

## **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT ("Agreement") is entered by and between Kiel Center Partners, L.P. ("KCP") and Darlene Green ("Comptroller Green"). The foregoing are collectively referred to herein as the "Parties."

### **RECITALS**

WHEREAS, Green is the Comptroller of the City of St. Louis (the "City").

WHEREAS, the City is the fee owner of the real property and improvements located at 1401 Clark Avenue improved with a multipurpose sports and entertainment venue known as the Scottrade Center ("Scottrade Center"). In addition to serving as home to the St. Louis Blues hockey team, the Scottrade Center serves as a special purpose civic building for assembly, display and entertainment purposes;

WHEREAS, on January 6, 2017, Board Bill No. 246AA ("Board Bill") was introduced before the Board of Aldermen relating to a Financing Agreement ("Financing Agreement") by and among the City, the 14<sup>th</sup> and Market Community Improvement District, and the Land Clearance for Redevelopment Authority ("LCRA") for an improvement project for the Scottrade Center ("Scottrade Center Project") as more fully described in the Financing Agreement;

WHEREAS, the Financing Agreement calls for the LCRA's issuance of bonds pursuant to an Indenture of Trust (the "Indenture") as more fully described in the Financing Agreement.

WHEREAS, on February 10, 2017, the City's Board of Aldermen duly passed, and on February 15, 2017 the Mayor signed into law, the Board Bill as Ordinance No. 70473 (the "Ordinance"), approving the form of Financing Agreement attached thereto and directing the Mayor and Comptroller to sign that agreement on behalf of the City;

WHEREAS, although all other parties to the Financing Agreement duly executed that Agreement, Comptroller Green refused to sign the Financing Agreement, taking the position that she had discretion to refuse her signature thereon;

WHEREAS, on August 15, 2017, KCP filed its Petition for Preliminary Order in Mandamus, Permanent Order in Mandamus, and alternative claim for Declaratory Judgment in the Circuit Court of the City of St. Louis, all seeking an order compelling Comptroller Green's execution on the Financing Agreement, and said case was assigned case number 1722-CC11018 (the "Lawsuit");

WHEREAS, on August 18, 2017, Judge Joan Moriarty of the Circuit Court of the City of St. Louis issued a Preliminary Order in Mandamus and Comptroller Green duly filed her Answer and Affirmative Defenses to KCP's mandamus claim in accordance therewith;

WHEREAS, on September 15, 2017, KCP filed a motion for summary judgment seeking judgment as a matter of law on its mandamus claim;

WHEREAS, on September 19, 2017, the City of St. Louis was granted leave to intervene and file its own claim for mandamus against Comptroller Green seeking execution of the Financing Agreement;

WHEREAS, on November 27, 2017, Judge Moriarty granted KCP's motion for summary judgment on its mandamus claim and issued her permanent Order and Judgment in Mandamus ("Judgment") compelling Comptroller Green to execute the Financing Agreement;

WHEREAS, based upon the undisputed facts in the summary judgment record, Judge Moriarty found that Comptroller Green had a ministerial duty to execute the Financing Agreement because the Comptroller's general supervisory powers and duty to preserve the City's credit under Article XV, Section 2 of the City Charter does not give the Comptroller discretion to refuse to sign the Financing Agreement based upon her belief that the expenditure is imprudent;

WHEREAS, the Judgment ordered Comptroller Green to execute the Financing Agreement within five (5) days of the entry thereof;

WHEREAS, Comptroller Green executed the Financing Agreement, but refused to deliver the executed Financing Agreement to the City or the other parties to the Financing Agreement;

WHEREAS, after KCP filed a motion for contempt and Judge Moriarty indicated at the hearing thereon that she was seriously considering granting that motion, Comptroller Green delivered the executed Financing Agreement to the office of the Register of the City of St. Louis on December 5, 2017, and KCP dismissed its motion for contempt;

WHEREAS, on December 7, 2017, KCP dismissed its claim for Declaratory Judgment as moot and the City has dismissed its Petition for Mandamus as moot;

WHEREAS, Comptroller Green filed a premature appeal of the Judgment to the Missouri Court of Appeals, Eastern District and that appeal will be deemed filed in that Court when the Judgment becomes final on January 6, 2017;

WHEREAS, the Parties hereto have agreed to resolve this matter as more fully set forth below;

WHEREAS the Parties to this Agreement have had an opportunity to review this Agreement and to consult with legal counsel concerning this Agreement and are entering into this Agreement voluntarily with full knowledge of its significance and effect; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants of the Parties stated in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitations.** The above recitations are true and correct and are incorporated herein by this reference.

2. **Amendment to Indenture.** The Parties agree to the revisions to section 4.02 of the proposed Indenture in substantially the form set forth in Exhibit A hereto ("Revised Indenture Terms"). The intent of the Revised Indenture Terms is to confirm that the City has the authority and option to place City revenues from various sources, including, without limitation, moneys deposited in the Additional Revenues Account established pursuant to Section 5.01(d) of the Financing Agreement, incremental City tax revenues generated from the Scottrade Center Project and parking revenues contributed by the Parking Commission of the City, to offset amounts otherwise payable from the City's general revenue fund under the Financing Agreement. The Revised Indenture Terms do not alter the City's payment obligations under the Financing Agreement; they simply confirm the City's right to offset general revenue fund payments with other revenue from other sources.

3. **Comptroller Green's Cooperation.** Comptroller Green agrees that she will not take any action to negate her signature on the Financing Agreement, and to the extent requested by LCRA or KCP, Comptroller Green shall fully and timely cooperate with any and all requests made to further the implementation of the Financing Agreement, the Indenture, the issuance of the bonds or the payments to KCP in accordance with the Financing Agreement.

4. **Joint Motion to Vacate Judgment.** Within 24 hours after execution of this Agreement, KCP and Comptroller Green will execute and file a joint motion for the Circuit Court's entry of a proposed order vacating the Judgment but retaining jurisdiction over the case to enforce the terms of this Settlement Agreement, which motion and proposed order shall be in substantially the form attached as Exhibit B hereto.

5. **Dismissal of Appeal.** Within 24 hours after the Circuit Court's entry of its order vacating the Judgment, Comptroller Green will immediately dismiss her appeal of the Judgment in the Court of Appeals.

6. **Release of Green.** Subject to and conditioned upon the obligations of this Agreement, KCP, and its agents, representatives, employees, successors, predecessors, and assigns, release and forever discharge Comptroller Green and her respective attorneys, agents, successors and assigns, jointly and severally, from any and all demands, claims, rights, proceedings, and causes of action of any nature and description whatsoever, known or unknown, suspected or unsuspected, disclosed or undisclosed, absolute or contingent, that relate in any manner to, or arise in conjunction with the Lawsuit.

7. **Release of KCP.** Subject to and conditioned upon the obligations of this Agreement, Comptroller Green and her respective attorneys, agents, successors and assigns, jointly and severally, KCP, and its agents, representatives, employees, successors, predecessors, and assigns, jointly and severally, from any and all demands, claims, rights, proceedings, and causes of action of any nature and description whatsoever, known or unknown, suspected or unsuspected, disclosed or undisclosed, absolute or contingent, that relate in any manner to, or arise in conjunction with the Lawsuit, the Financing Agreement or the Ordinance. Comptroller

Green further agrees that she will not take any further action, or be involved with any further efforts, to block or prevent implementation of the Scottrade Center Project or to block or prevent City or State or other public financing or assistance to the maintenance, operation, or improvement of the Scottrade Center.

8. **Non-Admission of Liability.** Nothing in this Agreement shall constitute or be construed as an admission of liability on behalf of the Parties or their agents, affiliates, assigns, parents, successors, subsidiaries, and/or successors, or an admission as to the validity of the allegations in the Lawsuit. The Parties understand and agree that the provisions of this Agreement do not change or alter the terms of the Financing Agreement or any other agreements pertaining to the Scottrade Center that were the subject of the Lawsuit, with the sole exception of the Revised Indenture Terms, **which simply confirm the City's existing right to offset general revenue fund payments with other revenue from other sources.**

9. **Attorney Representation.** This Agreement is entered into voluntarily by the Parties who stipulate and agree that they are under no duress or undue influence. The Parties represent that in the execution of this Agreement, they had the opportunity to consult legal counsel of their own selection and that said attorneys have reviewed this Agreement, made any desired changes and advised their respective clients with respect to the advisability of making this Agreement and release provided herein and of executing this Agreement.

10. **Entire Agreement.** This Agreement constitutes the sole and entire agreement among the Parties relating to the termination of the Lawsuit and supersedes all prior and contemporaneous statements, promises, understandings or agreements relating to such agreement, whether written or oral.

11. **Amendments.** This Agreement may be amended, modified or altered at any time upon the approval of the Parties; however, any such amendment must be in writing and signed by all Parties in order for such amendment to be of any force and effect.

12. **Partial Invalidity.** In the event that any provision of this Agreement is declared by any court of competent jurisdiction or any administrative judge to be void or otherwise invalid, all of the other terms, conditions and provisions of this Agreement shall remain in full force and effect to the same extent as if that part declared void or invalid had never been incorporated in the Agreement and in such form, the remainder of the Agreement shall continue to be binding upon the Parties.

13. **Survival.** All representations and warranties contained herein shall survive the execution and delivery of this Agreement.

14. **Applicable Law.** This Agreement shall be subject to and governed by the laws of the State of Missouri, without regard to conflict of law rules.

15. **Costs.** Unless otherwise provided in this Agreement, the Parties have agreed to bear their own attorneys' fees and costs with respect to the Lawsuit, and the preparation of any and all documents necessary to enter into this Agreement.

16. **Counterparts; Execution.** This Agreement may be signed and executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or email shall be effective as delivery of an originally executed counterpart of this Agreement.

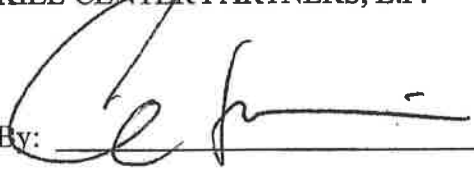
17. **Authority.** Each person(s) executing this Agreement as an agent or in a representative capacity warrants that he or she is duly authorized to do so.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY BLANK.  
SIGNATURE PAGES TO FOLLOW.]**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth below.

Dated: January 3, 2018

KIEL CENTER PARTNERS, L.P.

By: 

Name: Chris Zimmerman

Title: President / CEO

Dated: January \_\_, 2018

DARLENE GREEN

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth below.

Dated: January \_\_, 2018

KIEL CENTER PARTNERS, L.P.

By: \_\_\_\_\_

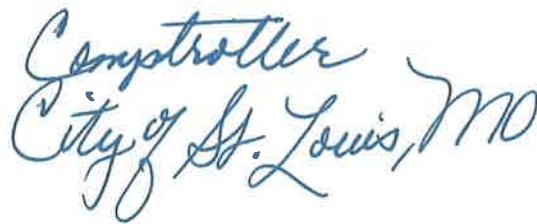
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: January \_\_, 2018

  
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DARLENE GREEN

  
Comptroller  
City of St. Louis, MO