC's approval or rejection of the modifications to the Redeveloper, consent to which such modifications shall not be unreasonably withheld, conditioned or delayed. If either or both the Authority and HAKC rejects any such modification, the notice so stating shall set forth the reasons for rejection. Following receipt of such notice, the Redeveloper and Authority shall follow the process set forth in Section 8.05 below as to future submittals by the Redeveloper of the modifications.

Commented [BE8]: Is HAKC approval for Redevelopment Plan/Zoning changes necessary?

Section 8.04 Extensions Due to Force Majeure Conditions. Any particular Phase Completion Date and the Project Completion Date may be extended due to any Force Majeure Condition if the Redeveloper notifies the Authority of the existence of such condition within forty five (45) days after first becoming aware of such condition. The extension of time for the applicable Phase Completion Date and/or the Project Completion Date shall be for the period of any delay or delays caused or resulting from any Force Majeure Condition; provided, however, the Redeveloper must notify the Authority of the existence of such Force Majeure Condition within forty five (45) days after the Redeveloper becomes aware of the commencement of a Force Majeure Condition, which notice to the Authority shall include documentation or other information reasonably necessary to establish the existence of the Force Majeure Condition and an estimate of the approximate period of delay to be created by the Force Majeure Condition. The Redeveloper's failure to provide such notice and documentation shall eliminate the waiver of default due to such Force Majeure Condition created in this Section. Notwithstanding anything in this Section 8.04 or in this Contract to the contrary, any extension of a Phase Completion Date or the Project Completion Date shall be subject to Authority and City Council approval in accordance with the City Deadline Ordinance.

Section 8.05 Project Certificate of Completion. Upon the completion of the construction of the Project Improvements for a particular Phase of the Project in accordance with the Phasing Plan, as evidenced by the issuance of a Certificate of Occupancy by the City for such Phase of the Project, the Redeveloper may send a written request to the Authority for a Certificate of Completion for such Project Phase. The Certificate of Completion shall be a conclusive determination of the Redeveloper's satisfaction and termination of the Project Covenants in this Contract regarding completion of such Phase of the Project in accordance with the Urban Renewal Plan, the Redevelopment Plan and this Contract. The Certificate of Completion shall be in recordable form and shall not be unreasonably withheld, conditioned or delayed. If the Authority fails or refuses to provide the Certificate of Completion after receiving a written notice requesting such certificate, the Authority shall, within fifteen (15) days of receiving such request, provide the Redeveloper with a written statement indicating in reasonable detail how the Redeveloper has failed to complete such Phase of the Project in conformity with the Urban Renewal Plan, the Redevelopment Plan, and/or this Contract and the measures or acts necessary, in the opinion of the Authority, for the Redeveloper to take or perform in order to obtain a Certificate of Completion. Thereafter, the Redeveloper shall exercise reasonable means to cure the Redeveloper's failure to complete and, upon completion of such activities, shall submit a request for a Certificate of Completion to the Authority which shall be processed in accordance with this Section 8.05. Upon delivery of the Certificate of Completion, the Authority, timely upon the request of the Redeveloper, shall execute and record, at

such time as may be directed by the Redeveloper, one or more Certificate(s) of Qualification for Tax Abatement for the all or any portion or Phase of the Property for which a Certificate of Completion has been issued.

Section 8.06 Maintenance. The Redeveloper shall, at all times during the Term and while in ownership thereof, maintain the Project Improvements and Property in a good state of repair and attractive appearance.

Section 8.07 Payment of Fees, Costs and Expenses. Except as otherwise provided herein, the Redeveloper shall pay to the Authority all reasonable fees owed to the Authority and all necessary and reasonable expenses and costs incurred by the Authority in performance of its obligations under this Agreement, including reasonable attorney's fees, as required by the Funding Agreement.

Section 8.08 Reconveyance of Improved Property; Application of Sales Proceeds. In the event the Redeveloper owns and intends to convey any portion of the Property to a third-party that is not otherwise a permitted assignee in accordance with Articles VIII and XV herein, and such Property is improved with Infrastructure paid for with funds of the City under the City Contracts or the Authority Funding Contracts but has not been improved with vertical Project Improvements, the Authority shall have the option, as a right of first refusal, to require the Redeveloper to reconvey such Property to the Authority. The Redeveloper shall provide written notice to the Authority of the Redeveloper's intent to convey such Property to a third-party. The Authority shall promptly notify the Redeveloper in writing of the Authority's decision to exercise its option, in which event the Redeveloper shall convey such Property to the Authority upon the Authority's payment to the Redeveloper of sum of Ten and 00/100 Dollars (\$10.00), by special warranty deed in a form acceptable to the Parties. If the Authority does not exercise this option, notice of which exercise shall be promptly given by Authority to the Redeveloper in writing, the Redeveloper may proceed with the sale of the parcel of the subject Property. The Redeveloper agrees that the sale proceeds realized by the Redeveloper or its designee from the sale of any parcel of the Property within a particular Phase of the Project which is improved with Infrastructure but is not improved with Project Improvements constructed by the Redeveloper shall be paid to the Authority for the Authority's use in reducing the Affordable Housing Gap, if any, for such Phase of the Project, within fifteen (15) days following closing of such transaction; provided, however, that at such time as there is no remaining Affordable Housing Gap, the Redeveloper or its designee shall be authorized to and shall retain such sales proceeds realized from the sale of any parcel within the Property which is improved with Infrastructure but is not improved with Project Improvements. The Parties acknowledge and agree that the requirements of this Section 8.08 shall not apply to the Phase One Property or any areas identified as an open space, detention facility or detention tract on the Final Plat, and that there is no Affordable Housing Gap as to Phase One of the Project.

Section 8.09 Release of Redeveloper and Successor Owners. For each Phase of the Project, at such time as the Redeveloper conveys any portion of the Property to a Successor Owner (as defined in Section 10.03 below), the Redeveloper shall be released from the terms and requirements of this Contract as to such portion of the Property conveyed to a Successor Owner; provided, however, that so long as the Redeveloper owns any portion of the Property and is receiving tax abatement, the Redeveloper shall be bound by the terms and requirements of this Contract during the Term. Unless this Contract is sooner terminated, the Redeveloper shall be fully released from the terms and requirements of this Contract at such time as the Redeveloper has completed the Project in accordance with this Contract, the Redevelopment Plan and the Urban Renewal Plan (and any amendments to any such documents) and no longer owns any portion of the Property. Each Successor Owner shall be released from the terms and conditions of this Contract at such time as the tax abatement granted by the Authority expires as to that portion of the Property owned by such Successor Owner. At such time as all of the tax abatement granted by the Authority expires, the Term of this Contract shall also expire. If any Phase includes the



development of residential units, including, without limitation, condominiums, townhomes, or single-family homes, that the Redeveloper intends to sell to a Successor Owner (“**For-Sale Units**”), each Successor Owner shall take title to such property subject to the terms and conditions of this Contract. Before the Redeveloper may sell a For-Sale Unit to a Successor Owner, this Contract shall be recorded in the Office of the Recorder of Deeds for Jackson County, Missouri, and the Authority shall have issued its Certificate of Qualification for Tax Abatement for such property within the applicable Phase or portion of the applicable Phase.

**ARTICLE IX  
DEFAULT AND TERMINATION; ESTOPPEL**

Section 9.01 Events of Default Defined. The following shall be "**Events of Default**" under this Contract and the terms "Events of Default" and "Default" shall mean, whenever they are used in this Contract, any one or more of the following events:

(a) Failure by the Redeveloper to observe and perform any covenant, term condition or agreement on its part to be observed or performed under this Contract, which failure continues uncured following the Cure Period.

(b) The filing by the Redeveloper of a voluntary petition in bankruptcy, or failure by the Redeveloper to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of the Redeveloper to carry on its operation, or adjudication of the Redeveloper as a bankrupt, or assignment by the Redeveloper for the benefit of creditors, or the entry by the Redeveloper into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Redeveloper in any proceedings whether voluntary or involuntary instituted under the provisions of the federal bankruptcy laws, as amended, or under any similar acts which may hereafter be enacted.

(c) The occurrence of an Event of Default or a default under the Funding Agreement which is not cured within any applicable cure period set forth in the Funding Agreement.

(d) The Redeveloper's breach of the Project Covenant defined in Sections 10.01(b) and 10.01(c) below.

(e) The failure of the Redeveloper through the fault of the Redeveloper to complete the Project Improvements for any particular phase of the Project by the Phase Completion Date in accordance with the provisions of Article VIII and subject to any extensions by the period of time equal to the delays caused by any Force Majeure Conditions, subject to the approval of the Authority and the City Council in accordance with the City Deadline Ordinance.

(f) Failure by the Authority to observe and perform any covenant, term, condition or agreement on its part to be observed or performed under this Contract, which failure continues uncured following the Cure Period, provided that the Authority shall not be in default for any such failure due to the lack of available City funding under the City Contracts or the Authority Funding Contracts for any Pre-Construction Activity, Authority Predevelopment Obligation or any other Authority funding obligation under this Contract.

Section 9.02 Remedies on Default.

(a) Whenever any Event of Default shall have occurred and be continuing, the non-defaulting party shall have the right, at its option and without any further demand or notice, to take

whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Redeveloper or the Authority, as applicable, under this Contract, including, but not limited to, terminating this Contract and terminating tax abatement on any portion of the Property then owned by the Redeveloper or Successor Owner, or instituting such proceedings as may be necessary or desirable, in the non-defaulting party's sole opinion, to compensate the non-defaulting party for any damages resulting from all breaches by the defaulting party, including, but not limited to, a proceeding for breach of contract and/or damages. The Authority's election to terminate tax abatement upon an Event of Default shall apply only to the Phase that is the subject of the Event of Default and not to any other Phase that is in compliance with this Contract.

(b) Notwithstanding anything to the contrary set forth in this Contract, the Authority shall, in no way, be limited to the terms of this Contract in enforcing, implementing and/or otherwise causing performance of the provisions of this Contract, the Redevelopment Plan and/or Urban Renewal Plan or in exercising its right and authority to condemn the Property after the Redeveloper's Default and failure to cure during the Cure Period as provided in this Contract.

(c) Before enforcing any remedies against the Redeveloper due to the occurrence of an Event of Default on the part of the Redeveloper as to Phase One, the Authority shall provide notice and an opportunity to cure such Event of Default to each holder of any deed of trust affecting the Phase One Property, Garnet LIHTC Fund XX, LLC, Transamerica Affordable Housing, Inc., and CPL State Partner, LLC (collectively, the "Notice and Cure Parties"). Such notice shall provide the Notice and Cure Parties a fifteen (15) day cure period for a monetary Event of Default, and a sixty (60) day holder cure period for a non-monetary default. The Authority agrees to accept a cure from any of the Notice and Cure Parties with the same force and effect as if performed by the Redeveloper.

Section 9.03 No Waiver. No delay or omission of a party to exercise any right or remedy occurring upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or acquiescence to such Event of Default. Every right and remedy given by this Article or by law may be exercised from time to time and as often as may be deemed expedient by the Authority. No waiver of any breach of any covenant or agreement contained in this Contract shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement. In case of a breach, the non-defaulting Party may nevertheless accept from the defaulting Party any payment or payments made under this Contract without in any way waiving right of the non-defaulting Party to exercise any of its rights and remedies provided for in this Contract with respect to any such default or defaults of the defaulting Party which were in existence at the time such payment or payments were accepted by the non-defaulting Party.

Section 9.04 Rights and Remedies Cumulative. The rights and remedies set forth herein and provided by law shall be construed as cumulative and continuing rights and may be exercised concurrently or alternatively. No one of them shall be exhausted by the exercise of such option on one or more occasions.

Section 9.05 Estoppel. The Authority and the Redeveloper acknowledge and agree that this Contract: (a) constitutes the entire agreement between the Parties, with respect to the subject matter contained herein; (b) is valid and in full force and effect and is a binding obligation of each of the Parties; (c) has not been amended, supplemented, modified, pledged or assigned in any way, except as set forth herein; (d) has not been terminated by either Party; (e) all consideration, fees and payments under the Contract now required to be paid by either Party pursuant to the Contract have been timely and fully paid by the appropriate Party; (f) no default or breach by either Party exists under the Contract nor has any act or omission occurred which, solely as a result of the giving of notice or passage of time, or both, would constitute a default or breach under the Contract by either Party; (g) no default or breach by

either Party exists under the Contract, and there is no act or omission which has occurred which, solely as a result of the giving of notice or passage of time, or both, would constitute a default or breach under the Contract by either Party; (h) no litigation, claims or disputes exist asserting that the Contract is unenforceable or violates any other agreement; (i) the Contract is not, and has not been, the subject of any bankruptcy or foreclosure proceeding; (j) neither Party is currently involved in any legal proceedings which may impair or encumber such Party's ability to perform under the Contract, and neither is aware of any pending or threatened claim or litigation concerning the Contract; and (k) there is no breach by the Redeveloper or by the Authority of any of the agreements required by this Contract.

#### ARTICLE X SPECIAL COVENANT AND DAMAGES FOR BREACH

Section 10.01 Project Covenant. It is acknowledged that the Authority's willingness to enter into this Contract and carry out the Authority's obligations under the Transaction Documents is based on the anticipated benefits to be derived in the City through the Redeveloper's completion of the Project and the proper maintenance of the Project and/or any Project Improvements. The Redeveloper covenants and agrees that it will at all times during the term of the Urban Renewal Plan: (a) timely commence each Phase of the Project in accordance with Section 8.01, and timely commence each subsequent Phase of the Project in accordance with the Process, subject to a Force Majeure Condition, as provided in Section 8.04; (b) properly complete each Phase of the Project, following commencement of such Phase of the Project; and (c) properly operate and maintain the Project and the Project Improvements during the period in which such Project and Project Improvements are owned by the Redeveloper or its assignee or designee (collectively, items (a)-(c) are hereinafter the "**Project Covenant**").

Section 10.02 Remedy Upon Breach of Project Covenant. If the Redeveloper does not, in the Authority's reasonable discretion, comply with the Project Covenant then the Redeveloper shall be in breach and violation of the Project Covenant. The Parties acknowledge that the damages that will be incurred upon any material breach or violation of the Project Covenant would be impossible to ascertain with any reasonable degree of certainty. Nevertheless, the Parties have attempted to fairly approximate the amount of such damages, and have agreed that upon any material breach or violation of Project Covenant 10.01(a) above, the Authority may, but shall not be obligated to, exercise its right to enforce (but not as a penalty) one of the following remedies (individually, "**Project Covenant Liquidated Damages**"):

(a) if the Authority has issued its Certificate of Qualification for Tax Abatement for the subject Property for the applicable Phase, then, immediately upon demand, the Redeveloper shall pay to the Authority a sum equal to the aggregate amount of the ad valorem taxes which could have been assessed and payable with respect to the subject Property and Project Improvements if the Authority had not issued a Certificate of Qualification for Tax Abatement pursuant to the LCRA Law. Payment of the Project Covenant Liquidated Damages by the Redeveloper shall be the Authority's remedy for a material breach or violation of the Project Covenant.

(b) if the subject Property for the applicable Phase has been improved only with Infrastructure and no Project Improvements, then the Authority may terminate this Contract as to such Phase and/or, immediately upon demand and following any applicable Cure Period, the Redeveloper shall convey any and all of the Project Property for such Phase then owned by the Redeveloper or its assignee or designee to the Authority by a special warranty deed in a form acceptable to the Parties. Such conveyance shall be made by the Redeveloper to the Authority upon the Authority's payment to the Redeveloper of the sum of Ten and 00/100 Dollars (\$10.00). Partial termination of this Contract and/or reconveyance of such Project Property shall constitute Project Covenant Liquidated Damages and be the Authority's sole remedy for a material breach or violation of the Project Covenant.

(c) if the subject Property for the applicable Phase has been improved with Infrastructure and certain Project Improvements that are insufficient for issuance of Certificate of Qualification for Tax Abatement, then the Authority may terminate this Contract as to such Phase and/or, immediately upon demand and following any applicable Cure Period, the Redeveloper shall convey any and all of the Project Property for such Phase then owned by the Redeveloper or its assignee or designee to the Authority by a special warranty deed in a form acceptable to the Parties. Such conveyance shall be made by the Redeveloper to the Authority subject to the payment by the Authority to the Redeveloper or its designee or assignee of the Sale Price for such Project Property less an amount needed to release all obligations, outstanding financings or mechanic's liens that could or do encumber title to the Project Property. Partial termination of this Contract and/or reconveyance of such Project Property shall constitute Project Covenant Liquidated Damages and be the Authority's sole remedy for a material breach or violation of the Project Covenant.

Section 10.03 Successor Owners. At such time as Redeveloper conveys any Project Property or Project Improvement to another party, whether by sale or assignment (each such party being a "**Successor Owner**"), Redeveloper shall include in the conveyance instrument for such Project Property or Project Improvement a requirement that such Successor Owner shall be subject to (i) the Use Restrictions set forth in Article III above, and (ii) the Project Covenant (together, (i) and (ii) are hereinafter referred to as "**Successor Covenants**") and, in the event such Successor Owner materially breaches or violates such Successor Covenants, notice of which shall be provided by the Authority to the Successor Owner, the Successor Owner shall be subject to the Project Liquidated Damages as set out in Section 10.02.

## **ARTICLE XI RISK OF LOSS AND INSURANCE**

Section 11.01 Allocation of Risk. All risk of loss with respect to such portion of the Property and the Project Improvements owned by Redeveloper shall be borne by the Redeveloper, and all risk of loss with respect to such portion of the Property owned by the Authority shall be borne by the Authority.

Section 11.02 Insurance. The Redeveloper shall, at its expense, maintain or cause to be maintained a policy of all risk casualty insurance insuring the Property and the Project Improvements owned by the Redeveloper. Such policy of insurance shall also name the Authority and such other persons designated by the Authority as additional insureds and shall each contain a provision that such insurance may not be canceled without at least thirty (30) days' advance written notice to the Authority. The Authority's rights as an additional insured shall be subordinate to the prior rights of each holder of any deed of trust affecting any portion of the Property as to a particular Phase. Copies of such insurance policies shall be furnished to the Authority together with certificates of such policy bearing notations evidencing payment of premiums or other evidence of such payment. Such policy shall include a waiver of subrogation consistent with the release described in Section 11.04 below.

Section 11.03 Blanket Insurance Policies. The Redeveloper may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

Section 11.04 Mutual Release. Anything in this Contract to the contrary notwithstanding, it is agreed that each Party hereby releases the other from any claim, demand or cause of action arising out of any loss or damage to all or any portion of the Property or Project Improvements constructed thereon

caused by a peril insurable pursuant to an all risk casualty insurance policy in standard form available in the State.

**ARTICLE XII  
COMPLIANCE WITH APPLICABLE LAWS**

The Parties hereto shall, at their respective sole cost and expense, comply with all Applicable Laws and shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of such Party to comply with the provisions of this Article. Notwithstanding any provision contained in this Article, however, either Party shall have the right, at its sole cost and expense, to contest or review, by legal or other appropriate procedures, the validity or legality of any such Applicable Laws, or any such requirement, rule or regulation of an insurer, and during such contest or review the contesting Party may refrain from complying therewith to the extent such noncompliance is expressly permitted by law and provided that such noncompliance does not result in adverse action being taken against the Project, the Property, the Authority or the City.

**ARTICLE XIII  
LIENS**

The Redeveloper shall not do or suffer anything to be done by any person or entity whereby all or any part of any portion of the Property may be encumbered by any mechanics' or other similar lien. Whenever and as often as any mechanics' or other similar lien is filed against all or any portion of the Property purporting to be for or on account of any labor done or materials or services furnished to Redeveloper in connection with any work in or about any portion of the Property, the Redeveloper shall discharge the same of record, or post a bond in an amount and in accordance with the requirements of Missouri law, within thirty (30) days after the date of filing. If the Redeveloper fails to do so, then the Authority may, if the Authority is then in ownership of such Property, but shall not be obligated to, take such action and pay such amounts on account of the Redeveloper as may be necessary in order to cause such lien to be discharged of record. The Redeveloper shall have no obligation to discharge any lien purporting to be for or on account of any labor done or materials or services furnished to the Authority, the City or any other party in connection with any work in or about any portion of the Property.

**ARTICLE XIV  
INDEMNIFICATION**

Section 14.01 Indemnity. The Redeveloper agrees to protect, defend, indemnify and hold harmless the Authority and the Authority's commissioners, officers, directors, employees, agents, affiliates, successors and assigns, at Redeveloper's cost and using legal counsel selected by the Redeveloper, subject to Authority approval, which shall not be unreasonably withheld, from and against all claims, demands, losses, damages, costs, expenses, liabilities, taxes, assessments, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, causes of action, remedial action requirements and/or enforcement actions of any kind (including, without limitation, reasonable attorney's fees and court or similar costs) directly arising out of or attributable to in whole or in part:

- (a) the material inaccuracy of any representation or the material breach of any representation, covenant or warranty of the Redeveloper contained in this Contract;
- (b) the Redeveloper's negligent or intentional misuse of any portion of the Property;

(c) the failure on the part of the Redeveloper to materially perform, observe and/or comply with any covenant, obligation or duty to be performed, observed and/or complied with by the Redeveloper pursuant to the terms of this Contract or any Transaction Document, following the applicable notice and cure provisions and subject to the Authority's performance of its obligations under the Contract or any Transaction Document, but only to the extent that the Authority's performance of its obligations is a prerequisite for the Redeveloper's performance of its obligations;

(d) any condition of or damage to all or any portion of the Property and any injury to or death of any person in connection with the Project which is caused by any negligent act or omission of the Redeveloper or the Redeveloper's agents, contractors, subcontractors, servants, employees, members, officers, directors, licensees or invitees or any other person or entity for whose acts or omissions the Redeveloper is otherwise responsible pursuant to Applicable Law;

(e) the negligent performance or non-performance by the Redeveloper of any of the terms and conditions of any Transaction Document, contract, agreement, obligation or undertaking entered into by the Redeveloper (whether as the agent of the Authority or otherwise) in connection with all or any part of the Project; and/or

(f) any negligent act or omission of the Redeveloper or any of the Redeveloper's agents, contractors, subcontractors, servants, employees, members, officers, directors, licensees or invitees or any other person or entity for whose negligent acts or omissions the Redeveloper is otherwise responsible pursuant to Applicable Law.

#### Section 14.02 Project Environmental.

(a) The Redeveloper covenants that, while in ownership or possession and control of all or any portion of the Property, it shall not place or cause to be placed, nor permit any other Person to place or cause to be placed, any Hazardous Substances on or about all or any portion of the Property in excess of *de minimis* quantities reasonably necessary to the Redeveloper's use of all or any portion of the Property.

(b) The Redeveloper agrees to protect, defend, indemnify and hold harmless, the Authority and the Authority's officers, directors, commissioners, employees, agents, affiliates, successors and assigns, from and against any and all claims, demands, losses, damages, costs, expenses, liabilities, assessments, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, causes of action, remedial action requirements and/or enforcement actions of any kind (including, without limitation, reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to, in whole or in part: (i) the breach of the covenants of the Redeveloper contained in Section 14.02 (a); (ii) Redeveloper's or Redeveloper's employees', agents', contractors' or subcontractors' use, handling, generation, manufacture, production, storage, release, threatened release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of Hazardous Substances on, under, from or about all or any portion of the Property, provided that such claims, demands, losses, damages, costs, expenses, liabilities, assessments, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, causes of action, remedial action requirements and/or enforcement actions of any kind do not arise out of or related to (x) the negligent acts or omissions of the Authority; or (iii) any other activity carried on or undertaken on all or any portion of the Property by the Redeveloper or any employees, agents, contractors or subcontractors of the Redeveloper in connection with the use, handling, generation, manufacture,

production, storage, release, threatened release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of any Hazardous Substance at any time located, transported or present on, under, from, to or about all or any portion of the Property, including without limitation: (A) the cost of any required or necessary repair, cleanup or detoxification of any portion of the Property and the preparation and implementation of any closure, remedial or other required plans; and (B) liability for personal injury or property damage arising under any statute or common law tort theory, including damages assessed for the maintenance of a public or private nuisance, response costs or for the carrying on of any abnormally dangerous activity.

(c) The foregoing indemnity obligation includes without limitation: (i) the costs of removal or remedial action incurred by the United States government or the State or response costs incurred by any other person, or damages from injury to, destruction of or loss of natural resources, including the cost of assessing such injury, destruction or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("**CERCLA**"), 42 U.S.C. §9601 *et seq.*; (ii) the clean-up reasonable and necessary costs, fines, damages or penalties incurred pursuant to any applicable provisions of State law; and (iii) the reasonable and necessary cost and expenses of abatement, correction or cleanup, fines, damages, response costs or penalties which arise from the provisions of any other Applicable Law.

(d) The foregoing indemnity shall further apply to any residual contamination on, under, from or about all or any portion of the Project or affecting any natural resources, arising in connection with the use, handling, generation, manufacturing, production, storage, release, discharge, treatment, removal, transport, decontamination, cleanup, disposal and/or presence of any such Hazardous Substance on, under, from or about all or any portion of the Project and irrespective of whether any of such activities were or will be undertaken in accordance with any Applicable Laws. This indemnity is intended to be operable under 42 U.S.C. Section 9607(e)(1), and any successor section thereof, and shall survive the Closing under this Contract in all respects.

(e) The foregoing indemnity obligations include within them all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in enforcing any right to indemnity contained in this Contract.

#### **ARTICLE XV ASSIGNMENT**

Section 15.01 Successors and Assigns. This Contract shall be binding upon and shall inure to the benefit of the Redeveloper and its successors and assigns, and any Successor Owner of the Property (provided, however, that this provision shall not be deemed to permit an assignment of this Contract except as specifically provided in this Article and in Section 8.02 above), and the then "Redeveloper" as used in this Contract shall be deemed to include such successors and assigns.

Section 15.02 General Assignments. Except as otherwise provided in Section 8.02 above, this Contract may not be assigned by the Redeveloper without the prior written consent of the Authority, which consent may be granted, denied or conditioned in the sole discretion of the Authority; provided, however, the leasing or sale of individual units within the Project by the Authority or the Redeveloper within the normal course of business shall not to be construed as an assignment of this Contract. The Authority shall have the right to assign or otherwise transfer this Contract to the City or to any successor

entity created by the City to perform the same functions as the Authority and upon such assignment or other transfer, this Contract shall be binding upon and shall inure to the benefit of the City or to any such successor entity.

**ARTICLE XVI  
EQUAL EMPLOYMENT OPPORTUNITY**

Section 16.01 Equal Employment Opportunity During Performance of this Contract. During the performance of this Contract, the Redeveloper agrees, for itself and its successors and assigns, as follows:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, sexual orientation, family status, handicap, sex, or national origin. The Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth the provisions of this nondiscrimination clause.

(b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sexual orientation, family status, handicap, sex or national origin.

(c) The Redeveloper will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Redeveloper's commitments under Section 202 of Executive Order 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Redeveloper will comply with all provisions of the Executive Order, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Redeveloper will furnish all information and reports required by the Executive Order, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the Authority and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Redeveloper's non-compliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Redeveloper may be declared ineligible for further government contracts and/or federally assisted construction contracts in accordance with the procedures authorized in the Executive Order, and such other sanctions may be imposed and remedies invoke as provided in the Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.



Section 16.02 Inclusion of Equal Employment Opportunity Provisions in Contracts. The Redeveloper agrees, for itself and its successors and assigns, that it will include the provisions listed in Section 16.01 in every contract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, so that such provision will be binding upon each contractor or vendor that does business with the Redeveloper in conjunction with the Project, as well as those contractor's subcontractors. For the purpose of including the provisions of Section 16.01 in any construction contract or purchase order, the terms "Authority", "Redeveloper" and "Contract" may be changed to appropriately reflect the name or designation of the parties to such contract or purchase order.

Section 16.03 Modification of Requirements. Upon the issuance of additional or conflicting rules, regulations, or orders of the Secretary of Labor pursuant to section 204 of the Executive Order, the requirements of this Article shall automatically be amended to conform and comply with such changes.

Section 16.04 Determination of Compliance. For the sole purpose of determining the Redeveloper's compliance with the provisions of this Article, the Authority and its duly appointed agents shall be permitted, at reasonable times, and after three (3) days prior notice to the Redeveloper, to examine the books and records of the Redeveloper.

#### **ARTICLE XVII AMERICANS WITH DISABILITIES ACT**

The Redeveloper shall comply with the provisions of the Americans with Disabilities Act ("ADA"), 42 U.S.C. A Section 1201, et seq., as amended from time to time, and regulations promulgated under the ADA, including, without limitation, 28 C.F.R. Part 35 and 29 C.F.R. Part 1630.

#### **ARTICLE XVIII AFFIRMATIVE ACTION: MINORITY BUSINESS ENTERPRISES/WOMEN'S BUSINESS ENTERPRISES AND CONSTRUCTION WORKFORCE EMPLOYMENT**

The Redeveloper shall comply with the provisions of the Affirmative Action Policy of the Authority, as amended from time to time, which policy requires that the Redeveloper make a good faith effort to meet the goals established in accordance with the City Code of General Ordinances Chapter 3, Article IV, Divisions 1-3, Sections 3-401 through 3-600, and any related rules and regulations, as may be amended, of the City promulgated pursuant to Ordinance No. 18535 As Further Further Amended, adopted by the City Council on October 25, 2018, and Committee Substitute for Ordinance 130275 adopted by the City Council on April 11, 2013, and effective May 1, 2013, for (a) MBE/WBE participation under professional services and construction contracts in connection with the Project, and (b) construction workforce employment on a company-wide basis of minorities and women under construction contracts between the Redeveloper and construction contractors in connection with the Project. As a part of this Contract, Redeveloper shall provide all attachments as required by the Authority's Affirmative Action Information Packet containing information and forms for MBE/WBE participation and construction workforce employment ("Affirmative Action Information Packet"). Redeveloper acknowledges that Redeveloper has received a copy of the Affirmative Action Policy and the Affirmative Action Information Packet pertaining to the requirements for MBE/WBE participation and construction workforce employment. The Redeveloper further acknowledges that the Redeveloper understands the Affirmative Action Policy's requirements and that the Authority, in the Authority's sole discretion, may pursue any remedy or remedies available under the Affirmative Action Policy and/or this Contract in the event that the Redeveloper is unable to demonstrate a good faith effort

to meet the goals set forth in the Affirmative Action Policy as may be determined by the Authority. A remedy or remedies may also be enforced following a determination by the City's Civil Rights and Equal Opportunity Department (CREO), the Fairness in Construction Board, or the Fairness in Professional Services and Goods Board that the Redeveloper failed to demonstrate a good faith effort to meet the approved goals. In the event that the Authority incurs any costs or expenses, including reasonable attorney's fees, in connection with any action or claim filed by the Redeveloper or a contractor or consultant hired by the Redeveloper for the Project appealing or challenging any determination concerning whether good faith efforts were exerted under the Affirmative Action Policy or imposition of liquidated damages for failure to comply with the Affirmative Action Policy, the Redeveloper shall indemnify and hold the Authority harmless from any such costs or expenses incurred by the Authority without qualification, restriction or limitation. The indemnification obligation of the Redeveloper under this Article XVIII applies whether or not the Authority is a named party in any such action or claim and shall survive the termination of this Contract. Notwithstanding anything to the contrary in this Article XVIII, the Redeveloper covenants not to sue or bring any claim against the Authority related to the Affirmative Action Policy, it being understood that the Affirmative Action Policy incorporates the City ordinances referenced in this Article XVIII, as such ordinances may be amended from time to time. The Redeveloper shall comply with the City Code of General Ordinances Chapter 3, Article IV, Divisions 1-3, Sections 3-401 through 3-600, as may be amended, and any related rules and regulations promulgated by the City, whether or not the Authority has formally amended its Affirmative Action policy to incorporate any such amended ordinances, rules or regulations.

In compliance with the Ordinance No. 18535 As Further Further Amended, adopted by the City Council on October 25, 2018, the construction and professional services goals for the Project as established by the approved contractor utilization plan (CUP) are incorporated into and made a part of this Contract as if fully set forth herein, even if the CUP is approved after the effective date of this Contract.

**ARTICLE XIX  
SECTION 3 PLANS**

In connection with the construction of the Project Improvements and Infrastructure, the Redeveloper shall comply with its approved Section 3 Plan which describes public housing resident and local hiring goals for the review and approval of the Authority in compliance with Section 3(b)(2) of the U.S. Housing Act of 1937, as amended. Updated Section 3 Plans shall be submitted to the Authority to be reviewed and approved prior to the execution of construction contracts. Section 3 Plans shall be applicable to all services provided by the Redeveloper, general contractor(s) and subcontractors. The Redeveloper shall be responsible for implementation of such plans.

**ARTICLE XX  
MISCELLANEOUS PROVISIONS**

Section 20.01 Amendments. This Contract may not be amended, modified, terminated or waived orally, but only by a writing signed by the Parties.

Section 20.02 No Oral Agreements. This Contract, together with all exhibits referred to in this Contract, and the Transaction Documents contain all the oral and written agreements, representations and arrangements between the parties, and any rights which the parties may have under any previous contracts or oral arrangements are hereby canceled and terminated and no representations or warranties are made or implied, other than those set forth in this Contract.

Section 20.03 Binding Effect. This Contract shall inure to, the benefit of and shall be binding upon the Authority and its successors and assigns and the Redeveloper and its permitted successors and assigns.

Section 20.04 Severability. The provisions of this Contract are severable. In the event that any provision of this Contract is held to be invalid, illegal or unenforceable to any extent, then the remaining provisions of this Contract, and the portion of the offending provision (or any application of such provision) which is not invalid, illegal or unenforceable shall remain in full force and effect.

Section 20.05 Conflict of Interest. No commissioner, officer or employee of the Authority taking official action with respect to this Contract or the Project shall have any personal interest, direct or indirect, in the Project, the Property or this Contract, nor shall any such commissioner, officer or employee participate in any decision relating to the Project, the Project, Property or this Contract which affects his personal interest or the interest of any corporation, partnership or association in which he is directly or indirectly interested.

Section 20.06 Execution of Counterparts. This Contract may be executed in two (2) or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

Section 20.07 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State without regard to conflict of laws.

Section 20.08 Notices. Any notice, approval, request or consent required by or permitted under this Contract shall be in writing and mailed by United States registered or certified mail, postage prepaid, return receipt requested, or delivered by hand, and addressed as follows:

To Authority: Land Clearance for Redevelopment Authority of Kansas City, MO  
Attention: Executive Director  
300 Wyandotte, Suite 400  
Kansas City, Missouri 64105

With a copy to: Rouse Frets White Goss Gentile Rhodes , P.C.  
Attention: Brian Engel, Esq.  
4510 Belleview, Suite 300  
Kansas City, Missouri 64111

To Redeveloper: Columbus Park Development Group, LLC  
Columbus Park Development Group 2, LLC  
Attention: Daniel F. Musser  
1220 Washington, Ste. 200  
P.O. Box 411299  
Kansas City, Missouri 64141-1299

With a copy to: Hardwick Law Firm, LLC  
Attention: Allison L. Bergman, Esq.  
2405 Grand Boulevard, Suite 800  
Kansas City, Missouri 64106

To 5 Cherry UC-B Properties, LLC  
Attention: Lance Carlton  
6247 Brookside Boulevard, Suite 205  
Kansas City, Missouri 64113

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any notice provided pursuant to Section 9.02(c) shall also be addressed as follows, but only if such notice relates to an amendment or modification of terms relating to Phase One of the Project under this Contract:

CPL STATE PARTNER, LLC  
c/o Twain LIHTC Manager Corp.  
1232 Washington Ave., Suite 200  
St. Louis, MO 63013

With a copy to: Rosenblum Goldenhersh, P.C.  
7733 Forsyth Blvd., 4<sup>th</sup> Floor  
St. Louis, MO 63105  
Attn: Brian J. Beck

GARNET LIHTC FUND XX, LLC  
c/o AEGON USA Realty Advisors, LLC  
Mail Drop 5553  
4333 Edgewood Road NE  
Cedar Rapids, IA 52499  
Attn: LIHTC Reporting  
And

Transamerica Affordable Housing, Inc.  
c/o AEGON USA Realty Advisors, LLC  
Mail Drop 5553  
4333 Edgewood Road NE  
Cedar Rapids, IA 52499  
Attn: LIHTC Reporting

With a copy to: Applegate & Thorne-Thomsen, P.C.  
626 West Jackson Boulevard, Suite 400  
Chicago, IL 60661  
Attn: Bennett P. Applegate

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 prior written notice thereof.

All notices given by mail shall be effective upon the earlier of the date of receipt or the second (2nd) business day after deposit in the United States mail in the manner prescribed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address for which no

notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

Section 20.09 Recording. This Contract or a memorandum of this Contract may be recorded by the Authority, from time to time, in the office of the Director of Records of Jackson County, Missouri, at Kansas City. The Redeveloper shall pay the costs of recording the Contract or memorandum upon demand by the Authority.

Section 20.10 Reserved.

Section 20.11 Further Assurances. The Redeveloper will do, execute, acknowledge and deliver such further acts, instruments, financing statements and assurances as the Authority may reasonably require for accomplishing the purposes of this Contract.

Section 20.12 Access to Project and Inspection. During the Term of the Redeveloper's ownership of the portion of the Property in which the Authority seeks to conduct an examination or inspection, the Authority and its duly appointed agents shall have the right, at all reasonable times, to enter upon the Property and Project Improvements and to examine and inspect the Property, provided that such entry shall be at the sole risk of the Authority and shall be subject to reasonable coordination with and direction by the Redeveloper, and further provided that such inspections shall not unreasonably interfere with the development activities of the Redeveloper and its agents and contractors. The Redeveloper covenants to execute, acknowledge and deliver all such further documents and do all such other acts and things as may be reasonably necessary to grant to the Authority such right of entry. The Authority and its duly appointed agents shall also have the right, at reasonable times and upon seven (7) days prior written notice, to examine the books and records of the Redeveloper which relate to the Project and/or to the obligations of the Redeveloper under this Contract.

Section 20.13 Affordability Requirements. The Parties agree that [REDACTED] % of the housing units built within Phase One and Phase Two of the Project shall be Affordable.

Section 20.14 Authority Approvals. The approvals required by the Authority under this Contract may be made administratively and in writing by the Authority's Executive Director or his designee; provided, however, if, in the Authority's Executive Director's or his designee's reasonable discretion, a matter must be presented to the Board for the Authority's approval, then such matter shall be presented to the Board for such approval at a regular or special meeting called by the Board.

Section 20.15 Phase One. It is the express intent of the Parties that nothing herein shall amend, alter, release, limit, or impair the rights and obligations of the Authority, the Redeveloper, or CP Lofts under the Redevelopment Contract and the Phase One Assignment as to Phase One and the Phase One Property, and that the Redevelopment Contract and the Phase One Assignment as to Phase One and the Phase One Property shall remain in full force and effect.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, the Redeveloper has caused this Second Amended and Restated Redevelopment Contract to be executed in its name and attested by its duly authorized officers. The Authority has caused this Second Amended and Restated Redevelopment Contract to be executed in its name with its affixed and attested by its duly authorized officers. All of the above occurred as of the date first above written.

LAND CLEARANCE FOR REDEVELOPMENT  
AUTHORITY OF KANSAS CITY, MISSOURI

(SEAL)

By: \_\_\_\_\_  
Daniel Moye, Executive Director

ATTEST:

By: \_\_\_\_\_  
Susan Tumey, Assistant Secretary

State of Missouri     )  
                                  ) SS.  
County of Jackson    )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me appeared Daniel Moye to me personally known, who, being duly sworn/affirmed did say that he is Executive Director of the Land Clearance for Redevelopment Authority of Kansas City, Missouri, and that the foregoing instrument was signed for and on behalf of said redevelopment authority by authority of its commissioners, and said Executive Director acknowledged said instrument to be the free act and deed of said redevelopment authority.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

COLUMBUS PARK DEVELOPMENT GROUP, LLC

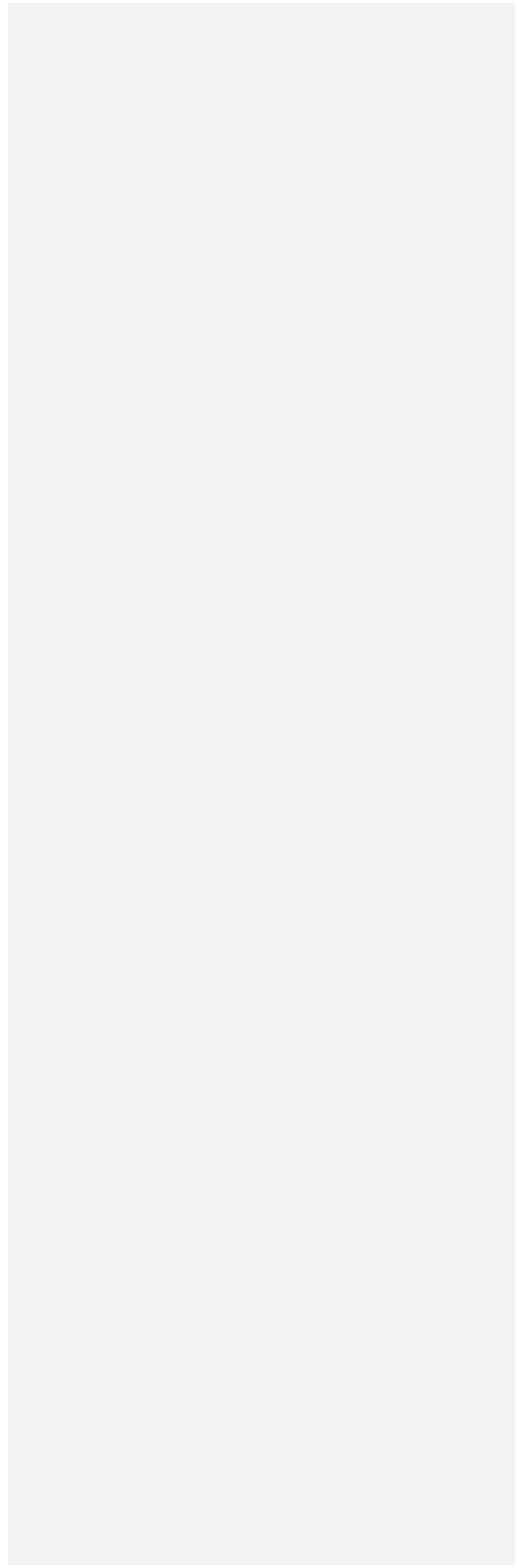
By: \_\_\_\_\_  
Daniel F. Musser, Member

State of Missouri     )  
                              ) SS.  
County of Jackson    )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me appeared Daniel F. Musser to me personally known, who, being duly sworn/affirmed did say that is Member of Columbus Park Development Group, LLC, and that the foregoing instrument was signed for and on behalf said limited liability company by authority of its members, and said Member acknowledged said instrument to be the free act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



COLUMBUS PARK DEVELOPMENT GROUP 2,  
LLC

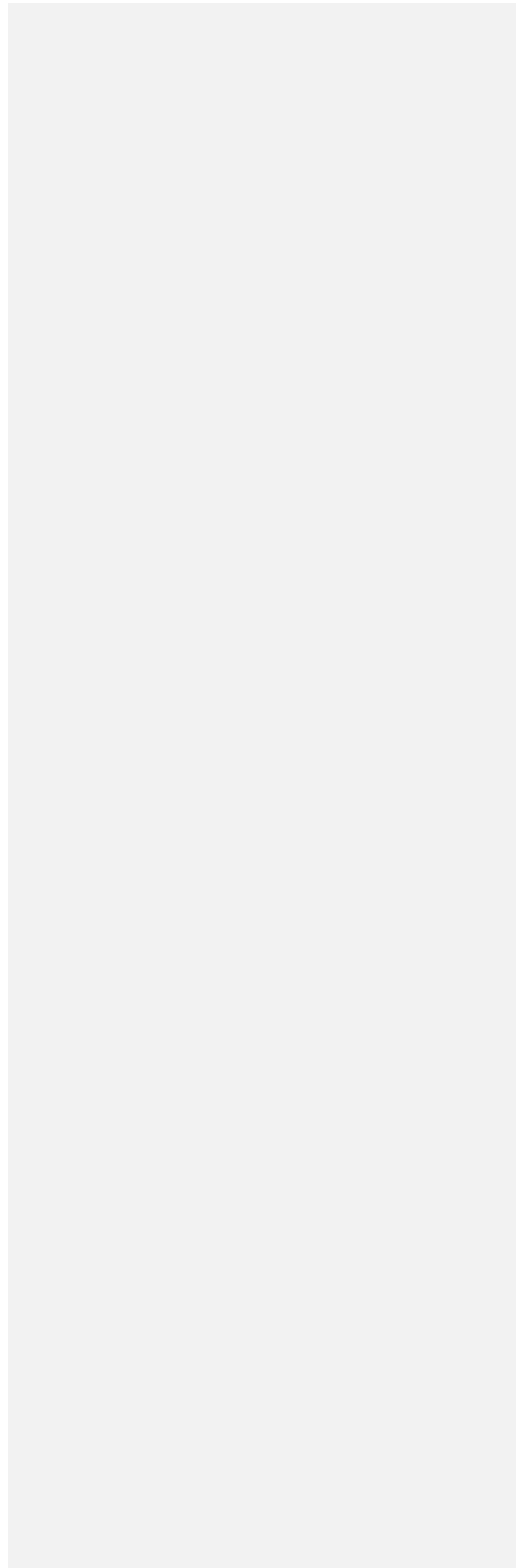
By: \_\_\_\_\_  
Daniel F. Musser, Member

State of Missouri     )  
                              ) SS.  
County of Jackson    )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me appeared Daniel F. Musser to me personally known, who, being duly sworn/affirmed did say that is Member of Columbus Park Development Group 2, LLC, and that the foregoing instrument was signed for and on behalf said limited liability company by authority of its members, and said Member acknowledged said instrument to be the free act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_





**EXHIBIT LIST**

- Exhibit A – Legal Description
- Exhibit B – Authority Funding Contracts
- Exhibit C – Redevelopment Plan
- Exhibit D – Phase One Pro Forma and Phase Two Pro Forma
- Exhibit E – Phasing Plan
- Exhibit F – HAKC Approval Letter (Phase One and Phase Two)

**Commented [BE9]:** Is there an updated pro forma for Phase Two?

**Commented [BE10]:** Is there an updated Phasing Plan for Phase Two?

**EXHIBIT A**

**Legal Description of the Property<sup>1</sup>  
and Map of the Phase One Property and the Phase Two Property**

<b>Parcel #</b>	<b>Parcel Address</b>	<b>Jackson Co. Parcel #</b>	<b>Legal Description</b>	<b>Phase #</b>
1	700 E. 4 <sup>th</sup> Street	12840220300000000	BLOCK 2, LOT 1, COLUMBUS PARK PHASE 1	1
2	750 E. 4 <sup>th</sup> Street	12840220400000000	BLOCK 2, TRACT C, COLUMBUS PARK PHASE 1	1
3	800 E. 4 <sup>th</sup> Street	12840230400000000	BLOCK 5, LOT 1, COLUMBUS PARK PHASE 1	1
4	850 E. 4 <sup>th</sup> Street	12840230500000000	BLOCK 5, TRACT B1, MINOR SUBDIVISION LOT SPLIT OF TRACT B, COLUMBUS PARK PHASE 1	1
5	880 E. 4 <sup>th</sup> Street	12840230600000000	BLOCK 5, LOT 2, COLUMBUS PARK PHASE 1	2
6	No Address	12840230700000000	BLOCK 5, TRACT B2, MINOR SUBDIVISION LOT SPLIT OF	2

<sup>1</sup> The property at 508 Charlotte (formerly 12-840-31-15-00-0-00-000) was originally included as part of the Property. A portion of that parcel was subsequently redeveloped as the City Market Townhouses pursuant to a separate LCRA redevelopment contract (now 12-840-31-15-01-0-00-000) and it, along with the separate townhouse parcels, have been removed from the Project Property legal description. The two remaining lots (now 12-840-31-15-02-0-00-000) have also been removed. Parcels 12-840-21-02-00-0-00-000 and 12-840-21-01-00-0-00-000 were removed by the Partial Release and Amendment to Redevelopment Contract dated October 25, 2021, and recorded as Instrument No. 2021E0128993. In addition, the following parcels have been removed and are no longer subject to this Contract:

- 315 Cherry Street (12-840-21-03-00-0-00-000) currently owned by Anh T. Nguyen
- 300 Gillis Street (12-840-24-01-00-0-00-000) currently owned by the Housing Authority of Kansas City, Missouri
- No Address (12-840-49-01-00-0-00-000) currently owned by the Housing Authority of Kansas City, Missouri
- 1007 E. 4<sup>th</sup> Street (12-840-47-01-01-0-00-000) currently owned by the Housing Authority of Kansas City, Missouri
- 700 E. 5<sup>th</sup> Street (12-840-26-04-00-0-00-000) currently owned by 5 Holmes LLC
- 706 E. 5<sup>th</sup> Street (12-840-26-05-00-0-00-000) currently owned by 5 Holmes LLC
- 708 E. 5<sup>th</sup> Street (12-840-26-06-00-0-00-000) currently owned by 5 Holmes LLC
- 808 E. 5<sup>th</sup> Street (12-840-25-12-00-0-00-000) currently owned by C&S Hall Loft, LLC

Except for these changes and for updated legal descriptions of the Phase One Property and the Phase Two Property, the Property remains the same as described in the Original Contract.

Parcel #	Parcel Address	Jackson Co. Parcel #	Legal Description	Phase #
			TRACT B, COLUMBUS PARK PHASE 1	
7	401 Cherry Street	12840271200000000	BLOCK 1, LOT 1, COLUMBUS PARK PHASE 1	2
8	701 E. 4 <sup>th</sup> Street 770 E. 5 <sup>th</sup> Street 400 Charlotte Street	12840260900000000	BLOCK 3, LOT 1, COLUMBUS PARK PHASE 1	1
9	751 E. 4 <sup>th</sup> Street	12840261000000000	BLOCK 3, TRACT A, COLUMBUS PARK PHASE 1	1
10	401 Charlotte Street	12840251300000000	BLOCK 4, LOT 2, COLUMBUS PARK PHASE 1	2
11	881 E. 4 <sup>th</sup> Street	12840251400000000	BLOCK 4, LOT 3, COLUMBUS PARK PHASE 1	2
12	808 E. 5 <sup>th</sup> Street	12840251200000000	BLOCK 4, LOT 1, COLUMBUS PARK PHASE 1	2

Legal Description of the Phase One Property (according to the recorded plats thereof dated July 15, 2015, as Document No. 2015E0062508, Book 157, Pages 1-15 and August 5, 2015, as Document No. 2015E0070325, Book 14, Pages 10-11)

ALL OF LOT 1, BLOCK 2 AND LOT 1, BLOCK 3 AND LOT 1, BLOCK 5 AND TRACT A AND TRACT C, COLUMBUS PARK PHASE 1, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, TOGETHER WITH ALL THAT PART OF TRACT B, COLUMBUS PARK PHASE 1, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEASTERLY CORNER OF LOT 1, BLOCK 5, SAID COLUMBUS PARK PHASE 1; THENCE S14°34'22"E, ALONG THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID LOT 1, 20.00 FEET TO THE SOUTHERLY LINE OF SAID TRACT B; THENCE S75°47'38"W, ALONG SAID SOUTHERLY LINE, 135.26 FEET; THENCE CONTINUING ALONG THE SOUTHERLY AND SOUTHWESTERLY LINES OF SAID TRACT B ON A CURVE TO THE RIGHT WITH A RADIUS OF 15.00 FEET AND A CENTRAL ANGLE OF 89°40'40", AN ARC DISTANCE OF 23.48 FEET; THENCE N14°31'43"W, ALONG THE WESTERLY LINE OF SAID TRACT B, 5.08 FEET, TO THE NORTHERLY LINE OF SAID TRACT B; THENCE N75°47'38"E, ALONG SAID NORTHERLY LINE, 150.16 FEET, TO THE POINT OF BEGINNING.

Legal Description of the Phase Two Property (according to the recorded plat thereof dated July 15, 2015, as Document No. 2015E0062508, Book 157, Pages 1-15 and August 5, 2015, as Document No. 2015E0070325, Book 14, Pages 10-11)

**1. Block 1, Lot 1, Columbus Park Phase I, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof. (containing 55,110 square feet, more or less) ("Block 1, Lot 1")**

**2. Block 4, Lot 1, Columbus Park Phase I, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof.** TOGETHER WITH, ALL THAT PART OF LOT 2, BLOCK 4, COLUMBUS PARK PHASE 1, A SUBDIVISION IN SECTION 32, TOWNSHIP 50 NORTH, RANGE 33 WEST, KANSAS CITY, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 2; THENCE N14°41'26"W, ALONG THE WESTERLY LINE OF SAID LOT 2, 22.57 FEET, TO THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF LOT 3 OF SAID BLOCK 4; THENCE N75°46'04"E, ALONG SAID WESTERLY PROLONGATION, 142.02 FEET, TO THE EASTERLY LINE OF SAID LOT 2; THENCE S14°39'13"E, ALONG SAID EASTERLY LINE, 20.60 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 2; THENCE S74°58'15"W, ALONG THE SOUTHERLY LINE OF SAID LOT 2, 142.01 FEET TO THE POINT OF BEGINNING, CONTAINING 19,137 SQUARE FEET, MORE OR LESS.

**3. Block 4, Lot 2, Columbus Park Phase I, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof.** EXCEPT, ALL THAT PART OF LOT 2, BLOCK 4, COLUMBUS PARK PHASE 1, A SUBDIVISION IN SECTION 32, TOWNSHIP 50 NORTH, RANGE 33 WEST, KANSAS CITY, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 2; THENCE N14°41'26"W, ALONG THE WESTERLY LINE OF SAID LOT 2, 22.57 FEET, TO THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF LOT 3 OF SAID BLOCK 4; THENCE N75°46'04"E, ALONG SAID WESTERLY PROLONGATION, 142.02 FEET, TO THE EASTERLY LINE OF SAID LOT 2; THENCE S14°39'13"E, ALONG SAID EASTERLY LINE, 20.60 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 2; THENCE S74°58'15"W, ALONG THE SOUTHERLY LINE OF SAID LOT 2, 142.01 FEET TO THE POINT OF BEGINNING, CONTAINING 22,579 SQUARE FEET MORE OR LESS.

**4. Block 4, Lot 3, Columbus Park Phase I, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof. (22,570 square feet) ("Block 4, Lot 2")**

**5. Block 5, Lot 2, Columbus Park Phase I, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof,** TOGETHER WITH, ALL THAT PART OF TRACT B, COLUMBUS PARK PHASE 1, A SUBDIVISION IN KANSAS CITY, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWESTERLY CORNER OF LOT 2 BLOCK 5, SAID COLUMBUS PARK PHASE 1; THENCE N75°47'38"E, ALONG THE NORTHERLY LINE OF SAID TRACT B, 150.16 FEET, TO THE EASTERLY LINE OF SAID TRACT B; THENCE S14°37'00"E, ALONG SAID EASTERLY LINE, 4.89 FEET; THENCE CONTINUING ALONG THE EASTERLY AND SOUTHEASTERLY LINES OF SAID TRACT B ON A CURVE TO THE RIGHT WITH A RADIUS OF 15.00 FEET AND A CENTRAL ANGLE OF 90°24'38", AN ARC DISTANCE OF 23.67 FEET; THENCE S75°47'38"W, ALONG THE SOUTHERLY LINE OF SAID TRACT B, 135.07 FEET, TO THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 2; THENCE N14°34'22"W, ALONG SAID SOUTHERLY PROLONGATION, 20.00 FEET, TO THE POINT OF BEGINNING, CONTAINING IN TOTAL 29,978 SQUARE FEET MORE OR LESS.

**EXHIBIT B**

**Authority Funding Contracts**

(a) Columbus Park 2013-14 Bond Funds Capital Improvements Contract (No. 14040) dated on or about January 14, 2014 between the City and the Authority in the amount of \$1,000,000.00 for construction of public infrastructure improvements.

(b) Columbus Park Supplementary Water/Sewer Funds Capital Improvements Contract (No. 15101) dated June 13, 2014 between the City and the Authority in the amount of \$120,000.00 for design and construction of water and sewer improvements.

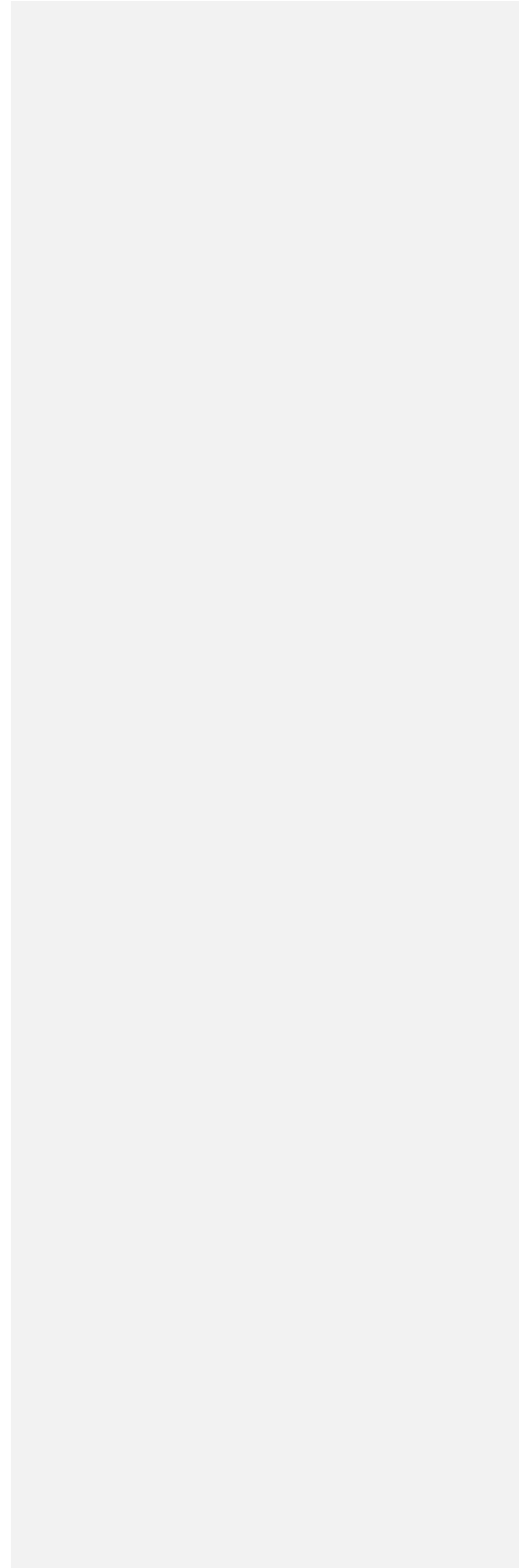
(c) Cooperative Agreement dated April 23, 2015 between the City and the Authority in the amount of \$989,541.00 for water and sanitary sewer improvements.

Note: The listed public funding contracts have expired. If the Authority and the City (or other party) enter into a new public funding contract to assist the Project, each such new contract shall be added to Exhibit B by an amendment to this Contract.

**EXHIBIT C**

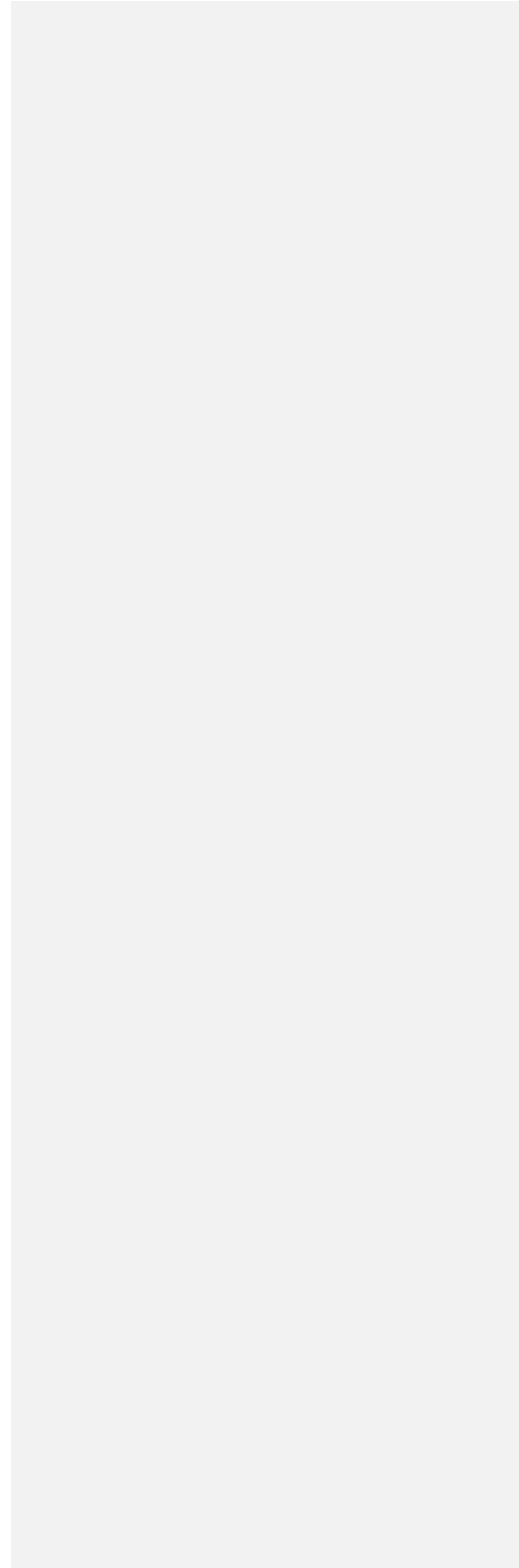
**Redevelopment Plan**

The development and construction of the Phase One Improvements and the Phase Two Improvements in accordance with this Contract and the Urban Renewal Plan.

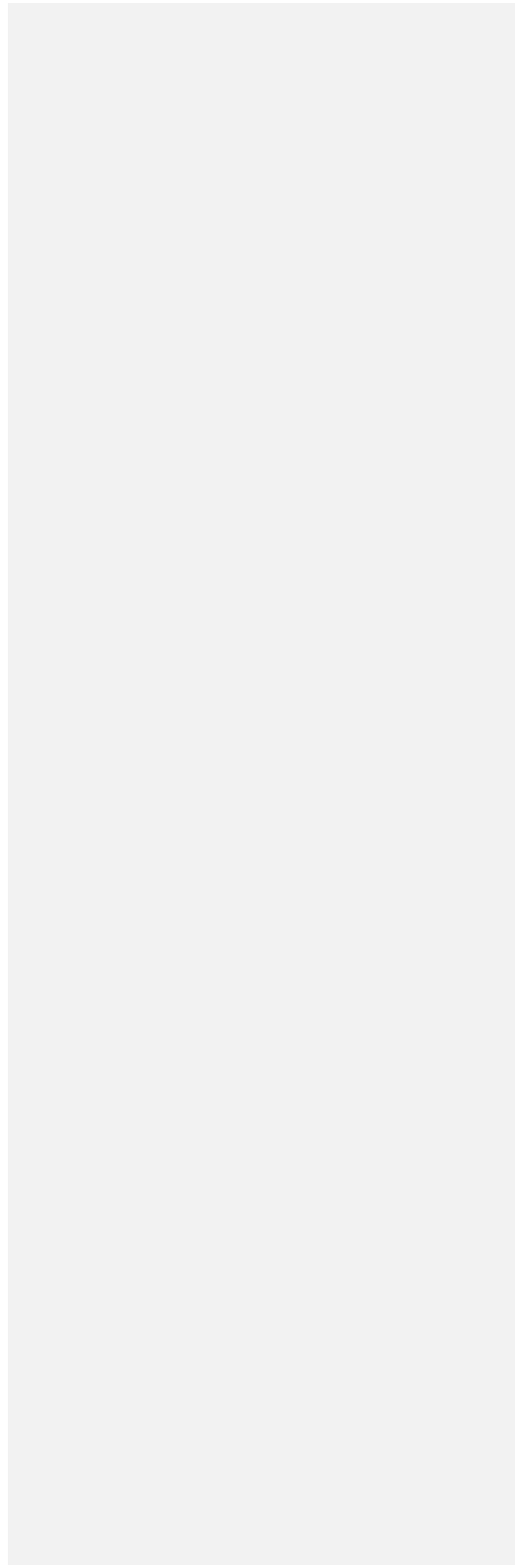


**EXHIBIT D**

**Phase One Pro Forma and Phase Two Pro Forma**



**EXHIBIT E**  
**Phasing Plan**





**EXHIBIT F**  
**HAKC Approval Letter (for Phase One and Phase Two)**

