



## **CITY COUNCIL MEETING**

### **GLADSTONE, MISSOURI**

#### **NOTICE OF SPECIAL MEETING**

Notice is hereby given that the Gladstone City Council will meet Monday, November 19, 2018, 6:30 pm in the North Conference room of City Hall, 7010 North Holmes, Gladstone, Missouri.

The tentative agenda of this meeting is:

An Ordinance consenting to the assignment of certain documents related to the Northland Innovation Center Project and authorizing the execution of certain documents and taking of certain actions in connection with the assignment of such documents and the transfer of the Project.

**Representatives of the News Media may obtain copies  
of this notice by contacting:**

City Clerk Ruth Bocchino  
City of Gladstone  
7010 North Holmes  
Gladstone, MO 64118  
816-423-4096  
Posted: 11/16/18 11:30 am

**AN ORDINANCE CONSENTING TO THE ASSIGNMENT OF CERTAIN DOCUMENTS RELATED TO THE NORTHLAND INNOVATION CENTER PROJECT AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS AND TAKING OF CERTAIN ACTIONS IN CONNECTION WITH THE ASSIGNMENT OF SUCH DOCUMENTS AND THE TRANSFER OF THE PROJECT.**

**WHEREAS**, the City of Gladstone, Missouri (the "City") is a third class city and political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri; and

**WHEREAS**, the City is authorized under the provisions of Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), to purchase, construct, extend and improve certain projects (as defined in the Act) for the purposes set forth in the Act and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable; and

**WHEREAS**, the City, in accordance with Section 100.050 of the Act, previously prepared and approved a plan for industrial development (the "Plan") for Gladstone CAP LLC, a Delaware limited liability company (together with any successors or assigns, the "Transferor"), with respect to a project consisting of the construction and improvement of a commercial facility known as the Northland Innovation Center Project (the "Project"); and

**WHEREAS**, notice of the Project was given to the taxing jurisdictions in accordance with Section 100.059.1 of the Act and the City approved the Plan; and

**WHEREAS**, the City financed the costs of the Project out of the proceeds of industrial development revenue bonds issued under the Act (the "Bonds") pursuant to a Trust Indenture, dated as of June 1, 2015, between the City and First Bank of Missouri, as Trustee (the "Indenture"); and

**WHEREAS**, the following agreements related to the Project, copies of which are on file with the City (the "Assigned Agreements"), are assignable with the City's prior written consent:

- a. Development Agreement dated October 14, 2014, as amended, between the City and Transferor.
- b. Performance Agreement dated as of June 1, 2015, between the City and Transferor.
- c. Parking Lease dated as of June 19, 2015, between the City and Transferor.
- d. Access Easement dated as of June 18, 2015, between the City and Transferor.

e. Lease Agreement between dated as of June 1, 2015, between the City and Transferor.

f. Bond Purchase Agreement dated as of June 1, 2015, between the City and Transferor.

; and

**WHEREAS**, the Transferor wishes to assign and transfer, and KCP Fee Owner 4 LLC, a Delaware limited liability company (the "Transferee"), wishes to acquire, assume and be assigned all of Transferor's right, title and interest in, and obligations arising under, the Assigned Agreements and the Project, subject to the terms contained in the below-defined City Documents.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, AS FOLLOWS:**

**Section 1. Consent to assign Assigned Agreements.** The Council hereby consents to the assignment of the Assigned Agreements from the Transferor to the Transferee subject to the terms contained in the below-defined City Documents.

**Section 2. Execution of Documents.** The following documents (the "City Documents") are hereby approved in substantially the forms presented to the Council at this meeting (copies of which documents shall be filed in the records of the City), and the City is hereby authorized to execute and deliver the City Documents with such changes therein as shall be approved by the officials of the City executing such documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

(a) Transfer, Assignment and Assumption Agreement, among the City, the Transferor, the Transferee, and Citi Real Estate Funding, Inc. (the "Lender").

(b) First Supplemental Trust Indenture between the City and the Trustee.

(c) Estoppel Certificate and Agreement.

**Section 3. Authorization to Execute Documents.** The City Council hereby authorizes the officers, agents and employees of the City, including the Mayor, City Manager, Director of Finance, City Attorney and City Clerk, to enter into and execute and deliver, for and on behalf of and as the act and deed of the City, the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 4. Further Authority.** The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the City Documents, the assignment of the Assigned Documents and the transfer of the Project.

**Section 5. Severability.** The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of the Ordinance are so essential to and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council has enacted the valid portions without the void ones, or unless the court finds that the valid

portions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

**Section 6. Governing Law.** This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

**Section 7. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the City Council.

**INTRODUCED, READ, PASSED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 19TH DAY OF NOVEMBER 2018.**

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Mayor Bill Garnos

ATTEST:

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Ruth E. Bocchino, City Clerk

First Reading: November 19, 2018

Second Reading: November 19, 2018

**TRANSFER, ASSIGNMENT  
AND ASSUMPTION AGREEMENT**

This **TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT** (this "Agreement"), dated as of November \_\_, 2018 (the "Effective Date"), is made and entered into by and among **GLADSTONE CAP LLC**, a Delaware limited liability company (the "Transferor"), **KCP FEE OWNER 4, LLC**, a Delaware limited liability company (the "Transferee"), **CITI REAL ESTATE FUNDING INC.**, a New York corporation (or its successors, assigns, designees, co-lenders, participants and/or other similar holders of direct or indirect interests in the loan made to Transferee with respect to the Property (as defined herein), collectively, the "Bank"), and the **CITY OF GLADSTONE, MISSOURI**, a municipal corporation and political subdivision of the State of Missouri (the "City"). The following recitals form an integral part of this Agreement:

**WHEREAS**, reference is made to that certain (i) Development Agreement dated as of October 14, 2014 (the "Original Agreement") as amended by the First Amendment to the Development Agreement, dated April 21, 2015 (the "First Amendment") both between the City and the Transferor, and as modified by the Extension of Development Agreement Deadlines (the "Extension") executed by the City (with the Original Agreement, the First Amendment and the Extension, as the same may be further amended, restated, renewed or modified from time to time, being the "Development Agreement"); (ii) Parking Lease, dated as of June 1, 2015 between the City and the Transferor, a Memorandum of which was recorded on June 19, 2015 as Instrument Number 2015019751 at Book 7519, Page 11 (collectively, the "Parking Lease"); (iii) the Access Easement, dated as of June 1, 2015, between the City and the Transferor, recorded on August 12, 2015 as Instrument Number 2015027419 at Book 7555, Page 144 (the "Access Easement"); (iv) the Lease Agreement, dated as of June 1, 2015, between the City and the Transferor, a Memorandum of which was recorded on June 19, 2015 as Instrument Number 2015019750 at Book 7519, Page 10 (collectively, the "Lease"); (v) the Performance Agreement, dated as of June 1, 2015, between the City and the Transferor (the "Performance Agreement"); and (vi) the Bond Purchase Agreement, dated as of June 1, 2015, between the City and the Transferor (the "Bond Purchase Agreement," together with the Development Agreement, the Parking Lease, the Access Easement, the Lease and the Performance Agreement, the "Transferred Agreements");

**WHEREAS**, the Transferor wishes to assign and transfer to the Transferee, and the Transferee wishes to acquire, assume and be assigned, all of the Transferor's right, title and interest in, and obligations arising under, the Transferred Agreements;

**WHEREAS**, the Transferred Agreements require that any assignee of the Transferor agree to be bound by all of the covenants, and assume all of the obligations, of the Transferor contained in such agreements and, by entering into this Agreement, the Transferee agrees to be bound by such covenants and assume all of such obligations contained in the Transferred Agreements;

**WHEREAS**, the assignment of the Transferred Agreements by Transferor requires the consent of the City;

**WHEREAS**, the Transferee is now or hereafter may become otherwise obligated or indebted to the Bank, and the Transferee may incur future obligations to the Bank pursuant to one or more loan documents or other agreements (as the same may be amended from time to time, collectively, the "Loan Agreement") or pursuant to certain collateral documents described in the Loan Agreement (collectively, the "Collateral Documents") with respect to the loan to the Transferee (the "Loan") in order to acquire Transferor's leasehold interests in certain real estate listed on **Exhibit A** attached hereto (the "Property")

and other property and contract rights of the Transferor created by or set forth in the Transferred Agreements.

**NOW THEREFORE**, in consideration of the foregoing recitals, the agreements herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

1. Assignment of the Transferred Agreements. Transferor hereby conveys, assigns and transfers to Transferee, and Transferee hereby accepts and assumes from Transferor, all of Transferor's right, title and interest in the Transferred Agreements, and all obligations under the Transferred Agreements first arising or accruing under the Transferred Agreements on or after the Effective Date. This assignment will be effective as of the Effective Date and shall be effective for the full remaining respective terms of each of the Transferred Agreements. Except as provided in this Agreement, no right, obligation, certification or provision contained in any Transferred Agreement will be deemed to be amended, altered, modified or revised in any manner.

2. Assumption of Obligations. Transferee hereby accepts and assumes all obligations of Transferor of any nature whatsoever arising under and with respect to the Transferred Agreements first arising or accruing under the Transferred Agreements on or after the Effective Date. The Transferee consents and agrees to be bound by all of the terms, provisions and covenants that were initially made by Transferor, whether financial or otherwise, contained in each of the Transferred Agreements but only to the extent the performance thereof or compliance therewith is to be performed or complied with under the Transferred Agreements on or after the Effective Date.

3. Release. Pursuant to Section 13.1(c) of the Lease, upon assumption of the Transferred Agreements by Transferee, the Transferor is released from and has no further obligation under the Transferred Agreements except to the extent otherwise provided in the Transferred Agreements.

4. Consent. City hereby consents to (a) the assignment of the Transferred Agreements from Transferor to Transferee; (b) the assumption by Transferee of all of Transferor's obligation, right, title and interest under the Transferred Agreements; and (c) the security interest in the Lease, the Parking Lease, the Access Easement and the Development Agreement granted to Bank by Transferee pursuant to that certain Leasehold Deed of Trust, Security Agreement, Assignment of Lease and Rents, and Fixture Filing dated as of the date hereof (the "Deed of Trust") in a form provided to the City for review. City agrees for the benefit of Bank that the City will observe and perform all of its covenants and obligations under the Development Agreement, the Lease, the Parking Lease, the Access Easement and the Performance Agreement (collectively, the "Assigned Documents").

5. Attornment. City covenants and agrees to make full and complete attornment (without the necessity of any other or further attornment or instrument) to, and to accept performance of the Transferee's obligations under the Assigned Documents, from (a) Bank, or (b) any receiver which Bank requests be appointed for the Property. Such attornment shall be for the balance of the term of the Assigned Documents, including any extensions thereof, and shall be upon the same terms, covenants and conditions as provided in the Assigned Documents so as to establish direct privity of estate and contract between City and Bank, with the same force and effect as though the Assigned Documents were made directly between City and the person to whom City shall attorn as aforesaid, provided, however, that (i) the Bank shall not be bound by any amendment or modification of any of the Assigned Documents after the date of this Agreement without the written consent of Bank in contravention of the provisions hereof, and (ii) City's attornment shall not be deemed a waiver of any default by the Transferor or the Transferee (but shall be subject to Bank's cure rights as provided herein). If Bank exercises its rights under the Deed of Trust and thereafter sells its interest in the Property and assigns its rights under any of the Assigned

Documents to another entity with the written consent of the City (in accordance with any Assigned Document), then Bank shall be discharged from all liability under the Assigned Documents arising from any action or non-action after Bank assigns or otherwise transfers its interest in the Assigned Documents as part of any such sale of the Bank's interest in the Property.

6. Amendment of Assigned Documents. The City agrees that, so long as the loan made pursuant to the Loan Agreement shall remain outstanding and unpaid, the City shall not, without the prior written consent of the Bank, (a) amend or modify any of the Assigned Documents, (b) cancel or terminate any of the Assigned Documents in contravention of the provisions of this Agreement, or (c) assign the Assigned Documents other than pursuant to the terms of the applicable Assigned Document and this Agreement. The Bank agrees to provide the City, upon written demand of Transferee, written notice of the final payoff of the Loan pursuant to the Loan Agreement promptly following such payoff.

7. Bank's Right to Cure Transferee Default. If any breach or default on the part of the Transferee occurs under any of the Assigned Documents, then the City shall give the Bank written notice thereof at the same time the City gives written notice thereof and regardless of whether notice of such breach or default is required to be given to Transferee and otherwise to the Transferee setting forth the nature of the default, the specific action or actions necessary to cure such default and the period during which the Transferee must cure the default pursuant to the applicable Assigned Documents. If the Transferee fails to cure the same within any applicable cure or grace period (any such uncured breach or default being referred to herein as a "Transferee Default"), then (a) the City shall give the Bank written notice thereof, (b) the City shall have the right to take any action permitted under the applicable Assigned Document, subject, however, to the Bank's rights to cure the same as provided herein below. The Bank shall have the right, but not the obligation, to cure or cause the cure of such Transferee Default prior to the exercise by the City of any rights or remedies available under the applicable Assigned Documents or applicable law, on the following terms and subject to the following conditions:

7.1 If the Transferee Default involves the failure to make any payment due by the Transferee under an Assigned Document, then, if the Bank desires to exercise such cure right, the Bank shall make such payment to the City within fifteen (15) days after the expiration of the Transferee's cure or grace period applicable to such failure, subject to possible delays resulting from any injunction, or by reason of any applicable law, or by reason of any action by any court having jurisdiction over any bankruptcy, reorganization or insolvency proceeding involving the Transferee. If the Bank fails to exercise such cure right as aforesaid, then the Bank shall have no liability therefor and the City shall have the unrestricted right to exercise any rights or remedies available to the City under the Assigned Documents as a result of such Transferee Default.

7.2 If the Transferee Default involves the failure to observe or perform a covenant or obligation under an Assigned Document, then, if the Bank desires to exercise such cure right, the Bank shall give the City written notice of the Bank's intention to cure such Transferee Default within fifteen (15) days after the expiration of the Transferee's cure or grace period applicable to such failure, subject to possible delays resulting from any injunction, or by reason of any applicable law, or by reason of any action by any court having jurisdiction over any bankruptcy, reorganization or insolvency proceeding involving the Transferee. If the Bank fails to exercise such cure right as aforesaid, then the Bank shall have no liability therefor and the City shall have the unrestricted right to exercise any rights or remedies available to the City under the applicable Assigned Document as a result of such Transferee Default.

7.3 If the Bank exercises its cure right as provided in Section 7.2 above, then the Bank shall cause such Transferee Default to be cured within thirty (30) days after the Bank gives written notice to the City of the Bank's exercise of such cure right; provided, however, that if the Transferee Default is of such a nature that it is not reasonably capable of cure within said thirty (30) day period, then

the Bank shall have a reasonable time after the expiration of said thirty (30) day period within which to cure such default provided that the Bank is proceeding with reasonable diligence to cause such default to be cured; and provided, further, that if it is reasonably necessary for the Bank to obtain possession of the Property (either through receivership, foreclosure or deed in lieu thereof, all at the option of the Bank) in order to cure such default, then the pursuit of such remedies by the Bank with reasonable diligence shall be deemed to satisfy the foregoing requirement that the Bank proceed with reasonable diligence with respect to the cure of such default.

8. Exercise of Bank Remedies for Transferee Default. If the Bank exercises the Bank's rights under the Deed of Trust, the Loan Agreement or other documents executed by the Transferee in favor of the Bank in connection with the Loan (the "Loan Documents") and thereby acquires all of the Transferee's rights under any Assigned Document, then the Bank shall be liable for the obligations of the Transferee under such Assigned Document first arising or accruing under the Assigned Document on or after such acquisition by Bank and only for the period of time that the Bank remains the holder of such rights. The Bank shall not be liable for any default or other action of the Transferee prior to the exercise of such rights by the Bank, nor shall the Bank have any obligations under any Assigned Document for any obligations which accrue or arise after its rights thereunder have been assigned or otherwise disposed of thereafter.

9. Bankruptcy or Termination Generally. If prior to payment in full of the Loan an Assigned Document is terminated as a result of any rejection of such Assigned Document in any bankruptcy, reorganization or insolvency proceeding, then the City shall, upon written request by the Bank, given within thirty (30) days after such termination, execute and deliver to the Bank a new Assigned Document, which shall have the same provisions as provided in the current Assigned Document which has been so terminated and with equal priority. The City shall not agree to, and shall not accept, a voluntary termination or surrender of any Assigned Document without the Bank's prior written consent. The City agrees that the obligations of the City herein are specifically enforceable.

10. Casualty and Condemnation Proceeds. Notwithstanding anything to the contrary in any Assigned Document, and, so long as the Loan remains outstanding, the City, the Transferee and the Bank agree that all proceeds from any casualty to or any condemnation (or sale under threat of condemnation) of the Property shall be (a) first, applied in accordance with any leases encumbering the Property, if the Bank has agreed to make such proceeds available for repair or restoration of the Property, (b) secondly, paid to the Bank for the application by the Bank pursuant to terms of the Loan Documents (as defined in the Loan Agreement), and (c) finally, paid to the Transferee.

11. Representations, Warranties and Covenants of the City. The City represents, warrants and covenants that:

11.1 A true, correct and complete copy of each of the Assigned Documents has been delivered to the Bank, and, other than as described herein, no Assigned Document has been canceled, modified, assigned, extended or amended. There are no side letters or oral or other agreements which affect any terms of any of the Assigned Documents or the relationship between the parties to the respective Assigned Documents or the relationship between the City and the Transferee.

11.2 To the best of its knowledge and belief, as of the date of this Agreement, the Transferor and the City have not engaged in any conduct that would permit the other party to terminate any Assigned Document as provided therein.

11.3 Each of the Assigned Documents is in full force and effect on the date hereof and represents the valid, binding and enforceable obligation of the City. The Transferor is not in default



under any Assigned Document and has not breached any of the terms of any Assigned Document. As of the date hereof, the City has no claims against the Transferor, and no offsets or defenses against the performance of its obligations under any Assigned Documents. No termination of the Transferee's rights under any Assigned Documents shall be valid without prior written notice to the Bank of such termination and an opportunity to cure in accordance with the provisions of such Assigned Documents.

11.4 Any amounts required to be paid prior to the date hereof by the Transferor to the City pursuant to any Assigned Documents have been paid in full.

11.5 The City has not subordinated or caused to be subordinated its interest in any Assigned Documents to any deed of trust or other lien. The City has not sold, transferred or assigned any Assigned Document or otherwise incurred or granted a lien or encumbrance on its interest in any Assigned Documents except as set forth in the Bond Trust Indenture dated as of June 1, 2015, between the City and Security Bank of Kansas City, Kansas City, Kansas, a Kansas banking corporation, as successor trustee to First Bank of Missouri.

11.6 The Property is in compliance with the Assigned Documents and the City's ordinances, including, without limitation, zoning ordinances.

11.7 To the best knowledge of the City, there is no litigation or proceeding pending or threatened against or affecting the City which would materially adversely affect any Assigned Documents, the projects described therein, or the ability of the City to perform any of its obligations under any Assigned Documents.

11.8 The City has received no notice of prior sale, transfer or assignment, hypothecation or pledge of the Transferor's or Transferee's interest in any Assigned Documents, except as otherwise set forth herein.

11.9 None of the following events have occurred: (a) the filing of a petition in bankruptcy, insolvency or reorganization, or for the appointment of a receiver or trustee, affecting the City, or (b) the making of an assignment by the City or the Transferor for the benefit of its creditors.

12. Representations, Warranties and Covenants of the Transferee. The Transferee represents, warrants and covenants that:

12.1 The Transferee has full power and authority to assume the Transferred Documents and to perform its obligations thereunder. The acquisition of the Transferor's interests in the Transferred Documents and the Transferee's assumptions of the obligations thereunder has been duly authorized by the Transferee and is a valid, legally binding obligation of the Transferee enforceable against the Transferee in accordance with its terms.

12.2 The Transferee has not subordinated or caused to be subordinated its interest in any Assigned Documents to any deed of trust or other lien except to the Bank. The Transferee has not sold, transferred or assigned any Transferred Agreement or otherwise incurred or granted a lien or encumbrance on its interest in any Transferred Agreement except to the Bank.

12.3 The acquisition of the Transferor's interests in the Transferred Agreements, and the Transferee's assumption of the obligations and covenants contained in the Transferred Agreements do not and will not constitute a default under or conflict with or violate any provisions of the Transferee's limited liability company certificate of formation or operating agreement, or applicable law, and do not and will not materially conflict with or violate or result in a material adverse effect on the Transferee

under any indenture, mortgage, deed of trust, contract, agreement or other instrument to which it is a party.

13. Representations, Warranties and Covenants of the Transferor. The Transferor represents, warrants and covenants that:

13.1 The Transferor has full power and authority to assign and transfer the Transferred Agreements. The acquisition of the Transferor's interests in the Transferred Agreements and the Transferee's assumptions of the obligations thereunder has been duly authorized by the Transferor and is a valid, legally binding obligation of the Transferor enforceable against the Transferor in accordance with its terms.

13.2 To the Transferor's actual knowledge, as of the date of this Agreement, the Transferor has not engaged in any conduct that would permit the City to terminate any Transferred Agreement as provided therein.

13.3 The Transferor has not subordinated or caused to be subordinated its interest in any Assigned Documents to any deed of trust or other lien except to BMO Harris Bank N.A.. The Transferor has not sold, transferred or assigned any Transferred Agreement or otherwise incurred or granted a lien or encumbrance on its interest in any Transferred Agreement except to BMO Harris Bank N.A..

13.4 Any amounts required to be paid prior to the date hereof by the Transferor to the City pursuant to any Transferred Agreements have been paid in full.

13.5 No Transferred Agreement has been canceled, modified, assigned, extended or amended. There are no side letters or oral or other agreements which affect any terms of any of the Transferred Agreements or the relationship between the parties to the respective Transferred Agreements or the relationship between the City and the Transferee.

13.6 None of the following events have occurred: (a) the filing of a petition in bankruptcy, insolvency or reorganization, or for the appointment of a receiver or trustee, affecting the Transferor, or (b) the making of an assignment by the Transferor for the benefit of its creditors.

13.7 To the actual knowledge of the Transferor (without inquiry or investigation), there is no litigation or proceeding pending or threatened against or affecting the Transferor which would materially adversely affect any Transferred Agreements, the projects described therein, or the ability of the Transferor to perform any of its obligations under any Assigned Documents.

13.8 Transferor has not engaged in any conduct that would permit the City to terminate any Transferred Agreements as provided therein.

13.9 Each of the Transferred Agreements is in full force and effect on the date hereof and represents the valid, binding and enforceable obligation of the Transferor. The Transferor is not in default under any Transferred Agreement and has not breached any of the terms of any Transferred Agreement. To the actual knowledge of the Transferor (without inquiry or investigation), Transferor does not have notice of any facts which would constitute a default by the City under any Transferred Agreement. As of the date hereof, the Transferor has no known claims against the City, and has asserted no offsets or defenses against the performance of its obligations under any Transferred Agreement.

13.10 The Transferor has received all necessary consents and releases from its lender(s) and any other necessary parties related to the transfer and/or assignment of the Transferred Agreements.

14. Lender Requirements. Upon the written request of the Bank (or its successors or assigns), the City agrees to enter into an agreement on the same terms and conditions as this Agreement with any other mortgage lender who will be granted a deed of trust or mortgage against Transferee's leasehold interest in the Property created by the Lease, if the same is reasonably required to facilitate a sale or refinancing of such leasehold interest.

15. Miscellaneous.

15.1 Waiver. No waiver of any breach or default hereunder shall constitute or be construed as a waiver by the Bank of any subsequent breach or default or of any breach or default of any other provisions of this Agreement. Any waiver by the Bank must be in writing and will not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default of the Transferee.

15.2 Notices. The City agrees to mail or deliver to the Bank a copy of any and all notices which the City may from time to time serve upon the Transferee. Copies of such notices shall be given to the Bank promptly upon the giving of the same to the Transferee.

The Bank agrees to mail or deliver to the City a copy of any and all notices of default with respect to the Loan Documents, the Collateral Documents or the Loan Agreement which the Bank may from time to time serve upon the Transferee.

In the event that the City receives a notice of default of Transferee under the Loan Documents, the Collateral Documents or the Loan Agreement, the City may elect, but shall be under no obligation to, cure such default. If the City makes such an election, the City and Bank agree to use commercially reasonable means to facilitate such cure.

Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if and when received if personally delivered, or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to the Bank:

Citi Real Estate Funding Inc.  
388 Greenwich Street, 6th Floor  
New York, New York 10013  
Attn: Ana Rosu Marmann

If to the Transferee:

KCP Fee Owner 4, LLC  
c/o Kawa Capital Partners LLC  
21500 Biscayne Boulevard, Suite 700  
Aventura, Florida 33180  
Attention: Legal

with a copy to:

Greenberg Traurig, P.A.  
333 S.E. 2<sup>nd</sup> Ave, Suite 4400  
Miami, Florida 33131  
Attn: Gavin Loughlin, Esq.

If to the City:

City of Gladstone, Missouri  
7010 North Holmes  
Gladstone, Missouri 64118  
Attn: City Manager

If to the Transferor:

Gladstone Cap LLC  
4706 Broadway, Suite 240  
Kansas City, Missouri 64112  
Attn: Dan Carr

or to such other address the party to receive such notice may have theretofore furnished to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to the Bank herein is required to be given. The City acknowledges that Transferee's address set forth above serves as notice of change of address for "Developer", "Tenant" and "Lessee" as applicable, under the Transferred Agreements.

15.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

15.4 Governing Law. This Agreement and the terms, provisions and conditions herewith shall be governed by and construed and enforced in accordance with the internal laws of the State of Missouri (without giving effect to the conflicts of law provisions thereof).

15.5 Amendments; Severability. This Agreement may not be modified or amended except by written agreement of the parties hereto. The headings contained in this Agreement have been

inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms and provisions hereof. If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement represents the entire Agreement between the parties and all prior negotiations and communications between the parties concerning the Loan are superseded hereby.

15.6 Termination. Except for the provisions of Sections 1, 2, 3 and 4, this Agreement shall terminate upon the date that the Bank releases all collateral assignments of and security interest in the Assigned Documents, including but not limited to the release of the Deed of Trust.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

SIGNATURE PAGE FOR  
TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the year and date first set forth above.

“CITY”

**THE CITY OF GLADSTONE, MISSOURI**

Attest:

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Clerk



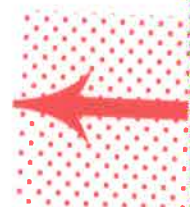
SIGNATURE PAGE FOR  
TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT

“BANK”

**CITI REAL ESTATE FUNDING INC., a**  
New York corporation

(SEAL)

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_



SIGNATURE PAGE FOR  
TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT

“TRANSFeree”

**KCP FEE OWNER 4, LLC**, a Delaware  
limited liability company

By: \_\_\_\_\_  
Printed Name: Daniel Ades  
Title: Chief Executive Officer





SIGNATURE PAGE FOR  
TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT

“TRANSFEROR”

**GLADSTONE CAP LLC**, a Delaware limited liability company  
By Gladstone Cap Managing Member LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: Manager



Exhibits:

A      Legal Description of the Property

**EXHIBIT A**

Legal Description of the Property

Lot 1, NORTHLAND INNOVATION CAMPUS, as subdivision in the City of Gladstone, Clay County, Missouri, according to the recorded plat thereof.

Lot 2 and Tract 1, NORTHLAND INNOVATION CAMPUS, as subdivision in the City of Gladstone, Clay County, Missouri, according to the recorded plat thereof.

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**CITY OF GLADSTONE, MISSOURI,  
the City**

**AND**

**SECURITY BANK OF KANSAS CITY,  
as Successor Trustee**

---

**FIRST SUPPLEMENTAL TRUST INDENTURE**

**Dated as of November 20, 2018**

---

**Relating to:**

**\$17,700,000  
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)  
CITY OF GLADSTONE, MISSOURI  
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS  
(NORTHLAND INNOVATION CENTER PROJECT)  
SERIES 2015**

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# TRUST INDENTURE

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## FIRST SUPPLEMENTAL TRUST INDENTURE

THIS FIRST SUPPLEMENTAL TRUST INDENTURE dated as of November 20, 2018 (the "**First Supplemental Indenture**"), is between the **CITY OF GLADSTONE, MISSOURI**, a third class city and political subdivision duly organized and existing under the laws of the State of Missouri (the "**City**"), and **SECURITY BANK OF KANSAS CITY**, Kansas City, Kansas, a state banking corporation duly organized and existing under the laws of the State of Kansas, with a corporate trust office located in Kansas City, Kansas, as successor Trustee (the "**Trustee**") under a Trust Indenture dated as of June 1, 2015 (the "**Original Indenture**");

### RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "**Act**"), to purchase, construct, extend and improve certain projects (as defined in Section 100.010 of the Revised Statutes of Missouri, as amended) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or businesses for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. The City Council adopted Resolution R-14-73 on October 1, 2014, authorizing the City to enter into the Development Agreement dated October 14, 2014 (as amended, the "**Development Agreement**"), with Gladstone CAP LLC, a Delaware limited liability company (the "**Original Company**"), and expressing the intent of the City to finance an economic development project for the Original Company.

3. Following notice to affected taxing jurisdictions in accordance with Section 100.059.1 of the Act and a public hearing, the City Council adopted Ordinance No. 4.307 on May 11, 2015, approving a plan for the Original Company's economic development project.

4. Pursuant to the Act, the City Council passed Ordinance No. 4.313 (the "**Ordinance**") on June 8, 2015, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Northland Innovation Center Project), Series 2015, in the maximum principal amount of \$17,700,000 (the "**Bonds**"), which were issued under the Original Indenture, for the purpose of improving certain real property located generally at the southeast corner of N. Oak Trafficway and N.E. 68<sup>th</sup> Street in Gladstone, Missouri (the "**Project Site**," as more fully described on **Exhibit A** to the Original Indenture), including the construction and improvement of a commercial facility on the Project Site (the "**Project Improvements**," as more fully described on **Exhibit B** to the Original Indenture).

5. The Ordinance authorizes the City to lease the Project Site and the Project Improvements (collectively, the "**Project**") to the Company, and the Project was so leased pursuant to a Lease dated as of June 1, 2015 (the "**Lease**").

6. In connection with the transfer the interest of the Original Company in the Project and the assignment and assumption of various documents entered into in connection with the Project, including, without limitation, the Lease and the Bonds, the City and the Trustee, at the request of the Original Company and KCP Fee Owner 4, LLC (the "**Company**") as successor to the Original Company's interest in the Project and various related documents, desire to enter into this First Supplemental Indenture to amend and supplement the Original Indenture.

NOW, THEREFORE, THIS FIRST SUPPLEMENTAL TRUST INDENTURE WITNESSETH:

## ARTICLE I

### AMENDMENT OF ORIGINAL INDENTURE

**Section 101. Amendment of Section 101 of Original Indenture.** The definitions set forth in Section 101 of the Original Indenture are hereby supplemented or amended, as the case may be, as follows:

**“Commercial Lending Bank”** means Citi Real Estate Funding Inc., with an office located in New York, New York, or any other Financing Party identified as a Commercial Lending Bank in a notice delivered by the Company pursuant to Section 1403 of the Original Indenture to the Issuer and the Trustee at their respective then current address for notices.

**“Company”** means KCP Fee Owner 4, LLC, a Delaware limited liability company, and its successors or assigns, or any other party designated as a Company in a notice delivered to the Issuer and the Trustee pursuant to Section 1403 of the Original Indenture, provided that any such designation shall have first been consented to by the City pursuant to the terms of the Indenture, the Lease and the Performance Agreement as set forth in such documents.

**“Conventional Loan”** means a loan made by Citi Real Estate Funding Inc. to the Company in the principal amount of \$74,500,000, and, as shall be identified in a notice delivered by the Company pursuant to Section 1403 of the Original Indenture to the Issuer and the Trustee at their respective then current address for notices, any other loan made by a Commercial Lending Bank to the Company in connection with the acquisition and/or construction of the Project, or any replacement or refinancing of any such loan.

**“First Supplemental Indenture”** means the First Supplemental Indenture dated as of November 20, 2018, between the Issuer and the Trustee.

**“Indenture”** means the Original Indenture as supplemented and amended by the First Supplemental Indenture and as further supplemented and amended from time to time in accordance with its terms.

**“Original Indenture”** means the Trust Indenture dated as of June 1, 2015 between the City and the Trustee.

**“Person”** means an individual, partnership, corporation, business trust, joint stock company, limited liability company, bank, insurance company, unincorporated association, joint venture real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan that is regularly engaged in the business of making or owning commercial real estate loans (including mezzanine loans to direct or indirect owners of commercial properties, which loans are secured by pledges of direct or indirect ownership interests in the owners of such commercial properties) or operating commercial properties, or other entity of whatever nature.

**"Trustee"** means Security Bank of Kansas City, Kansas City, Kansas, a state banking corporation duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the State of Kansas, and its successor or successors and any other corporation which at the time may be substituted in its place pursuant to and at the time serving as Trustee under the Indenture, as successor trustee to First Bank of Missouri, Gladstone, Missouri.

**Section 102. Amendment of Section 1403 of Original Indenture.** The addresses for notice set forth in Section 1403(b) and (c) of the Original Indenture are hereby amended to the following:

(b) To the Trustee:

Security Bank of Kansas City  
701 Minnesota Avenue, Suite 206  
Kansas City, Kansas 66101  
Attention: Corporate Trust Department

(c) To the Company:

KCP Fee Owner 4, LLC  
c/o Kawa Capital Partners LLC  
21500 Biscayne Boulevard, Suite 700  
Aventura, Florida 33180  
Attention: Legal

with a copy to:

Greenberg Traurig, P.A.  
333 S.E. 2nd Ave, Suite 4400  
Miami, Florida 33131  
Attn: Gavin Loughlin, Esq.

## ARTICLE II

### MISCELLANEOUS PROVISIONS

#### Section 201. Rules of Interpretation.

(a) Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including public bodies, as well as natural Persons.

(b) Wherever in this First Supplemental Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(c) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this

instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision.

(d) Whenever an item or items are listed after the word "including", such listing is not intended to be a listing that excludes items not listed.

(e) The Table of Contents and the Article and Section headings of this First Supplemental Indenture shall not be treated as a part of this First Supplemental Indenture or as affecting the true meaning of the provisions hereof.

**Section 202. Severability.** If any provision of this First Supplemental Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

**Section 203. Execution in Counterparts.** This First Supplemental Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 204. Governing Law.** This First Supplemental Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 205. Electronic Storage.** The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

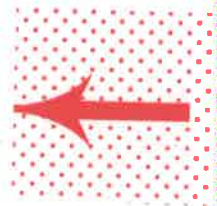
[Remainder of this page intentionally left blank]



**IN WITNESS WHEREOF**, City of Gladstone, Missouri, has caused this Indenture to be signed in its name and behalf by its City Manager and the seal of the City to be hereunto affixed and attested by the City Clerk, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf by its duly authorized officer, all as of the date first above written.

**CITY OF GLADSTONE, MISSOURI**

By: \_\_\_\_\_  
Name: Scott Wingerson  
Title: City Manager



[SEAL]

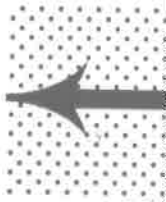
ATTEST:

By: \_\_\_\_\_  
Name: Ruth Bocchino  
Title: City Clerk

[Trust Indenture]

**SECURITY BANK OF KANSAS CITY, as**  
Successor Trustee

By: \_\_\_\_\_  
Name: Pete Gardner  
Title: Senior Vice President



[Trust Indenture]

**ESTOPPEL CERTIFICATE AND AGREEMENT**

**(City of Gladstone, Missouri)**

**TO:** KCP Fee Owner 4, LLC  
c/o Kawa Capital Partners LLC  
21500 Biscayne Boulevard, Suite 700  
Aventura, Florida 33180  
Attention: Legal

Gladstone Cap LLC  
4706 Broadway, Suite 240  
Kansas City, Missouri 64112  
Attention: Dan Carr

Citi Real Estate Funding Inc.  
388 Greenwich Street, 6th Floor  
New York, NY 10013  
Attention: Ana Rosu Marmann

**RE:** Northland Innovation Campus, Gladstone, Missouri.

**DATE:** November 19, 2018 (the "*Effective Date*").

In connection with the following transactions (collectively, the "*Transaction*")

(a) the proposed sale by Gladstone Cap LLC ("*Developer*") to KCP Fee Owner 4, LLC ("*Purchaser*") of Developer's leasehold interest in the Phase 1 Property and the Phase 1 Project Improvements owned by the City of Gladstone, Missouri (the "*City*"), the same being Lot 1, Northland Innovation Campus, a subdivision in the City of Gladstone, Clay County, Missouri, according to the recorded plat thereof, and

(b) the associated assignment and assumption of Developer's remaining rights and obligations under (i) that certain Development Agreement dated October 14, 2014, between City and Developer, as amended by First Amendment to Development Agreement dated April 21, 2015 between City and Developer, and as modified by Extension of Development Agreement Deadlines executed by City (collectively, the "*Development Agreement*"), (ii) that certain Performance Agreement dated as of June 1, 2015 between City and Developer (the "*Performance Agreement*"), (iii) that certain Lease Agreement dated as of June 1, 2015 between City, as Lessor, and Developer, as Lessee, with respect to the Phase 1 Property and the Phase 1 Project Improvements (the "*Chapter 100 Lease*"), (iv) that certain Parking Lease dated as of June 1, 2015 between City, as Landlord, and Developer, as Tenant, with respect to the Phase 2 Property (collectively, the "*Parking Lease*"), and (v) that certain Bond Purchase Agreement, dated as of June 1, 2015, between the City and the Transferor (the "*Bond Purchase Agreement*"), and

(c) the associated transfer to Purchaser of all outstanding Taxable Industrial Development Revenue Bonds (Northland Innovation Center Project), Series 2015 (collectively, the "**Bond**") issued by City under that certain Trust Indenture dated as of June 1, 2015 between Security Bank of Kansas City, Kansas City, Kansas, a Kansas banking corporation, as successor trustee to First Bank of Missouri, as trustee (the "**Trustee**") and City, as issuer (as the same may be hereafter amended or supplemented, the "**Indenture**"),

City hereby agrees with and certifies to Purchaser, Developer, Citi Real Estate Funding Inc. (together with each of its successors, assigns, designees, co-lenders, participants and/or other similar holders of direct or indirect interests in the loan made to Buyer to finance the Transaction, collectively, "**Lender**"), and the respective successors and assigns of any of the foregoing (collectively, "**Reliance Parties**"), as follows as of the Effective Date:

1. The Development Agreement, the Performance Agreement, the Bond, the Bond Purchase Agreement, the Chapter 100 Lease and the Parking Lease are sometimes collectively referred to as the "**Documents**." Capitalized terms used but not defined herein shall have the meaning ascribed thereto pursuant to the Documents unless otherwise specified.

2. Attached hereto as **Exhibit A** is a true, correct and complete copy of the Development Agreement. The Development Agreement has not been assigned, modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit A**. The Development Agreement was duly authorized, executed and delivered on the part of City and is in full force and effect.

3. Attached hereto as **Exhibit B** is a true, correct and complete copy of the Performance Agreement. The Performance Agreement has not been assigned, modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit B**. The Performance Agreement was duly authorized, executed and delivered on the part of City and is in full force and effect.

4. Attached hereto as **Exhibit C** is a true, correct and complete copy of the Chapter 100 Lease. The Chapter 100 Lease has not been assigned, modified, supplemented or amended in any way, except for those assignments, modifications, supplements or amendments, if any, attached hereto as part of **Exhibit C**. The Chapter 100 Lease was duly authorized, executed and delivered on the part of City and is in full force and effect.

5. Attached hereto as **Exhibit D** is a specimen copy of the Bond. The City has not authorized any modification, supplement or amendment to the Bond, except it is noted that the Indenture provides for (a) the Bond to be executed by the City and authenticated by the Trustee, and (b) changes from time to time by the Trustee to the Table of Cumulative Outstanding Principal Amount annexed to the Bond as Schedule I. The actual Bond is in safekeeping with the Trustee. The Bond remains outstanding as of the date hereof.

6. Attached hereto as Exhibit E is a true, correct and complete copy of the Parking Lease. The Parking Lease has not been modified, supplemented or amended in any way, except for those modifications, supplements or amendments, if any, attached hereto as part of Exhibit E. The Parking Lease was duly authorized, executed and delivered on the part of City and is in full force and effect.

7. Attached hereto as Exhibit F is a true, correct and complete copy of the Bond Purchase Agreement. The Bond Purchase Agreement has not been modified, supplemented or amended in any way, except for those modifications, supplements or amendments, if any, attached hereto as part of Exhibit F. The Bond Purchase Agreement was duly authorized, executed and delivered on the part of City and is in full force and effect.

8. City acknowledges that it has by separate agreement consented to the assignment to Purchaser of all of Developer's right, title and interest in and to the Development Agreement, the Performance Agreement, the Chapter 100 Lease, the Bond Purchase Agreement and the Parking Lease, and City hereby consents to the assignment to Purchaser of all of Developer's right, title and interest in and to the Bond. Such assignments do not constitute a default, breach or violation on the part of Developer under or of any agreement, contract, document, instrument or undertaking or obligation entered into between City and Developer (alone or with additional parties) with respect to the development, construction, financing, operation or maintenance of the Project, including without limitation, the Indenture.

9. City has not been notified of any default and to the best of City's information and belief as of the Effective Date, neither City nor Developer is in default under any of the Documents, and, to the best of City's information and belief, no event has occurred and no condition exists that might, with the giving of notice or the passage of time, or both, constitute a default by City or Developer under any of the Documents, or would otherwise permit termination or modification by City of any of the Documents.

10. Any liability to City on the part of Developer under any of the Documents incurred or attributable to a default or breach by Developer prior to the Effective Date shall be deemed to be the liability of Developer, and City agrees not to bring or assert against Purchaser or Lender any claim, and not to interpose against Purchaser or Lender any defense, arising out of any of the Documents, or in any way relating thereto, except to the extent that such claim or defense arises from or is based on actions of Purchaser from and after the Effective Date. From and after the Effective Date, any liability incurred or attributable to a default or breach under any of the Documents shall be deemed to be the liability of Purchaser, and City agrees that from and after the Effective Date, Developer shall be released from and discharged of all liability under each of the Documents, and Developer shall have no further obligations with respect thereto, except for any liability incurred or attributable to a default or breach prior to the Effective Date.

11. Without limiting the generality of the foregoing certifications, City also hereby certifies and agrees that, as of the Effective Date:

(a) City is the owner and holder of (i) fee simple title to the Property (as defined in the Development Agreement) and the Phase 1 Project Improvements free and clear of any lien or security interest granted or created by City, and subject to the terms of the

Documents, (ii) the entire interest of "Lessor" under the Chapter 100 Lease, and (iii) the entire interest of "Landlord" under the Parking Lease;

(b) There is no suit, action, proceeding or audit pending or, to the knowledge of City, threatened against or affecting City or the Property, at law or in equity, or before or by any court, administrative agency, or other governmental authority (including without limitation, any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership or similar proceedings with respect to City, nor the subject of a ruling with respect to any of the foregoing) which brings into question the validity of any of the Documents or which, if determined adversely against City or the Property, might result in any adverse change to the leasehold interest under the Chapter 100 Lease or the Parking Lease;

(c) Except for the Documents, and that certain Access Easement between City as Grantor and Developer as Grantee, dated June 18, 2015 and recorded in the land records of Clay County, Missouri as Instrument Number 2015027419, there are no other written agreements or understandings between City and Developer regarding the Project or the Property;

(d) The Development Agreement has been terminated with respect to Phase 2;

(e) Attached hereto as Exhibit G is the Certificate described in Section 4.5 of the Chapter 100 Lease evidencing the Completion Date (as defined in the Chapter 100 Lease), and City does not contest the statements therein;

(f) Attached hereto as Exhibit H is the Certificate of Completion of Construction described in Section 5.02(d) of the Development Agreement, and City does not contest the statements therein;

(g) With respect to the Developer Public Improvements (as defined in the Development Agreement) and the Public Improvements (as defined in the Chapter 100 Lease): (i) all of the Developer Public Improvements and the Public Improvements have been completed and have been unconditionally accepted by City, (ii) all costs relating to the construction thereof have, to City's knowledge, been paid in full, (iii) City has received from Developer any and all rights-of-way, easements or other rights, titles or interests reasonably necessary for the ownership and maintenance of the Developer Public Improvements and the Public Improvements, and any other public facilities dedicated to City in connection with the Project, (iv) no further or additional rights-of-way, easements or other rights, titles or interests over the Property will be required by City in connection with the Public Improvements, or the Developer Public Improvements pursuant to Section 8.07 of the Development Agreement or otherwise, and (v) there is no obligation to pay any of the Additional Purchase Price (as defined in Section 11.1 of the Chapter 100 Lease) as a condition to exercise of the option to purchase the Project Site or the obligation to purchase the Project Site set forth in Article XI of the Chapter 100 Lease;

(h) All of the City Expenses (as defined in Section 9.03 of the Development Agreement) have been paid in full;

(i) Basic Rent and all other charges payable under the Ground Lease on or before the date hereof have been paid, and there is no Additional Rent (as defined in the Chapter 100 Lease) due or owing to City;

(j) City has been paid the entire amount of the consideration described in clause (i) of Section 3.07 of the Development Agreement;

(k) No Maintenance Reserve Escrow Account (as defined in the 5.05 (b) of the Development Agreement) exists nor had one previously been established;

(l) City has no rights of setoff, claims against Developer, or defense to the enforcement of the Documents, or any of them;

(m) The Project Improvements (as defined in the Chapter 100 Lease) and the Phase 1 Project Improvements (as defined in the Development Agreement) are the same, and have been completed in accordance with the Plans and Specifications and all applicable laws and requirements (including without limitation, municipal ordinances or codes);

(n) The initial construction of the Phase 1 Project Improvements necessary for the issuance of the final unconditional Certificate of Occupancy for the Phase 1 Project Improvements (collectively the "C/O") has been completed within the time period(s) required by the Documents and to the full satisfaction of City, there are no further obligations owed to City on the part of Developer or any other person or entity under the Documents to cause design, construction, completion or modification of, nor incur any additional costs associated with, the initial construction of the Phase 1 Project Improvements;

(o) Attached hereto as Exhibit I is the C/O, and the C/O is in full force and effect;

(p) The present uses of the Phase 1 Property and the Phase 1 Project Improvements are permitted under the Documents and applicable laws and requirements (including without limitation, municipal ordinances or codes);

(q) City has not issued, nor threatened to issue, any violation notice or other notice, demand, complaint or other enforcement action asserting any violation of applicable laws or requirements (including without limitation, municipal ordinances or codes) with respect to the Phase 1 Project Improvements or any part thereof;

(r) City has not sent to Tenant a written notice under the Parking Lease with respect to the provision of alternative structured parking pursuant to Section 2.4 of the Parking Lease or otherwise, and City has no present intention to send such notice;

(s) City has not received any notice from the State of Missouri or any agency or political subdivision thereof asserting that the sales tax exemption on materials used in the construction of the Project Improvements was improper or that City did not have the legal authority to issue such certificate of exemption for such purposes, nor any inquiry therefrom with respect to such sales tax exemption or exemption certificate;

(t) City has been advised by the Trustee that (i) the total principal amount of the outstanding Bond as of the Effective Date is \$17,394,021.37, and (ii) there are no funds on deposit in the Project Fund or Costs of Issuance Fund (as defined in the Indenture), (iii) no amount is presently due to the Trustee under the Indenture or otherwise with respect to the Bond,

whether for normal recurring fees, for ordinary or extraordinary costs or expenses, or by reason of a right to indemnity, and (iv) the Trustee's annual fee for service as trustee or Paying Agent (as defined in the Indenture) with respect to the Bond is \$1,750.00 and has been paid in full for the annual period ending May 31, 2019;

(u) City has not asserted any claim for indemnification from Developer under any of the Documents, and City is not aware of and has not been notified of, as of the Effective Date, any fact, event or circumstance that could be the basis of any such claim for indemnification;

(v) The entire PILOT Payment described in the Performance Agreement for the Project Site applies to the Phase 1 Property and the Phase 1 Improvements, and there is no PILOT Payment required with respect to the Phase 2 Property;

(w) The amount of administrative costs payable to City pursuant to Section 3.6 of the Performance Agreement for the annual period ending November 15, 2018 is \$0;

(x) Developer has provided to City the affidavits and documentation required pursuant to Section 8.8 of the Performance Agreement due for all periods through and including those due on or before November 15, 2018; and

(y) Except as set forth on Schedule A hereto, there are no outstanding or unpaid fees, costs, charges, assessments or other amounts of any nature or description whatsoever owed by Developer to City with respect to the Project.

12. City represents and warrants that it has all right, power, and authority to bind itself, and to execute and deliver this Estoppel Certificate and Agreement.

13. City makes the above agreements and certifications to and for the benefit and protection of the Reliance Parties, and with the intent and understanding that they will be justifiably relied upon by them or any of them.

[SIGNATURE PAGE FOLLOWS]



Dated: November 19, 2018.

**CITY OF GLADSTONE, MISSOURI**

By: \_\_\_\_\_  
City Manager



ATTEST:

By: \_\_\_\_\_  
City Clerk

**EXHIBIT A**

Development Agreement

**EXHIBIT B**

Performance Agreement

**EXHIBIT C**

Chapter 100 Lease

**EXHIBIT D**

Specimen Bond

**EXHIBIT E**

Parking Lease

**EXHIBIT F**

Bond Purchase Agreement

**EXHIBIT G**

Completion Date Certificate



**EXHIBIT H**

Certificate of Completion of Construction

**EXHIBIT I**

Certificate of Occupancy

**SCHEDULE A**

Unpaid Fees and Costs