

RESOLUTION No. 12- -22

RESOLUTION OF THE LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY OF KANSAS CITY, MISSOURI APPROVING ASSIGNMENT OF APPROVED TAX INCENTIVES TO NEW REDEVELOPER, SUBJECT TO CERTAIN CONDITIONS, TO FACILITATE NEW REDEVELOPER OBTAINING NEW CONSTRUCTION LOAN FINANCING; AND APPROVING RELATED ACTIONS.

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

WHEREAS, pursuant to its Resolution No. 11-1-18 dated November 28, 2018, the Authority selected Pedersen Development Redeveloper, L.L.C., a Colorado limited liability Redeveloper (the “Original Redeveloper”) as the redeveloper for the Project (as defined below) and approved a tax incentive package to include (a) sales tax exemption on construction materials (STECM), and (b) abatement of property taxes (above current predevelopment taxes) generated by the Project for 15 years under the LCRA Law (100% abatement in Years 1-10; 37.5% abatement in Years 11-15); and

WHEREAS, pursuant to its Resolution No. 6-1-19 dated June 19, 2019, and the Trust Indenture (“Indenture”) dated October 1, 2019, between the Authority and BOKF, N.A., as trustee, the Authority issued on October 9, 2019 its Land Clearance for Redevelopment Authority of Kansas City, Missouri Taxable Industrial Revenue Bond (Hyatt House Hotel Project), Series 2019, in the original principal amount of \$38,000,000 (the “Bond”) to fund a redevelopment project within the Central Business District Urban Renewal Area consisting of acquisition and construction of: (1) a multi-story, extended-stay hotel with approximately 154 guest rooms, approximately 2,500 square feet of meeting space, and approximately 6,000 square feet of common area that will be available to hotel guests and the public; and (2) other related improvements to be accomplished on the Land in accordance with the Redevelopment Contract and the Central Business District Urban Renewal Plan (the “Project”); and

WHEREAS, the Original Redeveloper, in coordination with its investment partners and lenders, created an ownership structure involving the following limited liability companies: (A) 900 Broadway KC LLC, a Missouri limited liability company (the “Land Developer”), as tenant under the Land Lease Agreement dated as of October 1, 2019, as evidenced by the Memorandum of Land Lease Agreement recorded as Document No. 2019E0082242, for the purpose of leasing from the Authority the real property upon which the Project will be constructed (the “Land”); and (B)(i) 900 Broadway KC Development Company LLC, a Missouri limited liability company (“900

Broadway Dev. Co.”); (ii) Oak Holdings LLC, a Colorado limited liability company (“Oak Holdings”); and (iii) REMSK, LLC, a Colorado limited liability company (“REMSK”), as tenants-in-common (collectively and jointly and severally, the “Redeveloper”) as tenant under the Improvements Lease Agreement dated as of October 1, 2019, as evidenced by the Memorandum of Improvements Lease Agreement recorded as Document No. 2019E0082243, for the purpose of leasing from the Authority the Project improvements to be constructed on the Land (the “Project Improvements”). The Redeveloper and the Land Developer, collectively, are referred to as the “Redeveloper Parties”; and

WHEREAS, the Authority previously consented to the Original Redeveloper’s assignment of its development rights in the Project to the Redeveloper Parties; and

WHEREAS, the Authority and the Redeveloper Parties entered into the Sale/Leaseback and Redevelopment Contract dated as of October 1, 2019, and recorded as Document No. 2019E0082240 (the “Redevelopment Contract”); and

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

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

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

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

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

WHEREAS, the Redeveloper Parties have been in discussions with HH KC Partners, LLC, a Missouri limited liability company (the “New Redeveloper”), which is a joint venture of O’Reilly Hospitality Management, LLC and Lotus Holdings, LLC to join the developer team and to seek to obtain a new construction loan to resolve all outstanding claims related to the Litigation and re-start construction of the Project; and

WHEREAS, the New Redeveloper has requested that the Authority approve an assignment of the approved tax incentives for the Project to the New Redeveloper in support of the New Redeveloper’s effort to obtain a new construction loan; and

WHEREAS, the Authority desires to approve an assignment of the approved tax incentives for the Project, subject to the satisfaction of certain conditions and requirements.

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

Section 1. Authorization. The assignment of the previously approved tax incentives for the Project to the New Redeveloper is approved; provided, however, that such assignment is expressly subject to the Authority’s review and approval of the new construction loan documents at a later meeting, to the New Redeveloper obtaining a commitment from a lender for a new construction loan for the Project, and to the satisfaction of the following conditions:

- The New Redeveloper closes new construction loan to fully pay the General Contractor and the Project Subcontractors and to fund completion of the Project as proposed by the Original Redeveloper.
- All mechanic’s liens and lawsuits dismissed with prejudice.
- The Redeveloper Parties, the General Contractor, and the Project Subcontractors agree to fully release LCRA and to waive any future claims against the Authority (including regarding the payment and performance bond).
- Agreement from General Contractor and the Project Subcontractors to stay the Litigation and the related arbitration refrain from filing any additional claims against the Authority pending the New Redeveloper’s effort to obtain a new construction loan.
- The New Redeveloper provides a payment and performance bond in compliance with Section 107.170, RSMo.
- The New Redeveloper assumes all obligations under the Authority’s project and financing documents for the Project from and after closing date, including, without limitation, compliance with the assignment provisions under the Redevelopment Contract, the Lease Agreements, and the Indenture.
- The Redeveloper Parties not released from obligations prior to closing date.
- All outstanding Authority legal fees (Project and Litigation matters) paid in full on or before the date of this resolution.
- The New Redeveloper enters into a new Funding Agreement with the Authority.

- The New Redeveloper satisfies requirements of the Authority's bond trustee (BOKF, N.A.).
- If the General Contractor, the Litigation Subcontractors, Other Subcontractors, or other party files any new claim related to the Litigation against the Authority, any officer of the Authority, or any or all members of the Board of Commissioners of the Authority, then the Redeveloper Parties shall provide a bond, a letter of credit, or other security satisfactory to the Authority in the amount of \$2,750,000 or such other amount equal to the then aggregate cost of unpaid labor and materials in connection with the Litigation.

Section 2. Further Authority. The attorneys, officers, agents and employees of the Authority are hereby authorized and directed to take such further actions contemplated hereunder in connection with the Project, and to execute and deliver such pleadings, documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Authority with respect to the Redevelopment Contract and the Indenture and related Bond documents, and to protect the Authority's interests in the Litigation. The signatures of the attorney's, officers and employees of the Authority executing such pleadings and documents shall constitute conclusive evidence of their approval and the Authority's approval thereof.

Section 3. Effective Date. This Resolution shall take effect and be in full force immediately after its adoption by the Board of Commissioners of the Land Clearance for Redevelopment Authority of Kansas City, Missouri; provided, however, that the assignment of the approved tax incentives as provided in the Redevelopment Contract to the New Redeveloper is expressly contingent upon the satisfaction of the conditions and requirements of this Resolution.

ADOPTED by the Board of Commissioners this 12th day of December, 2022.

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

By: _____
Rob Gardner, Chairman

ATTEST:

Daniel Moye, Secretary