

BILL NO. 4558

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF WEST PLAINS, MISSOURI AND KOZAK REALTY LLC, FOR THE FARM ROAD TAX INCREMENT FINANCING PLAN.

WHEREAS, on August 21, 2017, the City Council approved the Farm Road Tax Increment Financing Plan (the "Redevelopment Plan") through the adoption of Ordinance No. 4518 in accordance with the Real Property Tax Increment Allocation Redevelopment Act, sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended (the "TIF Act"); and

WHEREAS, the City Council desires to approve a tax increment financing redevelopment agreement to provide for the implementation of the Redevelopment Plan by the developer of record.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WEST PLAINS, MISSOURI, as follows:

SECTION 1. The Tax Increment Financing Redevelopment Agreement between the City and Kozak Realty LLC (the "Developer"), which is attached hereto as Exhibit A and incorporated herein by reference (the "TIF Agreement"), is hereby approved and the Mayor is authorized and directed to execute the TIF Agreement in substantial compliance with the attached TIF Agreement.

SECTION 2. City officers and agents of the City are each hereby authorized and directed to take such action 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 the TIF Agreement.

SECTION 3. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 4. That this Ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED AND APPROVED BY THIS 18th DAY OF JUNE 2018.

CITY OF WEST PLAINS, MISSOURI

BY: _____
MAYOR JACK PAHLMANN

ATTEST:

CITY CLERK MALLORY SNODGRAS

EXHIBIT A

TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT

[*ATTACHED*]

**TAX INCREMENT FINANCING
REDEVELOPMENT AGREEMENT**

between the

CITY OF WEST PLAINS, MISSOURI

and

KOZAK REALTY LLC

dated as of June 18, 2018

**FARM ROAD
TAX INCREMENT FINANCING PLAN**

**TAX INCREMENT FINANCING
REDEVELOPMENT AGREEMENT**

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SignaturesS-1

LIST OF EXHIBITS

- Exhibit A** Map of Redevelopment Area
- Exhibit B** Legal Description of Redevelopment Project Area
- Exhibit C** Map of Redevelopment Project Area
- Exhibit D** Project Budget
- Exhibit E** Project Schedule
- Exhibit F** Form of Certificate of Substantial Completion
- Exhibit G** Form of Application for Reimbursable Project Costs

**TAX INCREMENT FINANCING
REDEVELOPMENT AGREEMENT**

THIS TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT is made and entered into as of the _____ day of _____, 2018, by and between the **CITY OF WEST PLAINS, MISSOURI**, a charter city and political subdivision of the State of Missouri (the “**City**”), and **KOZAK REALTY LLC**, a Missouri limited liability company (the “**Developer**”). (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed in **Section 1.02** of this Agreement.)

RECITALS

1. The City Council created the TIF Commission by approval of mayoral appointments of members of the TIF Commission and empowered the TIF Commission to exercise those powers and fulfill such duties as are required or authorized for the TIF Commission under the TIF Act. The various Taxing Districts within the Redevelopment Area have appointed members to the TIF Commission in accordance with the TIF Act.
2. On June 13, 2017, the Developer submitted a proposed Farm Road Tax Increment Financing Redevelopment Plan (the “**Redevelopment Plan**”).
3. On July 5, 2017, the City published a request for proposals soliciting proposals for the redevelopment of an area that consists of approximately 72.5 acres located at 674 S. U.S. Highway 63 in the City.
4. On August 2, 2017, the TIF Commission, after giving all notices required by the TIF Act, opened a public hearing at which all interested parties had the opportunity to be heard and at which the TIF Commission heard and considered all protests and objections concerning the Redevelopment Plan. On that date, the TIF Commission concluded the hearing and made its recommendation to the City Council to approve the Redevelopment Plan.
5. After due consideration of the TIF Commission’s recommendations and making each of the findings required by Section 99.810 of the TIF Act, the City Council adopted Ordinance No. 4581 on August 21, 2017 (the “**Redevelopment Plan Ordinance**”), approving the Redevelopment Plan and appointing the Developer as the developer of the Redevelopment Plan.
6. The City Council concluded that the redevelopment of the Redevelopment Area as provided for herein, in the Redevelopment Plan Ordinance, and in the Redevelopment Plan, will further the growth of the City, facilitate the redevelopment of the entire Redevelopment Area, improve the environment of the City, increase the assessed valuation of the real estate situated within the City, increase the sales tax revenues realized by the City, foster increased economic activity within the City, increase employment opportunities within the City, enable the City to direct the development of the Redevelopment Area, and otherwise be in the best interests of the City by furthering the health, safety, and welfare of its residents and taxpayers.
7. Pursuant to the provisions of the TIF Act and the Redevelopment Plan Ordinance, the City is authorized to enter into this Agreement and to pay or reimburse project costs incurred in furtherance of the Redevelopment Plan.

AGREEMENT

ARTICLE 1: RECITALS, EXHIBITS AND DEFINITIONS

Section 1.01. Recitals and Exhibits. The representations, covenants and recitations set forth in the foregoing recitals 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. The provisions of the Redevelopment Plan, the Redevelopment Plan Ordinance and the provisions of the TIF Act as amended as of and including the date of this Agreement, are hereby incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof. In the event of any conflict between the provisions of this Agreement and any other documents related to the Redevelopment Plan previously prepared or executed, the provisions of this Agreement shall control.

Section 1.02. Definitions. Words and terms not defined elsewhere in this Agreement shall, except as the context otherwise requires, have the following meanings:

“**Action**” shall have the meaning set forth in **Section 7.01.B**.

“**Administrative Costs**” means all documented costs and expenses reasonably incurred by the City for planning, legal, financial, administrative and other costs associated with the review, consideration, approval and implementation of the Redevelopment Plan and this Agreement, including all consultants engaged by the City.

“**Advanced Funds**” shall have the meaning set forth in **Section 2.05.B**.

“**Advanced Funds Account**” shall have the meaning set forth in **Section 2.05.B**.

“**Agreement**” means this Tax Increment Financing Redevelopment Agreement, as the same may be from time to time modified, amended or supplemented in writing by the Parties hereto.

“**Applicable Law and Requirements**” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, requirement or decision of or agreement with or by Governmental Authorities.

“**Application for Reimbursable Project Costs**” means a certificate in substantially the form attached as **Exhibit G** hereto furnished by the Developer to the City evidencing Developer Reimbursable Project Costs with respect to the Redevelopment Project.

“**Best Efforts**” means actual, reasonable, good faith attempts to accomplish or achieve the required obligation which shall be documented by the party taking such action, and proof of such documentation may be requested in writing by the other party to verify that such actual, reasonable, good faith attempts occurred.

“Bond Counsel” means Gilmore & Bell, P.C., Kansas City, Missouri or an attorney at law or a firm of attorneys acceptable to the City of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations issued by states and their political subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Bonds” means any tax increment revenue bonds issued by the City or another governmental entity in accordance with the TIF Act and this Agreement.

“Captured CID Sales Tax Revenues” shall have the meaning set forth in **Section 6.02**.

“Certificate of Substantial Completion” means a certificate in substantially the form attached as **Exhibit F** hereto furnished by the Developer to the City in accordance with this Agreement and which, upon the City’s acceptance thereof pursuant to Section 5.02, will evidence the Developer’s substantial completion of the obligations and covenants to perform the Work associated with the Redevelopment Project.

“CID” means a community improvement district which is established and operated in accordance with the CID Act and which encompasses all or a portion of the Redevelopment Project Area.

“CID Act” means the Community Improvement District Act, Sections 67.1401 to 67.1571 RSMo.

“CID Cooperative Agreement” means an agreement to be entered into by the City, the CID, and the Developer which provides for the imposition of the CID Sales Tax, the payment of the administrative and generating costs of the CID, and the deposit of Non-Captured CID Sales Tax Revenues into the Special Allocation Fund, to be utilized and expended to fund CID Eligible Expenses.

“CID Eligible Expenses” means a portion of the Redevelopment Project Costs, plus operating and administration expenses incurred by the CID, for which CID funds may be expended pursuant to the CID Act.

“CID Sales Tax” means the sales tax imposed by the CID in accordance with the CID Act and the CID petition approved by the City.

“CID Sales Tax Revenues” means the revenues generated and collected by or on behalf of the CID through imposition of a CID Sales Tax.

“City” means the City of West Plains, Missouri, a charter city and political subdivision of the State of Missouri.

“City Attorney” means the then current attorney appointed by the City as the City Attorney.

“City Council” means the City Council of the City of West Plains, Missouri.

“City Finance Director” means the chief financial officer of the City.

“City Engineer” means a person or firm engaged by the City to perform engineering services, or a person that may be hired and appointed by the City as the City Engineer.

“City Event of Default” has the meaning set forth in **Section 8.02**.

“City Indemnified Parties” shall have the meaning set forth in **Section 7.01.A**.

“City Manager” means the City Manager of the City, or his/her designee.

“Collection Authority” means the City, the County Collector, or any other governmental official or body charged with the collection of Payments in Lieu of Taxes or Economic Activity Taxes.

“Comprehensive Plan” means the Comprehensive Plan of the City of West Plains, Missouri.

“Construction Inspector” means a City agent or employee designated by the City to perform inspections.

“Contingency Date” shall have the meaning set forth in **Section 8.06.A**.

“County” means Howell County, Missouri.

“County Assessor” means the County Assessor of Howell County, Missouri.

“County Collector” means the Collector of Revenue of Howell County, Missouri.

“Developer” means Kozak Realty LLC, a Missouri limited liability company, or its permitted successors or assigns in interest.

“Developer Event of Default” has the meaning set forth in **Section 8.01**.

“Developer Reimbursable Project Costs” means those Redevelopment Project Costs incurred by Developer and associated with a Redevelopment Project eligible for reimbursement to the Developer under the Redevelopment Plan and the TIF Act in accordance with this Agreement.

“Economic Activity Taxes” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act.

“Economic Activity Taxes Account” means the separate segregated account within the Special Allocation Fund into which fifty percent (50%) of Economic Activity Taxes are to be deposited.

“Effective Date” means the date written in the first paragraph on the first page of this Agreement.

“Excusable Delay” means any delay beyond the reasonable control of the Party affected, caused by damage or destruction by fire or other casualty, strike, shortage of materials, civil disorder, war, wrongful failure or refusal of any governmental entity to issue any permits and/or legal authorization necessary for the Developer to proceed with construction of the Work or any portion thereof, adverse market conditions, the Developer’s inability to secure acceptable financing and/or Tenants for the development despite the Developer’s commercially reasonable efforts, unavailability of labor or other labor/contractor disputes outside the reasonable control of the Developer, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, and any other events or conditions, which shall include but not be limited to any litigation interfering with or delaying the construction of all or any portion of the Redevelopment Project in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder. The Parties agree that the market conditions on the Effective Date do not constitute extraordinary market conditions that may cause Excusable Delay of commencement of work on the Redevelopment Project.

“Financing Costs” means:

(1) for costs incurred by the City with respect to Obligations, all costs reasonably incurred by the City in furtherance of the issuance of Obligations including but not limited to reasonable financing loan origination fees and expenses (with loan origination fees and expenses not to exceed 2% of the principal amount of the loan,) and interest payable to banks, similar financing institutions or other entities that loan money, the City’s attorneys (including City Attorney, special TIF counsel and Bond Counsel,) and the City’s administrative fees and expenses (including Planning Consultants), underwriters’ discounts and fees, trustee fees, the costs of printing any Obligations and any official statements relating thereto, the costs of credit enhancement for Obligations, if any, capitalized interest, debt service reserves, and the fees of any rating agency rating any Obligations, and all accrued and anticipated interest on the Obligations, and

(2) the amount that may be reimbursed pursuant to **Section 3.02.B.** of this Agreement, which shall be deemed to include reimbursement for costs incurred by Developer with respect to interest on Private Loans regardless of the actual interest rate incurred by Developer or any affiliate or assignee of Developer on any Private Loans, and which amount shall not exceed the Reimbursement Interest Rate.

“Financing Documents” means the financing agreements, disbursement agreements and all other agreements and certificates executed in connection with the issuance of Obligations.

“Funding Agreement” means the Funding Agreement executed by the City and the Developer for the payment of City costs associated with the Redevelopment Plan.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals required for the implementation of the Redevelopment Project and consistent with the Redevelopment Plan, the Site Plan and this Agreement, as all may be amended from time to time.

“Governmental Authorities” means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

“Non-Captured CID Sales Tax Revenues” shall have the meaning set forth in **Section 6.02.**

“Note Ordinance” means the ordinance(s) necessary to authorize the Notes, other Financing Documents, and any documents related to the Notes.

“Notes” means any tax increment or community improvement revenue notes (including any tax increment or community improvement revenue notes issued in substitution or replacement of other tax increment or community improvement revenue notes, including any subordinate tax increment or community improvement revenue notes) issued by the City in accordance with the TIF Act, this Agreement, the Note Ordinance, and the CID Act to evidence the limited obligation to repay Developer Reimbursable Project Costs incurred by the Developer on behalf of the City or the CID in accordance with and subject to the TIF Act, the CID Act, the CID Cooperative Agreement, and this Agreement.

“Obligations” means the Bonds, Notes, or other debt obligations, singly or in series, issued by the City or any third party at the direction of the City pursuant to the TIF Act or the CID Act and in accordance with this Agreement.

“Ordinance” means an ordinance adopted by the City Council.

“Party” or **“Parties”** means the City and/or the Developer.

“Payments in Lieu of Taxes” shall have the meaning assigned to such term in Section 99.805 of the TIF Act.

“PILOT Account” means the separate segregated account within the Special Allocation Fund into which Payments in Lieu of Taxes are to be deposited.

“Planning Consultant” means a person or company selected by and engaged by the City to provide professional advice regarding the issuance of Obligations and related financial matters as described in this Agreement.

“Private Loans” means loans or indebtedness incurred by the Developer or any other private entity or individual to pay for Developer Reimbursable Project Costs incurred to carry out the Redevelopment Project. Reimbursement of interest on Private Loans shall be limited to

the amount shown in the Project Budget, shall be limited to interest actually paid by Developer, and shall not exceed the Reimbursable Interest Rate.

“Project Budget” means the Project Budget set forth in **Exhibit D**.

“Project Ordinance” means an Ordinance approved by the City Council which approves a Redevelopment Project and activates the collection of TIF Revenues in a Redevelopment Project Area.

“Project Schedule” means the schedule for design, construction and operation of the Redevelopment Project as set forth in **Exhibit E**.

“Projected Assessed Value” shall have the meaning set forth in **Section 4.06.C**.

“Property” means all of the real property located within the boundaries of the Redevelopment Area as set forth in the Redevelopment Plan.

“Redevelopment Area” means the area within Redevelopment Project 1, as depicted in **Exhibit A** and designated as the Redevelopment Area by the Redevelopment Plan Ordinance.

“Redevelopment Plan” means the plan entitled *“Farm Road Tax Increment Financing Redevelopment Plan,”* as approved by the Redevelopment Plan Ordinance, as such plan may be amended from time to time by the City in accordance with the TIF Act.

“Redevelopment Plan Ordinance” means Ordinance No. 4581, adopted by the City Council on August 1, 2017, which approved the Redevelopment Plan and took other actions related to the Redevelopment Plan.

“Redevelopment Project” means any development project located within the Redevelopment Area that is in furtherance of the objectives of the Redevelopment Plan.

“Redevelopment Project 1” means the construction of the following improvements: extensive grading, site preparation, installation of utility improvement, construction and development of approximately 216,741 square feet of new buildings for commercial uses, and the construction of roads, utilities, parking lots, ingress and egress, landscaping, and other infrastructure as required.

“Redevelopment Project Area 1” means the area selected for Redevelopment Project 1 as legally described in **Exhibit B**.

“Redevelopment Project Area” means Redevelopment Project Area 1.

“Redevelopment Project Costs” means the sum total of all reasonable or necessary costs incurred or estimated to be incurred in connection with the Redevelopment Plan, and any such costs incidental to the Redevelopment Plan, as applicable. Such costs include, but are not limited to, the following:

- (1) Costs of all due diligence permitted hereunder, including, but not limited to, studies, surveys, plans, reports, tests and specifications;
- (2) Professional service costs, including, but not limited to, architectural, engineering, legal, marketing, financial, planning or special services, real estate commissions, and construction management (except for reasonable Administrative Costs of the City, such costs shall be allowed only as an initial expense which are included in the costs set forth in the Redevelopment Plan);
- (3) Property assembly costs, including, but not limited to, acquisition of land and other property, real or personal, or rights and interests therein; brokerage commissions; costs of title commitments; reports or policies; surveys; engineering fees; environmental testing and remediation; soil and hazardous waste and other site and property related reports and expenses; appraisals; professional fees of any kind or nature, including attorney's fees and expenses, architects' fees, filing fees, recording fees, experts' fees, and all litigation costs, including commissioners' awards, judgements, payments in settlement of litigation, and all associated court costs, fees, and expenses; demolition of buildings, and the clearing and grading of land;
- (4) Costs of rehabilitation, reconstruction, or repair or remodeling of existing buildings and fixtures and the costs of all vertical construction associated with any Redevelopment Project;
- (5) Costs of construction of public works or improvements;
- (6) Financing Costs, including, but not limited to, all necessary and incidental expenses related to the issuance of Obligations, and which may include payment interest on any Obligations issued hereunder accruing during the estimated period of construction of any Redevelopment Project for which such Obligations are issued and for not more than eighteen (18) months thereafter, and including reasonable reserves related thereto;
- (7) All or a portion of a Taxing District's capital costs resulting from a Redevelopment Project necessarily incurred or to be incurred in the furtherance of the objectives of the Redevelopment Plan, to the extent the City by written agreement accepts and approves such costs;
- (8) Relocation costs to the extent that the City determines that relocation costs shall be paid or are required to be paid by federal or state law;
- (9) Payments in Lieu of Taxes; and,
- (10) Any and all costs permitted to be reimbursed pursuant to the TIF Act or the CID Act.

“Reimbursement Interest Rate” means the Prime Rate of Interest reported by the Wall Street Journal plus 1% per annum, adjusted on the first day of each calendar quarter.

“Related Entity” shall have the meaning set forth in **Section 7.02.B.1.**

“RSMo” means the Revised Statutes of Missouri, as amended.

“Secured Lender” shall have the meaning set forth in **Section 7.02.B.2.**

“Site Plan” means the final site plan for the Redevelopment Area submitted by the Developer to the City and approved by the City pursuant to Applicable Law and Requirements.

“Special Allocation Fund” means the fund, including any accounts and subaccounts created therein, into which TIF Revenues are deposited, as required by the TIF Act and this Agreement.

“Surplus Payments In Lieu of Taxes” means the amount of revenue collected from 50% of the Payments in Lieu of Taxes attributable to property located within the Redevelopment Project Area, which revenue shall be declared as surplus by the City and shall be distributed annually by the County Collector to the Taxing Districts on a basis that is proportional to the current collections of revenue that each Taxing District receives from real property within the Redevelopment Area.

“Taxable Rate” shall have the meaning set forth in **Section 4.04A.**

“Tax-Exempt Rate” shall have the meaning set forth in **Section 4.04A.**

“Taxing District” means any political subdivision of the State of Missouri located wholly or partially within the Redevelopment Area having the power to levy real property taxes.

“Tenant” shall mean all lessees, purchasers and transferees of some portion of the Property.

“TIF Act” means the Real Property Tax Increment Allocation Redevelopment Act, Section 99.800 *et seq.*, RSMo.

“TIF Commission” means the Tax Increment Financing Commission of the City of West Plains, Missouri, as constituted for review of the Redevelopment Plan.

“TIF Revenues” means Payments In Lieu of Taxes and fifty percent (50%) of Economic Activity Taxes.

“Total Initial Equalized Assessed Valuation” means that amount certified by the County Assessor which equals the most recently ascertained equalized assessed value of each taxable lot, block, tract, or parcel of Property within a Redevelopment Project Area immediately after tax increment financing for the Redevelopment Project Area has been approved by Ordinance.

“**Work**” means all work, including, but not limited to, demolition, site preparation, development, design, engineering and construction, necessary to prepare the Property and to construct the improvements as described in the Redevelopment Plan.

ARTICLE 2: REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations of the City. The City makes the following representations and warranties, which are true and correct on the date hereof:

A. Due Authority. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute, deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

B. No Defaults. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing. In addition, no default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

C. Litigation. To the best of the City's knowledge, there is no litigation, proceeding or investigation pending or threatened against the City with respect to the Redevelopment Plan or this Agreement. In addition, to the best of the City's knowledge, there is no other litigation, proceeding or investigation pending or threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

D. Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

E. Construction Permits. The City reasonably believes that all permits and licenses necessary to construct the improvements can be obtained.

F. Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

Section 2.02. Representations of the Developer. The Developer makes the following representations and warranties, which are true and correct on the date hereof:

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

B. No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. Litigation. To the best of the Developer's knowledge, there is no litigation, proceeding or investigation pending or threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which 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, of the terms and provisions of this Agreement.

D. No Material Change. (1) The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (2) there has been no material adverse

change in the business, financial position, prospects or results of operations of the Developer, which could affect the Developer's ability to perform its obligations pursuant to this Agreement from that shown in any financial information provided by the Developer to the City prior to the execution of this Agreement.

E. Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement.

F. No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

Section 2.03. Conditions to Effective Date. This Agreement shall not become effective until the Developer has furnished the City with:

A. a copy of the Developer's Articles of Organization certified by the Secretary of State of the State of Missouri;

B. a Certificate of Good Standing of the Developer in the State of Missouri; and

C. a copy of the Operating Agreement of the Developer, which may be redacted to remove financial or confidential information.

Section 2.04. Developer to Advance Costs. The Developer agrees to advance all Redevelopment Project Costs as it deems reasonably necessary to acquire the Property and to complete the Work, all subject to any Excusable Delay and the Developer's right to terminate this Agreement as set forth in **Section 8.04**.

Section 2.05. Funding of Administrative Costs.

A. Termination of Funding Agreement. The Developer has previously advanced, pursuant to a Funding Agreement between the City and the Developer, certain funds for Administrative Costs. Within sixty (60) days after execution of this Agreement, the City shall submit final invoices which will be paid by Developer, along with the payment of any other outstanding invoices, pursuant to the terms of the Funding Agreement. All such payments by Developer are Developer Reimbursable Project Costs and are eligible for reimbursement with TIF Revenues in addition to the limitations on Developer Reimbursable Project Costs set forth in **Section 3.01**. After final payment of all outstanding invoices is made by Developer under the Funding Agreement, the Funding Agreement shall be terminated, and any funds remaining on deposit with the City pursuant to the Funding Agreement shall be used by the City in accordance with **Section 2.05.B.** hereof and shall be treated as a Developer Reimbursable Project Cost to Developer.

B. Initial Deposit. In addition to the Administrative Costs paid under the Funding Agreement, the City shall also be reimbursed for all Administrative Costs incurred in connection with the Redevelopment Plan and this Agreement. Upon termination of the Funding Agreement, the City shall deposit the funds remaining on deposit with the City pursuant to the Funding Agreement in a separate, segregated account of the City (the "**Advanced Funds Account**"), and, if such amount is less than \$10,000, then Developer shall make a payment to the City (all amounts in the Advanced Funds Account are the "**Advanced Funds**") so that the initial amount on deposit in the Advanced Funds Account, together with funds remaining from the Funding Agreement, is \$10,000. If there are no funds on deposit with the City pursuant to the Funding Agreement on the Effective Date, then the Developer shall advance the sum of \$10,000 to the City as Advanced Funds for deposit in the Advanced Funds Account. The City may invest the Advanced Funds in the same manner as other funds of the City are invested, and interest earnings shall remain in the Advanced Funds Account. All Advanced Funds shall be used to pay Administrative Costs. The City shall submit to the Developer an itemized statement of actual payments made from the Advanced Funds Account for such expenses on a regular periodic basis, but no more often than monthly and no less often than each calendar quarter. The Developer shall advance to the City the amounts set forth on such statements within thirty days after receipt thereof, which shall be deposited in the Advanced Funds Account so that the balance of the Advanced Funds Account remains at \$10,000. This arrangement shall continue until there are sufficient funds in the Special Allocation Fund to implement **Section 2.05.C.** hereof, at which time any remaining Advanced Funds in the Advanced Funds Account shall be returned to Developer. All such payments of Advanced Funds by Developer are Developer Reimbursable Project Costs in addition to the limitations on Developer Reimbursable Project Costs set forth in **Section 3.01** and will be eligible for reimbursement with TIF Revenues.

C. Future Administrative Costs on a Pay As You Go Basis. When sufficient funds are available in the Special Allocation Fund, the City may withdraw funds from the Special Allocation Fund to pay Administrative Costs in an amount not to exceed \$10,000 per calendar year. After the terms of this paragraph are implemented, if Administrative Costs in any year exceed the amount available in the Special Allocation Fund during such year, the unpaid portion of such Administrative Costs shall carry over to the next or any subsequent years until paid in full.

Section 2.06. Developer’s Ownership of the Property. At the time that this Agreement is executed, Developer represents that it owns the Property or has contracted to acquire the Property. The Parties do not anticipate that condemnation is needed to acquire any portion of the Property. To Developer’s knowledge, there are no adverse or other parties in possession of the Property, or of any part thereof. The Developer is not aware of any boundary, survey, or title questions or disputes with respect to the Property other than those that may be set forth in a commitment for title insurance delivered in connection with the purchase or pledge of the Property.

Section 2.07. Developer Designation and Development Rights. The City hereby selects the Developer to perform or otherwise cause the performance of the Work for the Redevelopment Project in accordance with the Redevelopment Plan and this Agreement. For the purpose of implementing the Redevelopment Project and this Agreement, the City hereby grants to the Developer and its successors and assigns (as specified in **Section 7.02**) exclusive redevelopment rights over the Redevelopment Area, subject to and in accordance with the terms and conditions of this Agreement.

ARTICLE 3: REIMBURSEMENT OF DEVELOPER COSTS

Section 3.01. Limitations on Reimbursement to Developer. Regardless of the total amount of Developer Reimbursable Project Costs requested by Developer or certified by the City in accordance with this Article, the City’s obligation to reimburse Developer from TIF Revenues and Non-Captured CID Sales Tax Revenues shall not exceed Eleven Million Dollars (\$11,000,000.00), plus any Financing Costs and Advanced Funds.

Section 3.02. City’s Obligation to Reimburse Developer.

A. Reimbursement of Project Costs. Subject to the limitations set forth in this Agreement, including the restrictions set forth in **Section 4.07**, the City shall reimburse the Developer for all certified Developer Reimbursable Project Costs which do not exceed the limitations on Developer Reimbursable Project Costs set forth in **Section 3.01**, under the conditions and restrictions set forth in this Agreement, plus all Advanced Funds and Financing Costs. The Parties agree that reimbursement will occur on a “pay as you go” basis as revenues are collected in the Special Allocation Fund in accordance with this Agreement. The City shall have no obligation to reimburse Developer until funds are available in the Special Allocation Fund or from any funds other than those funds in the Special Allocation Fund. In connection with the Work associated with the Redevelopment Project, the Developer shall submit an Application for Reimbursable Project Costs in substantial compliance with **Exhibit G** for any Developer Reimbursable Project Costs. The City will not reimburse the Developer for any cost that is not a “redevelopment project cost” under Section 99.805(15) of the TIF Act and which

does not fall within one of the categories of Developer Reimbursable Project Costs shown in the Project Budget. The City shall make reimbursements from the Special Allocation Fund in the order of priority set forth in **Section 4.07**.

B. Interest on Certified Developer Reimbursable Project Costs. Developer Reimbursable Project Costs which have been certified by the City through an approved Application for Developer Reimbursable Project Costs in accordance with this Agreement shall accrue simple interest at the Reimbursement Interest Rate starting on the day that the City approves such application in accordance with **Section 3.03**, adjusted on the first day of each calendar quarter, until the principal amount of such certified Developer Reimbursable Project Costs are paid, or until this Agreement is terminated as provided herein. TIF Revenues distributed to pay Developer Reimbursable Project Costs shall be applied first to accrued and unpaid interest, then to principal. Unpaid interest shall accrue but shall not be compounded.

Section 3.03. Reimbursement Process.

A. All requests for reimbursement of Developer Reimbursable Project Costs shall be made in an Application for Reimbursable Project Costs in substantial compliance with **Exhibit G**. The Developer shall, at the City's reasonable request, provide itemized invoices, receipts or other information reasonably requested by the City to confirm that any such cost is so incurred and does so qualify. The Parties agree that Developer Reimbursable Project Costs, to the extent actually incurred by Developer for the Redevelopment Project and certified by the City, up to the maximum amounts allowed by **Section 3.01**, are eligible for reimbursement in accordance with the TIF Act and this Agreement, although the City's obligation to reimburse Developer shall be as provided in **paragraph B** of this Section.

B. In no event will the City's total obligation for reimbursement exceed the limitations set forth in **Section 3.01**. The reimbursable amounts listed in the Project Budget do not represent caps on any individual expenditure or category of expenditures, as reimbursable amounts may be moved from one reimbursable line item or category to another, to the full extent permitted by law, to reflect actual expenditures, subject to the limitations on Developer Reimbursable Project Costs set forth in **Section 3.01**. However, the City will not reimburse the Developer for any cost that is not a "redevelopment project cost" under Section 99.805(15) of the TIF Act and which is not included within the Tax Increment/CID Funding column set forth in the Project Budget.

C. The Developer may submit an Application for Reimbursable Project Costs to the City Manager not more often than once each calendar month. The City shall either accept or reject each Application for Reimbursable Project Costs within thirty (30) days after the submission thereof. If the City determines that any cost identified as a Developer Reimbursable Project Cost is not a "redevelopment project cost" under Section 99.805(15) of the TIF Act or is not "TIF Reimbursable" pursuant to the Project Budget, the City shall so notify the Developer in writing within said 30-day period, identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to either amend its Application for Reimbursable Project Costs to include additional information regarding such rejected cost or identify and substitute other Redevelopment Project Costs as Developer Reimbursable Project Costs with a supplemental application for payment, subject to the

limitations of this Agreement. The City may also request such additional information from Developer as may be required to process the requested reimbursement, and the time limits set forth in this paragraph shall be extended by the duration of time necessary for Developer to respond to such request by the City. The City's identification of any ineligible costs shall not delay the City's approval of the remaining costs on the Application for Reimbursable Project Costs that the City determines to be eligible.

Section 3.04. Limitation on Source of Funds for City's Obligation to Reimburse. In no event shall the City be required hereunder to appropriate funds from the City's general fund or from any fund other than the Special Allocation Fund to pay for Developer Reimbursable Project Costs.

ARTICLE 4: TAX INCREMENT FINANCING

Section 4.01. Redevelopment Project Area and Redevelopment Project. The Redevelopment Area is depicted in **Exhibit A**. The Redevelopment Project Area is legally described in **Exhibit B** and depicted in **Exhibit C**. The Redevelopment Area will be developed in one Redevelopment Project. The City will cooperate with the Developer to initiate tax increment financing by Ordinance for Redevelopment Project 1 so that the collection of TIF Revenues is maximized. Subject to the terms and conditions of the Redevelopment Plan and this Agreement, including any Excusable Delays, the Developer shall construct or cause to be constructed the Redevelopment Project.

Section 4.02. Project Budget. The Redevelopment Project shall be constructed in general accordance with the Project Budget, which costs are estimates based on the Developer's knowledge of the Redevelopment Project on the date of the Redevelopment Plan Ordinance, and the actual items and costs of items for implementing the Redevelopment Project may vary depending on market factors and conditions.

Section 4.03. Removal of Blight in the Redevelopment Area. The Redevelopment Area has been declared by the City Council to be a "blighted area," as that term is defined in the TIF Act. By construction of the Redevelopment Project, the Developer shall clear the blighting influences, or eliminate the physical blight existing in the Redevelopment Area.

Section 4.04. Notes. At the request of the Developer, the City agrees to use its Best Efforts to issue one or more series of Notes to reimburse the Developer for Developer Reimbursable Project Costs up to the maximum amount allowed in **Section 3.01**.

A. Terms of the Notes.

1. Interest shall accrue on the "Cumulative Outstanding Principal Amount" (described below) of the Notes at the Prime Rate of Interest reported by the Wall Street Journal plus 1% per annum (the "**Taxable Rate**"), calculated as of the date of issuance of the Notes. If, in the opinion of Bond Counsel, any Notes are exempt from federal income taxation, the tax-exempt interest rate shall be one and one-half percent (1 1/2%) (the "**Tax-Exempt Rate**") less than the rate of reimbursement for the taxable Notes.

2. All Notes shall have a stated maturity that is not greater than 23 years from the date the applicable Project Ordinance was approved.

3. Interest accrued but not paid shall not be compounded.

4. The outstanding principal amount of any Notes shall only be paid, with interest, to the extent funds are available in the Special Allocation Fund. Failure to pay principal or interest because of lack of funds in the Special Allocation Fund shall not be an event of default under the terms of the Notes or this Agreement.

B. Conditions Precedent to Issuance of Notes. No Notes shall be issued until such time as (1) the City has accepted a Certificate of Substantial Completion in accordance with **Section 5.02** for at least one Redevelopment Project within the Redevelopment Area and (2) the City has received from the Developer an Application for Reimbursable Project Costs in substantially the form attached as **Exhibit G** hereto for the amounts set forth in paragraph C below.

C. Procedures for Issuance of Notes. Upon satisfaction of the conditions set forth in **Section 4.04.B**, and within fifteen (15) days after acceptance by the City of an Application for Reimbursable Project Costs, the City, or a bank designated by the City, subject to the limitations of **Article 3** and this Section, shall enter on a table to be attached to the Notes the amount certified pursuant to an approved Application for Reimbursable Project Costs as an “Addition to Principal Amount,” which shall be added to previous amounts entered into the table (if any) to determine a “Cumulative Outstanding Principal Amount.” The initial amount entered into the table attached to the Notes shall be not less than \$500,000. Notwithstanding anything contained in this Agreement to the contrary, upon the acceptance by the City of an Application for Reimbursable Project Costs and the entry into the table attached to the Notes of an “Addition to Principal Amount,” the City will be deemed to have issued that amount of the Notes, the Developer shall be deemed to have advanced funds necessary to purchase such Notes and the City shall be deemed to have deposited such funds in a project fund to be established pursuant to the Note Ordinance and shall be deemed to have reimbursed the Developer in full for such costs from the amounts deemed to be on deposit in said project fund from time to time, all as to be provided in the Note Ordinance.

D. Holdback from Issuance of Notes. The City shall be entitled to withhold endorsement or issuance of the final 10% of any construction advances or additional Notes, or such lesser amount as approved in writing by the City, that relate to any construction contract for any Redevelopment Project until the Work under such contract has been substantially completed as provided in such contract.

E. Abatement of Interest if Completion is Delayed. Subject to Excusable Delay, if the Developer fails to submit a Certificate of Substantial Completion for a Redevelopment Project Area in accordance with the Project Schedule attached as **Exhibit E**, or if such Certificate is not accepted by the Construction Inspector for just cause within 30 days following such submission, and the Developer fails, within 60 days thereafter, to submit a Certificate or correct the deficiencies that were the basis for the Construction Inspector’s failure to accept the

Certificate of Substantial Completion, interest shall cease to accrue on any outstanding Notes from the time of such performance default until such time as the required Certificate of Substantial Completion is submitted and accepted by the Construction Inspector. In no event shall any such abated interest be recovered by or accrue to the benefit of the Developer or other holder of the Notes.

F. Optional Redemption. The Notes will be subject to optional redemption by the City in whole at any time or in part on any semiannual interest payment date designated in the Financing Documents at a redemption price of 100% of the principal amount of the Notes to be redeemed, plus accrued interest thereon to the date fixed for redemption, as provided in the Financing Documents.

Section 4.05. Bonds.

A. Issuance of Bonds. At the earliest practical time, but not later than 120 days after the City's acceptance of the Certificate of Substantial Completion, the City shall use its Best Efforts to consider the issuance of Bonds in an amount sufficient to pay or reimburse the Developer Reimbursable Project Costs, up to the maximum amount allowed in **Section 3.01**, provided that the market conditions for such Bonds are such that the payment terms of the Bonds are sufficiently favorable that reasonably prudent City financial officers would undertake the issuance of such Bonds.

B. Cooperation in the Issuance of Bonds.

1. If a determination is made to issue Bonds, the Developer covenants to cooperate and take all reasonable actions necessary to assist the City and its Bond Counsel, underwriters and financial advisors in the preparation of the Financing Documents, offering statements, private placement memorandums or other disclosure documents and all other documents necessary to market, sell and issue Bonds, including (i) disclosure of Tenants of the Property and the non-financial terms of the leases between the Developer and such Tenants and (ii) providing sufficiently detailed estimates of Developer Reimbursable Project Costs so as to enable Bond Counsel to render its opinion as to the tax-exemption of Bonds. The Developer will not be required to disclose to the general public or any investor the rent payable under any such lease or any proprietary or confidential financial information pertaining to the Developer, its Tenants or the leases with its Tenants, but upon the execution of a confidentiality agreement acceptable to the Developer, the Developer will provide such information to the City's financial advisors, underwriters and their counsel to enable such parties to satisfy their due diligence obligations.

2. The Developer further agrees (i) to provide a closing certificate in a form reasonably similar to the form used for similar bond transactions (which shall include a certification regarding the accuracy of the information relating to the Developer and the Project), (ii) to cause its counsel to provide a legal opinion in a form reasonably similar to the form used for similar bond transactions and (iii) to provide the following information (but no more frequently than semi-annually) to enable the underwriter of the Bonds to comply with Rule 15c2-12 of the Securities and Exchange Commission, if applicable: all

retail and commercial Tenants of the Project, the square footage occupied by each such Tenant, the purpose for which space is used by each retail Tenant, and the term of each commercial and retail lease. Developer shall provide information on an ongoing basis so that the City can comply with its continuing disclosure obligations, as requested by the City. The obligation to issue the Bonds and the conditions of such issuance under this Section shall be a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

C. City to Select Bond Counsel, Financial Advisor and Underwriter; Term. The City shall have the right to select the designated Bond Counsel, financial advisor and underwriter (and such additional consultants as the City deems necessary for the issuance of the Bonds). The final maturity of Bonds shall not exceed the maximum term permissible under the TIF Act.

D. Failure to Issue Bonds. If (a) the Developer has complied with its obligations under **Section 4.05.B** hereof, (b) the market conditions for Bonds are such that the payment terms of the Bonds are sufficiently favorable that reasonably prudent City financial officers would undertake the issuance of such Bonds, (c) the City has received a bona fide offer to purchase the Bonds, and (d) the City does not, within 180 days following the City's acceptance or deemed acceptance of the Certificate of Substantial Completion with respect to the Redevelopment Project, cause the issuance of the Bonds, then commencing on the date which is 180 days following the City's acceptance or deemed acceptance of the Certificate of Substantial Completion for the Redevelopment Project, the Taxable Rate and Tax-Exempt Rate shall each be increased by two percent (2%) from such date until the date that refunding Bonds are issued in accordance with **Section 4.05**. Notwithstanding any provision herein to the contrary, the City shall be deemed to have satisfied its obligation to issue Bonds pursuant to this **Section 4.05** if the City is unable to issue Bonds in an amount sufficient to refund all of the outstanding Notes issued to the Developer, but issues Bonds in the maximum amount that the market for such Bonds will bear in the opinion of an underwriter or placement agent retained by the City to market such Bonds.

Section 4.06. Payments in Lieu of Taxes.

A. Initiation of Payment Obligations. Pursuant to the provisions of the Redevelopment Plan and the TIF Act, including, but not limited to, Section 99.845 thereof, when tax increment financing is established by a Project Ordinance, the Property is subject to assessment for annual Payments in Lieu of Taxes. Payments in Lieu of Taxes shall be due November 30 of each year in which said amount is required to be paid and will be considered delinquent if not paid by December 31 of each such year. The obligation to make said Payments in Lieu of Taxes shall be a covenant running with the land and shall create a lien in favor of the City on each such tax parcel as constituted from time to time and shall be enforceable against the Developer and its successors and assigns in ownership of property in a Redevelopment Project Area.

B. Enforcement of Payments. Failure to pay Payments in Lieu of Taxes as to the Property or any portion thereof shall entitle any Collection Authority to proceed against the applicable portion of the Property as in other delinquent property tax cases or otherwise as permitted at law or in equity; provided, however, that the failure of any portion of the Property to

yield sufficient Payments in Lieu of Taxes because the increase in the current equalized assessed value of such Property is or was not as great as expected, shall not by itself constitute a breach or default. The City shall use all reasonable and diligent efforts to notify the County Collector and all other appropriate officials and persons and seek to fully implement the Payments in Lieu of Taxes.

C. Protesting Tax Assessments. Nothing herein shall prohibit or inhibit the Developer's right to pay Payments in Lieu of Taxes under protest pending Developer's exhaustion of all informal and formal appeal rights relating to the County's valuation of the Property or a portion thereof or the calculation of the Payments in Lieu of Taxes owed thereon.

D. Release of Liens. Notwithstanding anything to the contrary herein, the lien on the Property or any portion thereof shall be deemed (1) released as to any public street or other public way included within any plat in the Redevelopment Area, and (2) subordinated to the lot lines, utility easements and other similar matters established by any such plat (but not to any private access or parking rights granted or created by any such plat), effective upon the passage of an Ordinance by the City as aforesaid, and to any easement or like interests granted to the City or any public utility for public facilities or utilities or connection(s) thereto.

E. Certification of Base for Payments in Lieu of Taxes. Within ninety (90) days after adoption of a Project Ordinance, the City shall provide to the Developer a certification of the County Assessor's calculation of the Total Initial Equalized Assessed Valuation of the taxable real property within the Redevelopment Project Area based upon the most recent equalized assessed valuation of each taxable lot, block, tract, or parcel of real property within the Redevelopment Project Area.

F. Surplus Payments in Lieu of Taxes. In accordance with the Redevelopment Plan, and at such times as set forth in the Redevelopment Plan Ordinance, fifty percent (50%) of the Payments in Lieu of Taxes collected within the Redevelopment Area shall be declared as Surplus Payments in Lieu of Taxes by the City. The City shall, or, if an agreement between the City and County has been executed for such purpose then the County Collector shall on behalf of the City, pay such Surplus Payments in Lieu of Taxes to the appropriate Taxing Districts in the order of priority set forth in **Section 4.07**. Once commenced, such declaration of Surplus Payments in Lieu of Taxes shall continue at a level of fifty percent (50%) throughout the entire remaining term of the Redevelopment Plan and this Agreement, unless the Redevelopment Plan is amended in accordance with the TIF Act to alter such payments.

Section 4.07. Economic Activity Taxes.

A. Initiation of Payment Obligations. In addition to the Payments In Lieu of Taxes described above, and pursuant to Section 99.845 of the TIF Act, fifty percent (50%) of the total additional revenue from taxes which are imposed by the City or other Taxing Districts, and which are generated by economic activities within a Redevelopment Project Area which are in excess of the amount of such taxes generated by economic activities within a Redevelopment Project Area for the calendar year prior to the adoption of a Project Ordinance, while tax increment financing remains in effect, but excluding taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to

Section 70.500 RSMo, licenses, fees or special assessments and personal property taxes, other than payments in lieu of taxes and any penalty and interest thereon, or taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo, shall be allocated to, and paid by the collecting officer to the designated financial officer of the City, who shall deposit such funds in a separate segregated account within the Special Allocation Fund for the purpose of paying Redevelopment Project Costs incurred in the payment thereof.

B. Accounting. The City shall deposit the payments of Economic Activity Taxes received from the respective Taxing Districts in the Economic Activity Taxes Account of the Special Allocation Fund, to be utilized and expended in accordance with the TIF Act, the Redevelopment Plan and this Agreement.

C. Documentation of Economic Activity Taxes. The City and the Developer agree to cooperate and take all reasonable actions necessary to cause the Economic Activity Taxes to be paid into the Special Allocation Fund, including the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

D. Certification of Base for Economic Activity Taxes. Within ninety (90) days after adoption of a Project Ordinance, the City shall provide to the Developer a certification of the revenue from taxes, penalties and interest which are imposed by the City and other Taxing Districts and which are generated by economic activities within a Redevelopment Project Area for the preceding calendar year, but excluding those personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 RSMo, taxes levied for the purpose of public transportation, or licenses, fees or special assessments identified as excluded in Section 99.845.3 of the TIF Act.

Section 4.08. Special Allocation Fund. The City shall establish and maintain the Special Allocation Fund which shall contain the following separate segregated accounts: (1) Payments in Lieu of Taxes shall be deposited into the PILOT Account within the Special Allocation Fund; (2) Economic Activity Taxes shall be deposited into the Economic Activity Taxes Account within the Special Allocation Fund; and (3) such further accounts or sub-accounts as are required by this Agreement, the Financing Documents or as the City's financial advisor and trustee may deem appropriate in connection with the administration of this Special Allocation Fund. To the extent required by the CID Cooperative Agreement, the City Finance Director shall also establish and maintain additional separate segregated accounts into which all payments of Non-Captured CID Sales Tax Revenues that are pledged to pay Developer Reimbursable Project Costs are to be deposited. Subject to the requirements of the TIF Act and, with respect to Economic Activity Taxes, subject to annual appropriation by the City Council, the City will promptly upon receipt thereof deposit or be deemed to deposit all Payments in Lieu of Taxes, captured as TIF Revenue, into the PILOT Account and all Economic Activity Taxes, captured as TIF Revenue, into the Economic Activity Taxes Account.

Section 4.09. Disbursements From Special Allocation Fund. All disbursements of TIF Revenues and Non-Captured CID Sales Tax Revenues from the Special Allocation Fund will be paid in such priority as the City shall determine from the separate segregated accounts maintained within the Special Allocation Fund for Payments in Lieu of Taxes and Economic Activity Taxes. The City hereby agrees for the term of this Agreement to apply available TIF Revenues and Non-Captured CID Sales Tax Revenues in the following manner and order of preference:

- A. Payment of Surplus Payments In Lieu of Taxes as required by the terms of this Agreement;
- B. Payment of Administrative Costs incurred pursuant to **Section 2.05.C**;
- C. Reimbursement to any district providing emergency services within the Redevelopment Area, to the extent required by Section 99.848 of the TIF Act or, in lieu thereof, such amount (if any) as may be set forth in a cooperative agreement between the City and any such district;
- D. Payment of arbitrage rebate, if any, owed with respect to Obligations under Section 148 of the Internal Revenue Code of 1986, as amended, including any costs of calculating arbitrage rebate;
- E. Payment of fees and expenses owing to the trustee for Obligations, upon delivery to the City of an invoice for such amount;
- F. Payment of principal and interest becoming due on Obligations in accordance with the Financing Documents that have been executed for such Obligations;
- G. Payment of remaining TIF Revenues and Non-Captured CID Sales Tax Revenues generated within the Redevelopment Area to Developer to repay certified Developer Reimbursable Project Costs;
- H. Following the completion of the Redevelopment Project and repayment of all Developer Reimbursable Costs, funds remaining in the Special Allocation Fund shall be disbursed by the City Finance Director to the appropriate Taxing Districts in accordance with the TIF Act.

Section 4.10. Full Assessment.

- A. Redevelopment Project Area. After all Developer Reimbursable Project Costs have been paid, but not later than twenty-three (23) years from the adoption of the last Project Ordinance, the portions of this Agreement relating only to the TIF Act shall terminate and Developer shall not be entitled to receive any further disbursements from the Special Allocation Fund.
- B. Completion of Redevelopment Plan. Upon terminating the designation of the Redevelopment Area as a “redevelopment area” under the TIF Act, the rates of the Taxing Districts shall be extended and taxes shall be levied, collected and distributed in the manner applicable in the absence of the adoption of tax increment financing, and the Redevelopment Area shall be free from the conditions, restrictions and provisions of the TIF Act, of any rules or regulations adopted pursuant thereto, of the Redevelopment Plan Ordinance, the Redevelopment Plan, this Agreement, and of the Redevelopment Plan.

ARTICLE 5: CONSTRUCTION AND OPERATION OF THE PROJECT

Section 5.01. Project Schedule, Design and Construction.

A. Schedule. Absent an event of Excusable Delay, the Developer shall commence and complete the Redevelopment Project and each of its obligations under this Agreement with respect to the acquisition, construction and completion of the Redevelopment Project in accordance with the Project Schedule attached as **Exhibit E**. The Developer shall obtain the approval of the Site Plan in accordance with the Project Schedule and Applicable Law and Requirements. The Project Schedule may be modified as necessary by the Developer, with the prior written consent of the City, which will not be unreasonably conditioned, delayed, or withheld. The City and the Developer acknowledge and agree that the Project Schedule does not contain commencement and completion dates for Redevelopment Project 2, as such dates will be determined at the time an anticipated future amendment to the Redevelopment Plan is approved to provide further detail with respect to Redevelopment Project 2.

B. Construction. In accordance with the Project Schedule attached as **Exhibit E**, and absent an event of Excusable Delay, the Developer shall commence the construction of the Redevelopment Project in a good and workmanlike manner in accordance with the terms of this Agreement.

C. Construction Contracts. The Developer may enter into one or more construction contracts to complete the Work. All construction contracts shall provide that recourse against the City is limited to the Special Allocation Fund.

D. Insurance. Developer must obtain liability insurance that is consistent with Applicable Law and Requirements, and Developer shall file with the City evidence acceptable to the City of such liability insurance.

E. Prevailing Wages. The Developer shall comply with all applicable laws regarding the payment of prevailing wages to contractors or subcontractors of the Developer, as applicable. Upon written request by the City, Developer shall provide or cause to be provided written proof that the requirements of this paragraph have been satisfied from and after the date that the Work has commenced. In the event such request is made, no reimbursement payment shall be made by the City from TIF Revenues for the Developer Reimbursable Project Costs which are subject to the payment of prevailing wages unless the Developer has provided or caused to be provided the written proof as required by this paragraph. Developer shall indemnify the City for any damage resulting to it from failure of either the Developer or any contractor or subcontractor to pay prevailing wages pursuant to applicable laws. Such indemnification shall be limited to the amount of TIF reimbursement that Developer receives or is entitled to receive pursuant to this Agreement, and payments due to Developer pursuant to this Agreement from TIF Revenues may be withheld by the City in satisfaction of this indemnification obligation if Developer has not provided payment when due pursuant to the indemnification obligation of this paragraph.

F. Competitive Bids and Other Construction Requirements. The Developer shall comply with all applicable state and local laws relating to the construction of the Redevelopment Project, including but not limited to all applicable laws relating to competitive bidding. The

Redevelopment Plan submitted in response to the City's request for proposals is deemed to satisfy all competitive bidding requirements established by the City pursuant to the TIF Act.

G. Governmental Approvals. The City agrees to employ Best Efforts to cooperate with the Developer and to process and timely consider and respond to all applications for the Governmental Approvals as received, all in accordance with the Applicable Law and Requirements.

Section 5.02. Certificate of Substantial Completion. Promptly after substantial completion of a Redevelopment Project in accordance with the provisions of this Agreement, the Developer shall submit a Certificate of Substantial Completion to the City. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit F**. The Construction Inspector shall, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the City unless, prior to the end of such 30-day period after delivery, the City furnishes the Developer with specific written objections to the status of the Redevelopment Project, describing such objections and the measures required to correct such objections in reasonable detail. Upon acceptance of the Certificate of Substantial Completion, or upon the lapse of thirty (30) days after delivery thereof without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the Howell County Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to construct the Redevelopment Project(s).

Section 5.03. Relocation within the City. If a Tenant is relocated within one year after approval of a Project Ordinance from another location within the limits of the City to a Redevelopment Project Area, the sales tax base for such Tenant shall be transferred to the location of the Tenant within the Redevelopment Project Area and shall be treated as sales which occurred in the Redevelopment Project Area in the year before the year in which such Project Ordinance was approved.

Section 5.04. Compliance with Laws and Requirements. The Redevelopment Project shall be designed, constructed, equipped and completed in accordance with all Applicable Law and Requirements of all federal, state and local jurisdictions.

Section 5.05. Lease of Property. The Developer may lease Property within the Redevelopment Area. To the extent practicable and using Best Efforts, the Developer, or any third party, shall insert in any such lease the following language, or language that is substantially similar to the following after being approved by the City Attorney, and shall have such lease signed by the lessee indicating acknowledgment and agreement to the following provision:

Economic Activity Taxes: Tenant acknowledges that the leased premises are a part of a Tax Increment Financing district ("**TIF District**") created by the City of West Plains, Missouri (the "**City**") and that certain taxes generated by Tenant's economic activities, including sales taxes, will be applied toward the costs of improvements for the development. Upon the request of Landlord or the City, Tenant shall forward to the City and Landlord copies of Tenant's State of Missouri sales tax returns filed with the Missouri Department of Revenue for its property located in the TIF District, and, upon request, shall provide such other reports and returns regarding other local taxes generated by Tenant's economic activities in the TIF District as the City shall require, all in the format prescribed by them. Tenant acknowledges that the City is a third-party beneficiary of the obligations in this Section, and that the City may enforce these obligations in

any manner provided by law.

The Developer shall use Best Efforts to enforce this lease provision. At the request of the City, the Developer shall provide a certification to the City confirming that the lease includes the provisions satisfying the Developer's obligation as set forth in this Section. Failure of the Developer to require that such restrictions be placed in any such lease shall not be a Developer Event of Default and in no way modify, lessen or diminish the obligations and restrictions set forth herein.

Section 5.06. Sale of Property. The Developer may sell Property within the Redevelopment Area. To the extent practicable and using Best Efforts, the Developer, or any third party, shall insert in any such sale agreement the following language, or language that is substantially similar to the following after being approved by the City Attorney, and shall have such sale agreement signed by the buyer indicating acknowledgment and agreement to the following provision:

Economic Activity Taxes: Buyer acknowledges that the property is a part of a tax increment financing district (“**TIF District**”) created by the City of West Plains, Missouri (the “**City**”) and that certain taxes generated by Buyer's economic activities, including sales taxes, will be applied toward the costs of improvements for the development. Upon the request of Seller or the City, Buyer shall forward to the City and Seller copies of Buyer's State of Missouri sales tax returns filed with the Missouri Department of Revenue for its property located in the TIF District, and, upon request, shall provide such other reports and returns regarding other local taxes generated by Buyer's economic activities in the TIF District as the City shall require, all in the format prescribed by them. Buyer acknowledges that the City is a third-party beneficiary of the obligations in this Section, and that the City may enforce these obligations in any manner provided by law.

PILOTS: Buyer further acknowledges that the property will be subject to assessment for annual payments in lieu of taxes (“**PILOTS**”) when the redevelopment project area is activated by the City. PILOTS are due on November 30 of each year and are considered delinquent if not paid by December 31 of each year. The obligation to make said PILOTS shall be a covenant running with the land and shall create a lien in favor of the City on the property and shall be enforceable against Buyer and its successors and assigns in ownership of the property. Buyer acknowledges that in the event of the sale, lease, sublease, assignment, or other voluntary or involuntary disposition of any or all of the property, PILOTS with respect to the property shall continue and shall constitute a lien against the property from which they are derived, and such obligations shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable as if such purchaser, tenant, transferee or other possessor thereof were originally a party to and bound by the agreement.

The Developer shall use Best Efforts to enforce this provision. At the request of the City, the Developer shall provide a certification to the City confirming that the sale agreement includes the provisions satisfying the Developer's obligation as set forth in this Section. Failure of the

Developer to require that such restrictions be placed in any such sale agreement shall not be a Developer Event of Default and in no way modify, lessen or diminish the obligations and restrictions set forth herein.

ARTICLE 6: COMMUNITY IMPROVEMENT DISTRICT

Section 6.01. Formation. The Redevelopment Plan contemplates the formation of a CID in the Redevelopment Area which will, upon the imposition of the CID Sales Tax, generate additional sources of Economic Activity Taxes eligible to pay Developer Reimbursable Project Costs. The Non-Captured CID Sales Tax Revenues (defined below) will also be used to assist in the financing of the Redevelopment Project. In the event the CID has not been formed as of the date of execution of this Agreement, Developer and City agree to mutually cooperate in the formation of the CID. The Parties acknowledge and agree that formation of a CID by the City is a legislative act, that the City cannot agree by contract to take future legislative action, and that the City will consider the CID petition in good faith pursuant to the CID Act and the terms of this Agreement. Formation of the CID shall be initiated by the Developer filing a petition with the City in accordance with the CID Act. The City and Developer agree to jointly cooperate with and participate in the formation process.

Section 6.02. CID Sales Tax Revenues. Those CID Sales Tax Revenues which are captured as Economic Activity Taxes will be deposited into the Economic Activity Taxes Account within the Special Allocation Fund and will be disbursed in accordance with **Section 4.09 (“Captured CID Sales Tax Revenues”)**. For as long as the Redevelopment Project Area is subject to tax increment financing, the CID Sales Tax Revenues which are not considered hereunder as Captured CID Sales Tax Revenues (“**Non-Captured CID Sales Tax Revenues**”) shall be determined and deposited into the Special Allocation Fund in accordance with the CID Cooperative Agreement, the CID Act, the Redevelopment Plan, and this Agreement. To the extent required by the CID Cooperative Agreement, the City Finance Director shall establish and maintain additional separate segregated accounts into which all payments of Non-Captured CID Sales Tax Revenues that are pledged to pay Developer Reimbursable Project Costs are to be deposited. Deposited payments of the Non-Captured CID Sales Tax Revenues pledged by the CID to the repayment of Developer Reimbursable Project Costs that are CID Eligible Expenses shall be distributed in accordance with the CID Cooperative Agreement, the CID Act, the Redevelopment Plan, and this Agreement.

Section 6.03. Cooperative Agreement. The Developer, the City and the CID will enter into a CID Cooperative Agreement to memorialize the provisions of this **Article 6** and to provide for the operation of the CID and the administration of the CID Sales Tax Revenues.

ARTICLE 7: GENERAL COVENANTS

Section 7.01. Indemnification of the City.

A. Developer agrees to indemnify and hold the City, its employees, agents, independent contractors and consultants (collectively, the “**City Indemnified Parties**”) harmless

from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, including court costs and attorneys' fees, resulting from, arising out of, or in any way connected with:

1. the Developer's actions and undertaking in implementation of the Redevelopment Project and this Agreement;

2. the negligence or willful misconduct of Developer, its employees, agents, independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Redevelopment Project; or

3. any litigation filed against the Developer by any member of the Developer, or any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor which is not based in whole or in part upon any negligence or willful misconduct of the City, the City's breach of this Agreement, or the City's breach of the CID Cooperation Agreement.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an "**Action**") is initiated or made as a result of which the Developer may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties shall give prompt notice to the Developer of the occurrence of such event. After receipt of such notice, the Developer may elect to defend, contest or otherwise protect the City Indemnified Parties against any such Action, at the cost and expense of the Developer, utilizing counsel of the Developer's choice. The City Indemnified Parties shall assist, at Developer's sole discretion, in the defense thereof. In the event of such defense against any Action by Developer for the City, Developer shall provide to the City regular periodic reports on the status of such Action. In the event that the Developer shall fail timely to defend, contest or otherwise protect any of the City Indemnified Parties against such Action, the City Indemnified Parties shall have the right to do so, and, if such defense is undertaken by the City Indemnified Parties after notice to the Developer asserting the Developer's failure to timely defend, contest or otherwise protect against such Action, the cost of such defense shall be at the expense of the Developer, including the right to offset against amounts of Developer Reimbursable Project Costs payable to the Developer.

C. Any one of the City Indemnified Parties shall submit to the Developer any settlement proposal that the City Indemnified Parties shall receive which may only be accepted with the approval of the Developer. The Developer shall be liable for the payment of any amounts paid in settlement of any Action to the extent that and only with respect to any part the Developer expressly assumes in writing as part of such settlement. Neither the Developer nor the City Indemnified Parties will unreasonably withhold its consent to a proposed settlement.

D. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

Section 7.02 Assignment of Developer's Rights and Obligations and Transfer of Property.

A. Restrictions on Assignment. Prior to the issuance of a Certificate of Substantial Completion, the Developer's rights and obligations hereunder may not be assigned, in whole or in part, to another entity, without the prior approval of the City Council. The City Council shall provide such consent unless in the City's reasonable determination, a proposed assignee does not have qualifications and financial responsibility necessary and adequate to fulfill the obligations of the Developer under the Redevelopment Plan and this Agreement.

B. Related Entities, Collateral Assignment, and Certificate of Substantial Completion.

1. Related Entities. Nothing in this Section shall prevent the Developer from assigning, without the City's consent, all rights and/or obligations under this Agreement to a Related Entity (as defined below), provided that prior to such assignment Developer furnishes City with the name of any such Related Entity, together with a certification from Developer, and such other proof as City may reasonably request, that such assignee is a Related Entity of Developer. "**Related Entity**" means any entity in which the ownership or membership of such entity is controlled by Developer or the majority owners or members of Developer. For purposes hereof, "control" shall mean the power to direct or cause the direction of the management or policies of such entity.

2. Collateral Assignment. Developer shall also have the right, without the City's consent, to collaterally assign and pledge to any Secured Lender (as defined below) as collateral (x) all TIF Revenues, (y) the Notes, and (z) any and all of Developer's rights and/or obligations under this Agreement, and such Secured Lender shall have the right to perform any term, covenant, condition or agreement and to remedy, in accordance with the terms of this Agreement, any default by Developer under this Agreement, and City shall accept such performance by any such Secured Lender with the same force and effect as if furnished by Developer. No Secured Lender shall be personally liable or obligated to perform the obligations of Developer under the Agreement unless and until (i) such Secured Lender takes possession of the property as a mortgagee or by a receiver appointed at the request of mortgagee or becomes the owner of the fee estate under this Agreement by foreclosure, or deed in lieu of foreclosure or otherwise, and (ii) such Secured Lender elects to become the assignee of the Developer under this Agreement by providing the notices described in (a) and (b) below. For purposes of this Section, "**Secured Lender**" means a bank, financial institution or other person or entity from which Developer has borrowed funds to finance all or a portion of the Redevelopment Project and in whose favor Developer has agreed to provide a security interest as collateral for such loan.

Before a Secured Lender may exercise any rights of the Developer under the Agreement, the City shall receive: (a) within thirty (30) days following the date of such collateral assignment, a notice from the Developer that it has entered into a collateral

assignment with a Secured Lender in connection with the Property, which shall specify the name, address and telephone number of the Secured Lender, as well as the title, date and parties to the collateral assignment agreement; and (b) not less than ten (10) days' notice of the Secured Lender's intent to exercise its right to become the assignee of the Developer under the Agreement, which notice shall include the effective date of the collateral assignment, and the title, date and parties to such collateral assignment agreement. The City is entitled to rely upon representations made in the notices described in this paragraph without further investigation or inquiry.

Provided that the Developer has provided the City with notice of a collateral assignment as described in this Section, the City agrees to provide the Secured Lender with the same notice of default at the same time such notice is given to the Developer, and the Secured Lender shall have the same rights (but shall have no obligation) to cure, correct or remedy a default as are provided to the Developer. The Developer and the City hereby agree to review, negotiate and enter into a collateral assignment agreement with the Secured Lender to more formally memorialize the pledge of the TIF Revenues and the assignment rights set forth herein at the request of the Secured Lender, which agreement shall be acceptable to all parties thereto.

3. Certificate of Completion. Following the City's issuance of a Certificate of Substantial Completion for a Redevelopment Project, Developer and its successors and assigns shall have the right, without the City's consent, to assign any and all of its obligations as Developer under this Agreement with respect to such portion of the Redevelopment Project to any person or entity.

C. Assignment & Assumption Agreement. Any assignee under **subsections A or B.1** above shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer being assigned. The Developer shall be relieved from any obligations that are assigned according to the terms of this Agreement.

D. Lease of Property. Nothing in this section shall apply to Developer's lease of portions of the Property to other persons or entities. This Agreement shall not obligate, provide rights, or otherwise apply to any such lessees, and any such leases shall not relieve Developer of its obligations under this Agreement, including but not limited to its obligations with respect to the leased property.

E. Sale of Property. Nothing in this section shall limit the Developer's right to sell or otherwise transfer the Property or portions thereof to other persons or entities, but such sale shall not relieve Developer of its rights and obligations under this Agreement, including but not limited to its rights and obligations with respect to the sold or transferred property.

F. Right to Receive TIF Revenues. Only the Developer, or a Related Entity or Secured Lender pursuant to **subsection B** hereof, and not any subsequent purchaser or tenant, unless expressly consented to in writing by the City or otherwise made in accordance with the provisions of this Agreement, shall be entitled to receive TIF Revenues.

G. No Assignment if in Default. Notwithstanding anything in this section to the contrary, no assignment or transfer of this Agreement is permitted if the Developer is in default in the performance of any of the material terms, covenants, conditions and agreements of this Agreement.

H. City's Reasonable Consideration. If, from time to time, the City's consent to any assignment and transfer under the terms of this Agreement is required, or if confirmation that such consent is not required is requested, such consent or confirmation, as the case may be, shall not be unreasonably withheld or delayed.

Section 7.03. Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

Section 7.04. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 7.05. Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of an ordinance of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

ARTICLE 8: DEFAULTS AND REMEDIES

Section 8.01. Developer Event of Default. Subject to **Section 8.05**, a “**Developer Event of Default**” means a default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement (other than a covenant or agreement, a default in the performance or breach of which is specifically dealt with elsewhere in this Section), and continuance of such default or breach for a period of thirty (30) days after City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch. During any such cure period which extends beyond 30 days, the Developer shall provide monthly written updates to the City regarding its efforts toward, and the status of, remedying such default or breach.

Section 8.02. City Event of Default. Subject to **Section 8.05**, a “**City Event of Default**” means default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement (other than a covenant or agreement, a default in the performance or breach of which is specifically dealt with elsewhere in this Agreement), and continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied

and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch. During any such cure period which extends beyond 30 days, the City shall provide monthly written updates to the Developer regarding its efforts toward, and the status of, remedying such default or breach.

Section 8.03. Remedies Upon a Developer Event of Default.

A. Upon the occurrence and continuance of a Developer Event of Default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to remove the Developer as the developer of record for the Redevelopment Project under the Redevelopment Plan and terminate this Agreement or terminate the Developer's rights under this Agreement.

2. The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default.

B. Upon termination of this Agreement for any reason, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement, except for (i) Developer Reimbursable Project Costs certified by the City as of the date of termination of this Agreement, and (ii) the outstanding amounts advanced to the City for Administrative Costs hereunder that were not used by the City to pay for or reimburse such costs, or costs otherwise incurred or paid by Developer; provided, any cancellation of Notes or other Obligations pursuant to this section shall not apply to any Notes or other Obligations for a completed Redevelopment Project for which Reimbursable Project Costs have been certified by the City as of the date of termination of this Agreement.

C. If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

D. The exercise by the City of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City shall apply to obligations beyond those expressly waived.

E. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of

such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 8.04. Remedies Upon a City Event of Default.

A. Upon the occurrence and continuance of a City Event of Default, the Developer shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The Developer shall have the right to terminate the Developer's obligations under this Agreement;
2. The Developer may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement, to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developer resulting from such City Event of Default.

B. The exercise by the Developer of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the Developer shall apply to obligations beyond those expressly waived.

C. Any delay by the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the Developer of any specific default by the City shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 8.05. Excusable Delays. The parties understand and agree that neither the City nor the Developer shall be deemed to be in default of this Agreement because of an Excusable Delay.

Section 8.06. Developer's Right of Termination. The Developer may, by giving written notice to the City at any time prior to the dates provided below, abandon the Redevelopment Project and terminate this Agreement, if any of the following contingencies are not satisfied within the time periods provided:

A. on or before December 31, 2019 (the "**Contingency Date**"), an executed lease or purchase agreement has been entered into between the Developer and at least one major anchor tenant to construct and open a store within the Redevelopment Area;

B. on or before the Contingency Date, Developer has received reports as to the environmental conditions of the Property confirming the presence on the Property of hazardous or toxic substances in violation of applicable governmental laws or regulations in amounts or concentrations that could not have been reasonably anticipated and therefore necessitates additional remediation or construction costs that exceed commercially

reasonable budgeted amounts and contingencies and therefore render construction of the Redevelopment Project economically unfeasible under commercially reasonable standards;

C. on or before the Contingency Date, Developer has received reports as to the soils condition of the Property confirming the presence on the Property of soil stability conditions that could not have been reasonably anticipated and therefore necessitate additional construction costs that exceed commercially reasonable budgeted amounts and contingencies and therefore renders construction of the Redevelopment Project economically unfeasible under commercially reasonable standards;

D. on or before the Contingency Date, the Developer does not (despite the Developer's diligent efforts) receive all necessary permits and approvals from any and all entities having jurisdiction over the Property; or

E. on or before the Contingency Date, Developer determines that the Redevelopment Project is not financial feasible, in its sole discretion.

The Developer must act in good faith and diligently pursue all commercially reasonable acts necessary to eliminate all bases for terminating this Agreement as provided for above, including without limiting the generality of the foregoing, timely ordering and obtaining all studies and reports, negotiating leases, purchase contracts, financing commitments, option contracts and applying for and diligently pursuing all governmental approvals.

Section 8.07 City's Right of Termination. The City may terminate this Agreement at any time prior to the delivery of the Certificate of Substantial Completion if the Developer defaults in or breaches any provision of this Agreement and fails to cure such default or breach pursuant to Section 8.01 hereof (subject to extension in accordance with **Section 8.05**).

ARTICLE 9: GENERAL PROVISIONS

Section 9.01. Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect until such time as all Developer Reimbursable Project Costs up to the maximum amounts allowed under **Section 3.01**, are repaid to Developer. Upon such repayment, this Agreement shall terminate and become null and void.

Section 9.02. Nondiscrimination. The Developer agrees that, as an independent covenant running with the land, there shall be no discrimination upon the basis of race, creed, color, national origin, sex, age, marital status, or physical handicap in the sale, lease, rental, occupancy or use of any of the facilities under its control.

Section 9.03. Inspections and Audits. Developer shall, upon reasonable advance notice, allow the City and the City's agents (including the City Engineer) access to the Redevelopment Project from time to time for reasonable inspection of the Redevelopment Project. For up to one (1) year following the City's issuance of a Certificate of Substantial Completion for a Redevelopment Project, the City shall have the right at its own cost and expense to audit (either through employees of the City or a

firm engaged by the City) the books and records of the Developer relating to the payment of such Developer Reimbursable Project Costs.

Section 9.04. Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 9.05. Authorized Parties.

A. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Manager and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Manager may seek the advice, consent or approval of the City Council before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section.

B. Any action that is required by this Agreement to be performed by the City within a specified time period shall be extended for such additional reasonable time as may be necessary for the City to act or provide a response, as the case may be, in order to account for holidays, weekends, work stoppages, regular meeting schedules, meeting agendas, agenda management, delays or continuances of meetings and City staff availability. The City shall, within the time period specified in this Agreement, provide notice to Developer of such additional time needed to respond.

Section 9.06. No Other Agreement. The Parties agree that, as required by the TIF Act, the Redevelopment Plan contains estimated Redevelopment Project Costs, the anticipated sources of funds to pay for Redevelopment Project Costs, the anticipated type and term of the sources of funds to pay Developer Reimbursable Project Costs, and the general land uses that apply to the Redevelopment Area. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Redevelopment Project, the payment of Redevelopment Project Costs, Developer Reimbursable Project Costs, payments from the Special Allocation Fund, and all other methods of implementing the Redevelopment Plan. The Parties further agree that this Agreement contains provisions that are in greater detail than as set forth in the Redevelopment Plan and that expand upon the estimated and anticipated sources and uses of funds to implement the Redevelopment Plan. Nothing in this Agreement shall be deemed an amendment of the Redevelopment Plan. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties. In the event of a conflict between this Agreement and the Redevelopment Plan Ordinance, the Site Plan, the Redevelopment Plan, the Redevelopment Plan or any other document pertaining to the Redevelopment Project, this Agreement shall control.

Section 9.07. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

Section 9.08. Missouri Law. This Agreement shall be construed in accordance with the laws of the State of Missouri.

Section 9.09. Notices. All notices and requests required pursuant to this Agreement shall be sent as follows:

To the City:

City of West Plains
City Hall
1910 Holiday Lane
West Plains, MO 65775
Attn: City Manager

With a copy to:

Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, Missouri 64108
Attn: Rich Wood

To the Developer:

Kozak Realty LLC
1806 Autumn Glen Court
Chesterfield, MO 63017
Attn: Steve Zang

With a copy to:

Lewis Rice LLC
600 Washington Ave., Suite 2500
St. Louis, Missouri 63101
Attn: David Brown

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 9.10. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 9.11. Recordation of Memorandum of Agreement. The Parties agree to execute and deliver a Memorandum of this Agreement in proper form for recording and/or indexing in the appropriate land or governmental records. Such Memorandum shall be recorded by the City, and proof of recording shall be provided to the Developer.

Section 9.12. Consent or Approval. Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld or unduly delayed.

Section 9.13. Tax Implications. The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this

Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

Section 9.14. 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 have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF WEST PLAINS, MISSOURI

By: _____
Jack Pahlmann, Mayor

[SEAL]

ATTEST:

Mallory Hawkins
City Clerk

STATE OF MISSOURI)
) ss.
COUNTY OF HOWELL)

BE IT REMEMBERED, that on this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Jack Pahlmann, Mayor of the City of West Plains, Missouri, a city duly incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such person duly acknowledged the execution of the same to be the free act and deed of said City.

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

[SEAL]

NOTARY PUBLIC

My Commission Expires:

KOZAK REALTY LLC

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
 COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of Kozak Realty LLC, a Missouri limited liability company, who is personally known to me to be the same person who executed the within instrument on behalf of Kozak Realty LLC, and such person duly acknowledged the execution of the same to be the free act and deed of Kozak Realty LLC.

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

[SEAL]

 NOTARY PUBLIC

My Commission Expires:

EXHIBIT A

MAP OF REDEVELOPMENT AREA

(see attached)



EXHIBIT B

LEGAL DESCRIPTION OF REDEVELOPMENT PROJECT AREA

ALL THAT PART OF THE SOUTH HALF OF SECTION 29, TOWNSHIP 24 NORTH, RANGE 8 WEST OF THE FIFTH PRINCIPAL MERIDIAN, HOWELL COUNTY, STATE OF MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT A STONE MARKING THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 29, THENCE MEASURE N0°46'47"E ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 156.26 FEET, TO AN IRON PIN ON THE NORTH RIGHT OF WAY LINE OF RAMSEUR FARM ROAD AS DEFINED BY PLS 2655 (2013R3951), FOR THE POINT OF BEGINNING; THENCE, N35°04'55"W A DISTANCE OF 678.08 FEET, TO AN IRON PIN; THENCE, N2°51'48"W A DISTANCE OF 506.43 FEET TO AN IRON PIN ON THE SOUTH RIGHT OF WAY LINE OF U.S. HWY 63 BYPASS; THENCE, S88°40'36"E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 118.25 FEET TO AN IRON PIN; THENCE, N85°44'00"E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 603.05 FEET TO A RIGHT OF WAY MARKER; THENCE, S88°37'43"E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 399.60 FEET TO AN IRON PIN; THENCE, S1°35'42"W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 9.88 FEET TO AN IRON PIN; THENCE, S88°35'53"E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 447.25 FEET TO AN IRON PIN; THENCE, S57°22'56"E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 175.26 FEET TO AN IRON PIN, SAID POINT ON THE WEST RIGHT OF WAY LINE OF RAMSEUR FARM ROAD AS DEFINED BY MODOT HIGHWAY PROJECT J9P2177RW (2011R3184); THENCE, S0°52'57"E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 281.25 FEET TO AN IRON PIN; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT A DISTANCE OF 807.37 FEET TO AN IRON PIN, SAID CURVE HAVING A RADIUS OF 525.00 FEET, A CHORD BEARING OF S45°25'25"W AND A CHORD DISTANCE OF 730.13; THENCE, S89°28'46"W ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 223.40 FEET TO AN IRON PIN; THENCE S0°31'13"E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 4.38 FEET TO AN IRON PIN ON THE NORTHWEST RIGHT OF WAY LINE OF RAMSEUR FARM ROAD AS DEFINED BY PLS 2655 (2013R3951); THENCE ALONG THE ARC OF A CURVE TO THE LEFT A DISTANCE OF 594.94 FEET, SAID CURVE HAVING A RADIUS OF 1050.50 FEET, A CHORD BEARING OF S72°21'36"W AND A CHORD DISTANCE OF 587.03 FEET, TO THE POINT OF BEGINNING, CONTAINING 33.51 ACRES, SUBJECT TO EASEMENTS AND RIGHTS OF WAY.

EXHIBIT C

MAP OF REDEVELOPMENT PROJECT AREA

(see attached)



EXHIBIT D
PROJECT BUDGET

(see attached)

	RPA 1		
Redevelopment Project Costs	Redevelopment Project Costs	Tax Increment / CID Funding	Developer Equity or Private Financing
Real Property Costs			
Land Acquisition	3,432,000		3,432,000
Subtotal	3,432,000		
Building Costs			
Building Costs	27,100,000		27,100,000
Subtotal	27,100,000		
Site Development Costs			
Site Improvements (mobilization, grading, etc)	2,400,000	2,400,000	
Utilities / Infrastructure Costs	1,100,000	1,100,000	
Subtotal	3,500,000		
Professional/Soft Costs			
Plans, studies, surveys	395,000	395,000	
Professional fees and soft costs	2,000,000	2,000,000	
Subtotal	2,395,000		
Other Costs			
Financing Costs	1,500,000	1,500,000	
Development Fees	1,500,000	1,500,000	
Contingency	3,000,000	2,105,000	895,000
Subtotal	6,000,000		
Total	42,427,000	\$ 11,000,000	\$ 31,427,000
% of Total		25.93%	74.07%

EXHIBIT E
PROJECT SCHEDULE

[Attach Schedule]

Redevelopment Project 1

Activity	Time for Performance
Developer shall have taken fee title to the property in Redevelopment Project 1 date	Within 18 months from the Of this Agreement
Developer shall have commenced construction of Work from the date	Within 24 months Of this Agreement
Developer shall have substantially completed Work (as evidenced By City's acceptance of the Certificate of Substantial Completion) the construction	Within 36 months following commencement of

EXHIBIT F

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

**CERTIFICATE OF SUBSTANTIAL COMPLETION
OF
KOZAK REALTY LLC**

The undersigned, Kozak Realty LLC (the “**Developer**”) under the Tax Increment Financing Redevelopment Agreement dated as of _____, 20____, between the City of West Plains, Missouri (the “**City**”) and the Developer (the “**Agreement**”), hereby certifies to the City as follows:

1. That as of _____, 20____, Redevelopment Project __ (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. Redevelopment Project __ has been completed in a good and workmanlike manner.
3. This Certificate of Substantial Completion is accompanied by the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as **Appendix A** and by this reference incorporated herein, certifying that Redevelopment Project __ has been substantially completed in accordance with the Agreement.
4. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to Redevelopment Project __.
5. The City’s acceptance (below) or the City’s failure to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate of Substantial Completion to the City (which written objection, if any, must be delivered to the Developer prior to the end of such thirty (30)-day period), and the recordation of this Certificate of Substantial Completion with the Howell County Recorder of Deeds, shall evidence the satisfaction of the Developer’s agreements and covenants to construct Redevelopment Project __.

This Certificate of Substantial Completion shall be recorded in the office of the Howell County Recorder of Deeds. This Certificate of Substantial Completion is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ____ day
of _____, _____.

KOZAK REALTY LLC,
a Missouri limited liability company

By: _____

Name: _____

Title: _____

ACCEPTED:

CITY OF WEST PLAINS, MISSOURI

By: _____

Name: _____

Title: _____

[Insert Notary Form(s) and Legal Description]

EXHIBIT G

FORM OF APPLICATION FOR REIMBURSABLE PROJECT COSTS

APPLICATION FOR REIMBURSABLE PROJECT COSTS

TO: City of West Plains, Missouri
Attention: City Manager

Re: Farm Road Tax Increment Financing Plan

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Tax Increment Financing Redevelopment Agreement dated as of _____, 20__ (the "Agreement") between the City of West Plains, Missouri (the "City") and Kozak Realty LLC (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on *Schedule 1* hereto is a Developer Reimbursable Project Cost and was incurred in connection with the construction of Redevelopment Project __.
2. These Developer Reimbursable Project Costs have been paid by the Developer and are reimbursable under the Redevelopment Plan Ordinance and the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the Special Allocation Fund and no part thereof has been included in any other Application previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the Work for which this application relates have been issued and are in full force and effect.
6. All Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. If any cost item to be reimbursed under this application is deemed not to constitute a Redevelopment Project Cost within the meaning of the TIF Act and the Agreement, the Developer shall have the right to substitute other eligible Developer Reimbursable Project Costs for payment hereunder.

8. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.

9. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

10. Construction of Redevelopment Project __ is in compliance with the Project Schedule set forth in **Exhibit E** to the Agreement, subject to any amendment or Excusable Delay.

Dated this ____ day of _____, 20____.

KOZAK REALTY LLC,
a Missouri limited liability company

By: _____

Name: _____

Title: _____

Approved for Payment this ____ day of _____, 20____:

CITY OF WEST PLAINS, MISSOURI

By: _____

Name: _____

Title: _____

Reimbursable Project Costs (RPC) Request For Payment

RPC Request Detail:				
Vendor Name	Date of Service	Date Paid by Developer	Project Budget Item (Exhibit F)	Requested Amount
			Total RPC Request	\$
The portion above is to be filled out by Developer.				
The portion below is to be filled out by the City.				
			RPC Approved - This Request	
			Previous RPC Approved/Paid To Date	
			Total Approved/Paid RPC To Date	\$
			Total Project Cost Cap	
			(less) Total Approved/Paid RPC To Date	
			Adjusted Total Project Cost Cap	
Approving Signature by City			Date	

