

BILL NO. 4556

ORDINANCE NO. _____

AN ORDINANCE TO AUTHORIZE THE MAYOR TO ENTER INTO A COOPERATIVE AGREEMENT BETWEEN THE CITY OF WEST PLAINS, MISSOURI, RAMSEUR FARM COMMUNITY IMPROVEMENT DISTRICT, KOZAK REALTY LLC AND ALAN G. AND NORMA RAMSEUR AND AN OMNIBUS AMENDMENT OF SALES TAX REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF WEST PLAINS, MISSOURI AND ALAN G. AND NORMA R. RAMSEUR.

NOW THEREFORE, be it resolved by the City of West Plains as follows:

Section 1: That the Mayor is hereby authorized to enter into a Cooperative Agreement and Omnibus Amendment of Sales Tax Reimbursement Agreement (EXHIBIT A & B).

Section 2: That this Ordinance shall be in full force and effect from and after its day of passage and approval.

PASSED AND APPROVED THIS 21ST DAY OF MAY 2018.

CITY OF WEST PLAINS, MISSOURI

BY: _____
MAYOR JACK PAHLMANN

ATTEST:

CITY CLERK MALLORY SNODGRAS

COOPERATIVE AGREEMENT

among

CITY OF WEST PLAINS, MISSOURI,

the

**RAMSEUR FARM
COMMUNITY IMPROVEMENT DISTRICT,**

the

KOZAK REALTY LLC,

and

ALAN G. AND NORMA RAMSEUR

dated as of

_____, 2018

COOPERATIVE AGREEMENT

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COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT ("Agreement"), entered into as of this _____ day of _____, 2018, by and between the **CITY OF WEST PLAINS, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri (the "City"), the **RAMSEUR FARM COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri (the "CID"), **KOZAK REALTY LLC**, a Missouri limited liability company (the "Company"), and **ALAN G. AND NORMAL RAMSEUR**, husband and wife (the "Developer") (the City, the CID, the Company and the Developer being sometimes collectively referred to herein as the "Parties", and individually as a "Party", as the context so requires).

WITNESSETH:

WHEREAS, on September 19, 2016, the City Council of the City of West Plains, Missouri (the "City Council") passed Ordinance No. 4457 approving the formation of the CID and authorizing the CID, subject to voter approval, to impose a district-wide sales tax; and

WHEREAS, the City, the CID, and the Developer entered into a Cooperative Agreement on September __, 2016 authorizing the CID, among other things, to undertake construction of the Outer Road (defined below); and

WHEREAS, the City and the Developer entered into the Sales Tax Reimbursement Agreement (defined below) to assist with the funding of the Outer Road; and

WHEREAS, on August 21, 2017, the City Council passed Ordinance No. 4581 approving the Farm Road Tax Increment Financing Redevelopment Plan (the "Redevelopment Plan") and appointing the Company as the developer of the Redevelopment Plan;

WHEREAS, the City desires to take over construction of the Outer Road from the CID; and

WHEREAS, the Parties desire to contract to establish their relationships regarding the construction, maintenance and funding of the Outer Road.

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants herein contained, the Parties agree as follows:

ARTICLE 1: DEFINITIONS, RECITALS AND EXHIBITS

Section 1.1 Recitals and Exhibits. The representations, covenants and recitations set forth in the foregoing recitals and the exhibits attached to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section, and the appropriate exhibits are incorporated into each Section of this Agreement that makes reference to an exhibit.

Section 1.2. Definitions. Words and terms defined elsewhere in this Agreement shall have the meanings assigned therein. Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

"Applicable Laws and Requirements" means any applicable constitution, treaty, statute, rule, regulation, resolution, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by any unit of government.

"CID" shall mean the Ramseur Farm Community Improvement District.

"CID Act" means the Missouri Community Improvement District Act, Section 67.1401, *et seq.*, RSMo, as amended.

"Company" shall mean Kozak Realty LLC, a Missouri limited liability company, and its successors and assigns.

"Developer" means Alan G. and Norma Ramseur, husband and wife, and their successors and assigns.

"CID Cooperative Agreement" means the Cooperative Agreement executed among the City, the CID and the Developer, dated September __, 2016, which implements the CID and the CID Sales Tax.

"CID Sales Tax" means the sales tax levied by the District on the receipts from the sale at retail of all tangible personal property or taxable services at retail within its boundaries pursuant to the TDD Act in the amount not to exceed one percent (1.0%), as established by resolution of the District and approved by the qualified voters of the District.

"CID Sales Tax Revenues" means the monies actually collected, pursuant to this Agreement and the CID Act, from the imposition of the CID Sales Tax within the CID boundaries, consisting of approximately 29.65 acres.

"Event of Default" means any event specified in Section 4.1 of this Agreement.

"Excusable Delays" means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any Federal or State regulatory body, unforeseen site conditions, material litigation by parties other than the Parties not caused by the Parties' failure to perform, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable party using reasonable diligence to overcome which prevents such party from performing its specific duties or obligation hereunder in a timely manner.

"Outer Road" means that portion of Ramseur Farm Road described in Exhibit A.

"Project Costs" means all actual and reasonable costs and expenses which are incurred by or at the direction of the City with respect to construction of the Project Improvements, including the actual and reasonable cost of labor and materials payable to contractors, builders, suppliers, vendors and materialmen in connection with the construction contracts awarded in connection with the Project Improvements that are constructed or undertaken, plus all actual and reasonable costs to plan, finance, develop, design and acquire the Project Improvements, including but not limited to the following:

A. actual and reasonable fees and expenses of architects, appraisers, attorneys, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of construction, financing, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance

of all other duties of architects, appraisers, attorneys, surveyors and engineers in relation to the construction of the Project Improvements and all actual and reasonable costs for the oversight of the completion of the Project Improvements including overhead expenses for administration, supervision and inspection incurred in connection with the Project Improvements; and

B. all other items of expense not elsewhere specified in this definition which may be necessary or incidental to the review, approval, acquisition, construction, improvement and financing of the Project Improvements and which may lawfully be paid or incurred by the City or the CID under the CID Act.

"Project Improvements" means the design and construction of the Outer Road as described in Exhibit A to this Agreement.

"Redevelopment Agreement" means the Tax Increment Financing Redevelopment Agreement executed by and between the City and the Company, implementing the Redevelopment Plan.

"Redevelopment Plan" means the Farm Road Tax Increment Financing Plan.

"Redevelopment Projects" means any development project in furtherance of the objectives of the Redevelopment Plan, in accordance with the Redevelopment Agreement.

"Retained Sales Tax Revenue" shall mean fifty percent (50%) of the City's portion of the two percent (2%) retail sales tax generated by the Motel on the Motel Tract for deposit in the Reimbursement Fund not to exceed the Maximum Reimbursement Amount in the aggregate.

"Sales Tax Reimbursement Agreement" means the Sales Tax Reimbursement Agreement between the City and the Developer, dated September 1, 2016.

ARTICLE 2: REPRESENTATIONS

Section 2.1. Representations by the City. The City represents that:

A. The City is duly organized and existing under the Constitution and laws of the State of Missouri as a charter city.

B. The City has authority to enter into this Agreement and to carry out its obligations under this Agreement, and the Mayor of the City is duly authorized to execute and deliver this Agreement.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the City or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

D. There is no litigation or proceeding pending or threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

Section 2.2. Representations by the Developer. Developer represents that:

A. The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required to be executed and delivered by the Developer herein, and such execution and delivery has been duly and validly authorized and approved by Developer by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the Developer will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the Developer is a party, or any order, rule or regulation of any court or governmental body applicable to the Developer or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Developer under the terms of any instrument or agreement to which the Developer is a party.

C. No litigation, proceedings or investigations are pending or, to the knowledge of the Developer, threatened against the Developer or any member of the Developer, which litigation, proceedings or investigations would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, the terms and provisions of this Agreement.

Section 2.3. Representations by the CID. The CID represents that:

A. The CID is a community improvement district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the Missouri Community Improvement District Act, Sections 67.1401, *et seq.*, RSMo, as amended.

B. The CID has authority to enter into this Agreement and to carry out its obligations under this Agreement. By proper action of its Board of Directors, the CID has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the performance of or compliance with the terms and conditions of this Agreement by the CID will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the CID is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the CID or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the CID under the terms of any instrument or agreements to which the CID is a party.

D. There is no litigation or proceeding pending or threatened against the CID affecting the right of the CID to execute or deliver this Agreement or the ability of the CID to comply with its obligations under this Agreement or which would materially adversely affect its financial condition.

Section 2.4. Representations by the Company. The Company represents that:

A. The Company has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required to be executed and delivered by the Company herein, and such execution and delivery has been duly and validly authorized and approved by Company by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Company, enforceable in accordance with its terms.

B. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the Company will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the Company is a party, or any order, rule or regulation of any court or governmental body applicable to the Company or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party.

C. No litigation, proceedings or investigations are pending or, to the knowledge of the Company, threatened against the Company or any member of the Company, which litigation, proceedings or investigations would in any manner challenge or adversely affect the existence or powers of the Company to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Company, the terms and provisions of this Agreement.

ARTICLE 3: PROJECT IMPROVEMENTS

Section 3.1. Project Improvements. The Project Improvements are described on Exhibit A. The Project Improvements shall be designed, constructed and financed in accordance with the requirements of this Agreement.

Section 3.2. Construction. The City agrees to construct, or provide further construction of, all of the Project Improvements on a schedule reasonably determined by the City to coordinate with the development of the project agreed to in the Redevelopment Agreement once the City has received documentation or evidence reasonably satisfactory to the City that the following conditions have been satisfied:

A. The Redevelopment Agreement has been executed and there is confirmation by all parties to the Redevelopment Agreement that the Redevelopment Agreement is in full force and effect.

B. The Developer has executed a contract to sell the Property (as defined in the Redevelopment Agreement) to the Company.

C. The Company has entered into a lease or binding letters of intent with one or more tenants who will collectively occupy at least 100,000 square feet within the structures to be built within Redevelopment Project Area 1 (as defined in the Redevelopment Plan).

D. The Sales Tax Reimbursement Agreement has been amended (i) to reduce the Maximum Reimbursement Amount (as defined in the Sales Tax Reimbursement Agreement) to \$4,500,000, less any City Construction Costs (as defined in the Sales Tax Reimbursement Agreement), and (ii) to provide that 50% of Retained Sales Tax Revenues under the Sales Tax

Reimbursement Agreement will be used to reimburse the City for City Construction Costs until such time as the City is fully reimbursed for all costs associated with the completion of the Outer Road from a combination of CID Sales Tax Revenues and Retained Sales Tax Revenues.

E. The CID Cooperative Agreement has been amended to (i) provide that District Revenues (as defined in the CID Cooperative Agreement) will be split 50/50 among the City and Developer while the City Construction Costs (as defined in the CID Cooperative Agreement) are outstanding and until such time as the City is fully reimbursed for the costs of the Project Improvements from a combination of Retained Sales Tax Revenues under the Sales Tax Reimbursement Agreement and the CID Sales Tax Revenues under the CID Cooperative Agreement and (ii) reduce the Maximum Amount (as defined in the CID Cooperative Agreement) to \$4,500,000, less any costs the City incurs to construct the Outer Road.

Section 3.3. Ownership and Maintenance of Project Improvements.

A. As allowed by the CID Act, the CID's role is to reimburse the City for the Project Costs. Once the CID has dedicated the Outer Road to the City and the City has accepted the Outer Road, the CID shall have no ownership of the Project Improvements and title to the Project Improvements shall at all times be vested in the name of the City. The City shall at all times be responsible for maintenance of the Project Improvements.

B. Upon satisfaction of the conditions set forth in Section 3.2, the City agrees to maintain all portions of both London Lane and Ramseur Road located on Developer's property.

Section 3.4. Distribution of the CID Sales Tax Revenue and the Retained Sales Tax Revenue. The CID agrees to reimburse the City for any Project Costs associated with the Project Improvements. Following completion of the Project Improvements by the City, fifty percent (50%) of all CID Sales Tax Revenue as shown in the CID Cooperative Agreement and fifty percent (50%) of the Retained Sales Tax Revenues as shown in the Sales Tax Reimbursement Agreement will be paid to the City for reimbursement for the Project Improvements until such time as the City is fully reimbursed the costs of the Project Improvements. Once the City has been reimbursed for the Project Costs, the CID Sales Tax Revenues and Retained Sales Tax Revenues will be paid to the Developer in accordance with the CID Cooperative Agreement and the Sales Tax Reimbursement Agreement. Reimbursement of Project Costs will include interest on the amount of Project Costs eligible for reimbursement in the amount of six percent (6%).

ARTICLE 4: DEFAULTS AND REMEDIES

Section 4.1. Default and Remedies. An Event of Default shall occur upon the failure by any Party in the performance of any covenant, agreement or obligation imposed or created by this Agreement and the continuance of such failure for fifteen (15) days after any other Party has given written notice to such Party specifying such failure.

If any Event of Default has occurred and is continuing, then the non-defaulting party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceeding at law or in equity, enforce its rights against the defaulting party and its officers, agents and employees, and require and compel duties and obligations required by the provisions of this Agreement.

Section 4.2. Rights and Remedies Cumulative. The rights and remedies of any Party under this Agreement and those provided by law shall be construed as cumulative and continuing. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Parties shall be entitled to

specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and the Parties hereby waive the right to raise such defense in any proceeding in equity.

Section 4.3. Waiver of Breach. No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting Party may nevertheless accept from the defaulting party, any payment or payments without in any way waiving the non-defaulting party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting party.

Section 4.4. Excusable Delays. No Party shall be deemed to be in default of this Agreement because of Excusable Delays. Excusable Delays shall extend the time of performance for the period of such Excusable Delay.

ARTICLE 5: MISCELLANEOUS

Section 5.1. Effective Date and Term. This Agreement shall become effective on the date this Agreement has been fully executed by the Parties. This Agreement shall remain in effect for as long as the District is legally in existence.

Section 5.2. Modification. The terms, conditions, and provisions of this Agreement cannot be modified or eliminated except in writing and by mutual agreement between the Parties. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

Section 5.3. Jointly Drafted. The Parties agree that this Agreement has been jointly drafted and shall not be construed more strongly against another Party.

Section 5.4. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

Section 5.5. Common Representation. The City and the District agree that the engagement of common special legal counsel for the City and the District does not materially limit the representation of the District or the City and will not adversely affect the relationship between the District and the City. To the extent that such common legal representation presents a conflict of interest, the City and the District hereby consent to common representation.

Section 5.6. Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 5.7. Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 5.8. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the Parties.

Section 5.9. Limit on Liability. The Parties agree that:

(a) No official, director, officer, agent, employee, representative, attorney or consultant of the City shall be personally or otherwise in any way liable to the Developer, the Company or the CID in the event of any default, breach or failure of performance by the City under this Agreement or for any amount which may become due to the Developer, the Company or the CID or with respect to any agreement, indemnity, or other obligation under this Agreement.

(b) No member or shareholder of the Developer, the Company or the CID and no director, officer, agent, employee, shareholder, representative or consultant of the Developer, the Company or the CID shall be personally or otherwise in any way liable to the City or any third-party in the event of any default, breach or failure of performance by the Developer, the Company or the CID under this Agreement or for any amount which may become due to the City with respect to any agreement, indemnity or other obligation under this Agreement.

Section 5.10. Electronic Transaction. The transactions described herein may be conducted and related documents may be received, delivered or 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 page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY OF WEST PLAINS, MISSOURI

By: _____
Jack Pahlmann, Mayor

ATTEST:

Mallory Prewett, City Clerk

**RAMSEUR COMMUNITY
IMPROVEMENT DISTRICT**

By: ALAN RAMSEUR

Name: Chairman

Title: Chairman


ATTEST:

Stephan J. Hawkins
Name: Stephan J. Hawkins
Secretary

ALAN G. AND NORMA RAMSEUR

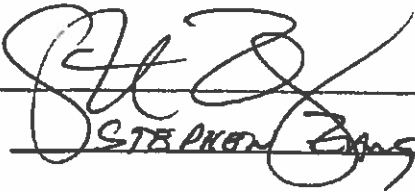
By: 

Alan G. Ramseur

By: 

Norma Ramseur

KOZAK REALTY LLC

By: 
Name: STEPHEN ZANG
Title: MEMBER

ATTEST:

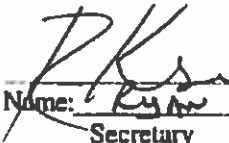

Name: Ryan Kison
Secretary

EXHIBIT A

DESCRIPTION OF PROJECT IMPROVEMENTS

The construction, reconstruction, installation, repair, and maintenance of the following public infrastructure improvements:

EXHIBIT B
PROJECT COSTS

OMNIBUS AMENDMENT OF SALES TAX REIMBURSEMENT AGREEMENT

THIS OMNIBUS AMENDMENT OF SALES TAX REIMBURSEMENT AGREEMENT (the "Agreement") is made and entered into as of March __, 2018 (the "Effective Date"), by the **CITY OF WEST PLAINS, MISSOURI**, a constitutional charter city and political subdivision organized and existing under the laws of the State of Missouri (the "City") and **ALAN G. AND NORMA R. RAMSEUR**, husband and wife (the "Developers").

RECITALS

WHEREAS, The City is authorized and empowered pursuant to the provisions of Section 70.220 of the Revised Statutes of Missouri, as amended ("Section 70.220"), to contract and cooperate with any other municipality, political subdivision or private person for the planning, development, construction, acquisition or operation of any public improvement or facility; and

WHEREAS, Pursuant to Section 70.220, the governing body of the City passed Ordinance No. 4460 (the "Ordinance") on September 19, 2016, authorizing the City to enter into a Sales Tax Reimbursement Agreement (the "Sales Tax Reimbursement Agreement") with the Developers for the purpose of providing reimbursement to the Developers for the redevelopment of an approximately 1.99 acre tract generally located south of US 63, east of the Southern Hills Shopping Center, and north and west of Ramseur Farm Road within the City; and

WHEREAS, Pursuant to the Sales Tax Reimbursement Agreement, the Developers agreed to construct and complete Ramseur Farm Road (the "Outer Road Project") and the City agreed to reimburse the Developers for the stated costs of the Outer Road Project and other costs up to a maximum amount of \$4,500,000; and

WHEREAS, the City has agreed to complete the construction of the Outer Road Project and desires to amend the Sales Tax Reimbursement Agreement to reduce the amount of reimbursement the Developers will receive and to make other conforming changes; and

WHEREAS, all capitalized terms which are not expressly defined herein shall have the same meaning as ascribed in the Sales Tax Reimbursement Agreement.

NOW THEREFORE, for and in consideration of mutual covenants, the City and the Developers, do each hereby agree as follows:

ARTICLE 1: AMENDMENT

Section 101. Amendment of the Sales Tax Reimbursement Agreement.

(a) All references in the Sales Tax Reimbursement Agreement, with the exception of the Recitals, to the Outer Road Project shall be deleted.

(b) All references in the Sales Tax Reimbursement Agreement to the Projects, shall be deleted and Project shall be substituted therefor.

(c) Section 1.2 of the Sales Tax Reimbursement Agreement is hereby amended by the amending the current definitions in the Sales Tax Reimbursement Agreement to read as follows:

“Maximum Reimbursement Amount” shall mean reimbursement to the Developer of \$4,500,000 of Reimbursable Project Costs, less the amount of the City Construction Costs, from the cumulative sources of available CID Revenues authorized under the CID Cooperative Agreement and the Retained Sales Tax Revenues authorized under this Agreement.

“Project” shall mean the Motel Construction Project.

“Retained Sales Tax Revenues” shall mean fifty percent (50%) of the City’s portion of the two percent (2%) retail sales tax generated by the Motel on the Motel Tract for deposit in the Reimbursement Fund not to exceed the Maximum Reimbursement Amount in the aggregate.

(d) Section 1.2 of the Sales Tax Reimbursement Agreement is hereby amended to include the following definitions:

“City Construction Costs” shall mean the costs incurred by the City in constructing the Outer Road.

“Outer Road” shall mean the construction of that portion of Ramseur Farm Road to be completed by the City pursuant to the Cooperative Agreement by and among the City, the Ramseur Farm Road Community Improvement District, Kozak Realty LLC and the Developer dated March __, 2018.

(e) Section 3.5 is hereby deleted and the following Section 3.5 is substituted therefor:

Construction Plans.

(a) The construction Plans with respect to the Project shall be or have been prepared by a professional architect or engineer licensed to practice in the State. The construction Plans and all construction practices and procedures with respect to the Project shall be in conformity with all applicable state and local laws, ordinances and regulations. The Developers shall submit the construction Plans for prior approval by the City’s engineer. The construction Plans shall be in sufficient completeness and detail to show that construction will be in substantial conformance with this Agreement and all laws, regulations and ordinances of the City.

(b) During the progress of the completion of the Motel Construction Project, the Developers may make such reasonable changes, including, without limitation, modification of the construction schedule, including dates of commencement and completion, modification of the areas in which the Motel Construction Project is to be performed, relocation, expansion or deletion of items, revisions to the areas and scope of the Motel Construction Project, and any and all such other changes as site conditions or orderly development may dictate, in the sole determination of the Developer; provided that (i) the Developer shall obtain all necessary approvals and comply with all laws, regulations and ordinances of the City and this Agreement, and (ii) any changes shall not result in an extension of the time for the substantial completion of the Project without the prior written consent of the City.

(c) The Developers agree to permit the City, or its designees, to inspect, observe, and oversee the construction of the Project in order to ascertain and determine that the construction standards of the City have been met.

(d) The parties agree that all costs associated with relocating any existing utilities from any existing public or private easement, as a result of construction of the Project, shall be paid by the Developers, and are not the responsibility of the City. The parties agree that all costs associated with relocating any existing utilities from any existing right-of-way as a result of construction of the Project,

which are not paid by a utility company, shall be paid by the Developer and are not the responsibility of the City.

(e) The parties agree that the uncompleted portion of the Outer Road will be constructed by the City and that the City will have ownership and control over the Outer Road.

(f) Section 5.2.1 is hereby deleted and the following Section 5.2.1 is substituted therefor:

Reimbursement. The parties agree that any reimbursement by the City pursuant to this section will be divided equally among the City and Developer. The City shall reimburse Reimbursable Project Costs by paying the Developer fifty percent (50%) of the Retained Sales Tax Revenues until payment does not exceed the Maximum Reimbursement Amount (which shall include reimbursement of interest on the principal amount eligible for reimbursement in the amount of six percent (6.0 %)), and the City shall retain fifty percent of the Retained Sales Tax Revenues while City Construction Costs are outstanding and until such time as the City is fully reimbursed for the City's Construction Costs (which shall include reimbursement of interest on the principal amount eligible for reimbursement in the amount of six percent (6.0%)). Once the City has been fully reimbursed for the City's Construction Costs, one hundred percent (100%) of the Retained Sales Tax Revenues will be paid to the Developer until payment does not exceed the Maximum Reimbursement Amount. Payments shall be made by the City in quarterly installment payments, beginning the first quarter after issuance of a Certificate of Substantial Completion. Except for a reduction of the Reimbursement Amount pursuant to Section 4.1 herein, such payments are not subject to any reduction, whether offset or otherwise. The City, at its option, may pay the remaining principal amount due at any time without penalty. City sales tax revenues eligible for this 50% reimbursement shall include only the City's 1% general sales tax, the City's ½ % transportation sales tax, and the City's ½ % capital improvement sales tax, and shall not include the City's hotel occupancy tax. For purposes of demonstrating the actual costs to the Developers to design, engineer and construct the Project, the Developers shall submit to the City a statement of costs and expenses associated with the design, engineering and construction of the Project. In addition, the City shall not issue any reimbursement payment until the Developers provides adequate documentation indicating that all contractors, engineers or other parties that have provided goods or services for the Project have been paid in full by the Developers.

ARTICLE 2: GENERAL PROVISIONS

Section 201. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

Section 202. Ratification of Sales Tax Reimbursement Agreement. The Sales Tax Reimbursement, as hereby amended, is acknowledged, ratified and confirmed in all respects as being valid, existing and of full force and effect. The execution, delivery and effectiveness of this Agreement shall not operate as a release or waiver of any right, power, liability or remedy of the parties hereto (or of any person or entity who may now or hereafter be liable under or on account of the Sales Tax Reimbursement Agreement) nor constitute a release or waiver of any provision of the Sales Tax Reimbursement Agreement.

Section 203. Severability. In the event any terms or provisions of this Agreement shall be held to be illegal, invalid, or unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

Section 204. Headings and Complete Agreement. The captions and headings contained herein are solely for convenience and reference and do not constitute a part of this Agreement. This Agreement

contains the full and complete agreement between the parties hereto and supersedes any prior agreement or understandings between the parties. This Agreement may be amended only by a written instrument executed by both parties hereto.

Section 205. Further Assurances. The parties shall execute and deliver to the other party such other and further instruments of conveyance, assignment, transfer, and consent as said party may reasonably request to accomplish the purpose of this Agreement.

Section 206. Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all of which together shall constitute the same instrument.

Section 207. Electronic Transactions. The parties agree that the arrangement described herein may be conducted and the 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.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement is entered into as of the Effective Date above written.

CITY OF WEST PLAINS, MISSOURI, a Missouri constitutional charter city


By: _____
Jack Pahlmann, Mayor

[SEAL]
Attest:

By: _____
Mallory Prewett, City Clerk

ALAN G. AND NORMA R. RAMSEUR,
husband and wife

By: 
Alan G. Ramseur

By: 
Norma R. Ramseur