

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

A RESOLUTION authorizing the County Executive to execute a Cooperative Agreement for Collection of Certain Special Assessments and Taxes with the Kansas City Headquarters Convention Center Community Improvement District, the Land Clearance for Redevelopment Authority of Kansas City, Missouri, and KC Hotel Property Owner, LLC, regarding the collection of taxes and special assessments at the proposed convention center hotel in downtown Kansas City, Missouri.

RESOLUTION NO. 19665, November 28, 2017

INTRODUCED BY Scott Burnett, County Legislator

WHEREAS, KC Hotel Property Owner, LLC (“the Developer”), has proposed to develop, finance, construct, and operate a convention center hotel on public property located adjacent to the downtown Kansas City, Missouri; and

WHEREAS, the Kansas City Headquarters Convention Center Community Improvement District (“the CID”) and the Land Clearance for Redevelopment Authority of Kansas City, Missouri (“the LCRA”) will have significant roles in this project as proposed; and

WHEREAS, the Developer, the CID, and the LCRA, have requested that Jackson County assist in this project by implementing special procedures to collect and distribute payments for taxes and special assessments due on the project; and

WHEREAS, the Director of Collection has agreed to implement these special collection procedures, for which compensation is authorized by state law; and

WHEREAS, the rights and obligations of the various parties involved in this matter are adequately set out in the attached Cooperative Agreement for Collection of Certain Special Assessments and Taxes; and

WHEREAS, the execution of this Cooperative Agreement is in the best interests of the health, welfare, and safety of the citizens of Jackson County; now therefore.

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the County Executive be and hereby is authorized to execute the attached Cooperative Agreement for Collection of Certain Special Assessments and Taxes with the Kansas City Headquarters Convention Center Community Improvement District, the Land Clearance for Redevelopment Authority of Kansas City, Missouri, and KC Hotel Property Owner, LLC, and any and all other documents necessary to give effect to the intent of this Resolution.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:


Chief Deputy County Counselor


County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution No. 19665 of November 28, 2017, was duly passed on November 28, 2017 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 9

Nays 0

Abstaining 0

Absent 0

11.28.17
Date


Mary Jo Spino, Clerk of Legislature

**COOPERATIVE AGREEMENT FOR COLLECTION OF
CERTAIN SPECIAL ASSESSMENTS AND TAXES**

This Agreement is made and entered into effective as of the Effective Date (defined below) among Jackson County, Missouri (the “**County**”), the Kansas City Headquarters Convention Center Hotel Community Improvement District (the “**CID**”), the Land Clearance for Redevelopment Authority of Kansas City, Missouri, and its successors and assigns (“**LCRA**”), and KC Hotel Property Owner, LLC, and its successors and assigns (“**Developer**”).

WITNESSETH:

WHEREAS, the CID is a political subdivision of the State of Missouri, organized under RSMo Sections 67.1401 to 67.1571, as amended (the “**CID Act**”) and the County, CID and LCRA each has the authority to enter into this Agreement pursuant to RSMo Sections 70.210 through 70.230; and

WHEREAS, the CID represents that it is authorized to levy certain special assessments (the “**CID Special Assessments**” and individually, “**CID Special Assessment**”) against that certain parcel of real property legally described on the attached **Exhibit A** and currently having property tax parcel numbers of 29-230-26-17-00-0-00-000, 29-230-26-02-00-0-00-000, 29-230-26-03-00-0-00-000 and 29-230-26-04-00-0-00-000 on the records of County (the “**Parcel**”); and

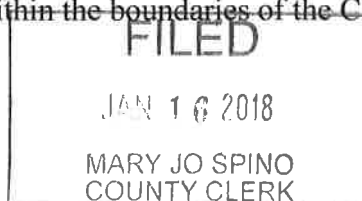
WHEREAS, the Parcel is located within the urban renewal area (“**Redevelopment Area**”) for the Truman & Wyandotte Urban Renewal Plan, as may be amended (“**LCRA Plan**”), approved by the City Council of the City of Kansas City, Missouri (the “**City**”) by adoption of Committee Substitute for Ordinance No. 150597 on July 23, 2015 (the “**Ordinance**”); and

WHEREAS, LCRA, a Missouri public body corporate and politic created pursuant to RSMo Sections 99.300 to 99.715, anticipates that it will, in accordance with a development project (the “**Project**”) undertaken pursuant to the LCRA Plan, acquire the Parcel; and

WHEREAS, for sufficient value received, LCRA has agreed pursuant to the CID Act to voluntarily subject the Parcel to the CID Special Assessments; and

WHEREAS, the CID was formed to assist in the financing of the Project, together with other public financing outlined in the Second Amended and Restated Master Financing Agreement entered into between the City and the KC Hotel Developers, LLC, dated January 18, 2018 (“**Master Financing Agreement**”) in connection with the City’s approval of the LCRA Plan and the approval of the Kansas City Convention Center Headquarters Hotel Tax Increment Financing Plan approved by the City Council for the Redevelopment Area with passage of the Ordinance, as such plan may be amended (the “**TIF Plan**”), to provide for tax increment financing (“**TIF**”) for the Project which Master Financing Agreement has been assigned by KC Hotel Developers, LLC to the Developer; and

WHEREAS, the Parcel is located within the boundaries of the CID; and



WHEREAS, to assist in the financing of the Project, LCRA anticipates, that upon acquiring the entire Parcel, LCRA will lease a portion of the Parcel to the Developer, or its successors and assigns, pursuant to the terms and conditions of a lease or similar agreement (“Lease Agreement”) and the remainder of the Parcel to the CID, and the Developer will be obligated pursuant to the Lease Agreement to cause the redevelopment of the Redevelopment Area in accordance with the LCRA Plan; and

WHEREAS, the CID will impose the CID Special Assessments to pay, reimburse and/or finance costs related to the Project for the benefit of the real property within the boundaries of the CID and such amounts are to be levied on or before the issuance of the CID Bonds to be paid in quarterly amounts not to exceed such amounts authorized by special assessment petition in accordance with the CID Act; and

WHEREAS, LCRA anticipates it will issue bonds or other obligations to further assist in financing a portion of the costs of the Project, which bonds or other obligations will be secured by the CID Special Assessments as described in the Master Financing Agreement (the “**CID Bonds**”); and

WHEREAS, in addition to the CID Bonds, LCRA anticipates it will issue bonds or other obligations to further assist in financing a portion of the costs of the Project, which bonds or other obligations will be secured by the TIF Revenues (defined below) as described in the Master Financing Agreement (the “**TIF Bonds**”); and

WHEREAS, LCRA, CID and the Developer desire that the County collect the CID Special Assessments and County EATs in accordance with this Agreement to facilitate the issuance of the CID Bonds and the TIF Bonds by LCRA.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the parties as follows:

1. Calculation and Collection of CID Special Assessments and Delinquency.

(a) *Billing by County.* The County will generate and mail to LCRA (or to such taxpaying addressee, as directed in writing by LCRA to the County, with a copy to LCRA) four times annually with due dates of February 1, May 1, and August 1, and December 1 of each tax year, property tax bills (each a “Special Assessment Bill”) for the CID Special Assessments which are levied by the CID for such tax year; provided that, not later than forty-five (45) days prior to such due date such CID Special Assessment is calculated by the CID and provided to the County in a format requested by the County to adapt to the County’s billing system, and is certified to the County in writing by the CID’s Chair, Treasurer or Executive Director. The CID shall not bill or collect any CID Special Assessments itself or by or through any other party except as specifically provided herein. Notwithstanding the foregoing, in the event that the Parcel, for any tax year, is subject to any Other Charge (defined below) such Other Charge may be included with the CID Special Assessment on the Special Assessment Bills generated and mailed by the County pursuant to this subsection for such tax year. As used herein, the term “**Other Charge**” shall mean any charge other than a CID Special Assessment that would be properly includable in an annual property tax statement generated by the County, including, without limitation, a transportation

development district special assessment, a TIF charge and ad valorem property tax. LCRA and the CID acknowledge and agree that the inclusion of such Other Charges on Special Assessment Bills for a tax year may require that such Other Charges be estimated for the first three such Special Assessment Bills for that tax year and adjusted by the County in the fourth such Special Assessment Tax Bill for that tax year to yield the proper charge for that tax year.

(b) *Certification by CID.* The certification by the CID's Chair, Treasurer or Executive Director described in subsection (a) of this section shall include a certification that to the best of his or her knowledge such CID Special Assessment was properly levied by the CID, and is proper, valid, legally authorized, and accurate.

(c) *Assessment of Interest, Fees and Charges by County.* The County will assess interest, delinquent and back tax collection fees, and other fees and charges on delinquent CID Special Assessments included on the tax bills described in Subsection (a) of this Section at the same rates and in the same manner as on delinquent ad valorem real property taxes.

(d) *Delinquency Date.* Notwithstanding the due date of each Special Assessment Bill, no Special Assessment Bill shall be delinquent for purposes of enforcement of collection by the County until January 1 of the tax year following the tax year such Special Assessment Bill is due.

(e) *Enforcement and State Law.* Other than as provided in this Agreement, the CID Special Assessment will be collected in the same manner as other real estate taxes are collected under Missouri law. Nothing in this Agreement is intended to alter the character of the CID Special Assessment or the means by which the non-payment of CID Special Assessments may be enforced in accordance with the CID Act and other applicable state law.

2. Payment Method. On or before the date due for each Special Assessment Bill, LCRA will pay, or cause to be paid, and the County will accept payment of all CID Special Assessments and other amounts billed thereon by the County. Payment of such Special Assessment Bill amounts shall be made and accepted only by wire transfer in accordance with instructions provided by the County with the applicable bill.

3. Deductions and Distributions. All CID Special Assessments and any interest thereon collected by the County during a calendar month, less CID Authorized Deductions (defined below), shall be distributed by the County to the CID via ACH (Automated Clearinghouse) on or before the fifteenth day of the following calendar month (collectively, "**CID Distributions**," and individually, "**CID Distribution**"); provided that amounts impounded under RSMo Section 139.031 or otherwise not lawfully available for distribution due to protest or challenge ("**CID Impounds**") shall not be subject to distribution under this section. Each CID Distribution shall provide an itemization of all CID Authorized Deductions claimed by the County with respect to such CID Distribution in the same manner as provided with respect to deductions from tax distributions to the City of Kansas City, Missouri. As used herein, the term "**CID Authorized Deductions**" shall mean and include CID Collector's Commissions (defined below), CID Special Processing Fee (defined below), CID Extraordinary Collection Costs (defined below), CID Indemnity Obligation Amounts (defined below), CID Correction Amounts (defined below), CID Impounds, and all other retentions, offsets, and deductions that the County is authorized to deduct from distributions under this Agreement and/or Missouri law. Any amount required to be distributed to the CID under this section shall be subject to offset for amounts previously distributed to the CID that were assessed, collected, or

distributed in error (“**CID Correction Amounts**”). To the extent there are any CID Correction Amounts, upon discovery of any such error the County shall advise the CID and LCRA in writing of the error with an explanation of the error.

4. Fees for Collection Services. The County shall be entitled to a collection fee of one percent (1.0%) of all CID Special Assessments and any interest thereon collected by the County as consideration for the County’s services with respect to such collection (the “CID Collector’s Commissions”), which fee shall include and constitute the fee authorized under RSMo Section 67.1541.2. In addition, the County shall be entitled to an additional fee equal to five thousand dollars (\$5,000.00) per annum, as consideration for the additional services of the County involved in billing, collecting, and accounting for the CID Special Assessments four times annually (the “**CID Special Processing Fee**”). To provide for payment of the CID Collector’s Commissions and the CID Special Processing Fee, the County may deduct said amounts from any distribution of monies made to the CID by the County. The CID Collector’s Commissions and the CID Special Processing Fee shall be in addition to all other fees, deductions, offsets, and reimbursement to which the County is entitled under other sections of this Agreement and/or Missouri law, shall be CID Authorized Deductions, and shall be in addition to all other CID Authorized Deductions.

5. CID Extraordinary Collection Costs. In the event that any CID Special Assessment billed by the County under this Agreement is uncollectible by the County due to (a) the CID’s failure or inability to support its claim in defense of the levy or collection of any CID Special Assessment under a final and non-appealable court order or decision, (b) the CID’s retraction or dismissal of any CID Special Assessment or levy or enforcement thereof, (c) the impropriety, invalidity, or inaccuracy of any CID Special Assessment under a final and non-appealable court order or decision, or (d) the applicable statute of limitations, then the County shall be entitled to reimbursement by the CID, of all expenses incurred by the County in connection with the billing and attempt to collect such uncollectible CID Special Assessment, as follows: (x) the sum of ten dollars (\$10.00) for each such uncollectible CID Special Assessment as reimbursement for associated County labor costs; and (y) the pro rata portion of all other costs and fees (including, without limitation, attorneys’ fees and suit costs at statutory rates, publication costs, and posting costs) allocable to each such uncollectible CID Special Assessment as reimbursement for such costs and fees (“**CID Extraordinary Collection Costs**”). To provide for payment of the CID Extraordinary Collection Costs, the County may deduct said amounts from any distribution of monies made to the CID by the County. CID Extraordinary Collection Costs shall be in addition to all other fees, deductions, offsets, and reimbursement to which the County is entitled under other sections of this Agreement and/or Missouri law, shall be CID Authorized Deductions, and shall be in addition to all other CID Authorized Deductions.

6. Reimbursement and Indemnification. The County shall be entitled to reimbursement by the CID and the Developer, and the CID and Developer shall hold the County harmless from and indemnify and defend the County, against, any and all claims, demands, actions, causes of action, suits, writs, judgments, damages, expenses, and costs (including, without limitation, reasonable in-house and outside counsel attorney’s fees and court costs) directly resulting from or arising out of any judicial challenge to the propriety, validity, or accuracy of, or the County’s collection of or attempt to collect, in accordance with this Agreement and/or Missouri law, any CID Special Assessment certified to the County by the CID, except to the extent that the County fails to notify the CID and Developer in writing promptly after receiving notice of the commencement of the applicable claim, demand, action, cause of action, suit, or writ (a “**CID Claim Notice**”), and such

failure results in prejudice to any defense by the CID or Developer authorized in this section (the “**CID Indemnity Obligation**”). Any amounts owed to the County under the CID Indemnity Obligation shall be herein referred to as “**CID Indemnity Obligation Amounts.**” To provide for payment of CID Indemnity Obligation Amounts, the County may deduct said amounts from any distribution of monies made to the CID by the County. CID Indemnity Obligation Amounts shall be in addition to all other fees, deductions, offsets, and reimbursement to which the County is entitled under other sections of this Agreement and/or Missouri law, but shall not be duplicative of reimbursements made pursuant to Section 5 hereof, shall be CID Authorized Deductions, and shall be in addition to all other CID Authorized Deductions. Notwithstanding anything in this Agreement to the contrary, the CID and Developer shall each have the right, at its option and at its expense, to elect in writing to provide the County with a defense against such claim, demand, action, cause of action, suit, or writ with counsel reasonably acceptable to the County (the “**Assumption of Defense Notice**”), in which event (a) the CID Indemnity Obligation will not include in-house or outside counsel attorney’s fees except those incurred by the CID or Developer for the defense provided to the County and except those incurred by the County after the County gives the applicable CID Claim Notice to the CID and Developer but prior to the County’s receipt of the Assumption of Defense Notice, and (b) the CID and Developer each shall have the right to compromise and settle any such claim, demand, action, cause of action, suit, or writ on terms acceptable to it in its sole discretion, so long as a complete release of the County from any such claim, demand, action, cause of action, suit, or writ is obtained in connection with such compromise or settlement. The obligations of the CID and Developer under this section shall be joint and several and shall be only as permitted by law.

7. Payment of County EATs. The County will not challenge the validity of the TIF Plan or the Ordinance. The County will pay to the City for deposit to the special allocation fund established for the TIF Plan 50% of the incremental sales tax revenues generated within the redevelopment project areas for the TIF Plan resulting from sales taxes imposed and collected by the County for a period of 23 years beginning pursuant to the terms of the Ordinance, excluding (a) the County’s stadium tax levied pursuant to Sections 67.700 – 67.727 of the Revised Statutes of Missouri, and (b) any other sales tax levy rates or increases in any existing levy rate approved by voters on or after August 28, 2014, other than the renewal of an existing levy rate, which are exempt by the Revised Statutes of Missouri from capture by tax increment financing by the Revised Statutes of Missouri (“**County EATs**”).

8. CID Special Assessment Calculation. The CID shall be solely responsible for the calculation and determination of the amount of any CID Special Assessment. Neither the County nor LCRA shall have any responsibility or obligation for any such calculation or determination.

9. CID Act Voluntary Participation. LCRA voluntarily agrees to participate in the provisions of the CID Act with regard to the Parcel, including without limitation the provisions that authorize the CID to impose the CID Special Assessments against the Parcel as permitted under Section 67.1461 of the CID Act. Effective as of the date (a) LCRA acquires all of the Parcel and (b) LCRA issues the CID Bonds, LCRA irrevocably agrees to participate in the CID Act provisions authorizing the CID to impose the CID Special Assessments and agrees that the CID Special Assessments may be levied against the Parcel included within the boundaries of the CID which LCRA owns or hereafter acquires for so long as LCRA owns all or any portion of the Parcel and the CID Bonds are outstanding. By voluntarily subjecting the Parcel to the CID Special Assessments, LCRA, for sufficient value received, agrees that it consents thereto and will not challenge the

County's collection or attempted collection of the CID Special Assessments in accordance with this Agreement and applicable state law, including, without limitation, foreclosure of the Parcel under RSMo Chapter 141. LCRA's voluntary agreement to participate in the CID Special Assessments and to subject the Parcel to the CID Special Assessments as provided in this Agreement does not constitute, and shall not be construed to constitute, an agreement by LCRA to subject any real or personal property owned by LCRA in the Redevelopment Area to any other levy or assessment of other taxes and special assessments.

10. Effective Date and Term of Agreement. This Agreement shall be effective as of the date (a) LCRA acquires legal title to the Parcel, (b) LCRA issues the CID Bonds, and (c) LCRA notifies County in writing of the date of such acquisition and the date of such issuance ("Effective Date") and shall terminate upon (i) the collection by the County of all CID Special Assessments pledged to the CID Bonds or the payment in full of the CID Bonds, which ever shall first occur, and (ii) the payment of all County EATs as provided in this Agreement. In the event of such termination, the provisions of this Agreement shall continue to apply with respect to CID Special Assessments billed by the County prior to such termination. LCRA, in writing, shall promptly notify the County of its acquisition or disposition of legal title to the Parcel or any portion thereof. Promptly following LCRA's acquisition of legal title to the Parcel, LCRA and Developer, at Developer's sole cost and expense, shall take all necessary actions to cause the four property tax parcels comprising the Parcel to be merged into one property tax parcel on the records of the County prior to the generation and mailing of the first Special Assessment Bill.

11. Amendments. This Agreement may not be amended, modified, terminated or waived orally, but only by a writing signed by all parties to this Agreement.

12. Severability. The provisions of this Agreement are severable. In the event that any covenant or provision of this Agreement is held to be invalid, illegal or unenforceable to any extent, by reasons of any rule of law or public policy, then the remaining covenants and provisions of this Agreement, and the portion of the offending covenant or provision (or any application of such provision) which is not held to be invalid, illegal or unenforceable shall remain in full force and effect, and no covenant or provision shall be deemed dependent upon any other covenant or provision unless so expressed herein.

13. Execution of Counterparts. This Agreement 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.

14. Notice. Any notice, approval, request or consent required by or permitted under this Agreement 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 County: Jackson County, Missouri
Attention: Jackson County Collector
415 E. 12th Street, Suite 100
Kansas City, Missouri 64106

With a copy to: Jackson County, Missouri
Attention: County Counselor

415 E. 12th Street, Suite 200
Kansas City, Missouri 64106

To LCRA: Land Clearance for Redevelopment Authority of Kansas City,
Missouri
Attention: Executive Director
1100 Walnut Street, Suite 1700
Kansas City, Missouri 64106

With a copy to: White Goss, a Professional Corporation
Attention: Brian Engel
4510 Belleview Avenue, Suite 300
Kansas City, Missouri 64111

To CID: Kansas City Headquarters Convention Center Hotel Community
Improvement District
Attn: Mike Burke
2024 Main Street
Kansas City, MO 64108

With a copy to: Polsinelli PC
Attn: Roxsen Koch
900 W. 48th Place, Suite 900
Kansas City, MO 64112-1895

To Developer: KC Hotel Property Owner, LLC
c/o Loews Hotels
667 Madison Avenue
New York, NY 10065
Attention: Constantine S. Dimas

and

KC Hotel Property Owner, LLC
P. O. Box 351979
Westminster, Colorado 80035
Attn: Timothy L. O'Byrne

With a copy to: Polsinelli PC
Attn: Roxsen Koch
900 W. 48th Place, Suite 900
Kansas City, MO 64112-1895

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.

15. Recording. This Agreement or a memorandum of this Agreement may be recorded by the CID, from time to time, in the office of the Director of Records of Jackson County, Missouri, at Kansas City.

16. Further Assurances. Each party will do, execute, acknowledge and deliver such further acts, instruments, financing statements and assurances as the other may reasonably require for accomplishing the purposes of this Agreement.

17. Entire Agreement. This Agreement incorporates the entire understanding and agreement of the parties with respect to the subject matter hereof.

18. Runs with the Land. The obligations of LCRA, CID and Developer pursuant to this Agreement shall be binding upon its successors in interest to the Parcel or any portion thereof.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

APPROVED AS TO FORM:

JACKSON COUNTY, MISSOURI

W. Stephen Nixon
W. Stephen Nixon
County Counselor

By: Frank White, Jr.
Frank White, Jr.
County Executive

ATTEST:

Mary Jo Spino
Mary Jo Spino
Clerk of the County Legislature

State of Missouri)
) : SS
County of Jackson)

The foregoing instrument was acknowledged before me this 12 day of January, 2018, by Frank White, Jr. as County Executive of Jackson County, Missouri, a political subdivision of the state of Missouri, on behalf of the County, who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same for and on behalf of said entity and acknowledged said instrument to be the free act and deed of said entity.

Michael A. Wells
Notary Public, State of Missouri
My commission expires on _____

