

**COOPERATIVE AGREEMENT FOR
DISTRIBUTION OF SURPLUS**

This Cooperative Agreement For Distribution of Surplus ("**Agreement**") is made and entered into this 15th day of December, 2017 by and among the Tax Increment Financing Commission of Kansas City, Missouri (the "**Commission**"), a commission created by the City Council of Kansas City, Missouri (hereinafter the "**Council**") by Ordinance No. 545556 adopted on November 24, 1982, as amended by Committee Substitute for Ordinance No. 911076 adopted on August 29, 1991, by Ordinance No. 100089 adopted on January 28, 2010, by Ordinance No. 130986 adopted on December 19, 2013 and by Committee Substitute for Ordinance No. 140823 adopted on June 18, 2015, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Section 99.800, RSMo. et seq. (as amended) (the "**TIF Act**"), the City of Kansas City, Missouri, a constitutionally chartered municipal corporation (the "**City**"), and Jackson County, Missouri, a political subdivision of the State of Missouri (the "**County**").

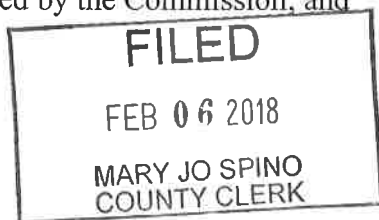
WHEREAS, on January 24, 1994, the Commission, by Resolution No. 94-02, recommended to the Council that it approve the 43rd & Main Tax Increment Financing Plan (the "**Original Plan**"); and

WHEREAS, on March 24, 1994, the Council, by Committee Substitute for Ordinance No. 940227, approved the Original Plan and designated the area described therein as a Redevelopment Area, pursuant to the authority granted the Council by the Act, which Original Plan the Council has subsequently amended from time to time (the Original Plan, together with all amendments thereto shall hereafter be referred to as the "**Plan**"); and

WHEREAS, on September 2, 2008, Distinct Properties HA, LLC ("**Distinct Properties**"), the designated developer for Redevelopment Projects 8A and 8B of the Plan, and the Commission entered into an Assignment of Contract to Purchase Real Estate (the "Assignment Agreement") with respect to a Contract to Purchase Real Estate (the "**Contract**") between Jenla Real Estate Management Services, L.L.C., a Kansas limited liability company ("**Jenla**") and the Distinct Properties, for the real property located within the Redevelopment Area at 3821 Main Street, Kansas City, Missouri (the "**Property**"); and

WHEREAS, the Assignment Agreement, which has been amended three (3) times provides, in part, that Jenla, subject to the satisfaction of certain conditions, shall transfer and convey the Property to the Commission and the Commission, in consideration of such conveyance, shall pay Jenla \$1.4 million; and

WHEREAS, the Assignment Agreement further provides that District Properties shall have the right to acquire fee title to the Property from the Commission at a purchase price of \$1.4 million or enter into a Ground Lease to which lease payments over the term of the Plan would equal \$1.4 million, provided that (a) on or before December 31, 2008, the Commission approves a plan for finance and a construction schedule submitted by Distinct Properties to implement Projects 8A and 8B of the Plan (the Hawthorn Building and 3821 Parking Lot, respectively), and (b) on or before June 30, 2009, the Developer shall have obtained the financing set forth in the plan of finance approved by the Commission; and



WHEREAS, the Commission, pursuant to the Assignment Agreement, acquired the Property, but District was unable to satisfy the conditions set forth in the Assignment Agreement and the conditional option to enter into a Ground Lease or acquire the Property lapsed in 2009; and

WHEREAS, on October 29, 2009, the City Council, by Ordinance, elected to terminate the Plan upon the payment of certain Redevelopment Project Costs identified by the Plan, including costs described by the Eighth Amendment to Plan, including funding (a) the S.M.A.R.T. Housing Program in the amount of \$585,000.00, (b) administration costs (c) streetscape improvements in the amount of \$587,402.00; (d) sidewalk improvements in the amount of \$255,074.00, (e) the demolition of the former Naughty But Nice building and (f) the survey of Main Street in the amount of \$125,000.00; and

WHEREAS, upon the demolition of the Naughty But Nice Bok Store, as permitted by the Eighth Amendment to the Plan, the Commission entered into a Service Agreement with International Architects Atelier, Inc., to provide for the construction and paving of a surface parking lot on the Property (the “**3821 Main Parking Lot**”); and

WHEREAS, on December 29, 2009, the Commission entered into a Parking License Agreement with Loki Asset Group, LLC and Madrid Events, LLC (collectively, “**Madrid**”), which provides (a) that the Commission shall grant Madrid a non-exclusive parking license as to 31 of the 38 parking spaces located on the 3821 Main Parking Lot during the hours of operation of the Madrid Theater and (b) that Madrid shall pay the Commission \$500 for such license and Madrid, at its own cost and expense, shall maintain and secure the 3821 Main Parking Lot; and

WHEREAS, Exact Partners, LLC (“**Exact**”) is currently negotiating the acquisition of District Properties for the purpose of developing the Hawthorn Building, the Monarch Building adjacent thereto, along with the Property and expressed its desire to acquire the Property from the Commission; and

WHEREAS, Exact and the Commission entered into an Option Agreement, which provides, in part, that the Commission, subject to the satisfaction of certain conditions, shall grant Exact an option to acquire the Property in consideration for Exact’s payment of \$230,000 to the Commission, along with its implementation of certain public improvements approved by the City; and

WHEREAS, the \$230,000 cash consideration payment made by Exact to the Commission is deemed surplus, within the meaning of the TIF Act (“**Surplus Funds**”), and shall be distributed to the affected taxing districts in accordance with Section 99.820.1.(12); and

WHEREAS, the City desires to enter this Agreement, which shall provide for contribution of its portion of the Surplus Funds to each of the taxing districts affected by the Plan.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I REPRESENTATIONS

1.01 Commission Representations. The Commission represents and warrants to the City and the County as follows:

(a) Organization and Authority. The Commission (i) is a real property tax increment financing commission duly organized and existing under the Act; (ii) has lawful power and authority to enter into, execute and deliver this Agreement, and to carry out its obligations hereunder; and (iii) by all necessary action, has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) No Defaults or Violations. The execution and delivery of this Agreement by the Commission will not result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the Commission is a party or by which it is or any of its property is bound, or its bylaws, or any of the constitutional or statutory laws, rules or regulations applicable to the Commission or its property.

1.02 City Representations. The City represents and warrants to the Commission and the County as follows:

(a) Organization and Authority. The City (i) is a constitutionally chartered municipal corporation validly existing under the laws of the State of Missouri; (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; and (iii) by all necessary action has, been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) No Defaults or Violations. The execution and delivery of this Agreement by the City will not conflict with or result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any of the constitutional or statutory laws, rules or regulations applicable to the City or its property.

1.03 County Representations. The County represents and warrants to the Commission and the City as follows:

(a) Organization and Authority. The County (i) is a political subdivision duly organized and validly existing under the laws of the State of Missouri; (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; and (iii) by all necessary action has, been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) No Defaults or Violations. The execution and delivery of this Agreement by the County will not conflict with or result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the County is a party or by which it or any of its

property is bound, or any of the constitutional or statutory laws, rules or regulations applicable to County or its property.

1.04 Survival of Representations. All representations of the Commission, the City and the County contained in this Agreement shall survive the execution and delivery thereof.

**ARTICLE II
COVENANTS OF THE COMMISSION**

2.01 Transfer of the Existing Surplus Funds.

(a) Within thirty (30) days after Exact’s exercise of its option to acquire the Property, its \$230,000 payment to the Commission and the approval, execution and delivery of this Agreement by each of the Commission, the City and the County (together, the “**Surplus Conditions**”) the Surplus Funds in the amount of \$97,400.92 (the “**Non-City Surplus Amount**”), shall be distributed to certain affected taxing districts. Of the amount of the Non-City Surplus Amount, the following estimated amounts are to be distributed to the following affected taxing districts (the “**Non-City Affected Taxing Districts**”):

<u>Taxing Jurisdiction</u>	<u>Amount</u>
Jackson County Community Mental Health Fund	\$1,328.84
Metropolitan Community Colleges of Greater Kansas City	\$2,587.97
Jackson County Board of Services for the Developmentally Disabled	\$816.55
Missouri Pension Fund for the Blind	\$331.93
Jackson County, Missouri (PILOTS)	\$4,591.76
Jackson County, Missouri (EATS)	\$11,500.00
Kansas City Public Schools	\$54,878.45
Kansas City Library District	\$5,465.83
M&M Replacement Tax	\$15,899.59

(b) The aggregate amount of the Existing Surplus Funds estimated to be distributed to the City is approximately \$132,599.08 (the “**City’s Surplus Amount**”). The City, within thirty (30) days after the satisfaction of the Surplus Conditions, agrees to direct the Commission to transfer the portion of the City’s Surplus Amount to the County for distribution to the Non-City Affected Taxing Districts in the same proportion as the most recent distribution by the County’s Collector to such Non-City Affected Taxing Districts of real property taxes for real property located in the Redevelopment Area described by the Plan.

**ARTICLE III
COVENANTS OF THE COUNTY**

3.01 Distribution of Surplus Funds.

(a) Within thirty (30) days of the County's receipt of the Non- Surplus Amount, the County shall distribute \$97,400.92 to the Non-City Affected Taxing Districts in the same proportion as the most recent distribution by the County's Collector to such Non-City Affected Taxing Districts of real property taxes for real property located in the Redevelopment Area described by the Plan. Notwithstanding the estimates set forth in **Section 2.01(a)**, the County shall have the sole discretion to determine the amount and proper distribution from the County to the Non-City Affected Taxing Districts of the Non-City Surplus Amount or any portion thereof received by the County.

(b) Within thirty (30) days of the County's receipt of the City's Surplus Amount, the County shall distribute \$132,599.08 to the Non-City Affected Taxing Districts in the same proportion as the most recent distribution by the County's Collector to such Non-City Affected Taxing Districts of real property taxes for real property located in the Redevelopment Area described by the Plan. The County shall have the sole discretion to determine the amount and proper distribution from the County to the Non-City Affected Taxing Districts of the City's Surplus Amount or any portion thereof received by the County.

**ARTICLE IV
MISCELLANEOUS**

4.01 Survival. The representations, warranties and covenants herein shall survive the transfer of any funds described herein and shall remain in full force and effect after the transactions contemplated by this Agreement have been consummated.

4.02 Notices. Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement will be deemed to have been given when (a) delivered personally to the party designated to receive such notice, (b) on the third (3rd) business day after the same is sent by certified mail, postage and charges prepaid, (c) on the next business day after such notice is delivered to a regularly scheduled overnight delivery service with delivery fees prepaid or an arrangement, satisfactory with such carrier, made for payment of such fees, or (d) by facsimile transmission on the date of transmission if a business day or the next business day if not transmitted on a business day or prior to noon on a business day, in each case, directed to the following addresses or to such other or additional addresses as any party might designate by written notice to the other parties:

City:	City Attorney City of Kansas City, Missouri 23 rd Floor, City Hall 414 E. 12th Street Kansas City, Missouri 64106 816-513-3142 Fax: 816-513-3133
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Commission: Heather Brown
Executive Director
Tax Increment Financing Commission
1100 Walnut, Suite 1700
Kansas City, Missouri 64106
816-691-2109
Fax: 816-221-0189

With a copy to: Wesley O. Fields, Esq.
Bryan Cave LLP
3800 One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105
816-391-7667
Fax: 816-855-3667

County County Executive
Jackson County Courthouse, 2nd Floor
415 E. 12th Street
Kansas City, MO 64106

4.03 No Partnership or Joint Venture. Nothing contained in this Agreement will be deemed to create a partnership or joint venture between all or any of the parties hereto, or to cause any party to be liable or responsible in any way for the actions, liabilities, debts or obligations of any other party.

4.04 Severability. If any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid or unenforceable, there shall be added in lieu thereof a provision as similar in terms to such provision as is possible which will be legal, valid and enforceable.

4.05 Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original document, but all of which shall constitute a single document.

4.06 Governing Law and Venue. This Agreement will be interpreted and construed under the laws of the State of Missouri. Venue shall be in a state or federal court having jurisdiction over Jackson County, Missouri.

4.07 Cooperation; Further Documents. All parties agree to execute and deliver, or to cause to be executed and delivered, such documents and to do, or cause to be done, such other acts and things as might reasonably be requested to assure that the benefits of this Agreement are realized by the parties.

4.08 Entire Agreement; Written Modifications Only. This Agreement constitutes the sole and entire agreement between the parties hereto with respect to the subject matter hereof, and there are no other covenants, promises, agreements or understandings regarding the same. This

Agreement, including the provisions of this Section, may not be modified except by written amendment to this Agreement signed by the parties affected by the same, and the parties hereto hereby (a) expressly agree that it shall not be reasonable for any of them to rely on any alleged, non-written amendment to this Agreement; (b) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Agreement; and (c) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Agreement.

4.09 Construction of Agreement. The following rules of construction are applicable for the purposes of this Agreement and all documents and instruments supplemental hereto unless the context clearly requires otherwise:

(a) All references herein to numbered sections or to lettered exhibits are references to the sections hereof and the exhibits annexed hereto.

(b) The terms “include,” “including,” and similar terms shall be construed as if followed by the phrase “without being limited to.”

(c) Words of masculine, feminine or neutral gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural, and vice versa.

(d) No inference in favor of or against any party hereto shall be drawn from the fact that such party has drafted any portion of this Agreement.

4.10 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

4.11 Headings. The headings of sections contained in this Agreement are for convenience only and shall not be deemed to control or effect a meaning or construction of any provision of this Agreement.

4.12 Representation by Counsel. The parties acknowledge that each one has read this Agreement carefully, that each party has consulted with its attorney(s) prior to the execution of this Agreement about its contents, and that each party further states that it understands the entire contents of this Agreement. Each party shall be responsible for its respective attorneys' fees.

4.13 Enforcement. The parties specifically agree that this Agreement may be enforced in court and used as evidence in any matter in which the terms hereof are deemed relevant by a court of competent jurisdiction.

[Remainder of page left intentionally blank. Signatures follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date.

TAX INCREMENT FINANCING
COMMISSION OF KANSAS CITY,
MISSOURI

ATTEST:

By: *Heather A. Brown*
Heather A. Brown, Secretary

By: *Cynthia M. Circo*
Cynthia M. Circo, Chair

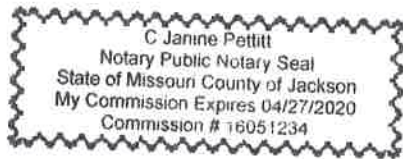
Approved as to form:

By: *Wesley O. Fields*
Wesley O. Fields, Counsel to the Commission

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this 1 day of December, 2017, before me, the undersigned a Notary Public in and for the County and State aforesaid, came Cynthia M. Circo, the Chair of the Tax Increment Financing Commission of Kansas City, Missouri, a commission duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said commission, and such person duly acknowledged the execution of the same to be the act and deed of said commission.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.



C. Janine Pettitt
Signature of Notary Public

My Commission Expires:

April 27, 2020

CITY OF KANSAS CITY, MISSOURI

By: Troy M. Schulte
Troy Schulte, City Manager

ATTEST:

Kelly Warner
Name: _____
Title: City Clerk

Approved as to form and legality:

By: Brian T. Rabineau
Brian T. Rabineau, Assistant City Attorney

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this 15 day of December, 2017, before me, a Notary Public in and for the state and county aforesaid, appeared Troy Schulte, to me personally known, and who being by me duly sworn, did say that he is the City Manager of the City of Kansas City, Missouri, and, as such official, executed the within instrument on behalf of the City of Kansas City, Missouri, and such person duly acknowledged the execution of the same to be the act and deed of the City of Kansas City, Missouri.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office the day and year last above written.

Terrie L. Smidt
Signature of Notary Public

My Commission Expires:

JAN 12, 2018



JACKSON COUNTY, MISSOURI

By: [Signature]
Frank White Jr., Jackson County Executive

ATTEST:

[Signature]
Mary Jo Spino, Clerk of the Legislature

Approved as to form:

By: [Signature]
W. Stephen Nixon

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this 14th day of December, 2017, before me, a Notary Public in and for the state and county aforesaid, appeared Frank White, Jr., to me personally known, and who being by me duly sworn, did say that he is the Executive of Jackson County, Missouri, and, as such official, executed the within instrument on behalf of Jackson County, Missouri, and such person duly acknowledged the execution of the same to be the act and deed of Jackson County, Missouri.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office the day and year last above written.

[Signature]
Signature of Notary Public

My Commission Expires:

April 17, 2019



TEDI H. ROWLAND
My Commission Expires
April 17, 2019
Jackson County
Commission #15173894