
COOPERATIVE AGREEMENT

among the

CITY OF LEE'S SUMMIT, MISSOURI,

the

PINE TREE COMMUNITY IMPROVEMENT DISTRICT,

and

NORTHERN STATES INVESTMENTS, LLC

dated as of

_____, 2017

COOPERATIVE AGREEMENT

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COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“Agreement”), entered into as of this ____ day of _____, 2017, by and among the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri (the “**City**”), the **PINE TREE COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri (“**District**” or “**CID**”), and **NORTHERN STATES INVESTMENTS, LLC**, a Missouri limited liability company (the “**Developer**”) (the City, the District and the Developer being sometimes collectively referred to herein as the “**Parties**”, and individually as a “**Party**”, as the context so requires).

WITNESSETH:

WHEREAS, the City Council of the City of Lee’s Summit, Missouri (the “**City Council**”), did on July 27, 2017, pass Ordinance No. 8216, which approved the formation of the District and the Petition to Establish the Pine Tree Community Improvement District (the “**Petition**”); and

WHEREAS, on _____, 2017, the City Council approved Ordinance No. _____, approving this Agreement and authorizing the City to execute and to enter into this Agreement; and

WHEREAS, on _____, 2017, the CID Board of Directors adopted Resolution No. _____ authorizing and directing the District to enter into this Agreement; and

WHEREAS, the District is authorized under the CID Act (defined below), subject to qualified voter approval, to impose a district-wide sales tax and to enter into this Agreement for the administration of the District Revenues; and

WHEREAS, Developer is the current owner of the real estate which is located within the District boundaries; and

WHEREAS, the Parties desire to set forth through this Agreement their respective duties and obligations with respect to the administration, enforcement, and operation of the District Sales Tax, the use of the District Revenues, and this Agreement.

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

ARTICLE 1

DEFINITIONS, RECITALS AND EXHIBITS

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

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

“**Action**” shall have the meaning set forth in **Section 8.4**.

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

“**Application for Reimbursement**” means the Application for Reimbursement in substantially similar form to **Exhibit D**, filed with the City by the Developer pursuant to **Section 6.3**.

“**CID Act**” means the Missouri Community Improvement District Act, Sections 67.1401, *et seq.*, RSMo, as amended.

“**CID Board of Directors**” means the governing body of the District.

“**CID Budget**” means the budget for the CID as set forth in **Exhibit C**.

“**CID Obligations**” means bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by the District pursuant to the CID Act, subject to the restrictions in **Section 7.1**.

“**CID Petition**” means the petition to establish the District, approved by the City Council on July 20, 2017, by Ordinance No. 8216.

“**City Council**” means the City Council of the City.

“**City Indemnified Parties**” shall have the meaning set forth in **Section 8.2**.

“**City Manager**” means the City Manager of the City.

“**County Assessor**” shall mean the County Assessor of Jackson County, Missouri.

“**Costs of Formation**” means those costs and expenses which are eligible to be paid under the CID Act and which are or have been incurred by or at the direction of the City, Developer, and the District and their staff and consultants in the process of preparing for the District, petitioning the City for formation of the District, considering the CID Petition, holding public meetings and hearings and forming the District, negotiating and approving this Agreement, and holding the first meeting of the District, including all activities through the conclusion of the first District meeting.

“**District Revenues**” means the monies actually collected, pursuant to this Agreement and the CID Act, from the imposition of the District Sales Tax.

“**District Sales Tax**” means the sales tax levied by the District on the receipts from the sale at retail of all tangible personal property or taxable services at retail within the District boundaries pursuant to the CID Act in the maximum amount of one percent (1.0%), as established by resolution of the District and approved by the qualified voters of the District, in accordance with this Agreement.

“**Event of Default**” means any event specified in **Section 8.1** of this Agreement.

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

“Governmental Authorities” or **“Governmental Authority”** means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence, that have jurisdiction over some or all of the Redevelopment Area and/or Redevelopment Project, including the City.

“Mayor” means the Mayor of the City.

“Operating Costs” means the actual, reasonable expenses which are necessary for the operation of the District which shall include, but are not limited to, costs associated with notices, publications, meetings, supplies, equipment, photocopying, the engagement of special legal counsel, financial auditing services performed for the District or the City on behalf of the District, and other consultants or services, and shall also include reasonable attorneys’ fees for the formation of the District.

“Redevelopment Area” means the property within the CID boundaries.

“Redevelopment Project” means the work undertaken by or at the direction of Developer or the District within the Redevelopment Area in accordance with the CID Petition.

“Reimbursable Project Costs” means those actual and reasonable costs and expenses of the Redevelopment Project which are set forth in the column labeled “CID Reimbursable” in the CID Budget.

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

ARTICLE 2

REPRESENTATIONS

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

A. The District is a community improvement district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the CID Act.

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

C. The Reimbursable Project Costs are authorized in the CID Petition.

D. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the performance of or compliance with the terms

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

E. The District acknowledges that the construction of the Redevelopment Project is of significant value to the District, the property within the District and the general public. The District finds and determines that the Redevelopment Project will promote the economic welfare and the development of the City and the State of Missouri through: (i) the creation of temporary and permanent jobs; (ii) stimulating additional development in the area near the CID; and (iii) increasing local and state tax revenues. Further, the District finds that the CID conforms to the purposes of the CID Act.

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

Section 2.2. Representations by the City. The City represents that:

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

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

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

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

A. The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required 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 in accordance with its terms.

B. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, 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. No litigation, proceedings or investigations are pending or, to the knowledge of the Developer, threatened against the Developer, any member of the Developer or the Redevelopment Project which litigation, proceedings or investigations would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described

in or contemplated by the execution, delivery, validity or performance by the Developer, the terms and provisions of this Agreement.

D. The Developer acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the state of Missouri. Developer therefore covenants, and will provide an affidavit from any general contractor directly employed by Developer to construct the Project attesting that it is not knowingly in violation of subsection 1 of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work related to this Agreement, and that its employees are lawfully eligible to work in the United States.

ARTICLE 3

REDEVELOPMENT PROJECT

Section 3.1. Redevelopment Project. Developer, or its successors and assigns, will undertake the Redevelopment Project in accordance with all Applicable Laws and Requirements and the CID Petition. The District is not authorized to make, and the Developer will not receive reimbursement for, any improvements or services other than those listed in the column labelled “CID Project Estimates” in the CID Budget attached hereto as Exhibit C.

Section 3.2. Removal of Blight. Developer, or its successors and assigns, shall clear blight or rehabilitate to eliminate the physical blight existing in the District boundaries, or make adequate provisions satisfactory to the City for the clearance of such blight. This obligation shall be a covenant running with the land and shall not be affected by any sale or disposition of the District boundaries. Any purchaser of property in the Redevelopment Area shall acquire title subject to this obligation insofar as it pertains to the land so acquired.

Section 3.3. Redevelopment Project Maintenance. So long as this Agreement is in effect, Developer, or its successor(s) in interest, as owner or owners of the affected portion(s) of the District, shall maintain or cause to be maintained the buildings and improvements within the Redevelopment Area which it owns in a good state of repair and in conformity with Applicable Laws and Requirements.

Section 3.4. Changes. Developer shall promptly notify the City in writing of any changes in the location of the principal place of business of Developer and of any other material adverse change in fact or circumstance directly affecting the Redevelopment Project.

Section 3.5. Use Limitations. Developer covenants that the uses within the District boundaries shall at all times be in accordance with Applicable Laws and Requirements, including the zoning and subdivision approvals granted by the City, and all conditions thereof, for the Redevelopment Area.

ARTICLE 4

TRANSFER OF THE REDEVELOPMENT AREA

Section 4.1. Sale to Third Party. If Developer proposes to sell, assign, transfer, convey and/or otherwise dispose of any property within the District boundaries, Developer shall insert in any document

transferring any interest in real property within the CID, and shall cause any transferee to insert language reasonably similar to the following, and shall have such document signed by the transferee indicating acknowledgment and agreement to the following provision:

Community Improvement District: Grantee acknowledges and consents that the Property is a part of the Pine Tree Community Improvement District (“District”) created by ordinance of the City of Lee’s Summit, Missouri (“City”), and that the District imposes a sales tax on eligible retail sales conducted within the District that will be applied toward the costs of the Redevelopment Project that provide a generalized benefit to all property within the District. Grantee shall, or shall cause any applicable tenant of Grantee, to forward to the City copies of its State of Missouri sales tax returns for the Property when and as they are filed with the Missouri Department of Revenue. Grantee hereby acknowledges and agrees that the City and the District are third party beneficiaries of the obligations in this paragraph and shall have a separate and independent right to enforce these reporting requirements.

Section 4.2. Lease to Third Party. Developer shall cause all leases of property in the District entered into after the date of this Agreement to contain a provision that is in substantial compliance with the following:

Community Improvement District: Tenant acknowledges and consents that the Leased Premises are a part of the Pine Tree Community Improvement District (“District”) created by ordinance of the City of Lee’s Summit, Missouri (“City”), that the District imposes a sales tax on Tenant’s eligible retail sales that will be applied toward the costs of the Redevelopment Project that will provide a generalized benefit to the Development. Tenant shall forward to the City copies of Tenant’s State of Missouri sales tax returns for its property located in the District when and as they are filed with the Missouri Department of Revenue. Tenant hereby acknowledges and agrees that the City and the District are third party beneficiaries of the obligations in this paragraph and shall have a separate and independent right to enforce these reporting requirements.

Section 4.3. Consent by Developer, Tenants and Transferees.

A. In complying with **Section 4.1** and **Section 4.2** above, the Parties acknowledge and agree that the lease or transfer document may also include an appropriate caveat indicating that language and requirements with respect to the District Sales Tax shall be of no force or effect unless and until the District Sales Tax is actually implemented in accordance with Petition and **Section 5.1**.

B. The Developer shall ensure that any documents transferring its interest in property located within the District shall make the obligations set forth in this Section a covenant running with the land that shall be enforceable against any purchaser, lessee or other transferee or possessor as if such purchaser, lessee or possessor were originally a party to and bound by this Agreement, which obligations shall only terminate upon the end of the term of the District.

C. Failure of the Developer to require that such restrictions be placed in any such lease/sales contract shall in no way modify, lessen or diminish the obligations and restrictions set forth herein relating to the District’s and the City’s rights of enforcement and remedies under this Agreement, or otherwise form the basis of a default on the part of the Developer hereunder.

ARTICLE 5

DISTRICT SALES TAX

Section 5.1. Imposition, Collection and Administration of the District Sales Tax. The CID Board of Directors shall adopt a resolution that (i) imposes the District Sales Tax within the District boundaries (subject to voter approval), and (ii) authorizes the City to perform all functions incident to the administration, enforcement and operation of the District Sales Tax. The District shall notify the Missouri Department of Revenue of the District Sales Tax and that the District authorizes the City, on behalf of the District, to receive from the Missouri Department of Revenue all of the District Revenues. The District Sales Tax shall be collected by the Missouri Department of Revenue as provided in the CID Act. The District official charged with formulating a budget for the District shall request that the CID Board of Directors appropriate the District Revenues in accordance with the budget, the CID Petition, and this Agreement.

Section 5.2. Costs of Formation and Operating Costs. The City and Developer have incurred Costs of Formation which are reimbursable pursuant to the CID Act and this Agreement. The City shall submit invoices to Developer for all Costs of Formation that have been incurred by the City, and such invoices will be paid by Developer to the City within thirty (30) days after receipt of such invoices. All payments to the City by Developer for the Costs of Formation incurred by the City, along with Costs of Formation incurred by Developer, may be reimbursed to Developer in the order of priority set forth in **Section 5.3** for reimbursement of the Costs of Formation. The Operating Costs of the District which are advanced by Developer on behalf of the District shall be reimbursed to Developer with District Revenues in the order of priority set forth in **Section 5.3** for payment and reimbursement of Operating Costs.

Section 5.3. Distribution of the District Revenues. Beginning in the first month following the effective date of the District Sales Tax and continuing each month thereafter until the expiration or repeal of the District Sales Tax, the District shall, not later than the fifteenth (15th) day of each month, distribute the District Revenues received in the preceding month in the following order of priority:

- A. The District shall pay the City an administration fee equal to 1.5% of District Revenues which are generated on an annual basis.
- B. The District shall pay the Operating Costs of the District and reimburse Developer for funds advanced by Developer for payment of Operating Costs.
- C. Developer shall be reimbursed for payment of the Costs of Formation.
- D. Payment of debt service or the CID Obligations authorized pursuant to **Section 7.1**.
- E. The District shall make reimbursement payments to the Developer for any Reimbursable Project Costs set forth in an approved Application for Reimbursement pursuant to **Section 6.3**, at such time as reimbursement is authorized pursuant to **Section 6.1**.

Section 5.4. Records of the District. Any District records pertaining to the District Sales Tax or the administration and operation of the District shall be provided to the City upon written request of the City, as permitted by law.

Section 5.5. Abolishment of District. Unless extended by mutual agreement of the Parties and in accordance with the CID Act, the District shall implement the procedures in the CID Act for repeal of the District Sales Tax and abolishment of the District upon the earlier of (A) the expiration of the District

Sales Tax in accordance with the District Sales Tax ballot measure as approved by the qualified electors of the District; or (B) the date that the Developer is reimbursed in full for its eligible Reimbursable Project Costs pursuant to **Article 6**. Upon repeal of the District Sales Tax, the District shall:

A. Pay all outstanding amounts set forth in **Section 5.3(A) – (E)**.

B. Retain any remaining District Revenues until such time as the District is abolished and the District has provided for the transfer of any funds remaining in a manner permitted by the CID Act.

Section 5.6. CID Board of Directors and Insurance.

A. The CID Board of Directors shall consist of five members, two of which will be representatives of the City.

B. All members of the CID Board of Directors shall meet all qualifications of the CID Act and the Missouri Constitution.

C. Successor members of the CID Board of Directors shall be appointed by the Mayor with the consent of the City Council as provided in the CID Petition and in compliance with Section 67.1451.5, RSMo. In the event of a vacancy on the CID Board of Directors, interim members will be elected by the remaining existing members of the CID Board of Directors in compliance with Section 67.1451.5, RSMo.

D. The District will maintain reasonable levels of directors and officers liability insurance throughout its existence.

Section 5.7. Pledge of District Revenues and Collateral Assignment of Agreement to Lender. Developer shall have the right to pledge its right to receive any District Revenues under this Agreement to its construction or permanent lender for the Redevelopment Project. Upon Developer's request, the City will send any such revenues to such lender directly until Developer directs otherwise. Developer shall also have the right to collaterally assign its rights and obligations under the Agreement to such lender.

Section 5.8. Notification of Sales Tax. Upon the District Sales Tax becoming effective, the District shall notify all existing tenants within the Redevelopment Area of the requirement to impose the District Sales Tax on the tenant's eligible retail sales.

ARTICLE 6

REIMBURSEMENTS TO DEVELOPER

Section 6.1. Requirements of and Limitations on Reimbursement to Developer.

A. Developer, or its successors and assigns, will develop and construct the Redevelopment Project in accordance with the CID Petition. The Developer shall only receive reimbursement for Reimbursable Project Costs, plus Costs of Issuance in accordance with Article 7 and the Maximum Interest Reimbursement in accordance with **Section 6.3.D**.

B. The District shall reimburse the Developer for Reimbursable Project Costs approved by the City pursuant to **Section 6.3**, and subject to the limitations set forth in this Section. Reimbursable Project Costs shall be reimbursed from available District Revenues and from no other source of funds. The

City shall review and certify Reimbursable Project Costs in accordance with the procedures for review of reimbursement requests as set forth in **Section 6.3**. Neither the District nor the City will have any obligation to design and construct the Redevelopment Project.

C. The maximum amount of District Revenues used to reimburse Developer for Reimbursable Project Costs shall be \$2,410,225, excluding any District Revenues used to reimburse Developer for Costs of Formation, Operating Costs, indemnification costs as set forth in **Section 8.2**, and interest as set forth in **Section 6.3(D)** (the “**Maximum Amount**”).

D. The Developer shall not be entitled to receive reimbursement of any certified Reimbursable Project Costs until issuance of a Certificate of Completion of Construction in substantially the form as **Exhibit E** for the Redevelopment Project is issued by the City.

Section 6.2. District’s Obligation to Reimburse Developer. The Parties agree that reimbursement of Reimbursable Project Costs will occur on a “pay as you go” basis as District Revenues are collected by the District in accordance with this Agreement. The District will only reimburse the Developer for Reimbursable Project Costs which may lawfully be paid or incurred by the District under the CID Act, which become reimbursable under the conditions and restrictions in **Section 6.1**, and which are approved pursuant to **Section 6.3**.

Section 6.3. Reimbursement Application Process.

A. The District appoints the City as its agent to administer the reimbursement application process. All requests for reimbursement of Reimbursable Project Costs shall be made by the Developer to the City in an Application for Reimbursement in substantially the form as **Exhibit D**. Each Application for Reimbursement shall include itemized invoices, receipts or other information, if any, reasonably requested by the City to confirm that each cost identified in the Application for Reimbursement has been incurred and qualifies for reimbursement pursuant to the CID Act and this Agreement.

B. The District will not reimburse the Developer for any cost that is not eligible for reimbursement under the CID Act or the CID Petition.

C. The Developer may submit an Application for Reimbursement to the Finance Director not more often than once each calendar month. The City shall either accept or reject each Application for Reimbursement within thirty (30) days after the submission thereof. If the City determines that any cost identified as a Reimbursable Project Cost is not eligible for reimbursement under the CID Act, the CID Petition or this Agreement, 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 identify and substitute other costs for reimbursement with a supplemental application for payment, subject to the limitations of this Agreement. The City may also request such additional information from the 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 the 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 Reimbursement that the City determines to be eligible.

D. After the City approves an Application for Reimbursement, interest shall accrue at a rate not to exceed the United States Department of Treasury Daily Long-Term Composite Rate from the date the City approves an Application for Reimbursement of Reimbursable Project Costs until such costs are actually reimbursed with District Revenues (the “**Maximum Interest Reimbursement**”).

ARTICLE 7

ISSUANCE OF OBLIGATIONS

Section 7.1. Issuance. The District may authorize the issuance of CID Obligations upon written approval of the City subject to the following restrictions:

A. The final maturity date of the CID Obligations shall be no more than twenty (20) years from the date of issuance or the expiration of the term of the District, whichever is sooner.

B. The maximum principal amount of the CID Obligations shall not exceed \$2,410,225, plus costs of issuance.

C. Reimbursement of interest on CID Obligations shall be limited to the Maximum Interest Reimbursement.

ARTICLE 8

RELEASE AND INDEMNIFICATION

Section 8.1. Survival of Termination. The indemnification and covenants contained in this Article shall survive expiration or earlier termination of this Agreement.

Section 8.2. Developer Indemnity. The Developer hereby agrees that, anything to the contrary herein notwithstanding, it will defend, indemnify and hold harmless the City, its governing body members, employees and agents (collectively, the “**City Indemnified Parties**”) against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys’ fees and court costs) to the extent resulting from, arising out of, or in any way connected with (i) the Developer’s failure to comply with any provision of this Agreement, (ii) the gross negligence or intentional misconduct of the Developer, an affiliate of the Developer, or their respective officers, employees and agents in connection with this Agreement and the Redevelopment Project (iii) the presence of hazardous wastes, hazardous materials or other environmental contaminants on any property within the District or the Redevelopment Area, or (iv) otherwise arising out of the construction of the Redevelopment Project or the administration of this Agreement. If the validity or construction of the CID Act and/or any other ordinance of the City adopted in connection with this Agreement or the CID Petition are contested in court, the Developer shall defend, hold harmless and indemnify the City from and against all claims, demands and/or liabilities of any kind whatsoever including, without limitation, any claim for attorney fees and court costs, and the Developer shall pay any monetary judgment and all court costs rendered against the City, if any. Any costs, fees, and expenses paid by Developer under this **Section 8.2** shall be Reimbursable Project Costs; provided that, if the event or circumstances giving rise to the claim against the City is due to the failure of the Developer or its contractors to comply with applicable Legal Requirements related to the construction of the Redevelopment Project or otherwise caused by the Developer’s gross negligence or intentional misconduct, no such costs, fees, and expenses paid by Developer under this **Section 8.2** shall be reimbursable.

Section 8.3. District Indemnity. The District hereby agrees, to the extent permitted by law, that it will defend, indemnify and hold harmless the City Indemnified Parties and the Developer, its officers, employees and agents against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys’ fees and court costs) to the extent resulting from, arising out

of, or in any way connected with (i) the District's failure to comply with any provision of this Agreement, or (ii) the negligence or intentional misconduct of the District or its officers, employees and agents.

Section 8.4. Notification. If any suit, action, investigation, claim or proceeding (collectively, an "Action") is threatened, initiated or made as a result of which the Developer or the District may become obligated to one or more of the City Indemnified Parties hereunder, any one of the applicable City Indemnified Parties shall give prompt notice to the Developer and the District of the occurrence of such event. After receipt of such notice, the Developer or the District, as applicable, at their cost, shall defend, contest and otherwise protect the City Indemnified Parties against the Action utilizing counsel of the Developer's choice. The City Indemnified Parties shall cooperate in good faith with the Developer and its counsel in the defense of an Action. The Developer shall provide to the City regular periodic reports on the status of such Action. If the indemnifying party fails to timely 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 to hire the counsel of their choice, and, if such defense is undertaken by the City Indemnified Parties after notice to the Developer and the District asserting the failure of the Developer, or the District, as applicable, to timely defend, contest or otherwise protect against such Action, the cost of such defense shall be at the expense of the Developer or the District, as applicable.

Section 8.5. Settlements. All proposed settlements to any Action shall be subject to the mutual approval of the Developer or the District, as applicable, and the applicable City Indemnified Parties. Neither the Developer nor the District, as applicable, nor the City Indemnified Parties, will unreasonably withhold their consent to a proposed settlement.

Section 8.6. Invalidity of Proceedings. Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer or the District for damages or otherwise if all or any part of the CID Act, the ordinance approving the CID Petition, and/or any other ordinance of the City adopted in connection with this Agreement, the Redevelopment Project, or the CID Petition is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction. If, as a result of a final judgment, the revenue mechanisms and/or the reimbursements to the Developer contemplated by this Agreement cannot be implemented, the City and the District agree, subject to any necessary future legislative approvals by the City Council or CID Board of Directors, as applicable, to make good faith efforts to take all actions necessary to remedy any deficiencies and effectuate the intent of this Agreement.

ARTICLE 9

DEFAULTS AND REMEDIES

Section 9.1. Default and Remedies. An "Event of Default" shall occur upon the failure by any Party in the performance of any covenant, agreement or obligation imposed or created by this Agreement and the continuance of such failure for fifteen (15) days after the other Party has given written notice to such Party specifying such failure.

If any Event of Default has occurred and is continuing, then any non-defaulting party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting party and its officers, agents and employees, and require and compel duties and obligations required by the provisions of this Agreement (except that in no event shall the City enjoin the Developer to undergo any construction).

Section 9.2. Rights and Remedies Cumulative. The rights and remedies maintained by any Party under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. Any Party shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and any Party hereby waives the right to raise such defense in any proceeding in equity.

Section 9.3. Waiver of Breach. No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting Party may nevertheless accept from the defaulting party, any payment or payments without in any way waiving the non-defaulting party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting party.

Section 9.4. Excusable Delays. No Party shall be deemed to be in default of this Agreement because of Excusable Delays. Excusable Delays shall extend the time of performance for the period of such Excusable Delay.

ARTICLE 10

MISCELLANEOUS

Section 10.1. Effective Date and Term. This Agreement shall become effective on the date this Agreement has been fully executed by the Parties ("**Effective Date**"). This Agreement shall remain in effect for as long as the District is legally in existence.

Section 10.2. Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement among the City, the District and the Developer. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

Section 10.3. Jointly Drafted. The Parties agree that this Agreement has been jointly drafted and shall not be construed more strongly against another Party.

Section 10.4. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

Section 10.5. Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 10.6. Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 10.7. City Approvals. Unless specifically provided to the contrary herein, all approvals of the City hereunder may be given by the City Manager or his or her designee without the necessity of any action by the City Council. The City Manager may seek the advice and consent of the City Council before granting any approval.

Section 10.8. Relationship. In the performance of this Agreement, the Developer shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making the Developer a partner, joint venturer with, or agent of, the City. The City and the Developer agree that neither party will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the City and the Developer.

Section 10.9. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the Parties.

Section 10.10. Reserved.

Section 10.11. Limit on Liability. The Parties agree that:

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

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

Section 10.12. Headings. Headings of articles and sections are inserted only for convenience and are in no way to be construed as a limitation or expansion on the scope of the particular articles, sections or subsections to which they refer. Words in the singular shall include the plural, and vice versa, where appropriate.

Section 10.13. Notices. Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally or by a reputable overnight delivery service to all parties listed below. Mailed notices shall be deemed effective on the third day after mailing and all other notices shall be effective when delivered.

To the City:

City of Lee's Summit, Missouri
220 SE Green
Lee's Summit, Missouri 64063
Attn: City Manager

With a copy to:

Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, Missouri 64108
Attn: David W. Bushek, Esq
dbushek@gilmorebell.com

To the District:

Pine Tree Community Imp. District
c/o Development Dynamics, LLC
1001 Boardwalk Springs Place, Suite 50
O'Fallon, MO 63368

To the Developer:

Northern States Investments, LLC
601 E South
Ozark, Missouri 65721
Attention: Trent Overhue

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

Section 10.14. Waiver. The failure of either Party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either Party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party.

Section 10.15. Tax Implications. The Developer and the District acknowledge and represent that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents have provided to the Developer or the District any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer and the District are relying solely upon their own tax advisors in this regard.

Section 10.16. Exhibits. All exhibits which are attached or referred to in this Agreement are specifically incorporated herein by reference and form an integral part hereof.

Section 10.17. Agreement to Control. In the event of any conflict between the terms of this Agreement and any other agreements between the City and the Developer or the District, the provisions of this Agreement shall control and supersede the conflict.

Section 10.18. 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 Developer, and proof of recording shall be provided to the City.

Section 10.19. Estoppel. Upon Developer's request, the City shall deliver a written instrument to Developer or any other person, firm or corporation specified by Developer, duly executed and acknowledged, certifying that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modifications; whether or not Developer has observed and performed all of the terms, covenants and

conditions on the part of Developer to be observed and performed, and if not, specifying the same; and such other matters as reasonably requested by Developer.

[Remainder of this page intentionally left blank]

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

CITY OF LEE’S SUMMIT, MISSOURI

By: _____
Randall L. Rhoads
Mayor

[SEAL]

ATTEST:

Denise R. Chisum
City Clerk

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

On this ____ day of _____, 2017, before me appeared Randall L. Rhoads, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the **CITY OF LEE’S SUMMIT, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said Randall L. Roads acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

[SEAL]

DISTRICT:

PINE TREE COMMUNITY IMPROVEMENT
DISTRICT

By: _____
Chairman

ATTEST:

Secretary

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF MISSOURI)

) ss

COUNTY OF JACKSON)

On this ____ day of _____, in the year 2017, before me, a Notary Public in and for said state, personally appeared the Chairman of the Pine Tree Community Improvement District, known to me to be the person who executed the within Intergovernmental Cooperative Agreement on behalf of the Pine Tree Community Improvement District and acknowledged to me that he executed the same for the purposes therein stated.

Subscribed and affirmed before me this ____ day of _____, 2017.

Notary Public

My Commission Expires:

DEVELOPER:

NORTHERN STATES INVESTMENTS, LLC

By: _____
Trent Overhue, _____

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

On this ___ day of _____, in the year 2017, before me, a Notary Public in and for said state, personally appeared Trent Overhue, the _____ of Northern States Investments, LLC, a Missouri limited liability company, known to me to be the person who executed the within Intergovernmental Cooperative Agreement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

Subscribed and affirmed before me this ___ day of _____, 2017.

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF CID AREA

TRACT 1: A tract of land in the Northeast quarter of Section 7, Township 47, Range 31, in Lee's Summit, Jackson County, Missouri, more particularly described as follows:

Commencing at the Southwest corner of the East one half of the Northeast Quarter of said Section 7; thence North 0 degrees 00 minutes 00 Seconds East, along the West line of the East one half of said Northeast Quarter of said Section 7, 990.24 feet to a point on the West line of Mission Road, said point being the Southeast corner of Lot 116, of Lots 109 to 117, BAYLES ADDITION, a subdivision in the City of Lee's Summit, Jackson County, Missouri and being the Northeast corner of the second of the two tracts described in Document No. I-584524 in Book I-1341 at page 1036, and being the point of beginning; thence South 0 degrees 00 minutes 00 seconds East along the West line of the East one half of the Northeast quarter of said Section 7 and the West line of Mission Road, a distance of 74.83 feet to the Northwest corner of the tract as described in Document No. I-584525 in Book I-1341 at page 1037; thence North 88 degrees 45 minutes 20 seconds East, along the North line of said tract, 789.36 feet to the Northeast corner of said tract; thence South 1 degree 14 minutes 40 seconds East, along the East line of said tract, 102.01 feet to the Northwest corner of the tract as described in document No. I-604652 in Book I-1380 at Page 2240; thence North 88 degrees 45 minutes 20 seconds East, along the North line of said tract, 125.07 feet; thence North 1 degree 14 minutes 40 seconds West, along said Northerly line, 11.00 feet thence North 88 degrees 45 minutes 29 seconds East, along said Northerly line 101.07 feet to the Northeast corner of said tract, and being on the West line of Jefferson Street; thence South 5 degrees 06 minutes 12 seconds East, along the West line of Jefferson Street, 169.90 feet to the Southeast corner of the tract as described in Document No. 678928 in Book 1226 at Page 318 thence South 88 degrees 45 minutes 20 seconds West, along the south line of said tract, 300.00 feet to the Southwest corner of said tract and being on the East line of the tract as described in Document No. I-5584524 in Book I-1341 at Page 1036; thence South 5 degrees 06 minutes 12 seconds East, along said East line and the East line of the tract as described in Document No. I-344326 in Book I-867 at Page 1796, 323.75 feet to the Southeast corner of said tract and the Northerly right-of-way line of U.S. Highway 50; thence South 87 degrees 41 minutes 37 seconds West along said Northerly right-of-way line, 9.91 feet; thence South 87 degrees 56 minutes 47 seconds West, along said Northerly right-of-way line 179.91 feet thence North 80 degrees 08 minutes 13 seconds West along said Northerly right-of-way line, 199.27 feet; thence North 62 degrees 52 minutes 34 seconds West along said Northerly right-of-way line, 689.64 feet; thence continuing along said Northerly right-of-way line Northwesterly on a 5,663.62 feet radius chord curve to the right at a distance of 271.94 feet (long Chord = North 61 degrees 16 minutes 58 seconds West 271.91 feet) to a point on a curve on the Easterly line of Madison Street; thence Northeasterly on a 193.27 feet radius curve to the left a distance of 281.01 feet (Long chord = North 49 degrees 50 minutes 23 seconds East 256.90 feet) along the East line of said Madison Street to the Southwest corner of Lot 117 of Lots 109 to 117, BAYLES ADDITION said being the Northwest corner of the second of the two tracts described in Document: No. I-58424 in Book I-1341 at Page 1036; thence North 89 degrees 23 minutes 32 seconds East, along the South line of Lots 117 and 116 a distance 280.63 feet to the Point of Beginning except the following described tract.

TRACT 2: A parcel of land in the East half of the Northeast quarter of section 7, Township 47, Range 31, Jackson County, Missouri described as commencing at the Southwest corner of said East half, thence North 00 degrees 00 minutes 00 seconds East along the West line of said East half a distance of 567.86 feet to the North right-of-way line of Missouri U.S. Highway 50; thence South 62 degrees 52 minutes 34 seconds East along said Right-of-way line a distance at 180.64 feet to the Point of Beginning; thence North 27 degrees 05 minutes 39 seconds East a distance of 112.00 feet; thence South 62 degrees 52 minutes 34 seconds East a distance of 75.25 feet; thence South 27 degrees 05 minutes 39 seconds West a distance of 112.00 feet to the North right-of-way line Missouri U.S. Highway 50; thence North 62 degrees 52 minutes 34 seconds West along said right-of-way line a distance of 75.25 feet to the Point of Beginning.

EXHIBIT B
DEPICTION OF CID AREA



EXHIBIT C
CID BUDGET

Pine Tree Community Improvement District Project Estimates

Description	Total Project Cost	
	Estimates	CID Project Estimates
Acquisition of Land and Existing Buildings	\$ 3,937,000	
Exterior Improvements:		
Front Façade	\$ 1,690,000	\$ 1,690,000
Roofing	\$ 595,380	\$ -
Paving and Landscaping:		
Parking Lot	\$ 221,225	\$ 221,225
Signage - at front of center	\$ 49,000	\$ -
Signage - along Jefferson	\$ 35,000	\$ -
Landscape	\$ 150,000	\$ -
Lighting	\$ 150,000	\$ -
Handicap/Repair broken curbing	\$ 105,000	\$ 105,000
Site Work	\$ 50,000	\$ -
Storm Water Improvements	\$ 35,000	\$ -
Current Price Chopper into Three Suites		
Demo, New HVAC, Gas, Electric, Sewer, Water Meters, Restrooms for each Suite, Concrete Flooring, Dividing Walls, Divide out building into two separate tenants and get to white box condition	\$ 1,125,000	
Vacant Unit Improvements:		
Suite 276, 280, 286, 298	\$ 100,000	
Suite 300 - Planet Fitness	\$ 300,000	
Suite 300 - Harbor Fitness	\$ 250,000	
Suite 300 - Middle Section	\$ 200,000	
Suite 306, 316, 318, 324, 340, 354	\$ 255,000	
Interior Improvements		\$ 394,000
Capitalized Interest (From to)		
Cost of Issuance (i.e. accounting, legal, etc.)		
Contingency/Professional Fees	\$ 60,000	\$ -
Total Project Costs	\$ 9,307,605	\$ 2,410,225

25.9%

EXHIBIT D

FORM OF APPLICATION FOR REIMBURSEMENT

APPLICATION FOR REIMBURSEMENT

TO: City of Lee’s Summit, Missouri
Attention: Mayor

Re: Pine Tree Community Improvement District

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Cooperative Agreement dated as of _____, 2017 (the “Agreement”) among the City of Lee’s Summit, Missouri (the “City”), the Pine Tree Community Improvement District and Northern States Investments, 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 Reimbursable Project Cost and was incurred in connection with the construction of Redevelopment Project.
2. These Reimbursable Project Costs have been paid by the Developer and are reimbursable under the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the District Revenues 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 Reimbursable Project Cost within the meaning of the Agreement, the Developer shall have the right to substitute other eligible 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 an 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.

Dated this _____ day of _____, 20____.

NORTHERN STATES INVESTMENTS, LLC

By: _____

Name: _____

Title: _____

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

CITY OF LEE'S SUMMIT, MISSOURI

By: _____

Name: _____

Title: _____

EXHIBIT E

FORM OF CERTIFICATE OF COMPLETION OF CONSTRUCTION

CERTIFICATE OF COMPLETION OF CONSTRUCTION

The undersigned, NORTHERN STATES INVESTMENTS, LLC (the “Developer”), pursuant to that certain COOPERATIVE AGREEMENT (the “Cooperative Agreement”) effective as of the _____ day of _____, 2017, by and between the CITY OF LEE’S SUMMIT, MISSOURI (the “City”), a constitutional charter city and political subdivision duly organized and existing under the Constitution and laws of the State of Missouri, and Developer, hereby certifies to the City as follows:

1. That as of _____, 20____, the construction of the Redevelopment Project (as such term is defined in the Cooperative Agreement) has been completed in accordance with the Cooperative Agreement.
2. The Redevelopment Project has been completed in a good and workmanlike manner and in accordance with the plans and specifications of the City.
3. The Redevelopment Project has achieved substantial completion as defined in the principal construction contract.
4. This Certificate of Completion of Construction is being issued by the Developer to the City in accordance with the Cooperative Agreement to evidence the Completion of Construction and the Developer’s satisfaction of all obligations and covenants with respect to constructing the Redevelopment Project.

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

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

**NORTHERN STATES INVESTMENTS,
LLC,**
a Missouri limited liability company

By: _____
Name: _____
Title: _____

ACCEPTED:

CITY OF LEE'S SUMMIT, MISSOURI

By: _____

Name: _____

Title: _____

(Insert Notary Form(s) and Legal Description)