

**TAX INCREMENT FINANCING CONTRACT**

**BETWEEN**

**THE CITY OF LEE'S SUMMIT, MISSOURI**

**and**

**STREETS OF WEST PRYOR, LLC**

**for the**

**STREETS OF WEST PRYOR TAX INCREMENT FINANCING PLAN**

**January 8, 2019**

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## TAX INCREMENT FINANCING CONTRACT

**THIS TAX INCREMENT FINANCING CONTRACT** (the “**Contract**”) is made and entered into as of the 8<sup>th</sup> day of January, 2019 (the “**Effective Date**”), by and between THE CITY OF LEE’S SUMMIT, MISSOURI (“**City**”), and STREETS OF WEST PRYOR, LLC, a Missouri limited liability company, the developer selected by the City (“**Developer**”) to implement its plan of redevelopment more fully described herein.

### RECITALS

1. On November 19, 2018, the Tax Increment Financing Commission of Lee’s Summit, Missouri (the “**Commission**”), recommended that the City approve the Streets of West Pryor Tax Increment Financing Plan (the “**Redevelopment Plan**”) and on January 8, 2019, the City Council of the City (the “**City Council**”) approved the Redevelopment Plan and the redevelopment project described therein pursuant to Ordinance No. \_\_\_ for the area described in the Redevelopment Plan as the Redevelopment Area (the “**Redevelopment Area**”).

2. Pursuant to Ordinance No. \_\_\_, the City Council further determined that the Redevelopment Area is a Blighted Area and that it met the other applicable requirements of Missouri’s Real Property Tax Increment Allocation Redevelopment Act Sections 99.800 to 99.865, RSMo (the “**Act**” or “**TIF Act**”), selected Streets of West Pryor, LLC, as the developer to implement the Redevelopment Plan, and authorized City to enter into a contract with Streets of West Pryor, LLC, as the developer for the implementation of the Redevelopment Project described in the Redevelopment Plan.

3. The Redevelopment Plan provides for the construction of the Redevelopment Project which will consist of the uses approved in the Preliminary Development Plan, which are set forth in **Exhibit C**. The parties acknowledge that the Preliminary Development Plan may be amended in accordance with the UDO, and such amendment of the Preliminary Development Plan shall control the land uses within the Redevelopment Project Area.

4. Pursuant to Ordinance No. \_\_\_, the Redevelopment Project Area has been approved and tax increment financing has been activated therein in conformance with the TIF Act.

### AGREEMENT

Now, therefore, for and in consideration of the premises, and the mutual covenants herein contained, City and Developer agree as follows:

#### ARTICLE 1: RULES OF INTERPRETATION AND DEFINITIONS

**Section 1.01. Rules of Interpretation.** Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Contract:

A. The terms defined in this Contract which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided, that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement other than in accordance with **Section 6.05** of this Contract.

B. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Contract shall refer to this Contract as a whole and not to any particular provision of this Contract. Section, subsection and exhibit references are to this Contract unless otherwise specified. Whenever an item or items are listed after the words “including” and/or “include(s)”, such listing is not intended to be a listing that excludes items not listed.

C. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, limited liability companies, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

D. The table of contents, captions and headings in this Contract are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Contract.

**Section 1.02. Definitions.** All capitalized words or terms used in this Contract that are not otherwise defined in this Contract but are defined in the Redevelopment Plan shall have the meaning ascribed to them in the Redevelopment Plan. In addition thereto and in addition to words and terms defined elsewhere in this Contract, the following words and terms shall have the meanings ascribed to them in this **Section 1.02** unless the context in which such words and terms are used clearly requires otherwise.

“**Acquisition Costs**” shall have the meaning set forth in **Section 2.05**.

“**Actual Private/Public Ratio**” shall have the meaning set forth in **Section 4.07**.

“**Action**” shall have the meaning set forth in **Section 6.01**.

“**Administrative Costs**” means all documented costs and expenses reasonably incurred by the City, and to be paid for as provided in Section 6.11, for planning, legal, financial, auditing, administrative and other costs associated with the review, consideration, approval and implementation of the Redevelopment Plan, this Contract and the Redevelopment Project, including all documented in-house costs and all consultants costs engaged by the City.

“**Affiliate**” means any person, entity or group of persons or entities which controls a party, which a party controls or which is under common control with a party. As used herein, the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

“**Age-Restricted Apartments**” means the apartment structure to be constructed on Lot 6 of the Preliminary Development Plan.

“**Annual Rate of Return**” shall have the meaning set forth in **Section 4.06**.

“**Apartments**” means the apartment structure to be constructed on Lot 7 of the Preliminary Development Plan exclusive of any commercial space in the apartment structure.

“**Approved Private/Public Ratio**” shall have the meaning set forth in **Section 4.07**.

**“Assignment Agreement”** shall have the meaning set forth in **Section 5.03**.

**“Available Revenues”** means all of the revenue sources that may be pledged to repay Obligations pursuant to the approvals granted by or at the direction of the City Council including the TIF Revenues, CID Revenues, the TDD Revenues and the Hotel Revenues.

**“Bond Documents”** means the trust indenture, purchase contract, official statement, tax compliance agreement, continuing disclosure agreement, and such other contracts, statements, certificates, memoranda and opinions that may be executed or delivered in connection with the issuance of Obligations.

**“Bond Trustee”** means the bank or trust company designated as such in any Bond Documents.

**“Blighted Area”** means an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.

**“Budgeted Private Sources”** shall have the meaning set forth in **Section 4.07**.

**“Budgeted Public Sources”** shall have the meaning set forth in **Section 4.07**.

**“Certification Application”** shall have the meaning set forth in **Section 4.01**.

**“Chapter 100”** shall have the meaning set forth in **Section 3.07**.

**“Chapter 100 Apartments Project”** shall have the meaning set forth in **Section 3.07**.

**“Chapter 100 Bonds”** shall have the meaning set forth in **Section 3.07**.

**“Chapter 100 Commercial Project”** shall have the meaning set forth in **Section 3.07**.

**“Chapter 100 Incentives”** shall have the meaning set forth in **Section 3.07**.

**“CID”** means the Streets of West Pryor Community Improvement District established by Ordinance No. \_\_\_ that was approved by the City Council on January 8, 2019.

**“CID Act”** means the Missouri Community Improvement District Act, Section 67.1401, et. seq., of the Revised Statutes of Missouri, as amended.

**“CID Improvements”** shall have the meaning set forth in **Section 3.05**.

**“CID Obligations”** means bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by the CID, the City, the IDA or any other issuer designated by or on behalf of the City, which are to be repaid using revenues of the CID, whether issued to provide funds to carry out a portion of the projects described in the Redevelopment Plan and CID Contract, or to refund outstanding Obligations; and includes an allocable portion of Obligations to be repaid from CID Revenues.

**“CID Public Project Improvements”** means those improvements described as such on **Exhibit F**.

“**CID Revenues**” shall have the meaning set forth in **Section 3.05**.

“**CID Sales Tax**” shall have the meaning set forth in **Section 3.05**.

“**City**” means the City of Lee’s Summit, Missouri.

“**City Council**” means the governing body of Lee’s Summit, Missouri.

“**City Engineer**” means the city engineer of Lee’s Summit, Missouri.

“**City Manager**” means the City Manager of Lee’s Summit, Missouri.

“**City Public Project Improvements**” means those improvements described as such on **Exhibit F**.

“**City Reimbursable Project Costs**” means those Reimbursable Project Costs that are capital improvement project costs incurred by the City in connection with the City Public Project Improvements, if any, that were originally expected to be constructed by Developer but which are subsequently constructed by the City by mutual agreement of the City and Developer, with such costs being separate and distinct from Administrative Costs.

“**City Treasurer**” means the Finance Director of Lee’s Summit, Missouri.

“**Commission**” means the Tax Increment Financing Commission of Lee’s Summit, Missouri.

“**Contingency**” shall have the meaning set forth in **Section 4.01** .

“**County**” means Jackson County, Missouri.

“**County Assessor**” means the assessor of Jackson County, Missouri.

“**County Collector**” means the collector of Jackson County, Missouri.

“**Debt Service**” means the amount required for the payment of interest and principal on the Obligations as they come due, including payment of mandatory, optional or special redemption payments and payments to reserve funds required by the terms of the Obligations to retire or secure the Obligations.

“**Developer**” means Streets of West Pryor, LLC, its successors and assigns, subject, however, to the provisions of **Section 5.06** hereof.

“**Developer Controlled Improvements**” shall have the meaning set forth in **Section 2.07**.

“**Developer Fee**” shall have the meaning set forth in **Section 3.12**.

“**Developer Public Project Plans**” shall have the meaning set forth in **Section 2.05**.

“**Developer Reimbursable Cost Categories**” shall have the meaning set forth in **Section 4.01**.

“**Economic Activity Account**” means the separate segregated account within the Special Allocation Fund into which Economic Activity Taxes are to be deposited.



**“Economic Activity Taxes”** or **“EATS”** means fifty percent (50%) of the total additional revenue from taxes which are imposed by City or other Taxing Districts, which are generated by economic activities within the Redevelopment Project Area while tax increment financing remains in effect in such area, excluding any 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 other than payments in lieu of taxes and penalties and interest thereon, personal property taxes, and taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo., and the sales tax imposed by Jackson County, Missouri to fund improvements to the stadium sports complex, until the designation of the Redevelopment Area as a “redevelopment area” for purposes of the Act is terminated pursuant to Subsection 2 of Section 99.850 of the Act.

**“Excusable Delay”** shall have the meaning set forth in **Section 6.03**.

**“Financing Plan”** shall have the meaning set forth in **Section 3.01**.

**“Hotel Revenues”** means the revenue generated by the City’s 1.0% general sales tax imposed upon rents and charges for sleeping rooms which are paid by transient guests within the Redevelopment Project Area for a period not to exceed the lesser of (a) 30 years from the Effective Date or (b) the date that all Obligations and Reimbursable Project Costs have been repaid.

**“IDA”** means The Industrial Development Authority of the City of Lee’s Summit, Missouri.

**“Indemnified Party”** or **“Indemnified Parties”** shall have the meaning set forth in **Section 6.01**.

**“Land Use Approvals”** means those approvals required pursuant to the UDO and those ordinances approving the Preliminary Development Plan and all other subsequent zoning approvals which are required for the construction of the Redevelopment Project.

**“Legal Requirements”** means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by 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 and specifically including but not limited to all ordinances, rules and regulations of the City, such as zoning ordinances, subdivision ordinances, building codes, property maintenance codes, and City’s Design and Construction Manual (Ordinance No. 3719).

**“Master Chapter 100 Plan”** shall have the meaning set forth in **Section 3.07**.

**“Necessary Right-of-Way”** shall have the meaning set forth in **Section 2.05**.

**“Obligations”** means the TIF Obligations, the CID Obligations, and/or the TDD Obligations.

**“Ordinance”** means an ordinance enacted by the City Council.

**“Outside Completion Date”** shall have the meaning set forth in **Section 2.04**.

**“Payment in Lieu of Taxes”** or **“PILOTS”** means those estimated revenues from real property in the Redevelopment Project Area, which revenues are to be used to retire Obligations and pay other

Reimbursable Project Costs, which Taxing Districts would have received had the City not adopted tax increment allocation financing, and which would result from levies made after the time of the adoption of tax increment allocation financing during the time the current equalized value of real property in the Redevelopment Project Area exceeds the Total Initial Equalized Value of real property in such area until the designation of the Redevelopment Area as a “redevelopment area” for purposes of the Act is terminated pursuant to subsection 2 of Section 99.850 of the Act, which shall not be later than 23 years after the Redevelopment Project Ordinance was approved. Payments in lieu of taxes which are due and owing shall constitute a lien against the real estate in the Redevelopment Project Area from which they are derived, the lien of which may be foreclosed in the same manner as a special assessment lien as provided in Section 88.861, RSMo.

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

**“Power Lines”** means the electric transmission lines, along with the associated poles, support structures and related facilities and improvements, that are located on the Property on the Effective Date of this Contract, as shown on the Preliminary Development Plan.

**“Preapproved Underwriters”** shall have the meaning set forth in **Section 3.02**.

**“Preliminary Development Plan”** means the Preliminary Development Plan for the PMIX (Planned Mixed Use District) approved by Ordinance No. \_\_\_ on January 8, 2019, and as such plan may be modified or amended pursuant to the requirements of the UDO.

**“Prime Rate”** shall have the meaning set forth in **Section 3.12**.

**“Private Funds”** shall have the meaning set forth in **Section 3.02**.

**“Private Investment”** shall have the meaning set forth in **Section 4.06**.

**“Project Improvements”** means the Private Project Improvements and the Public Project Improvements.

**“Property”** means all of the property within the Redevelopment Area as legally described in **Exhibit A**.

**“Private Project Improvements”** shall mean those improvements set forth in **Exhibit E**.

**“Public Bid Process”** shall have the meaning set forth in **Section 2.05**.

**“Public Investment”** shall have the meaning set forth in **Section 4.06**.

**“Public Project Improvements”** shall mean those improvements described in **Exhibit F**, and include, collectively, the CID Public Project Improvements, TDD Public Project Improvements and the City Public Project Improvements.

**“Ratio Documentation”** shall have the meaning set forth in **Section 4.07**.

**“Ratio True-Up”** shall have the meaning set forth in **Section 4.07**.

**“Redevelopment Project” or “Redevelopment Project Area”** means the geographic area which is legally described in the Redevelopment Project Ordinance as the redevelopment project for the Redevelopment Plan in which the collection of TIF Revenues has been activated.

**“Redevelopment Project Cost Budget”** means the budget setting forth the Redevelopment Project Costs, and identifying those Redevelopment Project Costs to be funded or reimbursed from Available Revenues, and/or the proceeds of Obligations, attached hereto as **Exhibit D** and incorporated herein by reference.

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

- (1) Costs of studies, surveys, plans and specifications;
- (2) Professional service costs, including, but not limited to, architectural, engineering, legal, marketing, financial, planning or special services. Except the reasonable costs incurred by the City or Commission established in the Act for the administration of the Redevelopment Plan, such costs shall be allowed only as an initial expense which, to be recoverable, shall be included in the costs of the Redevelopment Plan and the Redevelopment Project;
- (3) Property assembly costs, including but not limited to, acquisition of land and other property, real or personal, or rights or interests therein, demolition of buildings, and the clearing and grading of land;
- (4) Costs of rehabilitation, reconstruction, or repair or remodeling of existing buildings and fixtures;
- (5) Cost 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 of interest on any Obligations issued hereunder accruing during the estimated period of construction the Redevelopment Project for which such Obligations are issued and for not more than eighteen months thereafter, and including reasonable reserves related thereto;
- (7) All or a portion of a taxing district’s capital cost resulting from the Redevelopment necessarily incurred or to be incurred in furtherance of the objectives of the Redevelopment Plan and the Redevelopment Project, to the extent the City, by written agreement, accepts and approves such costs;
- (8) Relocation costs to the extent that a city determines that relocation costs shall be paid or are required to be paid by federal or state law; and
- (9) Payments in lieu of taxes.

**“Redevelopment Project Ordinance”** means Ordinance No. \_\_\_ which was approved by the City Council on January 8, 2019.

**“Redevelopment Schedule”** shall have the meaning set forth in **Section 2.04**.

**“Reimbursable Project Costs”** means the portion of Redevelopment Project Costs, which pursuant to the Redevelopment Plan and this Contract are to be funded or reimbursed with Available Revenues and/or the proceeds of Obligations as are estimated in the Redevelopment Project Cost Budget plus any related financing and interest costs. Reimbursable Project Costs include the portion of Redevelopment Project Costs incurred by City which, pursuant to the provisions of this Contract, are to be reimbursed to the City from TIF Revenues, Hotel Revenues or the proceeds of Obligations.

**“Related Entity”** shall have the meaning set forth in **Section 5.06**.

**“Restricted Entity”** shall have the meaning set forth in **Section 5.03**.

**“Restricted Period”** shall have the meaning set forth in **Section 5.03**.

**“Single-Family Residential Area”** means that portion of the Property that has been approved for the development of single-family residential uses according to the Preliminary Development Plan.

**“Special Allocation Fund”** means the fund established by the City into which, as required by the Act, all Payments in Lieu of Taxes and Economic Activity Taxes and other revenues from the Redevelopment Project Area are deposited for the purpose of paying Redevelopment Project Costs and Obligations incurred in the payment thereof. The Special Allocation Fund shall be divided into at least two (2) separate segregated accounts: the Payments in Lieu of Taxes Account and the Economic Activity Taxes Account, and such other accounts as are necessary to account for the several public revenue sources for the Redevelopment Project.

**“Taxing Districts”** means any political subdivision of this state having the power to levy taxes on sales or property in the Redevelopment Project Area.

**“TDD”** means the transportation development district to be formed for the Redevelopment Project.

**“TDD Act”** means the Missouri Transportation Development District Act, Section 283.200 *et seq.*, RSMo.

**“TDD Contract”** shall have the meaning set forth in **Section 3.06**.

**“TDD Improvements”** shall have the meaning set forth in **Section 3.06**.

**“TDD Obligations”** means bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by the TDD, the City, the IDA or any other issuer designated by or on behalf of the City, which are to be repaid using revenues of the TDD whether issued to provide funds, to carry out a portion of the projects described in the Redevelopment Plan and TDD Contract, or to refund outstanding Obligations; and includes an allocable portion of Obligations to be repaid from TDD Revenues.

**“TDD Public Project Improvements”** shall mean those improvements described as such in **Exhibit F**.

**“TDD Reimbursable Project Costs”** shall have the meaning set forth in **Section 3.06**.

**“TDD Revenues”** shall have the meaning set forth in **Section 3.06**.

“**TDD Sales Tax**” shall have the meaning set forth in **Section 3.06**.

“**Termination Ordinance**” shall have the meaning set forth in **Section 4.05**.

“**TIF Obligations**” means bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by the City, the IDA or any other issuer designated by the City, which are to be repaid using revenues of the TIF, to carry out the Redevelopment Plan or to fund outstanding obligations.

“**TIF Revenues**” means PILOTS and EATS.

“**Total Initial Equalized Assessed Value**” means that amount certified by the County Assessor which equals the most recently ascertained equalized land assessed value of each taxable lot, block, tract or parcel or real property within the Redevelopment Project Area immediately after the Redevelopment Project Ordinance was approved by the City Council.

“**Total Public Capital Support Cap**” shall have the meaning assigned in **Section 3.02**.

“**True-Up Date**” shall have the meaning set forth in **Section 4.07**.

“**UDO**” means the City’s Unified Development Ordinance as set forth in Chapter 33 of the City Code.

## **ARTICLE 2: THE REDEVELOPMENT PROJECT**

**Section 2.01. Redevelopment Area.** The portion of the Redevelopment Area subject to the provisions of this Contract consists of the area legally described on **Exhibit A** attached hereto (the “**Redevelopment Project Area**”).

**Section 2.02. Redevelopment Project Area.** The Redevelopment Project Area will be developed in one phase. The Redevelopment Project Area may only be changed, modified or amended in accordance with the Act. The collection of TIF Revenues within the Redevelopment Project Area became effective upon the approval of the Redevelopment Project Ordinance.

**Section 2.03. Project Improvements.** In accordance with the Act and the terms and conditions of the Redevelopment Plan and this Contract, to ameliorate or satisfy those conditions which are the basis for eligibility and designation of the Redevelopment Area as a Blighted Area and otherwise eligible as a redevelopment area under the Act, Developer shall use best commercially reasonable efforts to cause the Redevelopment Project Area to be redeveloped through the construction of the Project Improvements.

### **Section 2.04. Redevelopment Schedule.**

A. It is the intention of the parties that development activities for Redevelopment Project Area will be substantially commenced and completed on or before the dates set forth in **Exhibit G** attached hereto and incorporated herein by reference (the “**Redevelopment Schedule**”). Developer shall construct or cause to be constructed all Private Project Improvements, and all Public Project Improvements, and shall complete all other development-related activities including, but not necessarily limited to design, land preparation, environmental evaluation and remediation, construction, management, maintenance and procurement of private financing in sufficient time to comply with the Redevelopment Schedule. Changes in the development program contemplated by the Redevelopment Plan that require a Redevelopment Plan amendment under the Act, as reasonably determined by City, shall be processed in

accordance with the Act, and changes in the development program contemplated by the Redevelopment Plan that do not require a Redevelopment Plan amendment under the Act, as reasonably determined by City, may be made only by agreement of the parties hereto.

B. The parties hereto recognize and agree that market and other conditions may affect the Redevelopment Schedule. Therefore, the Redevelopment Schedule is subject to change and/or modification, with the written approval of City, which shall not be unreasonably withheld, upon a showing by Developer of changed market or other conditions.

C. Any amendment to the Redevelopment Plan that is approved by City as provided herein may require an amendment to the Redevelopment Schedule and the provisions of this Contract. City shall use reasonable efforts to expedite the approval of the Preliminary Development Plan and the Land Use Approvals; provided, however, that nothing herein shall constitute or be deemed to be a waiver by City or the City Council of its legislative authority.

D. If Developer does not comply with the Redevelopment Schedule as set forth above, then, unless Developer requests an amendment of such Redevelopment Schedule prior to such violation and any amendment of the Redevelopment Schedule is so approved by City, City may require Developer to appear before the City Council to show cause why this Contract and the Redevelopment Plan shall not be terminated in accordance with **Section 6.02** hereof. Notwithstanding anything to the contrary herein, if a Certificate of Substantial Completion is not issued for the Redevelopment Project by the last completion date in the Redevelopment Schedule attached as **Exhibit G** (the “**Outside Completion Date**”), City may require Developer to appear before the City Council to show cause why this Contract and the Redevelopment Plan as it pertains to the Redevelopment Project Area shall not be terminated in accordance with **Section 6.02** hereof. Any approval by City of any change or modification of the Redevelopment Schedule that would result in the Redevelopment Project not being completed by the Outside Completion Date, may be given or denied by City in its sole reasonable discretion, subject to the provisions of **Section 6.03**.

**Section 2.05. Design and Construction of Public Project Improvements.** Developer shall cause all of the Public Project Improvements to be designed and constructed as follows:

A. The Public Improvements shall be constructed in accordance with all Legal Requirements and such Developer Public Project Plans, as defined in **Section 2.05.D** below, and plans and specifications as are approved by City in writing. City agrees to cooperate in good faith to facilitate approval of the design, engineering and construction of the Public Project Improvements by any other governmental entities or governmental departments.

B. The contracts related to the construction of the City Public Project Improvements shall be subject to a transparent, open and competitive public bidding process conducted by Developer which will allow for the selection of the lowest and best contractor to be selected based upon bid criteria developed by Developer and approved in writing by City (the “**Public Bid Process**”). The Public Bid Process shall be mutually developed and agreed to in writing by Developer and the City Engineer. The Public Bid Process shall provide for the Director of Public Works to have the right to reasonably reject any contractor selected by Developer provided written reason for the rejection is provided concurrent with the rejection. The Public Bid Process shall provide for the City Engineer (or another person or department designated by City) to be entitled to review and supervise the bidding process, to review all bids received and to conduct the public bid process, including bid opening, if it so elects.

C. Timing of City Public Project Improvements. Prior to the design, engineering, and construction of the City Public Project Improvements, Developer shall submit to the City a proposed

schedule for the City Public Project Improvements to be designed and constructed by Developer. The City Engineer shall approve the schedule as presented or return the schedule with comments, to be resubmitted by Developer until approved by the City Engineer. Once the schedule is approved by the City Engineer, City and Developer shall mutually approve and adopt such changes to the Redevelopment Schedule as required to take into account the schedule for the City Public Project Improvements approved by the City Engineer. Such changes to the Redevelopment Schedule may, at the option of the City Manager or his designee, be approved administratively, and if the City Manager or his designee elects to approve such changes administratively, no action of the City Council shall be required to approve such changes to the Redevelopment Schedule.

D. Design Phase. Developer shall meet with City staff regarding preliminary design of the City Public Project Improvements to be constructed by Developer pursuant to this Contract and shall submit all preliminary design documents to City for approval before proceeding with the construction of the City Public Project Improvements. On the basis of such approved preliminary design documents, Developer shall:

1. Prepare detailed drawings, plans, design data, estimates, and technical specifications to show the character and scope of the work to be performed by contractors for all City Public Project Improvements (“**Developer Public Project Plans**”).

2. Furnish to City for its review and approval copies of such Developer Public Project Plans and other documents and design data as may be required to secure approval of such governmental authorities as may have jurisdiction over design criteria applicable to the City Public Project Improvements.

3. Following review and approval of the Developer Public Project Plans, furnish the number of approval copies of the final Developer Public Project Plans for the City Public Project Improvements as City may reasonably require.

E. Right of Way Acquisition.

1. Developer shall be responsible for acquiring or negotiating for the donation of all right-of-way or easements that are needed to construct the City Public Project Improvements, including all necessary temporary construction easements. All right-of-way or easements to be provided by Developer under this **Section 2.05.E.1** shall be provided to City without charge.

2. In the event that Developer is unable, after good faith negotiations, to acquire some or all of the right-of-way or easements necessary for those City Public Project Improvements over which City exercises jurisdiction (the “**Necessary Right-of-Way**”), Developer shall deliver to City a written request for City to acquire any of the Necessary Right-of-Way. If City agrees, at its sole discretion, to attempt to acquire any of the Necessary Right-of-Way, City will enter into good faith negotiations and, at its option, to elect to exercise its power of eminent domain to acquire any or all of such Necessary Right-of-Way.

3. In the event City agrees to enter into good faith negotiations or exercise its power of eminent domain to acquire the Necessary Right-of-Way, prior to beginning any work to acquire said Necessary Right-of-Way, Developer shall first deposit into escrow with City an amount equal to 150% of the estimated acquisition costs. Acquisition costs paid by City (“**Acquisition Costs**”) shall be a Reimbursable Project Cost and shall include, but shall not be limited to: the actual price paid for all right-of-way or easements, whether determined by negotiation or eminent domain; expenses paid to third parties related to the establishment of

acquisition values of right-of-way or easements, including appraisals, legal fees, other expenses paid to third parties, and expenses incurred by City related to acquisition of right-of-way or easements, whether through negotiation or eminent domain; and any other reasonable and necessary costs or expenses related to acquisition of the right-of-way or easements. City may require that Developer enter into a separate acquisition funding agreement with City to provide for the terms and conditions under which Developer will place 150% of all estimated Acquisition Costs in escrow with City prior to commencement of condemnation for right-of-way or easements. The acquisition funding agreement shall obligate Developer to reimburse City in full for all Acquisition Costs that result from City's condemnation process for any portion of the City Public Project Improvements.

F. Utility Relocation. The parties agree that the costs associated with relocating any existing utilities from any existing public or private easement or from any existing right-of-way, as a result of construction of the Public Project Improvements, shall be paid by Developer and are not the responsibility of City and such costs shall be a Reimbursable Project Cost. The parties agree that all costs associated with relocating any existing utilities from any existing right-of-way as a result of construction of the Public Project Improvements, which are not paid by a utility company, shall be paid by Developer and are not the responsibility of City and such costs shall be a Reimbursable Project Cost and such costs are included in the Off-Site Improvements and Other Site Improvements line items shown on the Redevelopment Project Costs Budget.

G. Inspections and Change Orders. City, or its designees, shall have the right to inspect, observe, and oversee the construction of all City Public Project Improvements in order to ascertain and determine that the standards of City have been met. Developer shall obtain City's approval of all change orders relating to the City Public Project Improvements; provided, however, that City shall not unreasonably withhold its consent to any change order so long as the purpose of such change order is to exercise Developer's rights under **Section 4.01** hereof. In no event shall Developer authorize or approve any change order that includes payment of overtime costs or other costs to accelerate the construction of the City Public Project Improvements except with the prior written approval of City, which approval City may condition upon an agreement by Developer to pay all or a portion of any cost increases resulting from such change order without such cost increases being a Reimbursable Project Cost. Such change orders that include payment of overtime costs or other costs to accelerate the construction of the City Public Project Improvements may, at the option of the City Manager or his designee, be approved administratively in his or her reasonable discretion. If the City Manager or his designee elects to approve such change orders administratively, no action of the City Council shall be required to approve such change orders.

H. Dedication. Upon completion, inspection and approval of the City Public Project Improvements by City, Developer will dedicate the City Public Project Improvements to City, for its use, operation and maintenance. City shall be under no obligation to accept the dedication or conveyance of any City Public Project Improvements constructed pursuant to this Contract until it has been inspected and approved to the satisfaction of City. Upon written notice of the inspection and approval of the Director of Public Works, Developer agrees to convey all the City Public Project Improvements to City free and clear of all liens and encumbrances or other obligations. Said conveyance shall be by appropriate document, and shall be sufficient, in the opinion of the City Attorney, to convey marketable title of record, as set forth in Title Standard 4 of the Missouri Bar.

I. Insurance.

1. General Provisions. Prior to commencing construction of the City Public Project Improvements, and at all times until the City Public Project Improvements are accepted by and



dedicated to City, Developer shall obtain liability insurance that is consistent with the requirements of the City's Design and Construction Manual and in the amounts set forth below, and Developer shall file with City evidence acceptable to City of such liability insurance.

2. Limits and Coverage. Bodily Injury and Property Damage, Commercial General Liability Coverage – Occurrence Form unless otherwise agreed by City:

(i) Commercial General Liability: Minimum \$2,900,000 each occurrence limit for bodily injury and property damage; \$2,900,000 policy aggregate; \$2,900,000 products and completed operations aggregate.

(ii) Automobile Liability: Minimum \$2,900,000 combined single limit for bodily injury and property damage; applicable to owned, non-owned and hired automobiles.

(iii) Workers' Compensation: As required by state statute; if exempt, must submit letter stating the exemption; employer's liability \$1,000,000 each occurrence.

(iv) Umbrella/Excess Liability: An umbrella or excess liability policy in the minimum amount of \$5,000,000 each occurrence and aggregate; at least as broad as the underlying general liability, automobile liability and employer's liability.

3. Endorsements. The following endorsements shall attach to the policy:

(i) The policy shall cover personal injury as well as bodily injury.

(ii) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.

(iii) Broad form property damage liability shall be afforded.

(iv) City shall be listed as an additional insured.

(v) Standard form of cross-liability shall be afforded.

(vi) The policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to City.

4. Use of Contractors and Subcontractors. Developer shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Subsection and the City's Design and Construction Manual. Said insurance shall be maintained in full force and effect until the completion of construction of the City Public Project Improvements, and acceptance of such City Public Project Improvements by City.

5. Workers' Compensation. Developer shall ensure that all contractors or subcontractors performing work for Developer obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, Developer shall cause any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in

compliance with State laws, and to fully protect City from any and all claims arising out of occurrences during construction of the Public Project Improvements. Developer hereby indemnifies City for any damage resulting to it from failure of either Developer or any contractor or subcontractor to obtain and maintain such insurance. Developer further waives, and shall cause all contractors or subcontractors performing work for Developer to waive, its rights to subrogation with respect to any claim against City for injury arising out of performance under this Contract. Developer shall provide City with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the City Public Project Improvements, and shall cause such insurance to be maintained at all times that any work on the City Public Project Improvements is being performed.

6. Bonds. Developer shall provide, or cause to be provided, the following bonds for the City Public Project Improvements and all other public infrastructure improvements that are constructed by Developer and dedicated to City.

(i) Performance Bond and Payment Bond. Prior to commencement of construction and ending upon acceptance of the City Public Project Improvements by, and dedication of such City Public Project Improvements to, City, Developer shall maintain or cause to be maintained a performance and payment bond in a form approved by the City Attorney, in an amount equal to the cost of the City Public Projects Improvements covered by such bond, as determined by the City Engineer, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The performance and payment bond shall name City as obligee and copies of certificates of such bond shall be delivered to City. No other party shall be named as a co-obligee on any of such bonds except with the prior written consent of City.

(ii) Maintenance Bonds. Prior to acceptance and dedication of the City Public Projects Improvements, Developer shall provide or cause to be provided a maintenance bond in a form approved by the City Attorney, in an amount equal to fifty percent (50%) of the cost of the City Public Projects Improvements as approved by the City Engineer, which shall be in effect for a term of three (3) years from the date that City issues a certificate of substantial completion for such City Public Projects Improvements covered by the bond, protecting the City against defective workmanship and materials in the City Public Project Improvements and guaranteeing that the City Public Project Improvements shall endure without need of any repairs during the term of such bond. The maintenance bond shall name City as an obligee and copies of certificates of such bond shall be delivered to City. No other party shall be named as a co-obligee on any of such bonds except with the prior written consent of City.

(iii) Indemnity for Failure to Provide Bonds. Developer shall indemnify City and its officers and employees for any damage resulting to City, its officers or employees from failure of Developer to provide the bonds set forth in this Section.

J. Park Improvements. Developer shall enter into the agreement set forth in **Exhibit J** to provide for the terms and conditions under which improvements to Lowenstein Park will be funded and constructed by Developer.

## **Section 2.06. Design Criteria and Review Procedures for Private Improvements.**

A. The land uses allowed on the property and the design and configuration of the Redevelopment Project Area shall be controlled by the Preliminary Development Plan. The list of land uses that are allowed by the Preliminary Development Plan as of the Effective Date of this Contract are set forth in **Exhibit C**. The Preliminary Development Plan may be amended pursuant to the requirements of the UDO, and amendment of the land uses in the Preliminary Development Plan shall take precedence over and shall be deemed to amend the list of land uses set forth in **Exhibit C**. Except for the list of prohibited land uses in **Exhibit I**, it is the intention of the parties that the uses allowed by the City pursuant to approval of the Preliminary Development Plan, and the City's approval of any amendments thereto, shall control the land uses permitted in the Redevelopment Plan Area pursuant to this Contract.

B. Construction plans for the Private Project Improvements shall conform to the Preliminary Development Plan.

### **Section 2.07. Control of Project.**

A. Construction. Except as otherwise provided in this Contract, Developer shall have complete and exclusive control over construction of the Project Improvements that it owns or controls (the "**Developer Controlled Improvements**"), subject, however, to all Legal Requirements. Developer hereby grants to City, its agents and employees the right to enter at reasonable times for the purpose of inspecting the Redevelopment Project. Prior to the construction of any buildings on undermined areas within the Redevelopment Area, Developer shall receive a certificate of true safety for the construction of such buildings on undermined areas within the Redevelopment Area in accordance with applicable Legal Requirements.

B. Certificates of Occupancy. City shall not be obligated to issue any certificates of occupancy for structures within the Redevelopment Project Area until a certificate of substantial completion for the City Public Project Improvements as described in **Exhibit F** has been issued by the City pursuant to the provisions of the Design and Construction Manual (Ordinance No. 3719). The foregoing shall not be subject to the provisions of **Section 6.03** hereof, it being the intent of the City and Developer that the City shall not be obligated to issue any certificates of occupancy until a certificate of substantial completion for the City Public Project Improvements as described in **Exhibit F** have been issued, without regard to the reason for any delay or failure to complete and open for traffic such improvements.

C. Maintenance and Repair. Developer, at its sole cost and expense, at all times shall (1) maintain and operate Developer Controlled Improvements in a first class manner, (2) timely make all necessary repairs to and replacements and restorations of all parts of the Developer Controlled Improvements, (3) keep the Developer Controlled Improvements in good condition, repair and appearance, and (4) maintain casualty insurance on the Developer Controlled Improvements in an amount equal to the full replacement value thereof and provide City with evidence of such insurance upon demand.

Developer shall use its best efforts to contractually obligate any tenant, purchaser, transferee, developer, manager, contractor or subcontractor to comply with the provisions of this **Section 2.07.C** for all portions of the Private Improvements. Developer shall enforce the provisions of this **Section 2.07.C** to the maximum extent permitted by law. Developer hereby agrees that every lease, sales contract or other contract regarding the Redevelopment Project Area shall incorporate the provisions of this **Section 2.07.C** and further provide that City is an intended third party beneficiary of such provisions and as such, City has a separate and independent right to enforce such provisions directly against any such tenant or purchaser. Developer shall use its best efforts to enforce such contract rights.

**Section 2.08. Permitted Uses.** Developer shall take such action as is from time to time necessary to permit only such uses within the Redevelopment Project Area which conform to and are

permitted by the Preliminary Development Plan and this Contract. Property within the Redevelopment Project Area may only be used for the uses permitted by Section 2.06.A of this Contract and the uses permitted on **Exhibit I** attached hereto.

**Section 2.09. Certificate of Substantial Completion.** Promptly after substantial completion of the Redevelopment Project in accordance with the provisions of this Contract, 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 H**. The City agent or employee designated by the City to perform inspections shall, within thirty (30) days following City's receipt of the Certificate of Substantial Completion, carry out such inspections necessary to verify to their 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 from the City, the Developer may record the Certificate of Substantial Completion with the Jackson 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.

### **ARTICLE 3: FINANCING**

#### **Section 3.01. Financing Plan.**

A. Prior to the issuance of any Obligations, Developer shall submit to City a financing plan for the financing of the relevant portion of the Redevelopment Project Costs related to the Redevelopment Project, as set out in the Redevelopment Project Cost Budget attached hereto as **Exhibit D** setting forth (1) the anticipated sources of funds to pay Redevelopment Project Costs related to the Redevelopment Project and (2) the anticipated type and term of the sources of funds to pay said Redevelopment Project Costs (the "**Financing Plan**") for City's review and approval, which approval will not be unreasonably withheld, provided that the type and term of sources of funds described in the Financing Plan are within the parameters set by this Article. Developer shall immediately notify City of any material changes in this information for City's review and approval, which approval will not be unreasonably withheld, provided that the type and term of sources of funds described in the Financing Plan, as revised, are within the parameters set by this Article.

B. Concurrently with delivery of the Financing Plan described in **Section 3.01.A** above, Developer will deliver to City its certificate stating that, with respect to the relevant portion of the Redevelopment Project: (1) to the best of its knowledge and belief, such sources of funds described in the Financing Plan and the financing commitments will enable Developer to timely implement the Redevelopment Project by constructing the Private Project Improvements and the Public Project Improvements to be contained therein; (2) the information and statements contained in the Financing Plan, taken as a whole, are accurate in all material respects and complete for the purposes for which used and made; (3) the information and statements contained in the Financing Plan do not fail to state any material facts necessary in order to make the statements or representations made therein, in light of the circumstances under which they were made, not misleading. By delivering the items described in **Section 3.01(A)** above, Developer shall be deemed to have made such representation and warranty even if Developer fails to deliver its certificate as provided herein. Developer's warranties and representations as set forth herein shall be deemed to be ongoing until termination or expiration of this Contract.

### **Section 3.02. Funding Sources and Uses of Funds.**

A. Private Funds. If Obligations have not been issued, Developer shall construct, or cause to be constructed, the Private Project Improvements with private funds (the “**Private Funds**”). Subject to first priority reimbursement as a Reimbursable Project Cost from the proceeds of the Obligations, Developer shall also construct, or cause to be constructed, the Public Project Improvements with Private Funds. If Obligations have not been issued, Developer shall advance all Private Funds necessary to construct the Public Project Improvements until the issuance of the Obligations. The Private Funds will be derived from a combination of Developer’s equity, assets contributed, or equity investment provided by third parties, and debt incurred by Developer or third parties.

#### **B. Obligations.**

1. Issuance. City, in its sole discretion, may authorize the issuance of Obligations secured by all or a portion of the Available Revenues as provided for in the CID Act, TDD Act and TIF Act. Obligations shall be issued in one or more series, in amounts, on terms and at an interest rate or rates determined by market conditions at the time of issuance and under terms and conditions deemed acceptable by City in its sole discretion. The parties agree that Piper Jaffray & Co. will be used as the City’s financial advisor to evaluate the issuance of Obligations, and shall be compensated from the proceeds of such Obligations or, in the sole discretion of the City, other funds that are identified by the City. It is anticipated that the City’s use of a financial advisor to evaluate and provide advice on the issuance of Obligations shall be pursuant to a contract entered into after the effective date of this Contract, and the City shall provide notice to Developer of the terms and conditions applicable to such engagement. Subject to the provisions of subparagraph (2) below, the underwriter(s) for any Obligations shall be selected by City. City shall solicit input from Developer as it relates to the engagement of an underwriter and a financial advisor and all components of the issuance of the Obligations in an effort to maximize the size of the issuance, but City shall have sole right, power and authority to determine the amount, terms, interest rate or rates, mandatory, optional or special redemption payments and other terms and conditions of the Obligations. The City shall not lend its credit to secure the Obligations and shall not be obligated to make any payments with respect to the Obligations from sources other than such Available Revenues as are pledged to the Obligations.

#### **2. Issuance Process.**

(i) Notwithstanding anything contained in this Contract to the contrary, the underwriter(s) for any Obligations shall be selected by the City from a list of qualified underwriters previously and reasonably agreed upon by Developer and City which shall contain not less than two firms and not more than four firms (the “**Preapproved Underwriters**”). City and Developer shall mutually and reasonably agree upon an underwriter discount based upon then market rates.

(ii) Once the Preapproved Underwriter selected by the City determines, to the City’s reasonable satisfaction, that Obligations are marketable based on such underwriter’s reasonable judgment that the projected Available Revenues will support the issuance of such Obligations, Developer shall advise the City in writing of the underwriter’s determination that Obligations are marketable and City shall have 135 days (subject to extension by agreement of the parties) to complete the issuance and sale of the Obligations.

(iii) If City is unable to complete the issuance of Obligations within said 135-day period (as extended by agreement of the parties), Developer, with the cooperation of City, may select another underwriter from the Preapproved Underwriters, and City shall proceed with good faith efforts to effect the issuance and sale of the Obligations with said new underwriter; provided, however, that City shall not be obligated to proceed to complete the issuance and sale of the Obligations if such Obligations would, in the judgment of City, based upon advice of its counsel or financial advisors: (i) (A) impose any liability upon City for the payment of such Obligations, or (B) adversely affect City, its financial standing and reputation or the rating given to other debt instruments issued by the City, (ii) result in an interest rate paid upon such Obligations that is above the market rate then being paid for instruments similar to the Obligations, or (iii) be upon terms and conditions not standard for municipal debt instruments similar to the Obligations.

(iv) In all instances, the purchasers of the Obligations must be a qualified institutional buyer (as that term is defined in Rule 144A promulgated under the Securities Act of 1933) or an accredited investor (as that term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended from time to time).

(v) The Developer and City shall reasonably cooperate in the issuance of any Obligations, including delivering such closing certificates and opinions of counsel reasonably necessary or desirable to complete the financing.

3. Use of Proceeds. After funding the costs of issuance, any reserves and capitalized interest, any unfunded Administrative Costs (subject to the limitations of Section 6.11) and other City Reimbursable Project Costs, the proceeds from Obligations will be used in the following priority: (a) to pay for or reimburse Developer for Private Funds advanced to pay costs certified by City as provided in **Section 4.01** hereof, together with interest determined in accordance with **Section 3.12.C** hereof, to construct the Public Project Improvements pursuant to **Section 3.02.A** hereof; and (b) subject to the limitations in **Section 3.02.C**, fund other Reimbursable Project Costs certified by City as provided in **Section 4.01** hereof.

4. Continuing Disclosure. The City and Developer shall cooperate with respect to the responsibility for any continuing disclosure required by the Bond Documents with respect to the Redevelopment Project or the Redevelopment Area. The City will only take responsibility for information regarding the City itself and the amount of Available Revenues collected and distributed by the City. Except as otherwise provided in the Bond Documents, the Developer will take responsibility for all other continuing disclosure required by the Bond Documents including the updates with respect to status and completion of the project.

C. Limitations on Reimbursement. No reimbursement for any Reimbursable Project Costs from TIF Revenues or Hotel Revenues shall occur until the requirements of this subsection have been satisfied. All of the following conditions must be complied with in order to receive any reimbursement for Reimbursable Project Costs from TIF Revenues or Hotel Revenues:

1. Developer has acquired all of the Property.
2. Developer is not in default under this Contract.

3. Developer or an Affiliate of Developer has caused the relocation of the Power Lines, or has arranged for the relocation of the Power Lines pursuant to an executed contract and has provided to the City documentation from the owner of the Power Lines that permission has been granted for such Power Line relocation into the Pryor Road right-of-way;

4. Mass grading for the entire Redevelopment Area has been commenced; and

5. All required utilities for service of all lots within the Redevelopment Project Area have commenced.

D. Maximum Public Reimbursement Limits. The total amount of actual reimbursement from the proceeds of Obligations, or on an as-collected basis, which may be supported by any of the following revenue sources shall not exceed the total of the following table:

<b>Revenue Source</b>	<b>Budgeted Reimbursement</b>
EATS, PILOTS and Hotel Revenues	\$20,159,503
CID Revenues (EATS and non-EATS portions)	\$8,010,893
TDD Revenues (EATS and non-EATS portion)	<u>\$1,779,604</u>
<b>Total</b>	<b>\$29,950,000</b>

The total amount of Obligations supported by Available Revenues shall not exceed the amount necessary to fund the Reimbursable Project Costs of the Developer totaling \$29,950,000 plus financing and interest costs (such total being the “**Total Public Capital Support Cap**”). The amount of the Total Public Capital Support Cap includes the line items in **Exhibit D** for “Financing Costs (Interest Carry / Closing / Fees / Other)” and “Development Fee” but does not include interest that accrues on certified but unreimbursed Reimbursable Project Costs pursuant to **Section 3.12.C**. The CID Revenues and TDD Revenues applied to the repayment of the Obligations shall be restricted in accordance with the portion of the proceeds of the Obligations applied to projects that can be legally funded from such revenues.

**Section 3.03. Conditions Precedent to Issuance of Obligations.** No Obligations shall be issued unless the following conditions precedent are satisfied:

A. Developer has acquired all of the Property.

B. Developer is not in default under this Contract.

C. A CID Contract and a TDD Contract have been executed as specified in this Contract and all steps required of the respective boards to impose the CID Sales Tax and TDD Sales Tax for as long as Obligations remain outstanding and certified but unreimbursed Reimbursable Project Costs remain outstanding pursuant to the CID Act and the TDD Act, respectively, have been completed other than the completion of administrative steps or waiting periods required by the Missouri Department of Revenue before the tax is implemented.

D. City has approved the Preliminary Development Plan, and there exist no known impediments to the issuance of all necessary permits for the applicable portion of the development for which Reimbursable Project Costs will be financed by the pending series of the Obligations.

E. The City has approved the Financing Plan pursuant to **Section 3.01**.

F. Developer has obtaining financing as contemplated in the approved Financing Plan sufficient (together with the proceeds of the Obligations that may be disbursed for such purpose) to complete the applicable portion of the development for which Reimbursable Project Costs will be financed by the pending series of the Obligations.

G. Mass grading for the entire Redevelopment Area has been commenced.

H. All required utilities for service of all lots within the Redevelopment Project Area have commenced.

I. Developer or an Affiliate of Developer has caused the relocation of the Power Lines, or has arranged for the relocation of the Power Lines pursuant to an executed agreement and has provided to the City documentation from the owner of the Power Lines that permission has been granted for such Power Line relocation into the Pryor Road right-of-way.

**Section 3.04. Hotel Sales Tax Rebate.** Subject to annual appropriation, the City agrees to the use of the Hotel Revenues to pay for Reimbursable Project Costs, or the applicable portion of the Obligations which fund or reimburse Reimbursable Project Costs, for the lesser of (a) thirty (30) years from the Effective Date or (b) the date that all Obligations and Reimbursable Project Costs have been repaid. During this time period, the City represents and warrants that the officer of the City at any time charged with the responsibility of formulating budget proposals shall be directed to include in all budget proposals submitted for each budget period in which this Contract is effective a request for an appropriation of the Hotel Revenues collected during such period for application as provided in this Contract. When appropriated, the Hotel Revenues shall be deposited in the Economic Activity Account of the Special Allocation Fund and expended in the same manner as Economic Activity Taxes pursuant to this Contract.

**Section 3.05. Community Improvement District.**

A. Establishment of CID. The City has approved the CID. The approved CID petition provides for the construction of the improvements and costs as shown in the CID columns in in **Exhibit D** (the “**CID Improvements**”). All of the costs related to or incurred in connection with CID Improvements that are certified by the City as provided in **Section 4.01** or pursuant to the CID Contract (defined below), are hereafter sometimes referred to as “**CID Reimbursable Project Costs.**”

B. CID Contract with City.

1. Developer shall use reasonable efforts to have the CID enter into a contract with the Developer and City (“**CID Contract**”) in a form acceptable to City and Developer with regard to funding of the CID Improvements, including the terms set forth below. The CID Contract shall include conditions precedent to the issuance of CID Obligations which are substantially similar to the conditions precedent included in **Section 3.03** hereof. The CID Contract shall also require City’s written approval prior to the issuance of CID Obligations. The underwriter(s) for any CID Obligations shall be selected in the same manner as provided in **Section 3.02.B.**

2. City and Developer agree that the costs incurred by the CID, and/or the Developer, in connection with the CID Improvements and certified by City as provided in **Section 4.01** hereof are Reimbursable Project Costs that may be paid from the Special Allocation



Fund. The CID Contract shall include provisions (1) granting City the right to review and approve all budgets (capital or operating) of the CID prior to adoption thereof by the CID, (2) granting City the right to cause the collecting authority to pay all CID Sales Tax directly to the City or the Bond Trustee, as City shall direct, and the CID will agree to execute such documents and instruments as may be necessary or desirable to evidence or perfect such right, and (3) such other provisions as City shall reasonably determine to be necessary.

C. Imposition of CID Sales Tax. The CID Contract shall provide for the imposition of a one (1) percent sales tax (the “**CID Sales Tax**”) within the boundaries of the CID, including the property in the Redevelopment Project Area. The CID Contract shall also obligate the CID board of directors to maintain the CID Sales Tax within the Redevelopment Project Area until all of the improvements in the CID have been funded and completed and all Debt Service obligations for the CID Obligations, or if CID Revenues are pledged to the Special Allocation Fund or the Obligations, the Obligations, have been met. After (i) the CID Obligations, or if CID Revenues are pledged to the Special Allocation Fund or the Obligations, the Obligations, have been repaid, and (ii) all costs eligible for reimbursement from revenues of the CID under the Redevelopment Plan, this Contract, the CID Contract and/or the CID Petition have been paid, the CID Sales Tax shall be terminated. The amounts received from the CID Sales Tax are collectively referred to as the “**CID Revenues.**” No CID Obligations will be issued without the consent of the City, which consent shall not be unreasonably withheld or delayed.

### **Section 3.06. Transportation Development District.**

A. Establishment of TDD. Developer will seek formation of the TDD that generally includes the Redevelopment Project Area except for the area occupied by the grocery store. The TDD petition will provide for the construction of the improvements and costs as shown in the TDD columns in **Exhibit D** (the “**TDD Improvements**”). All of the costs related to or incurred in connection with TDD Improvements that are certified by the City as provided in **Section 4.01** or pursuant to the TDD Contract (defined below), are hereafter sometimes referred to as “**TDD Reimbursable Project Costs.**”

#### **B. TDD Contract with City.**

1. Developer shall use reasonable efforts to have the TDD enter into a contract with the Developer and City (“**TDD Contract**”) in a form acceptable to City and Developer with regard to funding of the TDD Improvements, including the terms set forth below. The TDD Contract shall include conditions precedent to the issuance of TDD Obligations which are substantially similar to the conditions precedent included in **Section 3.03** hereof. The TDD Contract shall also require City’s written approval prior to the issuance of TDD Obligations. The underwriter(s) for any TDD Obligations shall be selected in the same manner as provided in **Section 3.02.B.**

2. City and Developer agree that the costs incurred by the TDD, and/or the Developer, in connection with the TDD Improvements and certified by City as provided in **Section 4.01** hereof are Reimbursable Project Costs that may be paid from the Special Allocation Fund. The TDD Contract shall include provisions (1) granting City the right to review and approve all budgets (capital or operating) of the TDD prior to adoption thereof by the TDD, (2) granting City the right to cause the collecting authority to pay all TDD Sales Tax directly to the City or the Bond Trustee, as City shall direct, and the TDD will agree to execute such documents and instruments as may be necessary or desirable to evidence or perfect such right, and (3) such other provisions as City shall reasonably determine to be necessary.

C. Imposition of TDD Sales Tax. The TDD Contract shall provide for the imposition of an up to one-half percent (0.5%) sales tax (the “**TDD Sales Tax**”) within the boundaries of the TDD. The TDD Contract shall also obligate the TDD board of directors to maintain the TDD Sales Tax within the boundaries of the TDD until all of the improvements to be funded by the TDD have been funded and completed and all Debt Service obligations for the TDD Obligations, or in TDD Revenues are pledged to the Special Allocation Fund or the Obligations, the Obligations, have been met. After (i) the TDD Obligations, or if TDD Revenues are pledged to the Special Allocation Fund or the Obligations, the Obligations, have been repaid, and (ii) all costs eligible for reimbursement from revenues of the TDD under the Redevelopment Plan, this Contract, the TDD Contract and/or the TDD Petition have been paid, the TDD Sales Tax shall be terminated. The amounts received from the TDD Sales Tax are collectively referred to as the “**TDD Revenues.**” No TDD Obligations shall be issued without the consent of the City, which consent shall not be unreasonably withheld or delayed.

### **Section 3.07. Chapter 100 Incentives.**

A. The City will provide certain incentives under Sections 100.010 to 100.200 of the Revised Statutes of Missouri, as amended, and Article VI, Section 27(b) of the Missouri Constitution, as amended (collectively, “**Chapter 100**”) and the Master Plan for Industrial Development Projects for The Streets of West Pryor Development (the “**Master Chapter 100 Plan**”). The Master Chapter 100 Plan includes two Chapter 100 projects:

1. The “**Chapter 100 Commercial Project**” which will include all property that is part of the Redevelopment Project Area.

2. The “**Chapter 100 Apartments Project**” which will include the two tax parcels where the Apartments and the Age-Restricted Apartments will be located.

B. The incentives to be provided pursuant to the Master Chapter 100 Plan include the following (the “**Chapter 100 Incentives**”):

1. With respect to the Chapter 100 Commercial Project, (a) sales tax exemption on construction materials incorporated into the Chapter 100 Commercial Project, and (b) real property tax abatement on partially completed improvements during the construction period in an amount equal to the difference between the 2018 tax year value included in the Commercial Project area and the value during the construction period (this will be achieved by setting the payment in lieu of taxes to be made under the Chapter 100 documents at an amount equal to 100% of the taxes that would be due based upon the 2018 tax year value); and

2. With respect to the Chapter 100 Apartments Project, (a) sales tax exemption on construction materials incorporated into the Chapter 100 Apartments Project, and (b) a fixed schedule of payments in lieu of taxes equal to an estimate of the taxes otherwise due for a period ending in 2030 for the Chapter 100 Apartments Projects based on an assumed rate of payments in lieu of taxes of \$1,135 per unit after completion of construction.

C. No other incentives available pursuant to Chapter 100 will be considered in connection with the Master Chapter 100 Plan. The provision of Chapter 100 Incentives is conditioned on the approval by the City Council of the Master Chapter 100 Plan, the issuance of industrial development bonds (“**Chapter 100 Bonds**”) to effect the Master Chapter 100 Plan or portions thereof, and the form and substance of legal documents to be entered into with respect to the issuance of the Chapter 100 Bonds, all of which constitute legislative decisions in the sole discretion of City Council. The City anticipates consideration of three separate issuances of Chapter 100 Bonds for the Master Chapter 100

Plan and may, in its discretion, agree to additional issuances of Chapter 100 Bonds, provided that the total amount of Chapter 100 Bonds to be issued shall not exceed the amount stated in the Master Chapter 100 Plan.

D. With respect to the Chapter 100 Commercial Project, the sales tax exemption on construction materials that is provided through the Master Chapter 100 Plan may be provided by the City directly to the users that will purchase lots from Developer in the Redevelopment Project Area. Developer and City will coordinate to determine which parties should receive sales tax exemption certificates for the purchase of construction materials.

E. With respect to the Chapter 100 Apartments Project, the sales tax exemption on constructions materials that is provided through the Master Chapter 100 Plan may be provided by the City directly to the users that purchase some or all of the property comprising the Chapter 100 Apartments Project. Developer and City will coordinate to determine which parties should receive sales tax exemptions certificates for the purchase of construction materials.

**Section 3.08. Conditions Precedent to Developer's Duties.** Developer's obligations to commence and complete construction of the Project Improvements are expressly conditioned upon the occurrence of each of the following events on and/or before the dates set forth below:

A. Acquisition (whether by purchase or contribution) of all real property within the boundaries of the Redevelopment Project Area as provided herein.

B. City approval of the Financing Plan.

C. City approval of all zoning, subdivision and permit applications required for implementation of the Redevelopment Project.

D. Developer obtaining the financing contemplated by the Financing Plan (other than the Obligations).

By commencing construction, which for purposes of this clause means the pouring of footings and foundations for any of the Private Project Improvements or commencement of the Public Project Improvements, Developer shall be deemed to have agreed that all of the foregoing conditions precedent in this **Section 3.08** have been satisfied or, to the extent not so satisfied, Developer shall be deemed to have waived all such conditions precedent.

**Section 3.09. Payments in Lieu of Taxes.**

A. Pursuant to the provisions of the Redevelopment Plan and the Act, including, but not limited to, Section 99.845 thereof, from and after the passage of the Redevelopment Project Ordinance, the real property located therein 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 or as otherwise determined by applicable law. 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 City on each such tax parcel as constituted from time to time and shall be enforceable against Developer and its successors and assigns during their ownership of property in the Redevelopment Project Area.

B. Failure to pay Payments in Lieu of Taxes as to any property in the Redevelopment Project Area shall constitute a default by the owner of such property of the provisions of **Section 6.02** hereof, and

shall entitle City, the County Collector or any other government official or body charged with the collection of any such sums (any one or more of such persons hereinafter individually or collectively referred to as the “**Collection Authority**”) to proceed against such property and/or the owner thereof as in other delinquent property tax cases or otherwise as permitted at law or in equity, and, if applicable, such failure shall entitle the Collection Authority to seek all other legal and equitable remedies it may have to ensure the timely payment of all such sums or of the principal of and interest on any outstanding Obligations secured by such payments; provided, however, that the failure of any property in a Redevelopment Project Area 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.

C. The City shall use all reasonable and diligent efforts to promptly notify the County Assessor, County Collector, the City Director of Finance, the City Treasurer and all other appropriate officials and persons and seek to assess the property within the Redevelopment Project Area as described in the Act and fully collect the Payments in Lieu of Taxes and implement reimbursement of Reimbursable Project Costs as provided in this Contract and in the Redevelopment Plan. Developer shall from time to time provide to City prior to and upon the completion of the Redevelopment Project a report, certified to City by Developer, setting forth the total amount expended from time to time by Developer or any Affiliate of Developer with respect to the construction of any improvements in the Redevelopment Project Area. Developer shall also use its best efforts to contractually obligate any purchaser or tenant of any property in the Redevelopment Project Area to provide to City from time to time prior to and upon the completion of the Redevelopment Project a report, certified to City by such purchaser or tenant, setting forth the total amount expended from time to time by such purchaser or tenant or any Affiliate of such purchaser or tenant with respect to the construction of any improvements in the Redevelopment Project Area. It is acknowledged that any such report may be provided by City to the County Assessor or other governmental authority from time to time having responsibility for determining the assessed value of any property in the Redevelopment Project Area to allow such authority to more accurately determine the assessed value of any such property.

D. Notwithstanding anything to the contrary, herein, the lien on property within the Redevelopment Project Area shall be deemed (1) released as to any public street or other public way included within any plat proposed by Developer, effective upon the passage of an Ordinance by City approving the same, 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 Ordinance by City as aforesaid, and to any easement or like interests granted to City or any public utility for public facilities or utilities or connection(s) thereto.

**Section 3.10. Economic Activity Taxes.** In addition to the payments in lieu of taxes described herein, and pursuant to Section 99.845.3 of the Act, Economic Activity Taxes shall be allocated to, and paid by the collecting officer to the City Treasurer or other designated financial officer of City, who shall deposit such funds in the Economic Activity Account within the Special Allocation Fund. From and after the passage of the Redevelopment Project Ordinance, for as long as the Redevelopment Project Area is subject to the Redevelopment Plan, Economic Activity Taxes shall be determined in accordance with the following procedures (subject, however, to the provisions of Section 99.835 of the Act):

A. Documentation of Economic Activity Taxes. Developer, its successors and assigns shall provide City with documentation of sales tax receipts for each business in the Redevelopment Project Area, indicating the type and amount of the Economic Activity Taxes paid by each such business located within the Redevelopment Project Area. Developer shall include the provisions as specified in **Section 5.02** hereof in all lease documents with tenants located within the Redevelopment Project Area requiring said sales tax information to be provided to City. A similar provision shall be included in all sales contracts with purchasers of property located in the Redevelopment Project Area requiring said sales tax

information to be provided to City. Developer shall enforce said provisions to the maximum extent permitted by law, and Developer hereby agrees that each such lease or sales contract shall provide that City is an intended third party beneficiary of such provisions and has a separate and independent right to enforce such provisions directly against any such tenant or purchaser.

Notwithstanding anything contained in this Contract to the contrary, Developer's obligation to provide City with documentation of sales tax receipts for each business in the Redevelopment Project Area, include provisions as specified in **Section 5.02** in leases and sales contracts, and enforce such provisions, all as set forth in the foregoing paragraph, shall not be applicable to Developer following any conveyance of property within the Redevelopment Project Area that is (1) approved by City pursuant to **Section 5.03** hereof, or (2) a conveyance for which City's approval is not required pursuant to **Section 5.03** hereof. City agrees to consider performing all functions incident to the administration, collection, and enforcement of the Economic Activity Taxes payable by each Taxing District from which Economic Activity Taxes are due for an administrative fee mutually agreed upon by City and Developer.

B. Certification by City. City, following reasonable research and investigation, using independent consultants, accountants and counsel when appropriate shall certify the nature and amount of Economic Activity Taxes payable by each Taxing District from which Economic Activity Taxes are due, or as otherwise required by the procedures and requirements of the Taxing District from time to time established.

C. Presentation to Taxing Districts. City shall deliver by mail or hand delivery its certification of Economic Activity Taxes payable by each Taxing District to the governing body of each such Taxing District and shall follow such procedures and requirements of the Taxing District from time to time established with respect to obtaining the deposit of the Economic Activity Taxes payable by each Taxing District into the Special Allocation Fund.

D. Net New Sales Calculation For Intra-City Relocations. During the term of this Contract, Developer shall not lease or sell any portion of the Redevelopment Project Area to any business operation that will operate under the same trade name as any business which is currently located in City if such business operation closes its existing business operation within the City in order to move into the Redevelopment Project Area, without prior approval from City. A business operation is deemed to be moved into the Redevelopment Project Area if a business operation that operates under the same trade name which is currently located in the City closes within one year before or one year after the same business operation opens within the Redevelopment Project Area. Should City waive this prohibition on intra-city relocations, or if an existing retail establishment within Jackson County but not in City locates to the Redevelopment Project Area, and within one year from the date of opening for business within the Redevelopment Project Area an existing facility of such retail establishment within City and/or Jackson County closes, and City determines that the retail establishment is a direct beneficiary of tax increment financing, in accordance with the provisions of the Act, the Economic Activity Taxes generated by the retail establishment shall equal the amount by which the total additional revenues from Economic Activity Taxes which are imposed by City and other Taxing Districts exceeds the amount of Economic Activity Taxes generated by the retail establishment in the calendar year prior to its relocation to a Redevelopment Project Area.

**Section 3.11. Special Allocation Fund.** The City Treasurer shall establish and maintain the Special Allocation Fund which shall contain two separate segregated accounts. Payments in Lieu of Taxes shall be deposited into the Payment in Lieu of Taxes Account within the Special Allocation Fund. Economic Activity Taxes and Hotel Revenues shall be deposited into the Economic Activity Account within the Special Allocation Fund. Payments in Lieu of Taxes, Economic Activity Taxes and Hotel Revenues so deposited and any interest earned on such deposits will be used for the payment of

Reimbursable Project Costs, including the retirement of the Obligations and for the distribution to the Taxing Districts, in the manner set forth in the Redevelopment Plan and this Contract.

**Section 3.12. Disbursements from Special Allocation Fund.** Except as otherwise provided in this Section, all disbursements 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. Disbursements from the Special Allocation Fund will be made in the following manner and order of preference:

- A. If Obligations have been issued:
  - 1. Payment of Administrative Costs as described in **Section 6.11**;
  - 2. Payment of such amounts at such times as are required by the Bond Documents, and then
  - 3. Payment of certified and unreimbursed Reimbursable Project Costs in the following order:
    - (a) to pay for or reimburse the City for City Reimbursable Project Costs;
    - (b) to pay for or reimburse Developer for Private Funds advanced to pay costs certified by City as provided in **Section 4.01** hereof, together with interest determined in accordance with **Section 3.12.C** hereof, to construct the Public Project Improvements pursuant to **Section 3.02.A** hereof; and
    - (c) subject to the limitations in **Section 3.02.C**, fund other Reimbursable Project Costs certified by City as provided in **Section 4.01** hereof.

The items listed above may be modified or adjusted in the Bond Documents for the Obligations as mutually agreed by the Developer and the City at the time such Obligations are issued. The City and Developer agree that reimbursement of Reimbursable Project Costs is a mutual goal and will endeavor to maximize reimbursements to City and Developer while balancing reasonable terms of repayment for the Obligations.

B. If Obligations have not been issued with a pledge for all of the Available Revenues and the parties anticipate that all of the Reimbursable Project Costs will be reimbursed on an “as collected” basis in accordance with **Section 4.03** for the applicable Available Revenues, then disbursements from the Special Allocation Fund will be made in the following manner and order of preference:

- 1. Payment of Administrative Costs as described in **Section 6.11**;
- 2. Payment of certified Reimbursable Project Costs in the following order:
  - (a) to pay for or reimburse the City for City Reimbursable Project Costs;
  - (b) to pay for or reimburse Developer for Private Funds advanced to pay costs certified by City as provided in **Section 4.01** hereof, together with interest determined in accordance with **Section 3.12.C** hereof, to construct the Public Project Improvements pursuant to **Section 3.02.A** hereof; and

(c) subject to the limitations in **Section 3.02.C**, fund other Reimbursable Project Costs certified by City as provided in **Section 4.01** hereof.

C. Reimbursable Project Costs shall include the following:

1. Payment of Interest Expenses.

(a) Third Party Borrowing. In the event Developer incurs financing costs, including interest, on amounts Developer was loaned to finance and pay for Reimbursable Project Costs from a “non-Affiliate” third party in an arms-length transaction, City shall reimburse Developer as a Reimbursable Project Cost the actual financing costs incurred and certified pursuant to **Section 4.01**. Financing costs certified for reimbursement under this **Section 3.12.C.1(a)** shall not exceed the lesser of (i) the actual lowest cost of funds at which any Affiliate of Developer is able to borrow funds for its corporate purposes from time to time, or (ii) the prime rate established by Commerce Bank (the “**Prime Rate**”), plus two percent (2%). For purposes of calculating interest expenses, Developer shall certify its interest expense pursuant to **Section 4.01** as a separate line item expense, and as part of such certification Developer shall certify to City the actual lowest cost of funds at which any Affiliate of Developer is able to borrow funds for its corporate purposes as of the date such interest was incurred. For the month in which interest expense is initially incurred with respect to any advance of funds, the interest expense shall accrue from the 15<sup>th</sup> day of the month incurred for costs paid by Developer from the 1<sup>st</sup> through the 14<sup>th</sup> day of a month and from the last day of the month incurred for costs paid by Developer after the 15<sup>th</sup> day of a given month.

(b) Affiliate Borrowing. In the event Developer incurs financing costs, including interest, on amounts Developer was loaned to finance and pay for Reimbursable Project Costs from an Affiliate of Developer, City shall reimburse Developer as a Reimbursable Project Cost with the actual financing costs incurred and certified pursuant to **Section 4.01**. Financing costs under this **Section 3.12.C.1(b)** shall not exceed the lesser of (i) the lowest rate at which any Affiliate of Developer, loans any funds to any other first tier affiliate of Developer for any purpose, (ii) the actual lowest cost of funds at which an Affiliate of Developer is able to borrow funds for its corporate purposes from time to time, or (iii) the Prime Rate. For purposes of calculating interest expenses, Developer shall certify its interest expense pursuant to **Section 4.01** as a separate line item expense, and as part of such certification Developer shall certify to City the lowest rate at which any Affiliate of Developer loans any funds to any other first tier affiliate of Developer for any purpose and the actual lowest cost of funds at which any Affiliate of Developer is able to borrow funds for its corporate purposes as of the date such interest was incurred. For the month in which interest expense is initially incurred with respect to any advance of funds, the interest expense shall accrue from the 15<sup>th</sup> day of the month incurred for costs paid by Developer from the 1<sup>st</sup> through the 14<sup>th</sup> day of a month and from the last day of the month incurred for costs paid by Developer after the 15<sup>th</sup> day of a given month.

2. Developer Fees. Developer shall be entitled to receive a development fee as set forth in the Redevelopment Project Cost Budget (the “**Developer Fee**”). No Developer Fee shall be paid with respect to the City Public Project Improvements, but Developer shall be entitled to receive, as a Reimbursable Project Cost, actual costs (a) paid to third parties that are not Affiliates of Developer with respect to the management of the development of the City Public Project Improvements, and (b) actual out-of-pocket costs incurred by Developer (including actual costs of payroll and benefits for employees of Developer) with respect to the management of the development of the City Public Project Improvements.

## ARTICLE 4: REIMBURSEMENT OF COSTS

### Section 4.01. Reimbursable Project Cost Certification.

#### A. Request for Certification.

1. Developer shall have the right to submit requests for certification for Reimbursable Project Costs identified on **Exhibit D** in columns labeled TIF, CID and TDD, those being Developer Reimbursable Cost Categories (the “**Developer Reimbursable Cost Categories**”; Reimbursable Project Costs incurred within the Developer Reimbursable Cost Categories are herein sometimes referred to as “**Developer Reimbursable Project Costs**”). Developer shall submit their request for certification of Reimbursable Project Costs paid within 180 days of paying any such costs. For all Reimbursable Project Costs paid by Developer prior to the execution of this Contract, such Reimbursable Project Costs shall be submitted for certification within 180 days after the Effective Date.

2. Upon presentation to City by Developer of an application for certification of Reimbursable Project Costs which details Reimbursable Project Costs paid in accordance with this Contract and the Redevelopment Plan, together with such supporting documentation (including copies of invoices, cancelled checks, receipts, lien waivers, and such other supporting documentation as City shall reasonably require) as City shall reasonably determine to be necessary (the “**Certification Application**”), City shall review, verify and confirm the information included in the Certification Application. The Certification Application shall (1) identify each item of Reimbursable Project Cost by line item category in the Redevelopment Project Cost Budget separately, (2) aggregate all costs in the Certification Application by line item category as set forth in the Redevelopment Project Cost Budget, (3) include a report setting forth the total amount, by line item category from the Redevelopment Project Cost Budget, of all Reimbursable Project Costs set forth in the then-current Certification Application and all prior Certification Applications approved by City or for which approval is pending, and (4) include a report setting forth the estimated percentage of work, by line item category from the Redevelopment Project Cost Budget, completed as of the date of the current Certification Application.

(a) If City determines that: (i) the Certification Application accurately reflects Reimbursable Project Costs paid in accordance with this Contract and the Redevelopment Plan; (ii) the Reimbursable Project Costs for which certification is requested (considered in combination with all prior amounts certified for the same cost category or item, as applicable) are reasonable and consistent with the Financing Plan and in accordance with the Redevelopment Project Cost Budget, subject to the provisions of **Section 4.01.B**; it shall approve the Certification Application and issue a draw certificate (the “**Draw Certificate**”).

(b) If City, pursuant to its review of such Certification Application and supporting documentation, determines that any portion of the request for reimbursement should not be approved, the City shall within 30 days after the City’s receipt of Developer’s Certification Application, provide Developer with a detailed written statement stating the reasons for such disapproval and if the City does not provide Developer with a written statement of disapproval within 30 days, the Certification Application shall be deemed approved and the City will immediately thereafter issue the Draw Certificate.



3. No Certification Application will be approved if it causes the total Reimbursable Project Costs to exceed the Total Public Capital Support Cap without prior City Council approval. Any such disapproval may be appealed by Developer to the City Council, which shall upon Developer's request hold a hearing at which Developer may present new and/or additional evidence as a basis for requesting additional reimbursement.

4. At the option of the City Manager or his designee, each Certification Application for Developer Reimbursable Project Costs (except for those causing the total Reimbursable Project Costs to exceed the Total Public Capital Support Cap, as described in **Section 4.01.A.3**, above) may be approved administratively, and if the City Manager or his designee elects to approve such Certification Application administratively, no action of the City Council shall be required to approve such Certification Application. All Certification Applications and Draw Certificates for City Reimbursable Project Costs may be approved by the City Manager or his designee administratively, Developer shall not be required to approve or consent to any such Certification Application or Draw Certificate for City Reimbursable Project Costs prior to the disbursement of funds to City, however, Developer shall be provided five (5) business days' notice prior to disbursement to review such Certification Application or Draw Certificate of the City.

B. Cost Allocation Across Line Items. Developer shall, in each Certification Application, identify the specific line item within the Redevelopment Project Cost Budget in **Exhibit D** as to which each Reimbursable Project Cost for which certification is requested is assigned. Any savings in the amount expended with respect to any specific line item in the Redevelopment Project Cost Budget in **Exhibit D** that is listed in the columns entitled "TIF" or "CID" or "TDD" may be applied to fund cost overruns in other TIF or CID or TDD line items subject only to any statutory restrictions on the use of TIF revenues, CID revenues or TDD revenues set forth in the Act, the CID Act or the TDD Act, as applicable.

#### **Section 4.02. Payment of Project Costs with Bond Proceeds.**

A. At such time as proceeds from the sale of Obligations are available for the reimbursement of or direct payment of Reimbursable Project Costs for which a Draw Certificate has been issued, payment shall be made by presenting such Draw Certificate to the Bond Trustee of the Obligations for payment which has been endorsed by both City and Developer, together with any requisition certificate and supporting documentation required under the Bond Documents (each a "Requisition"). No Requisition submitted by City for reimbursement of City Reimbursable Project Costs shall require execution by Developer; however, Developer shall be provided five (5) business days' notice prior to any disbursement to review such Requisition of the City.

B. Once presented for signature, Developer and City shall promptly each execute and deliver the fully endorsed Requisition to the Bond Trustee directing the Bond Trustee to pay the amount set forth therein. The amount to be included in the initial Requisition shall include all Reimbursable Project Costs that have been certified by City pursuant to all approved Certification Applications as of the date of the Requisition. Once the Requisition is presented to the Bond Trustee, City shall make reasonable efforts to cause the Bond Trustee to promptly make payment thereon.

C. As to any costs that have been incurred but have not been paid by either Developer or City, City shall have the right to cause payment to be made directly to the party entitled to such payment, or to withhold approval for such payment until payment is made to the party entitled thereto, it being agreed that City shall have no obligation to execute any Certification Application, Draw Request or Requisition with respect to any Developer Reimbursable Project Costs until paid by Developer, and any

decision by City to execute any Certification Application or Requisition with respect to any Developer Reimbursable Project Costs not yet paid by Developer shall be at City's sole option and election.

D. City shall have the right to require lien releases (full or partial) and such other releases as City may reasonably require prior to authorizing any such disbursement. Delivery to the Bond Trustee of a Requisition to pay for the Developer Reimbursable Project Costs identified in the Draw Certificate shall be made within thirty (30) days of issuance of such Draw Certificate for which Obligation proceeds are available for payment. Notwithstanding anything to the contrary herein, City shall deliver a copy of any such Requisition to Developer concurrently with submission of said Requisition to the Bond Trustee.

**Section 4.03. Payment of Project Costs – “As Collected” Basis.** If the Reimbursable Project Costs are to be reimbursed from the Special Allocation Fund on an “as collected” basis rather than paid with proceeds from the sale of Obligations, Developer shall present to City a Draw Certificate for payment by City, which Draw Certificate shall seek repayment of Reimbursable Project Costs that have been previously certified by City pursuant to a Certification Application. City shall have the right to require lien releases (full or partial) and such other releases and documents as City may reasonably require prior to authorizing any such disbursement. Disbursement to Developer of sufficient proceeds from the Special Allocation Fund, to the extent such funds are available in the Special Allocation Fund, to pay on the Draw Certificate shall be made within thirty (30) days following City's approval of such Draw Certificate.

**Section 4.04. Cost Overruns.** The Public Project Improvements shall be constructed in accordance with the Redevelopment Project Cost Budget attached hereto as **Exhibit D**. Except as provided in **Section 4.01.B** hereof, no line item cost set forth on **Exhibit D** that is to be paid for in whole or in part from the Special Allocation Fund or from the proceeds of the Obligations (as set forth in the columns of the Redevelopment Project Cost Budget titled “TIF” or “CID” or “TDD”) shall be exceeded without prior written consent of City Council (which may be given as described in **Section 4.01.A.3**). In no event shall the aggregate total of the Reimbursable Project Costs, net of financing and interest costs, that is to be paid for in whole or in part from the Special Allocation Fund or from the proceeds of the Obligations exceed the Total Public Capital Support Cap in **Section 3.02**, and if and to the extent that the Reimbursable Project Costs exceed such amount then Developer shall pay and be responsible for such Reimbursable Project Costs that exceed the Total Public Capital Support Cap.

**Section 4.05. Full Assessment of Redevelopment Area.** After all Obligations and Reimbursable Project Costs have been paid and after distribution of any excess moneys pursuant to Section 99.845 and 99.850 of the Act, but not later than twenty-three (23) years from passage of the Redevelopment Project Ordinance, City shall adopt an Ordinance dissolving the Special Allocation Fund and terminating the designation of the Redevelopment Project Area as a redevelopment area under the Act (the “**Termination Ordinance**”). From that date forward, all property in the Redevelopment Project Area shall be subject to assessments and payment of all ad valorem taxes, including, but not limited to, City, State, and County taxes, based on the full true value of the real property and the standard assessment ratio then in use for similar property by the County Assessor. After the adoption of the Termination Ordinance, the Redevelopment Project Area shall be owned and operated by Developer free from the conditions, restrictions and provisions of the Act, of any rules or regulations adopted pursuant thereto, of the Ordinance, of the Redevelopment Plan, and of this Contract, except as otherwise set forth herein or therein.

**Section 4.06. Public Participation.** The purpose of affording public assistance to the Redevelopment Project is to accomplish the stated public purposes and not to subsidize an otherwise economically viable development project. While it has been determined by both the Commission and the City Council that the Redevelopment Project would not be undertaken but for the public assistance being provided, the parties recognize that the ongoing profitability of the Redevelopment Project to Developer is

based upon projections that may or may not be fulfilled. Therefore, in order to ensure that the public assistance being provided does not subsidize an unreasonable level of earnings for Developer, the parties agree that a reasonable level of earnings for the combined Redevelopment Area, excluding the Single-Family Residential Area, is a cumulative annual cash on costs rate of return unleveraged (the “**Annual Rate of Return**”) upon the Private Funds invested in the Redevelopment Project Costs from time to time by Developer (“**Private Investment**”) of fourteen percent (14%). The amount of Private Investment shall be reduced by the net proceeds of any sale of property in the Redevelopment Area, excluding the Single-Family Residential Area, by Developer or Affiliates of Developer.

A. Cash Flow. If as of the last day of each calendar year after the Effective Date and prior to the termination of the Redevelopment Project Area as a development area pursuant to **Section 4.05** hereof, the Net Cash Flow (as hereinafter defined) exceeds the cash flow necessary to generate a cumulative Annual Rate of Return of fourteen percent (14%) on the Private Investment, the City Share (as hereinafter defined) of such excess shall be contributed to City for use to expedite retirement of the Obligations.

B. Developer Financial Information.

1. Developer shall submit annually, but not before the opening of the first business within the Redevelopment Project Area, a complete written financial statement to City in a format reasonably acceptable to City showing in reasonable detail the calculation of actual earnings from the Redevelopment Area, and Net Cash Flow. Such statement shall include the income inuring to Developer, its successors and assigns, and attributable to all the Redevelopment Area. The financial statement shall include only those expenses which are reasonable and necessary to the operation of the Redevelopment Area and are directly attributable thereto. The financial statement shall not include any indirect general administrative expenses or charge backs.

2. Developer shall also submit to City annually, but not before the opening of the first business within the Redevelopment Project Area, a statement setting forth in detail reasonably acceptable to City the amount of Private Investment by Developer and the month in which each item constituting a component of the Private Investment was expended (it being agreed that Developer shall be entitled to a return upon each such amount constituting a component of the Private Investment from the date the Private Investment was made), including the total amount of all net proceeds of any sale of property in the Redevelopment Area, excluding the Single-Family Residential Area, by Developer, together with a calculation of Developer’s Annual Rate of Return on Private Investment in accordance with the provisions of **Section 4.06.A** hereof.

3. All such statements shall be certified to by Developer’s Chief Financial Officer, shall be prepared in accordance with accounting principles generally accepted in the United States of America, consistently applied (except as otherwise specified herein) and shall be accompanied by the payment required under this **Section 4.06**. Developer shall provide such statements within one hundred eighty (180) days after the end of each calendar year following the execution of this Contract. Upon request from City, Developer shall provide such additional information or documentation as City shall reasonably require to verify or confirm the information set forth in such statements or to otherwise determine Developer’s obligations hereunder and compliance with the requirements hereof.

C. Audit Right. Upon ten (10) days prior written notice, City may cause an audit of Developer’s statements and calculations referred to herein by City’s staff or consultant, which may be paid as Administrative Costs. If, as a result of any such audit, City believes that Developer owes City more money than has been remitted by Developer as heretofore described, then City shall inform

Developer of its position in writing along with providing reasonable details and the material basis for City's position. Developer and City shall meet and discuss their conflicting positions (the "Audit Meeting"). If after the Audit Meeting, City and Developer are not in agreement, then Developer may request the conflict be reviewed by the City Council. If the audit indicates that Developer has under-reported its earnings by three percent (3%) or greater, Developer shall immediately remit the shortfall to City, as well as all costs of City's audit, subsequent to the Audit Meeting and review by the City Council (if requested by Developer); if the audit indicates that Developer has overstated the amount of Private Investment in the Redevelopment Project Costs by three percent (3%) or greater, then Developer shall immediately remit the costs of City's audit, and shall submit its revised statement.

D. Definition of Public Participation Terms. For purposes of this **Section 4.06** and as used in this Contract, the following terms shall have the meaning set forth below:

1. **"City Share"**: The percentage, calculated as of the last day of each calendar year during which the provisions of this **Section 4.06** are applicable, equal to the percentage that the total actual Reimbursable Project Costs paid by Obligations or otherwise paid from the Special Allocation Fund (hereinafter "**Public Investment**") bears to the sum of Public Investment plus Private Investment.

2. **"Net Cash Flow"**: The net operating income of the Developer from the combined Redevelopment Area, excluding the Single-Family Residential Area, determined in accordance with accounting principles generally accepted in the United States of America, consistently applied (except as otherwise specified herein), for each calendar year during which the provisions of this **Section 4.06** are applicable. In determining the net operating income from the Redevelopment Area there shall be no reduction for (a) debt service (principal or interest), depreciation, amortization, reserve deposits or any other non-cash charges, nor (b) any costs or expenses relating to sales of all or any part of the Project or any real property in the Redevelopment Area.

3. **"Private Investment"**: The total cost, determined as of the last day of each calendar year during which the provisions of this **Section 4.06** are applicable of the Redevelopment Project Costs which are paid by Developer with Private Funds, as determined in accordance with generally accepted accounting principles consistently applied, reduced by all net proceeds (after deduction of reasonable costs and expenses of such sale) from sales of all or any part of the Project or any real property in the Redevelopment Area, excluding the Single-Family Residential Area; subject, however, to the provisions of this **Section 4.06**.

E. Audited Financial Statements. Developer shall annually submit to City, within one hundred eighty (180) days after the close of Developer's fiscal year, audited financial statements of Developer, certified by a certified public accounting firm.

#### **Section 4.07. Development Cost Savings.**

A. Approved Private/Public Ratio. Pursuant to the Redevelopment Project Cost Budget, the total cost anticipated to be paid for with Private Funds (as set forth in the column on the Redevelopment Project Cost Budget titled "Private", less the amount set forth in the Redevelopment Project Cost Budget titled "Ch. 100 Sales Tax Exemption on Materials") totals \$142,561,479 ("**Budgeted Private Sources**"), and the total of the items which may be reimbursed with PILOTS and EATS and the Hotel Revenues (not including the portion of EATS captured from the CID Sales Tax and the TDD Sales Tax) is \$20,159,503 (the "**Budgeted Public Sources**"). Developer and the City agree that an appropriate ratio between private and public costs to be used for reimbursement under this Contract shall start at 6.5/1 on the Effective

Date, and shall be reduced (a) to 6.0/1 when certificates of occupancy (temporary or final) have been issued for (i) the grocery store, (ii) the Apartments, and (iii) at least 20,000 but less than 40,000 additional square feet of gross floor area of structures (excluding the grocery store) in the Redevelopment Project Area, (b) to 5.5/1 when certificates of occupancy (temporary or final) have been issued for (i) the grocery store, (ii) the Apartments, and (iii) at least 40,000 but less than 60,000 additional square feet of gross floor area of structures (excluding the grocery store) in the Redevelopment Project Area, and (c) to 5/1 when certificates of occupancy (temporary or final) have been issued for (i) the grocery store, (ii) the Apartments, and (iii) at least 60,000 additional square feet of gross floor area of structures (excluding the grocery store) in the Redevelopment Project Area (the “**Approved Private/Public Ratio**”).

**B. Determination When Obligations Issued.**

1. When Obligations are issued, the City will calculate the actual ratio of (1) the total amount of Private Funds expended to pay for Redevelopment Project Costs to (2) the total amount of funds to be expended for Reimbursable Project Costs from the proceeds of Obligations attributable to EATS, PILOTS and Hotel Revenues (not including the portion of EATS captured from the CID Sales Tax and the TDD Sales Tax) (the “**Actual Private/Public Ratio**”). Developer shall provide to City such documentation (the “**Ratio Documentation**”) as City shall reasonably request to assist City in completing this calculation.

2. If the Actual Private/Public Ratio shall be less than the Approved Private/Public Ratio, then City shall have the right to refuse to advance or disburse any EATS, PILOTS and Hotel Revenues (not including the portion of EATS captured from the CID Sales Tax and the TDD Sales Tax) to the Developer, or the proceeds of Obligations attributable to EATS, PILOTS and Hotel Revenues (not including the portion of EATS captured from the CID Sales Tax and TDD Sales Tax) that would cause the Actual Private/Public Ratio to be less than the Approved Private/Public Ratio as of such date. If Developer demonstrates, to City's reasonable satisfaction based upon executed contracts (or through estimation by independent third party appraised value) for the Redevelopment Project Costs, that the Actual Private/Public Ratio shall be not less than the Approved Private/Public Ratio upon the date of completion of the Redevelopment Project Costs according to the executed contracts, then the City shall advance such portion of the proceeds of Obligations, in accordance with all procedures for the disbursement of proceeds of the Obligations and in accordance with all of the other terms and provisions of this Contract, as Developer has demonstrated will not cause the Actual Private/Public Ratio to be less than the Approved Private/Public Ratio as provided herein.

3. In the sizing of Obligations, the City may reduce the amount of proceeds of Obligations to comply with this section and to avoid the payment of arbitrage rebate associated with such Obligations or to avoid non-compliance with other federal tax laws relating to Obligations to be issued on a tax-exempt basis.

4. In addition, the City may withhold up to 10% of the net proceeds of Obligations attributable to EATS, PILOTS and Hotel Revenues (not including the portion of EATS captured from the CID Sales Tax and TDD Sales Tax) (the “**True-Up Withholding Amount**”) that are due to be paid to Developer pursuant to this Contract in order to provide for the true-up at project completion as set forth in paragraph D of this Section. At Developer's election and in lieu of the City withholding the True-up Withholding Amount, Developer may provide the City with a letter of credit or other equivalent form of security acceptable to City in an amount equal to the True-Up Withholding Amount. However, after Obligations are issued and prior to the final “True-Up Date” (as defined in paragraph D of this Section), Developer shall have the right, from time-to-time, to provide the City with such documentation of additional Private Funds expended (the

“**Interim Ratio Documentation**”) as City shall reasonably request in order to determine the amount of the proceeds of Obligations that are no longer required for the True-Up Withholding Amount because of the change to the Actual Private/Public Ratio resulting from the additional Private Funds expended. City agrees to evaluate the Interim Ratio Documentation in a timely manner and if such documentation evidences that additional Private Funds have been expended, the City agrees to (i) release the applicable portion of the True-Up Withholding Amount to Developer accordingly, or (ii) permit Developer to provide a letter of credit or other equivalent form of security in an amount equal to the reduced True-Up Withholding Amount.

**Example:** As an example of the calculation and for illustration purposes during the time when the Approved Private/Public Ratio is 5/1, if Developer, after the Obligations are issued and the City has withheld the True-Up Withholding Amount, submits Interim Ratio Documentation to the City that evidences \$5 million of additional Private Funds expended, then the City would reduce any True-Up Withholding Amount by \$100,000, such amount being calculated as \$5 million divided by the Approved Private/Public Ratio multiplied by 10% ( $\$5,000,000 / 5 * 10\% = \$100,000$ ).

C. Appeals. If City, acting through its City Manager, reasonably determines based upon the Ratio Documentation that the Actual Private/Public Ratio will be less than the Approved Private/Public Ratio upon full development of the Redevelopment Area, or if City, acting through its City Manager, reasonably determines that the Interim Ratio Documentation is wholly or partially unacceptable, then Developer agrees that such determination or determinations will not constitute a default or failure to perform hereunder by City, and upon Developer's request and at Developer's sole cost and expense the parties will submit the City Manager's decision to an independent third party consultant (the “**Project Costs Consultant**”) mutually agreed to by the parties. The Project Costs Consultant will review the City Manager's decision and render an opinion on the reasonableness of such decision. Should the Project Costs Consultant agree with the City Manager's decision, Developer shall have the right to appeal the decision of the City Manager and Project Costs Consultant to the City Council, and Developer hereby agrees that the determination of the City Council shall be determinative, except as set forth below. Should the Project Costs Consultant find the City Manager's decision to be unreasonable, the City Manager may adopt the opinion of the Project Costs Consultant or seek the decision of the City Council, and Developer hereby agrees that the determination of the City Council shall be determinative, except as set forth below. A copy of the Project Costs Consultant's report shall be provided to the City Council upon any submission by the City Manager to the City Council hereunder. Notwithstanding Developer's agreement that the decision of the City Council shall be determinative, the provisions of this **Section 4.07.C** shall not be construed to preclude Developer from exercising its rights under **Section 6.02** of this Contract and instituting such proceedings as Developer deems necessary to enforce its rights under this Contract, including, without limitation, proceedings to contest the determinations made by the City Council pursuant to **Section 4.07.C**.

D. True-Up at Project Completion. Not later than the date that is six (6) months following the issuance of temporary certificates of occupancy for all of the Private Project Improvements, the Age-Restricted Apartments, and the Apartments (the “**True-Up Date**”), Developer shall deliver to City such information as City may reasonably request to determine and verify that the Actual Private/Public Ratio is not less than the Approved Private/Public Ratio (the “**Ratio True-Up**”).

1. If the result of the Ratio True-Up is a determination that the Actual Private/Public Ratio is less than the Approved Private/Public Ratio, then the City shall either (i) draw on the Letter of Credit or other form of security or (ii) withhold payment of such amount from the True-Up Withholding Amount and EATS, PILOTS and Hotel Revenues (not including the portion of EATS captured from the CID Sales Tax Revenue and TDD Sales Tax Revenue), as

shall be necessary to cause the Actual Private/Public Ratio to be equal to the Approved Private/Public Ratio. If such amounts cannot be drawn from the Letter of Credit or other form of security or withheld from the True-Up Withholding Amount and from EATS, PILOTS and Hotel Revenues (not including the portion of EATS captured from the CID Sales Tax Revenue and the TDD Sales Tax Revenue), then Developer shall promptly pay to City such amounts as shall be necessary to cause the Actual Private/Public Ratio to be equal to the Approved Private/Public Ratio.

2. If the result of the Ratio True-Up is a determination that the Actual Private/Public Ratio is greater than the Approved Private/Public Ratio, and if additional proceeds of Obligations are available, including any True-Up Withholding Amount for the purpose of reimbursing Developer for additional Reimbursable Project Costs that are eligible for reimbursement under this Contract and have not been released to Developer, then City shall promptly authorize the disbursement of such additional amount of the proceeds of Obligations, including any True-Up Withholding Amount, as may then be available to reimburse Developer for additional Reimbursable Project Costs not previously reimbursed to Developer that are eligible for reimbursement under this Contract and Developer shall continue to be reimbursed pursuant to this Contract until the Actual Private/Public Ratio equals the Approved Private/Public Ratio, subject to the Total Public Capital Support Cap.

E. Payments to the Bond Trustee. The provisions of this **Section 4.07** restrict amounts to be paid or made available to the Developer and nothing under this **Section 4.07** shall require or entitle the City to stop or delay payments of EATS, PILOTS or Hotel Revenues that are required to be made to the Bond Trustee under the provisions of the Bond Documents.

## **ARTICLE 5: PROJECT CONTROL AND OPERATIONS**

### **Section 5.01. Tenant Approvals.**

A. Subject to the provisions of **Section 2.08**, Developer shall have complete and exclusive control over the leasing of property which it owns within the Redevelopment Project Area including, without limitation, the fixing of rentals and the selection or rejection of tenants.

B. Developer shall at all times during the term of this Contract take such commercially reasonable actions as are necessary to ensure that the mix of major retail, restaurant and other permitted uses are such that the Redevelopment Project Area will attract the optimum customer traffic.

### **Section 5.02. Lease of Project Property.**

A. Subject to **Section 5.01** hereof, Developer, or any third party, may lease real property within the Redevelopment Project Area. Developer shall insert in any such lease, and shall cause any third party to insert, the following language and shall have such Developer lease signed by the lessee indicating acknowledgment and agreement to the following provision:

**Economic Activity Taxes / Continuing Disclosure:** Tenant acknowledges that the Leased Premises are a part of a Tax Increment Financing district (“**TIF District**”) created by Lee’s Summit, 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 within the TIF District. Tenant shall forward to the City copies of Tenant’s State of Missouri sales tax returns for its property located in the TIF District when and as they are filed with the Missouri Department of Revenue, and, upon request, shall provide such other reports and returns

regarding other local taxes generated by Tenant's economic activities in the TIF District and/or the City shall require, all in the format prescribed by the City. If the City is required to disclose Tenant's sales tax information in connection with offering documents or continuing disclosure requirements related to obligations issued in furtherance of the TIF District in order to market and sell obligations or comply with applicable laws or requirements of any governmental authorities, Tenant consents to the disclosure of such sales tax information by the City and parties to which the City is required to provide such information.

Developer shall enforce said provision to the maximum extent permitted by law. Within fifteen (15) days subsequent to its execution, Developer shall provide a certification to City, signed by Developer and each such tenant, confirming that the lease includes the provisions satisfying Developer's obligation as set forth in this **Section 5.02**. Failure of Developer to require that such restrictions be placed in any such lease shall in no way modify, lessen or diminish the obligations and restrictions set forth herein relating to the Redevelopment Project Area.

**Section 5.03. Sale or Disposition of Project Property.**

A. Sale of Property. Other than a sale of property within the Redevelopment Project Area to

(1) an entity (a) that is a "**Related Entity**" (as defined in Section 5.06), (b) that obligates Developer, a Related Entity or another third party approved by City, to unilaterally manage and operate such property, specifically including making capital improvements, determination of quality of materials used in making improvements, property management functions, frequency of cleaning and maintenance of the improvements, and determination of tenants and users, and (c) that agrees that any subsequent change in the party granted the right to manage and operate such property may be made only with the prior written approval of City (which approval shall not be unreasonably withheld, conditioned or delayed), or

(2) any third party entity that will use and occupy the property being acquired for the operation of its business, so long as the use of the property is permitted in accordance with **Exhibit I**,

no sale, transfer or other conveyance of any property in the Redevelopment Project Area may be made except with the prior written approval of City, which approval will not be unreasonably withheld. City's right of approval of any transferee shall be in force as long as there are outstanding Obligations for the Redevelopment Project. Without limiting the generality of the foregoing, City may require that any transferee demonstrate to City's reasonable satisfaction, that it has sufficient financial, management, property ownership and operation capabilities, and that it is interested in the long-term viability of the subject land use and the Redevelopment Plan as a whole. In addition, as a condition precedent to the transfer of any property interest within the boundaries of the Redevelopment Project Area to any transferee, Developer shall require the transferee to enter, and shall deliver to City, either, as applicable, an Assignment Agreement in the form attached as **Exhibit K** (the "**Assignment Agreement**") or a Transferee Agreement in the form attached as **Exhibit L** (the "**Transferee Agreement**"), with those modifications as requested by such transferee and acceptable to City. Upon execution of Assignment Agreement or Transferee Agreement, as applicable, Developer shall be released from its obligations in this Contract relating to said transferred property. City shall exercise its right to approve or deny any proposed sale or transfer within thirty (30) days from the date of receipt of written notice from Developer. In the event City fails to act within said thirty (30) days, the proposed sale or other transfer shall be deemed approved.

B. Continuation of Payments in Lieu of Taxes. In the event of the sale or other voluntary or involuntary disposition of any or all of the real property of Developer or any third party in the



Redevelopment Project Area, Payments in Lieu of Taxes with respect to the real property so sold or otherwise disposed of 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 Developer and its successors and assigns in ownership of said property 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, transferee or other possessor thereof were originally a party to and bound by this Contract.

C. Obligation to Ameliorate Existing Conditions. Developer's obligations pursuant to **Section 2.03** hereof, unless earlier satisfied and certified pursuant to **Section 2.09** hereof, 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 against purchasers or other transferees as if such purchaser or transferee were originally a party to and bound by this Contract.

D. Incorporation. The restrictions set forth above in **Section 5.03.A** and **Section 5.03.B** hereof, as well as those set forth in **Section 2.07.C**, **Section 3.09** and **Section 3.10** hereof, shall be incorporated into any deed or other instrument conveying an interest in real property, other than a lease agreement, within the Redevelopment Project Area and shall provide that said obligations or restrictions shall constitute a benefit held by both Developer and City and that City is an intended third party beneficiary of said obligations and restrictions. Failure of Developer to require that such restrictions be placed in any such deed or other instrument shall in no way modify, lessen or diminish the obligations and restrictions set forth herein relating to the Redevelopment Project Area.

E. Restriction on Transfer to Tax-Exempt Entities. No sale, transfer or other conveyance of any property in the Redevelopment Project Area may be made to an entity that may claim exemption, or is exempt, from real property taxes for all or part of the property in the Redevelopment Project Area (a "**Restricted Entity**") for the earlier of (i) twenty three (23) years from the date that a Redevelopment Project Ordinance is approved for such area or (ii) termination of this Contract (the "**Restricted Period**") without the prior written approval of the City. In the event that Developer seeks to transfer any property in the Redevelopment Area to a Restricted Entity during the Restricted Period, such transfer may only occur upon the prior written approval of the City, which approval shall not be unreasonably withheld, and upon the prior execution of a separate agreement between the purchasing Restricted Entity and the City which provides for the annual payment of an amount equal to Payments in Lieu of Taxes which otherwise would have been paid in regard to such property by such Restricted Entity for each of the years remaining in the Restricted Period. This requirement shall be a covenant running with the land and shall be enforceable for such period as if such purchaser, transferee or possessor thereof were originally a party to and bound by this Contract.

F. Notification to City of Transfer. Developer shall notify City in writing of any proposed sale or other transfer of any or all of the real property in the Redevelopment Project Area or any interest therein. Such notice shall be provided not less than thirty (30) days prior to the proposed effective date of the sale or other transfer in a manner as described in **Section 6.04** hereof and shall include a copy of the instrument effecting such sale or other disposition to enable City to confirm that the requirements set forth above in this **Section 5.03** hereof have been fulfilled.

#### **Section 5.04. Progress Reports.**

A. At the first regularly-scheduled meeting of the City Council following the first anniversary of the execution of this Contract and each anniversary of said execution thereafter until all Project Improvements are completed, Developer shall report to the City Council the progress of its implementation of the Redevelopment Project. At the first regularly-scheduled meeting of the City

Council following the fifth anniversary of said execution and on each five-year anniversary thereafter so long as the Redevelopment Plan shall remain in effect with respect to the Redevelopment Project Area, Developer shall prepare and present to the City Council a detailed report on the progress of implementation of the Redevelopment Project. Such reports shall include such information as is required under the reporting requirements of the Act, such additional information as City may reasonably require, and such additional information as Developer wishes to present, including, without limitation:

1. Project Improvements completed;
2. status of Project Improvements in progress but not yet completed;
3. actual assessed value of the Redevelopment Project Area before and after completion of the Project Improvements as compared to Redevelopment Plan estimates;
4. actual Payments in Lieu of Taxes as compared to Redevelopment Plan estimates;
5. actual Redevelopment Project Costs in the Redevelopment Project Area compared to Redevelopment Plan estimates;
6. actual start and completion dates of Project Improvements in the Redevelopment Project Area compared to Redevelopment Plan estimates; and
7. estimated start date of Project Improvements not yet commenced at date of report.

B. Developer shall from time to time furnish such other reports on specific matters not addressed by the foregoing as City may reasonably require.

**Section 5.05. Compliance with Laws.** Subject to Developer’s rights to contest the same in any manner permitted by law, Developer, its officers, directors and principals, at its sole cost and expense, shall comply in every respect with all Legal Requirements, ordinances, rules and regulations of all federal, state, county and municipal governments, agencies, bureaus or instrumentalities thereof now in force or which may be enacted hereafter which pertain to the ownership, occupancy, use and operation of the Redevelopment Project and the Redevelopment Project Area.

**Section 5.06. Assignment of Developer’s Obligations.** The Developer represents that its undertakings pursuant to this Contract are for the purpose of redevelopment. Without limiting the rights of Developer or any third party under **Section 5.03** hereof, Developer agrees that this Contract and the rights, duties and obligations hereunder may not and shall not be assigned by Developer except upon terms and conditions agreeable to City; provided, however, nothing in this Section 5.06 shall prevent the Developer from assigning, without the City’s consent, all rights and/or obligations under this Contract to a Related Entity (as defined below), provided that prior to an assignment to a Related Entity the Developer furnishes City with the name of the 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 owners of a majority of the interests in Developer. For purposes hereof, “control” shall mean the power to direct or cause the direction of the management or policies of such entity. Any proposed transferee shall have all of the qualifications and financial responsibility, as determined by City in its sole discretion, necessary and adequate to fulfill the obligations of Developer, and, if the proposed transfer relates to a portion of the Redevelopment Project Area on which Project Improvements are under way, such obligations to the extent that they relate to such property. Any

proposed transferee shall, utilizing the form Assignment Agreement, expressly for the benefit of City, assume all of the obligations of Developer under this Contract and agree to be subject to all the conditions and restrictions to which Developer is subject (or, in the event the transfer is of or relates to a portion of the Redevelopment Project Area, such obligations, conditions and restrictions to the extent that they relate to such portion and in such event the form Transferee Agreement shall be used). Upon approval of the Assignment Agreement or Transferee Agreement, as applicable, by City as set forth herein, Developer shall be released from such obligations accruing after the date of such assignment.

A. Assignment of Payments. Notwithstanding the provisions of this **Section 5.06**, Developer may assign or pledge its right to receive reimbursement for Reimbursable Project Costs incurred by providing City with notice of any such assignment or pledge. Such assignment or pledge shall remain subject to the terms, provisions and conditions of this Contract.

B. Collateral Assignment of Contract. Notwithstanding the provisions of this **Section 5.06** and **Section 5.07**, Developer may assign or pledge its right to receive reimbursement for Reimbursable Project Costs incurred by providing City with notice of any such assignment or pledge. Such assignment or pledge shall remain subject to the terms, provisions and conditions of this Contract.

**Section 5.07. Transfer of Interests in Developer – City Approval.** Developer shall, prior to the sale, conveyance, merger or other transfer of any interest in Developer (including without limitation any stock if Developer is a corporation or membership interests if Developer is a limited liability company and any transfers by operation of law), deliver to City a request for approval of such transfer, and no such transfer shall be permitted except with the prior approval of City; provided, however, that the members, partners or shareholders of Developer as of the Effective Date, shall have the right to transfer, in one or more transactions, up to a cumulative total of one hundred percent (100%) of the ownership interest in Developer, without City’s consent, to a Related Entity. Upon submission by Developer of any request for transfer to City, City shall have the right to request such documentation and information as City shall determine to be necessary or desirable to determine whether such transfer is acceptable to City. Any purported transfer by Developer or any party owning any interest in Developer of any interest without the consent of City shall be null and void. In addition, City may require Developer, as a condition precedent to the transfer of any interests in Developer, to require the transferee to enter into either an Assignment Agreement or Transferee Agreement, as applicable, with the City, obligating the transferee to comply with the requirements of the Redevelopment Plan and the obligations in this Contract relating to the property. Notwithstanding the foregoing, Developer or Developer’s members, or any one of them, may, without notice to or approval of City, transfer interests in Developer to any Affiliate of such member, if such transfer does not result in a material change in the controlling interests of Developer.

## ARTICLE 6: GENERAL COVENANTS

### Section 6.01. Indemnification.

A. Developer shall indemnify, protect, defend and hold City and its officers, directors, members, commissioners, employees and agents (collectively, the “**Indemnified Parties**” or, individually, an “**Indemnified Party**”) harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys’ fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any acts or omissions of Developer, its constituent members or partners, their employees, agents, independent contractors, licensees, invitees or others acting by, through or under such indemnifying parties, in connection with its or their activities conducted pursuant to this Contract and/or in connection with the ownership, use or occupancy and development or redevelopment of the Redevelopment Area or a portion thereof and the Project Improvements.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an “**Action**”) is begun or made as a result of which Developer may become obligated to one or more of the Indemnified Parties hereunder, the Indemnified Party shall give prompt notice to Developer of the occurrence of such event, but the failure to notify Developer will not relieve Developer of any liability that it may have to an Indemnified Party. After receipt of such notice, Developer may elect to defend, contest or otherwise protect the Indemnified Party against any such Action, at the cost and expense of Developer, utilizing counsel of Developer’s choice. The Indemnified Party shall have the right, but not the obligation, to participate, at the Indemnified Party’s own cost and expense, in the defense thereof by counsel of the Indemnified Party’s choice. In the event that Developer shall fail timely to defend, contest or otherwise protect an Indemnified Party against such Action, the Indemnified Party shall have the right to do so, and (if such defense is undertaken by the Indemnified Party after notice to Developer asserting Developer’s failure to timely defend, contest or otherwise protect against such Action), the Indemnified Party may submit any bills for fees and costs received from its counsel to Developer for payment and, within thirty (30) business days after such submission, Developer shall transfer to the Indemnified Party sufficient funds to pay such bills. Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

C. An Indemnified Party shall submit to Developer any settlement proposal that the Indemnified Party shall receive. Developer shall be liable for the payment of any amounts paid in settlement of any Action to the extent that Developer consents to such settlement. Neither Developer nor the Indemnified Party will unreasonably withhold its consent to a proposed settlement.

D. Developer expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Contract imposed upon Developer in order to induce City to enter into this Contract. To the fullest extent permitted by law, an Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Contract. If such court action is successful, the Indemnified Party shall be reimbursed by Developer for all fees and expenses (including attorneys’ fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

E. The right to indemnification set forth in this Contract shall survive the termination of this Contract and the Redevelopment Project Area as a development area.

**Section 6.02. Breach-Compliance.**

A. If Developer or City does not comply with provisions of this Contract, including provisions of the Redevelopment Plan pertaining to the Redevelopment Project Area, within the time limits and in the manner for the completion of the Redevelopment Project as therein stated, except for any extensions or waivers described herein and Excusable Delays (as defined in **Section 6.03** hereof), in that Developer or City shall do, permit to be done, or fail or omit to do, or shall be about so to do, permit to be done, or fail or omit to have done, anything contrary to or required of it by this Contract or the Act, and if, within thirty (30) days after notice of such default by the nondefaulting party to the defaulting party, the defaulting party shall not have cured such default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period (but in any event if the defaulting party shall not have cured such default within one hundred twenty (120) days), then the nondefaulting party may institute such proceedings as may be necessary in its opinion to cure the default including, but not limited to, proceedings to compel specific performance by the party in default of its obligations and, in the case of default by Developer, City is granted the right to terminate this Contract, the right to apply any deposit or other funds submitted by Developer to City in payment of the damages suffered by it, the right to withhold or apply funds from the Special Allocation Fund to such extent as is

necessary to protect City from loss or to ensure that the Redevelopment Plan and the Redevelopment Project are fully and successfully implemented in a timely fashion, and the right to withhold issuance of a Certificate of Substantial Completion.

B. If any action is instituted by either party hereunder, the nonprevailing party in such action shall pay any and all costs, fees and expenses, including attorneys' fees incurred by the prevailing party in enforcing this Contract.

C. The rights and remedies of the parties to this Contract, whether provided by law or by this Contract, shall be cumulative and the exercise by either party of any one or more of such remedies 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 either party shall apply to obligations beyond those expressly waived.

D. Developer (for itself and its successors and assigns, and for all other persons who are or who shall become liable, by express or implied assumption or otherwise, upon or subject to any obligation or burden under this Contract), waives to the fullest extent permitted by law and equity all claims or defenses otherwise available on the ground of being or having become a surety or guarantor, whether by agreement or operation of law. This waiver includes, but is not limited to, all claims and defenses based upon extensions of time, indulgence or modification of terms of contract.

E. Any delay by either party 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 them in any way. No waiver in fact made by either party of any specific default by the other party 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.

F. In no event shall City be obligated to certify any Reimbursable Project Costs, approve any Certification Application or Draw Certificate or reimburse Developer for any Reimbursable Project Costs incurred or paid by Developer at any time while any default by Developer has occurred, or any event that, with the passage of time or the giving of notice or both, will ripen into or constitute a default hereunder. If City shall at any time elect to rely upon the provisions of this **Section 6.02.F** as the basis for an action by City, City shall, at the time of such election, notify Developer in writing of such decision and the specific facts or events relied upon by City as the basis for such action by City.

G. Notwithstanding anything to the contrary herein, Developer agrees that in the event of any default by City under this Contract, it will not bring any action or suit to recover damages against City or any officer, director, commissioner, member, employee, or agent of any of them, except that this **Section 6.02.G** shall not prevent the award of attorneys' fees under **Section 6.02.B** hereof in the event of a default by City under this Contract. Actions brought in equity or which otherwise do not seek to recover damages are not precluded by this Section.

**Section 6.03. Excusable Delays.** The parties understand and agree that Developer shall not be deemed to be in default of this Contract because of an "**Excusable Delay**" (as herein defined). For purposes of this Contract, the term "**Excusable Delay**" shall mean any delay beyond the reasonable control of Developer, 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 or occupants 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 Contract, which in fact prevents the Developer from discharging its obligations hereunder. With the approval of City, the time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any of the foregoing causes, which approval shall not be arbitrarily or unreasonably withheld. Developer shall be granted such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays. Nothing herein shall excuse Developer from any obligation to pay money hereunder, nor shall this Section excuse Developer from performance of its obligations because of a lack of funds or inability to obtain financing, except as provided in **Section 3.05** hereof and except if financing commitments obtained by Developer and approved by City as provided in this Contract are not fulfilled by the party issuing such commitment through no fault of Developer, in which case Developer shall be entitled to additional time not to exceed one hundred eighty (180) days to obtain new financing commitments to be approved by City in the same manner as provided herein for the initial financing commitments. Notwithstanding the forgoing, in no event shall such Excusable Delays entitle Developer to a certificate of occupancy for any structure located within the Redevelopment Project Area until a certificate of substantial completion for the City Public Project Improvements has been issued by City pursuant to the provisions of the Design and Construction Manual (Ordinance No. 3719).

**Section 6.04. Notice.** Any notice required by this Contract shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, and addressed as hereinafter specified.

Any notice to City shall be addressed to:

City Attorney  
City Hall  
220 SE Green Street  
Lee's Summit, MO 64063

Any notice to Developer shall be addressed to:

Matt Pennington  
Drake Development, LLC  
12701 Metcalf Avenue, Suite 100  
Overland Park, KS 66213

With a copy to:

Charles F. Miller  
Ralph E. Bellar, Jr.  
Lewis Rice LLC  
1010 Walnut, Suite 500  
Kansas City, MO 64106

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days' written notice thereof.

**Section 6.05. Modification.** The terms, conditions, and provisions of this Contract and of the Redevelopment Plan can be neither modified nor eliminated except in writing and by mutual agreement between City and Developer. Any modification to this Contract as approved shall be attached hereto and incorporated herein by reference.

**Section 6.06. Effective Date.** This Contract shall become effective on the Effective Date and shall remain in full force and effect until the completion of all Project Improvements, as described herein, and so long as any Obligations or Redevelopment Project Costs under the Redevelopment Plan remain outstanding and unpaid, subject, however, to the provisions of **Section 6.02** hereof.

**Section 6.07. Recording.** Upon full execution by City and Developer, a Memorandum of this Contract (using the legal description for the Redevelopment Project Area) shall be recorded by City, at Developer's expense, in the Office of the Recorder of Deeds for Jackson County, Missouri.

**Section 6.08. Applicable Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Missouri.

**Section 6.09. Covenant Running With the Land.** The provisions of this Contract shall be covenants running with the land and shall remain in effect for the duration of the Redevelopment Plan, as it pertains to the Redevelopment Project Area, and any renewal period or periods of the Redevelopment Plan, as it pertains to the Redevelopment Project Area, at the end of which time they shall cease. They shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and be enforceable by, City, its successors and assigns, against Developer, its successors and assigns, and every successor in interest to the subject real property, or any part of it or any interest in it and any party in possession or occupancy of the real property or any part thereof (provided, subject to the provisions of **Section 5.07** hereof, that any such covenants shall be binding on Developer itself, such successor in interest to the subject property, and every part of the subject real property, and each party in possession or occupancy of the subject real property or any part thereof, only during their period of ownership).

**Section 6.10. Relocation Costs.** City shall not be responsible for any relocation activity or the costs thereof that may be required by law to be paid with respect to any part of the Redevelopment Plan. Developer shall provide the relocation services and benefits as provided for under the Redevelopment Plan with respect to the Redevelopment Project Area and shall hold City harmless from any claim, cost or expense for said services and benefits made by individuals and entities arising from implementation of this Redevelopment Plan with respect to the Redevelopment Project Area, except that such costs may be deemed by City to be Redevelopment Project Costs. City acknowledges that the amounts paid by Developer to purchase real property from third parties within the Redevelopment Project Area are Reimbursable Project Costs up to the reimbursable amounts shown on **Exhibit D**, as these amounts include relocation costs. Notwithstanding the foregoing, City may assist in administering relocation activity if requested by Developer and approved by City, or if directed by the City Council of City.

**Section 6.11. Administrative Costs and Expenses.**

A. Termination of Funding Agreement. The Developer has previously advanced, pursuant to a Funding Agreement between the City and the Developer dated October 19, 2018 ("the "**Funding Agreement**"), certain funds for Administrative Costs. Within thirty (30) days after execution of this Contract, 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 invoiced amounts shall be paid first from the existing advanced funds and thereafter by the Developer directly to the extent that invoiced amounts exceed the existing advanced funds. All such payments by Developer are Reimbursable Project Costs and are eligible for reimbursement with TIF Revenues. 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 6.11.B.** hereof and shall be treated as a 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 other Administrative Costs incurred in connection with the Plans and this Contract. 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 \$25,000, 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 \$25,000. 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 \$25,000 to the City as Advanced Funds for deposit in the Advanced Funds Account. If there are more funds on deposit with the City pursuant to the Funding Agreement than what is necessary to advance the sum of \$25,000 to the City as Advanced Funds for deposit in the Advanced Funds Account, then the City shall promptly refund such excess amount to the Developer. 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 quarterly. Developer shall have no further obligation to advance to the City funds for Administrative Costs. All such payments of Advanced Funds by Developer are Reimbursable Project Costs in addition to the Reimbursable Project Costs Cap and will be eligible for reimbursement with TIF Revenues.

C. Future Administrative Costs from Special Allocation Fund. When funds are available in the Special Allocation Fund for the Redevelopment Plan, the City shall transfer any balance in the Advanced Funds Account into a separate, segregated account of the City (the “**Administrative Costs Account**”) and may annually withdraw funds from the Special Allocation Fund in the lesser of (i) \$25,000 or (ii) the amount necessary to fund up the Administrative Costs Account to a balance of \$25,000 to pay the Administrative Costs of the City.

**Section 6.12. Validity and Severability.** It is the intention of the parties hereto that the provisions of this Contract 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 Contract. Accordingly, if any provision of this Contract shall be deemed invalid or unenforceable in whole or in part, this Contract 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 Contract in order to render the same valid and enforceable. All exhibits attached hereto are hereby incorporated into this Contract by reference; however, in the event of any conflict between any exhibit and the text of the Contract, the text of the Contract shall prevail.

**Section 6.13. Time and Performance are of the Essence.** Time and exact performance are of the essence of this Contract.

**Section 6.14. City’s Legislative Powers.** Notwithstanding any other provisions in this Contract, nothing herein shall be deemed to usurp the governmental authority or police powers of City or to limit the legislative discretion of the City Council, and no action by the City Council in exercising its legislative authority shall be a default under this Contract.

**Section 6.15. Disputes between Private Parties and Affiliated Entities.** In the event of a dispute regarding the rights, duties and obligations of any of the private parties that are associated with developing the Redevelopment Area, including any disputes between or among Developer, Affiliates of Developer, Related Entities and such parties’ lenders, the City shall have no obligation to resolve such disputes, and the private parties that are connected with such dispute shall independently resolve their issues. In the event that the City is requested to take any action associated with the implementation of the Redevelopment Plan, the Redevelopment Project, the CID, the TDD, the Hotel Revenues, the Master Chapter 100 Plan or this Contract, or development of the Redevelopment Area, and another private party that is Developer, an Affiliate, a Related Entity of Developer, a lender, or another private party that has a



colorable right under this Contract, contests or challenges the City's right to take such action, the City may decline to take such action until such time as the dispute between the appropriate parties is resolved to the City's satisfaction.

**Section 6.16. Approvals by City.** Unless specifically provided to the contrary herein, all approvals or consents of the City 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, in his/her discretion, may seek the advice, consent or approval of the City Council for any action that requires consent or approval by the City Manager pursuant to this Contract.

*[Remainder of the page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

**CITY OF LEE'S SUMMIT, MISSOURI**

By: \_\_\_\_\_  
Steve Arbo, City Manager

[SEAL]

ATTEST:

\_\_\_\_\_  
Trisha Fowler Arcuri  
City Clerk

STATE OF MISSOURI    )  
                                  )   ss.  
COUNTY OF JACKSON )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of January, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Steve Arbo, City Manager of the City of Lee's Summit, 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:

\_\_\_\_\_

**STREETS OF WEST PRYOR, LLC**

By: \_\_\_\_\_  
Matt Pennington, Manager

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, a notary public, appeared Matt Pennington, to me personally known, who being by me duly sworn, did say that he is the Manager of Streets of West Pryor, LLC, and is authorized to sign documents on behalf of Streets of West Pryor, LLC, a Missouri limited liability company, and that said instrument was signed on behalf of said Streets of West Pryor, LLC, by authority of its Articles of Organization and acknowledged said instrument to be the free act and deed of said company.

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

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION OF REDEVELOPMENT AREA

ALL OF LOT 1, PRYOR ACRES RECORDED IN BOOK I47 PAGE 36, AND ALL OF CORLEW'S ESTATES RECORDED IN BOOK 35, PAGE 54, AND ALL OF ERICKSON ACRES, 1ST PLAT, RECORDED AS DOCUMENT 200110086408, AND ALL OF LOT 17, TRACT C AND TRACT D, AND A PORTION OF LOT 18 CHIPMAN-HWY 50 RECORDED IN BOOK 168, PAGE 62, AND A PORTION OF NW LOWENSTEIN DRIVE RIGHT-OF-WAY, AND UN-PLATTED LAND IN THE SOUTH HALF OF SECTION 35, TOWNSHIP 48, RANGE 32, CITY OF LEE'S SUMMIT, COUNTY OF JACKSON, STATE OF MISSOURI, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 35; THENCE ON THE WEST LINE OF SAID SOUTHEAST QUARTER, ON AN ASSUMED BEARING OF S 02°27'18" W 332.72 FEET TO THE POINT OF BEGINNING; THENCE N 31°23'08" E 362.27 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 470; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 85°14'51" E 359.55 FEET TO THE NORTHWEST CORNER OF GERBER HEIGHTS RECORDED IN BOOK 151, PAGE 74; THENCE ON THE WESTERLY LINE OF SAID GERBER HEIGHTS, S 24°49'45" E 579.75 FEET TO THE SOUTHWEST CORNER OF SAID GERBER HEIGHTS; THENCE ON THE SOUTH LINE OF SAID GERBER HEIGHTS, S 85°07'20" E 511.36 FEET TO THE SOUTHEAST CORNER OF SAID GERBER HEIGHTS; THENCE ON THE EAST LINE OF SAID GERBER HEIGHTS, N 02°27'18" E 417.29 FEET TO SAID SOUTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 470; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 77°50'38" E 148.55 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 46°58'04" E 317.20 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 74°45'44" E 322.94 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 87°42'21" E 182.05 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 64°40'25" E 144.66 FEET TO THE INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE WITH THE WESTERLY RIGHT-OF-WAY LINE OF NW PRYOR ROAD BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT; THENCE ON SAID WESTERLY RIGHT-OF-WAY LINE, SOUTHWESTERLY ON THE ARC OF SAID CURVE HAVING A RADIUS OF 1140.00 FEET, AN ARC LENGTH OF 444.52 FEET, AND WHOSE CHORD BEARS S 14°41'33" W 441.71 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT; THENCE CONTINUING ON SAID WESTERLY RIGHT-OF-WAY LINE, SOUTHERLY ON THE ARC OF SAID CURVE HAVING A RADIUS OF 1260.00 FEET, AN ARC LENGTH OF 1040.64 FEET, AND WHOSE CHORD BEARS S 02°12'10" W 1011.31 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT; THENCE ON SAID WESTERLY RIGHT-OF-WAY LINE, SOUTHERLY ON THE ARC OF SAID CURVE HAVING A RADIUS OF 1140.00 FEET, AN ARC LENGTH OF 485.50 FEET, AND WHOSE CHORD BEARS S 09°15'26" E 481.84 FEET; THENCE CONTINUING ON SAID WESTERLY RIGHT-OF-WAY LINE, S 02°56'36" W 154.04 FEET TO THE INTERSECTION OF SAID WESTERLY RIGHT-OF-WAY LINE WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF NW LOWENSTEIN DRIVE; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE,

N 63°21'08" W 614.37 FEET; THENCE CONTINUING ON SAID SOUTHERLY RIGHT-OF-WAY LINE, N 46°56'08" W 1305.77 FEET TO THE INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF NW BLACK TWIG LANE; THENCE N 46°07'56" W 55.00 FEET TO THE INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE OF NW LOWENSTEIN DRIVE WITH THE NORTHERLY RIGHT-OF-WAY LINE OF SAID NW BLACK TWIG LANE; THENCE CONTINUING ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF NW LOWENSTEIN DRIVE, N 45°11'41" W 1073.28 FEET; THENCE CONTINUING ON SAID SOUTHERLY RIGHT-OF-WAY LINE, N 73°35'29" W 146.53 FEET; THENCE N 31°23'08" E 397.41 FEET TO THE POINT OF BEGINNING.

CONTAINS 3,199,695.26 SQUARE FEET, 73.45 ACRES MORE OR LESS.

END OF DESCRIPTION

BASIS OF BEARINGS:

ASSUMED N 86°35'09" W ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 48, RANGE 32, CITY OF LEE'S SUMMIT, COUNTY OF JACKSON, STATE OF MISSOURI.

## EXHIBIT B

### LEGAL DESCRIPTION OF REDEVELOPMENT PROJECT AREA

A PORTION OF LOT 1, PRYOR ACRES RECORDED IN BOOK 147 PAGE 36, AND ALL OF CORLEW'S ESTATES RECORDED IN BOOK 35, PAGE 54, AND A PORTION OF ERICKSON ACRES, 1ST PLAT, RECORDED AS DOCUMENT 200110086408, ALL OF LOT 17, TRACT C AND TRACT D, AND A PORTION OF LOT 18 CHIPMAN-HWY 50 RECORDED IN BOOK 168, PAGE 62, AND A PORTION OF NW LOWENSTEIN DRIVE RIGHT-OF-WAY, AND UN-PLATTED LAND IN THE SOUTH HALF OF SECTION 35, TOWNSHIP 48, RANGE 32, CITY OF LEE'S SUMMIT, COUNTY OF JACKSON, STATE OF MISSOURI, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 35; THENCE ON THE WEST LINE OF SAID SOUTHEAST QUARTER, ON AN ASSUMED BEARING OF S 02°27'18" W 332.72 FEET; THENCE N 31°23'08" E 362.27 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF INTERSTATE 470; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 85°14'51" E 359.55 FEET TO THE NORTHWEST CORNER OF GERBER HEIGHTS RECORDED IN BOOK 151, PAGE 74; THENCE ON THE WESTERLY LINE OF SAID GERBER HEIGHTS, S 24°49'45" E 579.75 FEET TO THE SOUTHWEST CORNER OF SAID GERBER HEIGHTS; THENCE ON THE SOUTH LINE OF SAID GERBER HEIGHTS, S 85°07'20" E 511.36 FEET TO THE SOUTHEAST CORNER OF SAID GERBER HEIGHTS, BEING THE POINT OF BEGINNING; THENCE ON THE EAST LINE OF SAID GERBER HEIGHTS, N 02°27'18" E 417.29 FEET TO SAID SOUTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY 470; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 77°50'38" E 148.55 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 46°58'04" E 317.20 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 74°45'44" E 322.94 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 87°42'21" E 182.05 FEET; THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S 64°40'25" E 144.66 FEET TO THE INTERSECTION OF SAID SOUTHERLY RIGHT-OF-WAY LINE WITH THE WESTERLY RIGHT-OF-WAY LINE OF NW PRYOR ROAD BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT; THENCE ON SAID WESTERLY RIGHT-OF-WAY LINE, SOUTHWESTERLY ON THE ARC OF SAID CURVE HAVING A RADIUS OF 1140.00 FEET, AN ARC LENGTH OF 444.52 FEET, AND WHOSE CHORD BEARS S 14°41'33" W 441.71 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT; THENCE CONTINUING ON SAID WESTERLY RIGHT-OF-WAY LINE, SOUTHERLY AND SOUTHEASTERLY ON THE ARC OF SAID CURVE HAVING A RADIUS OF 1260.00 FEET, AN ARC LENGTH OF 1040.64 FEET, AND WHOSE CHORD BEARS S 02°12'10" W 1011.31 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT; THENCE ON SAID WESTERLY RIGHT-OF-WAY LINE, SOUTHERLY ON THE ARC OF SAID CURVE HAVING A RADIUS OF 1140.00 FEET, AN ARC LENGTH OF 485.50 FEET, AND WHOSE CHORD BEARS S 09°15'26" E 481.84 FEET; THENCE CONTINUING ON SAID WESTERLY RIGHT-OF-WAY LINE, S 02°56'36" W 154.04 FEET TO THE INTERSECTION OF SAID WESTERLY RIGHT-OF-WAY LINE WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF NW LOWENSTEIN DRIVE; THENCE ON SAID

SOUTHERLY RIGHT-OF-WAY LINE, N 63°21'08" W 614.37 FEET; THENCE CONTINUING ON SAID SOUTHERLY RIGHT-OF-WAY LINE, N 46°56'08" W 671.14 FEET; THENCE N 43°03'52" E 99.28 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT; THENCE ON THE ARC OF SAID CURVE HAVING A RADIUS OF 300.00 FEET, AN ARC LENGTH OF 315.86 FEET, AND WHOSE CHORD BEARS N 13°57'34" E 301.47 FEET; THENCE N 73°47'49" E 42.44 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT; THENCE ON THE ARC OF SAID CURVE HAVING A RADIUS OF 250.00 FEET, AN ARC LENGTH OF 81.41 FEET, AND WHOSE CHORD BEARS N 83°07'33" E 81.05 FEET; THENCE S 87°32'44" E 17.38 FEET; THENCE N 02°27'16" E 161.89 FEET; THENCE S 87°32'44" E 112.00 FEET; THENCE N 02°27'16" E 284.17 FEET; THENCE N 87°32'44" W 112.00 FEET; THENCE N 02°27'16" E 174.93 FEET; THENCE N 87°32'44" W 217.33 FEET; THENCE N 02°27'18" E 302.94 FEET TO THE POINT OF BEGINNING.

CONTAINS 1,595,146.14 SQUARE FEET, 36.62 ACRES MORE OR LESS.

END OF DESCRIPTION

BASIS OF BEARINGS:

ASSUMED N 86°35'09" W ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 48, RANGE 32, CITY OF LEE'S SUMMIT, COUNTY OF JACKSON, STATE OF MISSOURI.

NOTE: THE LEGAL DESCRIPTION OF THE REDEVELOPMENT PROJECT AREA WILL BE SUBJECT TO MINOR ADJUSTMENTS AS CONSTRUCTION PLANS ARE PREPARED WHICH ESTABLISH THE FINAL LOCATION OF STRUCTURES WITHIN THE REDEVELOPMENT PROJECT AREA AND AS PRECISE FINAL BOUNDARIES OF THE REDEVELOPMENT PROJECT AREA AND TAX PARCELS THEREIN ARE ESTABLISHED THROUGH THE PLATTING PROCESS.

## EXHIBIT C

### LAND USES IN THE PRELIMINARY DEVELOPMENT PLAN

Lot #	Proposed District/Use	Proposed Square Footage
1	Restaurant (Sit-Down)	6,500
2	Restaurant (Sit-Down)	6,500
3	Restaurant Drive-Thru or Retail	5,500
4	Medical Office	6,500
4A	Restaurant - Drive-Thru Only	707
5	Grocery	63,119
6	Senior Living Apartments and Pickle Ball Courts	274,716
7	Apartments / Retail / Restaurant	264,600 apartment 10,000 retail 5,000 restaurant
8	Restaurant (Two-Tenants) or Retail	7,500
9	Restaurant (Two-Tenants) or Retail	9,500
10	Restaurant	7,500
10A	Restaurant (Sit-Down)	7,500
11	Restaurant (Sit-Down)	7,500
12	Hotel (105 rooms)	53,864

**NOTE:** This Exhibit C identifies the land uses that are allowed by the Preliminary Development Plan as of the Effective Date of this Contract and is subject to change as provided in Section 2.06 of the Contract. The land uses permitted by the Preliminary Development Plan, as the same may be amended from time to time, shall take precedence over the list of land uses shown on this Exhibit C.

**EXHIBIT D**

**REDEVELOPMENT PROJECT COST BUDGET**

Streets of West Pryor

	Total Project Costs	Private	TIF & OTHER	Community Improvement District (CID)		Transportation Development District (TDD)	
			PILOTS / EATS STR	CID NON-EATS	CID EATS	TDD NON-EATS	TDD EATS
<b>Development Costs</b>							
Acquisition	\$ 9,640,147	\$ 7,640,147	\$ -		\$ 2,000,000		
Building Construction	\$ 114,211,435	\$ 114,211,435					
General Conditions	\$ 1,476,396	\$ 984,265	\$ 492,132				
Site Construction (on & offsite)							
Grading, retaining walls and site prep	\$ 6,291,113	\$ -	\$ 5,862,020		\$ 429,093		
Sanitary Sewer	\$ 906,385	\$ 226,596	\$ 679,789				
Water	\$ 1,095,660	\$ 730,441	\$ 365,220				
Storm Water	\$ 2,907,007	\$ 1,938,006	\$ 969,001				
Roadway	\$ 4,359,751	\$ -	\$ 2,572,110	\$ 826,515		\$ 961,126	
Surface Parking & Curbs	\$ 5,490,623	\$ 5,490,623					
Parking Structure	\$ 5,698,000	\$ 2,013,472	\$ 2,988,539				\$ 695,989
Site Utilities	\$ 1,362,972	\$ 908,648	\$ 454,323				
Hardscape / Landscape	\$ 2,508,449	\$ 2,508,449					
Signage / Monumentation	\$ 250,000	\$ 250,000					
Park Improvements	\$ 703,900	\$ -	\$ -		\$ 703,900		
Transmission Lines	\$ 3,500,000	\$ -		\$ 3,500,000			
Professional Services (Eng/Arch/Consult/Legal/PM/Other)	\$ 5,213,605	\$ 2,477,346	\$ 2,450,394	\$ 135,664	\$ 98,239	\$ 30,137	\$ 21,824
Commissions & Marketing	\$ 1,062,000	\$ 1,062,000					
Financing Costs (Interest Carry / Closing / Fees / Other)	\$ 5,336,986	\$ 2,535,974	\$ 2,508,384	\$ 138,874	\$ 100,564	\$ 30,851	\$ 22,340
Development Fee	\$ 1,739,554	\$ 826,583	\$ 817,591	\$ 45,265	\$ 32,778	\$ 10,056	\$ 7,282
Contingency	\$ 4,805,560	\$ 4,805,560					
<b>Total Development Costs</b>	<b>\$ 178,559,545</b>	<b>\$ 148,609,545</b>	<b>\$ 20,159,503</b>	<b>\$ 4,646,318</b>	<b>\$ 3,364,575</b>	<b>\$ 1,032,170</b>	<b>\$ 747,434</b>

<b>Percentages of Total Development Costs by Category</b>	<b>83.2%</b>	<b>11.3%</b>	<b>2.6%</b>	<b>1.9%</b>	<b>0.6%</b>	<b>0.4%</b>
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Less: Ch. 100 Sales Tax Exemption on Materials	\$ (6,048,066)
<b>Net Development Costs (Net of Sales Tax Exemption)</b>	<b>\$ 172,511,478</b>

(1) The amounts set forth in the TIF & OTHER, CID and TDD columns totaling approximately \$29.95 million are net reimbursable project costs reimbursements and do not include (other than certain limited interest and financing costs as set forth in the "Financing Costs (Interest Carry / Closing / Fees / Other)" line item during the construction and ramp-up period to stabilization) interest expenses, financing expenses, fees, or costs of issuance for bonds or any other financing instrument, all of which are Reimbursable Project Costs in addition to the cap established in Section 3.02.D.

{LR: 00394301.6 }

**EXHIBIT E**

**PRIVATE PROJECT IMPROVEMENTS**

<b>Lot #</b>	<b>Proposed District/Use</b>	<b>Proposed Square Footage</b>
1	Restaurant (Sit-Down)	6,500
2	Restaurant (Sit-Down)	6,500
3	Restaurant Drive-Thru or Retail	5,500
4	Medical Office	6,500
4A	Restaurant - Drive-Thru Only	707
5	Grocery	63,119
6	Senior Living Apartments and Pickle Ball Courts	274,716
7	Apartments / Retail / Restaurant	264,600 apartment 10,000 retail 5,000 restaurant
8	Restaurant (Two-Tenants) or Retail	7,500
9	Restaurant (Two-Tenants) or Retail	9,500
10	Restaurant	7,500
10A	Restaurant (Sit-Down)	7,500
11	Restaurant (Sit-Down)	7,500
12	Hotel (105 rooms)	53,864

The foregoing description of the Private Project Improvements is based on the Preliminary Development Plan approved by the City for the Redevelopment Project Area as of the Effective Date of this Contract and is subject to change based on changes to the Private Project Improvements approved in any amendment to the Preliminary Development Plan, as the same may be amended from time to time.



## **EXHIBIT F**

### **PUBLIC PROJECT IMPROVEMENTS**

#### **City Public Project Improvements**

The construction of improvements to:

- NW Pryor Road from the intersection of NW Chipman Road to the approximate north boundary of the Project as shown on the Preliminary Development Plan
- NW Lowenstein Drive from Pryor Road to Black Twig Lane as shown on the Preliminary Development Plan
- Lowenstein Park consisting of those improvements described in the agreement which is attached to this Contract as **Exhibit J**.
- Black Twig Lane from NW Lowenstein Drive to NW Chipman Road as shown on the Preliminary Development Plan.

#### **CID Public Project Improvements**

A portion of the improvements to the roadways described as City Public Project Improvements above.

Relocation of the Power Lines.

#### **TDD Public Project Improvements**

A portion of the improvements to the roadways described as City Public Project Improvements above.

**EXHIBIT G**

**REDEVELOPMENT SCHEDULE**

<b>EVENT</b>	<b>ESTIMATED COMMENCEMENT</b>	<b>ESTIMATED COMPLETION</b>
Construction of Apartments	2021	2023
Construction of Age Restricted Apartments	2023	2025
Construction of Grocery Store	2020	2022
Construction of Remaining Retail and Hotel	2020	2025
Construction of Public Project Improvements	2020	2021

The above schedule is the Developer's estimate based on information available on the Effective Date of this Contract. Developer's obligations to commence and complete construction of the Project Improvements in accordance with this Redevelopment Schedule are subject to the provisions of **Section 6.03** of this Contract. Developer may commence construction activities earlier than the dates set forth in this Redevelopment Schedule.

## EXHIBIT H

### CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, Streets of West Pryor, LLC (the “*Developer*”), pursuant to that certain Tax Increment Financing Redevelopment Contract dated as of January 8, 2018, between the City of Lee’s Summit, Missouri (the “*City*”) and the Developer (the “*Contract*”), hereby certifies to the City as follows:

1. That as of \_\_\_\_\_, 20\_\_\_\_, the Redevelopment Project (as such term is defined in the Contract) has been substantially completed in accordance with the Contract.

2. The Redevelopment Project has been substantially completed in a good and workmanlike manner and the City Public Project Improvements associated with such Redevelopment Project have been substantially completed in a good and workmanlike manner and in accordance with the Developer Public Project Plans (as those terms are defined in the Contract).

3. Lien waivers for the City Public Project Improvements have been obtained.

4. 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 the Redevelopment Project has been substantially completed in accordance with the Contract.

5. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Contract to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Redevelopment Project.

6. 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 30-day period), and the recordation of this Certificate of Substantial Completion with the Jackson County Recorder of Deeds, shall evidence the satisfaction of the Developer’s agreements and covenants to construct the Redevelopment Project.

This Certificate of Substantial Completion shall be recorded in the office of the Jackson 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 Contract.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Streets of West Pryor, 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]

## EXHIBIT I

### PERMITTED USES AND PROHIBITED USES

#### Permitted Uses

Except as modified by the list of Prohibited Uses below, all uses permitted as a principal use, or as an accessory use, whether permitted as of right, as of right with conditions, or as a special use in the district PMIX shall be allowed in the Redevelopment Project Area.

#### Prohibited Uses

Notwithstanding the foregoing Permitted Uses, the following uses shall be prohibited as a primary or principal use, unless such use is approved by separate action of the City Council; provided, however, that the uses identified with \*\* below shall be permitted as a secondary, accessory or incidental use to an otherwise permitted primary or principal use.

- A. Convalescent, Nursing or Retirement Home, provided that such uses may occur as part of the Age Restricted Apartments portion of the project
- B. Group Home for Persons with Disabilities, Hospice or Special Care
- C. Halfway House
- D. Manufactured Home Park
- E. Adult Business
- F. Adult Entertainment Services
- G. Adult Personal Services
- H. Crematories
- I. Equipment Rental – includes all motorized equipment not listed elsewhere \*\*
- J. Mini Warehouse
- K. Railroad Lines, Yards or Station
- L. Automotive Repair Services – Major Repairs - Defined to mean the repair of automotive bodies and/or major mechanical works, straightening of body parts, painting, welding, including storage of automobile not in operable condition waiting to be repaired (not to include automotive tire service or battery service) \*\*
- M. Automotive Sales or Leases \*\*
- N. Automotive Service Station \*\*
- O. Automotive Upholstery Shop \*\*
- P. Boat Sales or Leases \*\*
- Q. Boats & Recreational Vehicle Equipment Storage \*\*
- R. Heavy Equipment Rental \*\*
- S. Heavy Equipment Service and Sales \*\*
- T. Truck Sales and Lease \*\*
- U. Hospital, provided that this prohibition on hospitals shall not be construed as prohibiting medical office uses or urgent care facilities
- V. LP Gas or Fuel Oil Sales \*\*
- W. Quick Lube or Oil Changing Stations \*\*
- X. Construction Contractor - With Machinery, Equipment & Storage
- Y. Warehouse and Mini-Warehouse Facilities
- Z. Trucking & Courier Service
- AA. Reservoir, Water Supply or Storage Facility (other than provided by the Owner for domestic service to the project)
- BB. Pawn Shop

- CC. Furniture or Appliance Rental Shop \*\*
- DD. Intentionally Omitted
- EE. Warehousing and distribution
- FF. Any discount dollar store that sells the majority of their inventory for one dollar or less
- GG. Pay-Day Loan Operations as a Primary Use (not to include Banks, Credit Unions, etc.)
- HH. Check Cashing Operations as a Primary Use (not to include Banks, Credit Unions, etc.)
- II. Precious Stones & Metals Buyers or Similar Type Operations (not to include Jewelry Stores or other retailers that purchase such items as an incidental use) \*\*
- JJ. Thrift Stores (not to include first class second hand stores)
- KK. Tattoo Parlors

**EXHIBIT J**  
**AGREEMENT WITH PARKS AND RECREATION DEPARTMENT**

**[See Attached]**



LEE'S SUMMIT PARKS & RECREATION  
MEMORANDUM OF UNDERSTANDING – LOWENSTEIN PARK AND STREETS OF WEST PRYOR

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is made and entered into on December 14, 2018, by and between the City of Lee's Summit, Missouri, by and through the Lee's Summit Parks & Recreation Board, 220 SE Green Street, Lee's Summit, MO 64063, (hereinafter "LSPR,") and Streets of West Pryor, LLC, 12701 Metcalf Avenue, Ste. 100, Overland Park, Kansas 66213 (hereafter "Developer.") **WITNESSETH:**

**WHEREAS**, pursuant to the Charter of the City of Lee's Summit, Missouri, LSPR is empowered with the control of the supervision, improvement, care and custody of parks and recreation activities in the City of Lee's Summit, Missouri, and further is empowered with the authority to acquire, dispose of or otherwise manage properties for parks and recreation purposes; and,

**WHEREAS**, LSPR owns, manages, and operates Lowenstein Park, a 18 acre improved park located at the intersection of NW Chipman Road and NW Pryor Road, and more specifically at 1901 NW Lowenstein Drive in Lee's Summit, Missouri; and,

**WHEREAS**, Developer has proposed a comprehensive development plan for a large section of land along NW Pryor Road immediately adjacent to the north of Lowenstein Park, and has proposed to LSPR incorporating a portion of the park property into its' mixed-use plan, enhancing the overall development and providing additional amenities and improvements to the park, with a detailed description and scope of said improvements contemplated for the area being attached hereto as Exhibit A; and,

**WHEREAS**, Developer has further requested access in the form of various easements across, through, and over Lowenstein Park for the purpose of providing infrastructure improvements to the area to be developed, and has offered to provide compensation to LSPR in exchange for the same; and,

**WHEREAS**, LSPR and Developer have negotiated terms and conditions related to the above-listed items and have reduced those terms and conditions to writing herein, and LSPR and Developer desire to enter into this MOU to formally acknowledge and agree to the same and further desire for this MOU to be incorporated into any future development agreement by and between Developer and the City of Lee's Summit, Missouri.

**NOW, THEREFORE**, in consideration of the mutual benefits and provisions set forth herein, LSPR and Developer do hereby agree as follows:

- A. DEVELOPER RESPONSIBILITIES.** In exchange for the consideration as outlined herein, Developer hereby agrees to the following:
  - 1. Construction of Additional Parking.** Developer shall construct new/additional parking to connect the two existing parking lots at Lowenstein Park, which shall consist of approximately 50 new spaces. Design and construction of the new parking shall comply with the City of Lee's Summit, Missouri's Unified Development Ordinance and Design and Construction Manual. Further, the design of the parking configuration shall include the modification of existing entry points in compliance with the direction and requirements imposed by the City Traffic Engineer and shall coordinate with the development of ingress and egress on the north side of Lowenstein Drive. Developer





**LEE'S SUMMIT PARKS & RECREATION**  
**MEMORANDUM OF UNDERSTANDING – LOWENSTEIN PARK AND STREETS OF WEST PRYOR**

shall ensure that the schedule for the incorporation of the additional parking shall be phased in such a manner to allow for uninterrupted access to Lowenstein Park at all times. Developer shall be responsible for all costs associated with this section, including, but not limited to: design, planning, permitting, and necessary approvals.

2. **Parking Lot Lighting.** Developer shall install LED parking lot lighting to all parking lot areas of Lowenstein Park. Parking lot lighting shall comply with applicable provisions of the City of Lee's Summit, Missouri's Unified Development Ordinance and Design and Construction Manual and shall be substantially similar and equivalent to the lighting in existence at Lea McKeighan Park and Miller J. Fields Park. The Administrator of Parks and Recreation shall have the authority to approve any lighting selected by the Developer prior to installation. Developer shall be responsible for all costs associated with this section, including, but not limited to: design, planning, permitting, and necessary approvals.
3. **Improvements to Existing Parking.** Developer shall provide crack fill, seal and restriping services to all existing parking areas of Lowenstein Park. Developer shall be responsible for all costs associated with this section, including, but not limited to: design, planning, permitting, and necessary approvals.
4. **Removal of Park Shelter.** The installation of additional parking as required in subsection A.1., above, will require the removal of an existing Park Shelter. Developer shall be responsible for the demolition and removal of the structure as well as the structure's foundation. Developer shall be responsible for all costs associated with this section, including, but not limited to: design, planning, permitting, and necessary approvals.
5. **Removal and Relocation of Park Trail.** The installation of additional parking as required in subsection A.1., above, will require the removal and realignment of an existing section of park trail. Developer shall be responsible for the demolition and removal of that area of park trail which LSPR representatives specifically identify. Further, Developer shall realign and reinstall the trail in order to reconnect the same, at its' sole expense, including all applicable planning and permitting costs. Said reconstruction shall be in compliance with the standards and requirements which may be set forth by LSPR from time to time with regard to trail development, and the design of the realignment shall be subject to approval by the Administrator of Parks and Recreation.
6. **Construction of Restrooms.** Developer shall construct a restroom facility in a location to be determined by LSPR which provides convenient access to parking, shelters, trails and utilities. Restrooms will be constructed in a manner that is substantially similar and equivalent to the restroom facilities in existence at Lea McKeighan Park and Miller J. Fields Park and shall have water, sewer, and electrical service, and shall further be equipped with sufficient heating and ventilating to be fully functional year round. Prior to construction, Developer shall submit its' proposed design and construction plan for the restrooms on the site identified by LSPR to the Administrator of Parks and Recreation. The Administrator of Parks and Recreation shall have the authority to approve or reject any such plan. Developer shall be responsible for all costs associated with this section, including, but not limited to: design, planning, permitting, and necessary approvals.



**LEE'S SUMMIT PARKS & RECREATION**  
**MEMORANDUM OF UNDERSTANDING – LOWENSTEIN PARK AND STREETS OF WEST PRYOR**

7. **Design and Construction of Pond.** Developer agrees to, at its' sole cost and expense, design and construct a pond/water feature area located on LSPR property, in the area as identified by LSPR which will include and/or be subject to the following minimum requirements:
- a. Maximum slope on the western slope of the dam will be 1 foot vertical to 5 feet horizontal.
  - b. Developer shall provide a geotechnical investigation to ensure that the pond can be constructed as represented by the Streets of West Pryor Preliminary Development Plan.
  - c. Developer shall review plans for pond overflow structure with LSPR staff, which shall occur in concurrence with the design and engineering of the overall development project.
  - d. Developer shall install 10 foot wide walking trails, consisting of 4-inch thick non-reinforced concrete on a bed of 4-inches of crushed stone, along the bank of the water feature and shall connect to the existing park trail system in a manner as designated by LSPR.
  - e. Developer shall install at the wet perimeter of the pond/water feature a stone fortified edging to enhance appearance and protect against erosion of bank areas.
  - f. Developer shall install guard rails as necessary and defined by the 2012 International Building Code, as well as any applicable City of Lee's Summit, Missouri code requirements. Said guard rails shall consist of decorative metal and the design and consistency of the same shall be submitted to the Administrator of Parks and Recreation for consideration and approval.
  - g. Developer shall install a minimum of three (3) Victor Stanley seating benches installed on brick paver bases and installed strategically around the perimeter of the pond/water feature area on the water side of the walking trail referenced in subsection A.7.d, above. Said benches shall be of the same style and quality used by LSPR in other areas of Lowenstein Park,
  - h. Developer shall install decorative limestone stacking rock on the western slope of the dam consistent with designs to be mutually agreed upon by Developer and LSPR prior to Developer's submittal of the Final Development Plan for the Streets of West Pryor project.
  - i. Developer shall install twenty (20) upper story 3-inch caliper deciduous trees in areas of the park as determined and identified by LSPR.
  - j. Developer and LSPR shall enter into a separate Maintenance Agreement for purposes of outlining ongoing obligations with regard to repair, maintenance, and liability of the pond/water feature which will exist on both Developer and LSPR property.
8. **Contribution for Additional Park Improvements.** As further consideration for the contributions from LSPR in providing continuity to the overall mixed-use development



**LEE'S SUMMIT PARKS & RECREATION**  
**MEMORANDUM OF UNDERSTANDING – LOWENSTEIN PARK AND STREETS OF WEST PRYOR**

plan, and in order to enhance the public offerings available, Developer shall contribute the total sum of ONE HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS (\$115,000.00) to LSPR, which shall be utilized for additional improvements to Lowenstein Park, said improvements and the installation or implementation of the same to be determined at LSPR's sole discretion.

**9. Implementation of Wildlife Management Protocol.** Developer agrees to establish and implement a comprehensive Wildlife Management Plan for the Streets of West Pryor Development, including specifically that portion which is Lowenstein Park, which incorporates the following minimum phased components:

- a. Phase One - Blue Water Dye:** Developer agrees to utilize and maintain use of blue pond dye to deter geese and other wildlife from landing on the pond referenced in subsection A.7, above. This treatment shall be at the expense of Developer and shall occur as often as reasonable and necessary to deter goose activity on the pond and surrounding areas.
- b. Phase Two - Grass and Plant Management:** Developer shall, in the design and construction of the pond referenced in subsection A.7., above, as well as in the maintenance thereof, make appropriate landscape choices and modifications as are reasonable and necessary to discourage goose activity. This shall include, but not be limited to planting more bushes and plants in the area and planting less palatable or preferred plants and grass species so as to make the area less inviting to geese.
- c. Phase Three - Liquid Goose Repellent:** In the event that the conditions outlined in Phase One and Phase Two, above, do not, in the opinion of LSPR, effectively deter geese in the area, Developer agrees to treat grasses and plants surrounding the pond as often as necessary and practical with a liquid goose repellent, consisting of a non-toxic biodegradable food ingredient called Methyl Anthranilate. This treatment shall be at the expense of Developer and shall occur as often as reasonable and necessary to deter goose activity.
- d. Phase Four - Geese Police:** In the event that the conditions outlined in Phases One, Two and Three, above, do not, in the opinion of LSPR, effectively deter geese in the area, Developer agrees to, at its sole cost and expense, engage the services of "Geese Police" which are handlers specially trained to work with and use highly trained Border Collies and special techniques to deter geese from being in a given area.
- e. Additional Measures Not Contemplated Herein:** In the event that none of the above phases, in the opinion of LSPR, adequately address goose activity, Developer agrees to work with LSPR in good faith to identify alternative remedies, at Developer's cost.

**10. Development of Private Multi-Use Trails.** Developer commits to the construction of various private, multi-use trails throughout the Streets of West Pryor development in mutually agreeable locations and in compliance with applicable provisions of the City of Lee's Summit, Missouri's Unified Development Ordinance and Design and Construction Manual, in such a manner that the trails provide connectivity to Lowenstein Park.



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11. **Cooperation in Road Improvements.** The City of Lee's Summit, Missouri's Development Center has preliminarily identified additional improvements that must be made to Lowenstein Drive and Black Twig as a result of the proposed Streets of West Pryor Development. Developer agrees to assume the full cost for any such improvements, as well as any impacts to Lowenstein Park which may occur as a result of said road improvements, including, but not limited to the cost of relocating existing park trails, and specifically the construction, reconstruction, or relocation of any trail to ensure the continuance of a pedestrian connection from the park trail to Summerfield Drive. Improvements shall be completed by Developer with the prior express, written authorization by the Administrator of Parks and Recreation.

**B. LSPR RESPONSIBILITIES.** LSPR agrees to the following:

1. **Grant of Sewer Easement.** LSPR agrees to grant Developer an easement for the extension of a sanitary sewer main across a portion of Lowenstein Park, to be drafted and identified as a separate document upon final determination of the location, alignment and depth of the sewer main to be installed. Developer shall be responsible to return any portion of the easement area to like or better conditions upon completion of the construction of the sewer line, and shall further repair or replace any utilities, site amenities, trails or other improvements that may be damaged during construction. Developer will pay all costs associated with design, planning, permitting, approvals, installation, and construction of the sewer line.
2. **Grant Permission to Construct Pond/Water Feature Area on LSPR Property.** LSPR agrees to grant Developer the right, via License, Easement, or other means, permission to construct a portion of a pond/water feature on a portion of Lowenstein Park property, more particularly identified on the attached "Exhibit A," and subject to the conditions as set forth herein, as well as any applicable codes, laws or other regulations. The portion of said pond/water feature area which exists on LSPR property shall remain the property of LSPR, while the portion of said pond/water feature area which exists on Developer's property shall remain the property of Developer. Developer and LSPR shall enter into a separate Maintenance Agreement for purposes of outlining ongoing obligations with regard to repair, maintenance, and liability of the pond/water feature which will exist on both Developer and LSPR property. No right of ownership shall transfer from LSPR to Developer.
3. **Cooperation in Road Improvements.** The City of Lee's Summit, Missouri's Development Center has preliminarily identified additional improvements that must be made to Lowenstein Drive and Black Twig as a result of the proposed Streets of West Pryor Development. LSPR agrees to cooperate with Developer and the City of Lee's Summit to identify and accommodate any needed road or infrastructure improvements. Any work which shall occur on LSPR property as a result of the needed road improvements shall be subject to review and approval by the Administrator of Parks and Recreation, said approval shall not be unreasonably withheld.

**C. GENERAL PROVISIONS.**

1. **Cooperation.** Each of the undersigned parties shall designate in writing a representative responsible for the cooperative performance of this Memorandum, including such person's name, address telephone numbers. During the period of time



**LEE'S SUMMIT PARKS & RECREATION**  
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which Developer is performing work on LSPR property, the designated representatives of the parties will meet in person or by telephone at least once each quarter to discuss the status of the project and the requirements of this Memorandum to the extent necessary, and make recommendations for improvements or modifications, if necessary. Once the construction and modification phase of the project is complete, representatives of the parties shall meet in person or by telephone at least once every six months for the same purposes with regard to ongoing maintenance of the property. In addition, any one of the three representatives can call a meeting of all three representatives by notifying the other two representatives in writing and giving at least five (5) business days' notice of such meeting.

2. **Compliance with this Memorandum.** In the event that LSPR determines that this Memorandum has been materially breached, LSPR shall provide written notice specifying the alleged breach or non-compliance the Developer representative referenced in subsection C.1., above. The written notice of alleged breach or non-compliance shall, to the extent possible, state the name, address and telephone number of the complaining party, the specific nature of the event or activity claimed to have been a breach, the dates and times each such activity or event occurred, the nature and extent of any action or response taken by the complainant or by LSPR, and the remedy requested by LSPR. Following receipt of such written notice specifying an alleged breach or non-compliance, Developer shall have ten (10) business days to submit a written response to the LSPR's notice. Following its receipt of the response, LSPR may request a meeting of the designated representatives of Developer for the purpose of discussing the alleged breach and the response. If a resolution or agreement as to a course of action is not reached between the parties following that meeting, LSPR reserves the right to take any actions at law or equity to enforce the provisions of this MOU.
3. **Term and Termination.** This MOU shall be in effect from \_\_\_\_\_, 20\_\_\_\_, and shall automatically renew for successive one (1) year periods for so long as Developer continues its' use of LSPR property pursuant to the grant of authorization to be provided as outlined in subsection B.2, above, or until terminated by LSPR for breach of this MOU, subject to any rights available to LSPR at law or equity.
4. **Notice.** Unless otherwise directed in writing, any and all notices, reports, and payments arising out of this MOU shall be sent via Regular U.S. Mail, first class, postage prepaid, to the following:

If to LSPR:

Lee's Summit Parks and Recreation  
 Attn: Joseph D. Snook, Administrator  
 220 SE Green Street  
 Lee's Summit, Missouri 64063

If to Developer: Streets of West Pryor  
Attn: Matt Pennington



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*7200 W. 132<sup>nd</sup> St., Suite 150  
Overland Park, KS 66213*

5. **Insurance and Indemnification.**

a. **General Indemnification.** The Developer shall, during the period of time that any of the activities referenced herein are being undertaken by Developer and for a period of one (1) year thereafter, indemnify, release, defend, be responsible for and forever hold harmless LSPR, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any act, error, or omission of the Developer or its officers, agents, employees, or subcontractors, to the extent such loss or injury arises out of or is related to the performance of this MOU; provided, however, that the Developer need not save harmless LSPR from claims, demands, losses and expenses arising out or to the extent caused by the sole negligence of LSPR, its employees or agents. This indemnification obligation shall survive the termination or expiration of this MOU.

i. **No Limitations or Waiver.** The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this MOU, or by a limitation of the amount or type of damages or compensation payable by or for the Developer under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this MOU, or the terms, applicability or limitation of any insurance held by the Developer. LSPR does not, and shall not, waive any rights against the Developer which it may have by reason of this indemnification, because of the acceptance by LSPR, or the deposit with LSPR by the Developer, of any of the insurance policies described in this MOU. In addition, the parties agree that this indemnification by the Developer shall not be limited by reason of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

ii. **Notification of Claims.** With respect to any claims which are subject to indemnity hereunder, the Developer shall immediately notify LSPR of any and all claims filed against the Developer or the Developer and LSPR jointly, and shall provide LSPR with a copy of the same.

iii. **Use of Independent Contractors.** The fact that the Developer carries out any activities under this MOU through independent contractors shall not constitute an avoidance of, or defense to, the Developer's duty of defense and indemnification under this section.

b. **Insurance.**

i. **General Provisions.** Prior to commencing any work contemplated under this MOU, the Developer shall file with LSPR evidence of liability insurance that is consistent with the requirements and in the amounts set forth below.



**LEE'S SUMMIT PARKS & RECREATION**  
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**ii. Limits and Coverage.** Bodily Injury and Property Damage, Commercial General Liability Coverage – Occurrence Form:

- (a) Commercial General Liability: Minimum \$2,000,000 each occurrence limit for bodily injury and property damage; \$2,000,000 policy aggregate; \$2,000,000 products and completed operations aggregate.
- (b) Automobile Liability: Minimum \$2,000,000 combined single limit for bodily injury and property damage; applicable to owned, non-owned and hired automobiles.
- (c) Workers' Compensation: As required by state statute; if exempt, must submit letter stating the exemption; employer's liability \$1,000,000 each occurrence.
- (d) Umbrella/Excess Liability: An umbrella or excess liability policy in the minimum amount of \$2,000,000 each occurrence and aggregate; at least as broad as the underlying general liability, automobile liability and employer's liability.

The following endorsements shall attach to the policy:

- (a) The policy shall cover personal injury as well as bodily injury.
- (b) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (c) Broad form property damage liability shall be afforded.
- (d) The City shall be listed as an additional insured.
- (e) Standard form of cross-liability shall be afforded.
- (f) The policy shall not be cancelled, or materially modified so as to be out of compliance with the requirements of this section, or not renewed without thirty (30) days advance written notice of such event being given to the City.

The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions pursuant to 537.600; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity.

**iii. Use of Contractors and Subcontractors.** The Developer shall not permit any contractor or subcontractor to commence or continue work until they shall have obtained or caused to be obtained all insurance required under this Section and the City of Lee's Summit, Missouri's Design and Construction Manual. Said insurance shall be maintained in full force and effect until the completion of construction of the improvements.

**iv. Workers' Compensation.** The Developer shall ensure that all contractors or subcontractors performing work for the Developer obtain and maintain Workers' Compensation Insurance for all employees, and in case any work is sublet, the Developer shall require any subcontractors to provide Workers' Compensation insurance for all subcontractor's employees, in compliance with State laws, and



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to fully protect LSPR from any and all claims arising out of occurrences during construction of the Improvements. The Developer agrees to hold harmless, indemnify and reimburse LSPR for any damage, loss, costs, payments or expenses of any kind (including LSPR's reasonable attorney's fees) incurred or sustained by LSPR as a result of the failure of either the Developer or any contractor or subcontractor of the Developer to obtain and maintain such insurance. The Developer further waives its rights to subrogation with respect to any claim against LSPR for injury arising out of performance under this MOU. The Developer shall provide LSPR with a certificate of insurance indicating Workers' Compensation coverage prior to commencing construction of the Improvements.

6. **Prevailing Wage.** Developer shall be responsible for ensuring compliance with applicable prevailing wage laws as a result of all work and services being completed on property owned by LSPR and for the benefit of LSPR in accordance with this MOU.
7. **Amendment.** Any amendment to this MOU shall be valid only if in writing and signed by both parties.
8. **Assignment.** Neither party shall transfer, assign, or modify any of the rights or obligations of this MOU without the prior written consent of the other party.
9. **Anti-Discrimination.** Developer shall not, in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, gender, sexual orientation, national origin or religious creed.
10. **Governing Law.** All contractual agreements, including this MOU, shall be subject to, governed by and construed according to the laws of the State of Missouri. Any lawsuit arising from or relating to this MOU shall only be filed in the Circuit Court of Jackson County, Missouri.
11. **Entire Agreement.** The parties declare and represent that no promise, inducement, or agreement not expressed herein have been made and that this MOU constitutes the entire agreement of the parties and shall supersede any prior or contemporaneous agreements or negotiations, whether written or oral, between the parties, regarding the subject matter contained herein.

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LEE'S SUMMIT PARKS & RECREATION  
MEMORANDUM OF UNDERSTANDING – LOWENSTEIN PARK AND STREETS OF WEST PRYOR

IN WITNESS WHEREOF, the parties have hereunto executed this MOU as of the date first written above.

LSPR

\_\_\_\_\_  
Joseph D. Snook, Administrator  
Lee's Summit Parks & Recreation Department

\_\_\_\_\_  
Approved as to Form  
Superintendent of Legal Services and Human Resources

DEVELOPER:

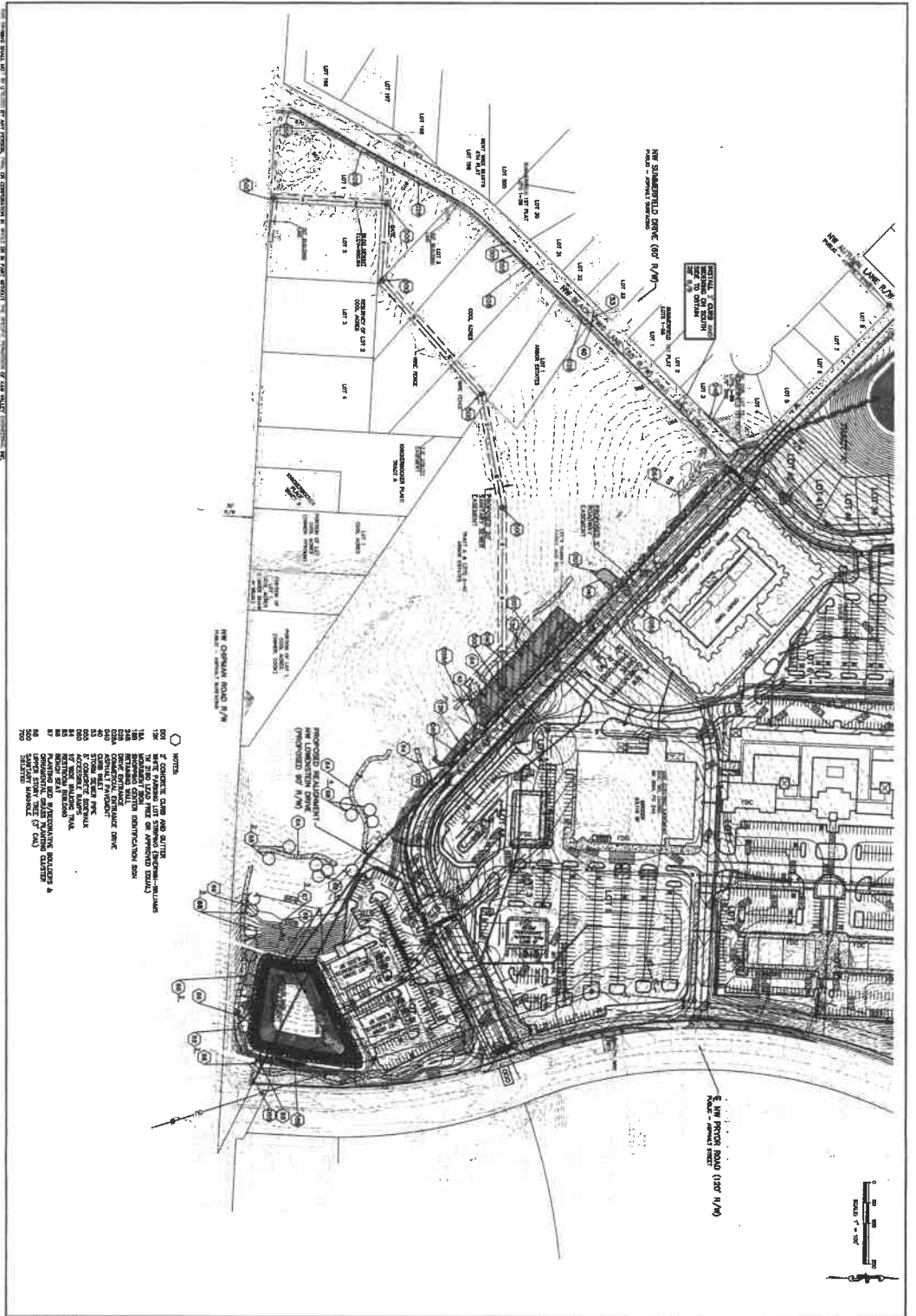
*Matthew B.*  
\_\_\_\_\_

By: *Streets of West Pryor, LLC*  
\_\_\_\_\_

Title: *Manager*  
\_\_\_\_\_

*Terran Y. Duld*  
\_\_\_\_\_  
Attest

# Exhibit A



C-125 0	<b>STREETS OF WEST PRYOR</b> <b>NW 10 NW PRYOR ROAD &amp; NW LOWENSTEIN DRIVE</b> <b>LEE'S SUMMIT, MISSOURI</b>		 <b>KEY</b> <b>KAW VALLEY ENGINEERING</b> 270 S. JOHNSON   SUITE 201 LEES SUMMIT, MISSOURI 64063 TEL: (816) 742-2400 FAX: (816) 742-7744 WWW.KAWVALLEYENGINEERING.COM		1   11-29-18   11-29-18   aced   Ljgtra	
	<b>PRELIMINARY DEVELOPMENT PLAN</b> <b>LOWENSTEIN PARK &amp; NW BLACK TWIG LANE - SUPPLEMENT NO. 1</b>				0   11-02-18   INITIAL   BULK	
	REV	DATE	DESCRIPTION	DSN	DWN	CHK

## EXHIBIT K

### FORM OF ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and is made by and among Streets of West Pryor, LLC ("Assignor"), \_\_\_\_\_, a \_\_\_\_\_ ("Assignee"), and the City of Lee's Summit, Missouri, a municipal corporation (the "City").

#### RECITALS

A. On January 8, 2019, the City Council by Ordinance No. \_\_\_ approved the Streets of West Pryor Tax Increment Financing Plan (the "**Plan**").

B. On January 8, 2019, the City and Assignor entered into a Tax Increment Financing Contract that set forth the respective obligations and duties of the City and Assignor with respect to the implementation of the Plan (the "**Redevelopment Contract**").

C. Pursuant to Section 5.06 of the Redevelopment Contract, Assignor now desires to enter into this Assignment to convey to Assignee its rights, interests, duties and obligations under the Redevelopment Agreement, and Assignee has agreed to assume and perform all of Assignor's rights, duties, interest and obligations under the Redevelopment Contract.

NOW, THEREFORE, in consideration of the foregoing and the covenants and obligations contained in this Assignment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and among Assignor, Assignee and the City as follows:

1. Recitals Incorporated. The above Recitals are hereby incorporated into this Assignment in full and form an integral part hereof.

2. Definitions. All capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Plan and the Redevelopment Contract.

3. Assignment by Assignor. The Assignor hereby assigns to the Assignee all of the Assignor's rights, duties, interests and obligations under the Plan, with respect to the Redevelopment Project Area, and the Redevelopment Contract.

4. Assumption by Assignee. Assignee hereby accepts such assignment from Assignor and expressly covenants to the City and Assignor that it assumes and agrees to perform those rights, duties, interests and obligations of the Assignor assigned to it pursuant to Section 3 above. If Assignee uses and occupies property within the Redevelopment Project Area for the operation of a business, Assignee hereby expressly assumes the obligations set forth in **Section 502(A)** of the Redevelopment Contract relating to reporting of sales tax and other information.

5. City's Consent and Release. Upon the execution of this Assignment, the assignment and assumption provided for in Section 3 and 4 above shall be deemed to have been approved and consented to by the City, and Assignor shall be deemed to have been released from all of Assignor's rights, duties, interest and obligations under the Redevelopment Contract.

6. Representations and Warranties of Assignor and City. Each of Assignor and City, to the best of its actual and present knowledge, hereby respectively represents and warrants to Assignee that it is not in default of its respective obligations under the Plan and Redevelopment Contract.

{LR: 00394301.6 }

7. Representations and Warranties of Assignee. Assignee is a \_\_\_\_\_ qualified to conduct its business in the State of Missouri and has all requisite power and authority to enter into, execute this Assignment and to perform its obligations hereunder. This Assignment, assuming the due execution and delivery hereof by Assignor and City, constitutes legal valid and binding obligations of Assignee, enforceable against Assignee in accordance with the terms and conditions herein.

8. Obligation of Assignor. The Assignor will promptly remit and send to Assignee any and all payments, funds, assets, notices, reports and other documents and information received by the Assignor or its agents or representatives (when Assignor becomes aware of such receipt by its agents or representatives) pertaining to or affecting the Plan with respect to the Redevelopment Project Area or Redevelopment Contract.

9. Notices. All notices, requests and other communications hereunder shall be deemed to be duly given if delivered by hand or if mailed by certified or registered mail with postage prepaid as follows:

If to Assignee:

\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Assignor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to City:

City Attorney  
City Hall  
207 SW Market Street  
Lee's Summit, Missouri 64063

10. Successors and Assigns. All rights, benefits and obligations of Assignor and Assignee hereunder shall inure to and bind Assignor and Assignee, respectively, and this Assignment shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

11. Governing Law. This Assignment shall be governed by the laws of the State of Missouri.

12. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

13. Expenses. Except as otherwise provided herein, each of the parties hereto will pay its own costs and expenses, including attorney's fees, incurred by such party or on its behalf in connection with this Assignment and the transactions contemplated herein, except that Assignee shall pay for all expenses incurred by the City.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

**ASSIGNOR:**

Streets of West Pryor, LLC

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

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

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

STATE OF MISSOURI        )  
  ) ss.  
COUNTY OF JACKSON     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Streets of West Pryor, LLC, personally known by me to be the person who executed the within instrument on behalf of said company and acknowledged to me that he executed the same for the purposes therein stated.

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

\_\_\_\_\_  
Notary Public

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

[SEAL]

My Commission Expires:  
\_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_

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

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

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, personally known by me to be the person who executed the within instrument on behalf of said \_\_\_\_\_ and acknowledged to me that he executed the same for the purposes therein stated.

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

\_\_\_\_\_  
Notary Public

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

[SEAL]

My Commission Expires:

\_\_\_\_\_

**CITY:**

CITY OF LEE'S SUMMIT, MISSOURI

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

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

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

STATE OF \_\_\_\_\_ )

)

ss:

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did say that he/she is the \_\_\_\_\_ of the City of Lee's Summit, Missouri, a Missouri municipal corporation, that said instrument was signed on behalf of said corporation by authority of its City Council, and acknowledged said instrument to be the free act and deed of said corporation.

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

\_\_\_\_\_  
Notary Public

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

[SEAL]

My Commission Expires:

\_\_\_\_\_



**EXHIBIT L**

**FORM OF TRANSFEREE AGREEMENT**

**TRANSFEREE AGREEMENT**  
(\_\_\_\_\_ **Property**)

THIS TRANSFEREE AGREEMENT (this “**Agreement**”) is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, and is made by and among STREETS OF WEST PRYOR, LLC (“**Transferor**”), \_\_\_\_\_, a \_\_\_\_\_, (“**Transferee**”), and the CITY OF LEE’S SUMMIT, MISSOURI, a municipal corporation (the “**City**”).

**RECITALS**

D. On January 8, 2019, the City Council by Ordinance No. \_\_\_\_\_ approved the Streets of West Pryor Tax Increment Financing Plan (the “**Plan**”).

E. On January 8, 2019, the City and Transferor entered into a Tax Increment Financing Contract that set forth the respective obligations and duties of the City and Transferor with respect to the implementation of the Plan (the “**TIF Contract**”).

F. Transferee proposes to purchase the property which is legally described in the attached **Exhibit A** (the “**Property**”) within the Redevelopment Area of the Plan.

G. Pursuant to Section 5.03.A., Sale or Disposition of Project Property, of the TIF Contract, Transferor and Transferee now desire to enter into this Agreement to facilitate the conveyance of a portion of the real property located within the Redevelopment Area of the Plan, and demonstrate to the reasonable satisfaction of the City that the Transferee is interested in the long term viability of the Plan as a whole as it pertains to the Transferee’s land use on the Property by making commitments which support the objectives of the Plan and obligating the Transferee to comply with the requirements of the Redevelopment Plan as it pertains to the Property and the obligations in the TIF Contract relating to the Property.

NOW, THEREFORE, in consideration of the foregoing and the covenants and obligations contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and among Assignor, Assignee and the City as follows:

1. Recitals Incorporated. The above Recitals are hereby incorporated into this Agreement in full and form an integral part hereof.

2. Definitions. All capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Plan and the Redevelopment Agreement.

3. Agreement by Transferee. The Transferee hereby agrees to obligate itself to comply with certain of obligations under the Plan and the TIF Contract pertaining to the Property, as specifically set forth herein:

(a) Pursuant to Section 2.07.C, Maintenance and Repair, of the TIF Contract, Transferee shall, at its sole cost and expense, as part of Transferee's construction work and at all times that the TIF Contract is in effect: (a) maintain and operate the Property, including the improvements thereon, in a first class manner, (b) timely make all necessary repairs to and replacements and restorations of all parts of the Property, including the improvements thereon, (c) keep the Property, including the improvements thereon, in good condition, repair and appearance, and (d) maintain casualty insurance on the Property, including the improvements thereon, in an amount equal to the full replacement value thereof and provide City with evidence of such insurance upon demand. Transferee acknowledges that the City is an intended third party beneficiary of the foregoing provision, and as such, City has a separate and independent right to enforce such provisions directly against Transferee.

(b) Pursuant to Section 3.05.C, Imposition of CID Sales Tax, of the TIF Contract, Transferee acknowledges that the CID Sales Tax is being imposed upon the Property and will remain in effect and be applicable to all taxable sales that occur on the Property until termination of the CID Sales Tax as provided in the TIF Contract and as allowed in accordance with the CID Act.

(c) Pursuant to Section 3.06.C, Imposition of TDD Sales Tax, of the TIF Contract, Transferee acknowledges that the TDD Sales Tax is being imposed upon the Property and will remain in effect and be applicable to all taxable sales that occur on the Property until termination of the TDD Sales Tax as provided in the TIF Contract and as allowed in accordance with the TDD Act.

(d) Pursuant to Section 3.09.C, Payments in Lieu of Taxes, of the TIF Contract, at all times that the TIF Contract is in effect, the Property and other property in the Redevelopment Area are or may become subject to assessment for annual Payments in Lieu of Taxes. Payments in Lieu of Taxes 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 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 tax parcel and shall be enforceable against the Transferee and its successors and assigns in ownership of the Property.

(e) Pursuant to Section 3.09.C, Payments in Lieu of Taxes, of the TIF Contract, and at all times that the TIF Contract is in effect, Transferee shall provide to City from time to time prior to and upon the completion of the improvements to the Property, a cost summary, certified to the City, setting forth the total amount expended from time to time by Transferee, or any affiliate of the Transferee, with respect to the construction of any improvements on the Property. It is acknowledged that any such cost summary may be provided by City to the County Assessor or other governmental authority from time to time having responsibility for determining the assessed value of any property in the Redevelopment Area. Transferee acknowledges and agrees that it

shall not be entitled to reimbursement for any costs pursuant to the TIF Contract unless the reimbursement of Reimbursable Project Costs are assigned by Transferor to Transferee in accordance with the requirements and limitations of the TIF Contract.

(f) Pursuant to Section 3.010.A, Economic Activity Taxes, of the TIF Contract and at all times that the TIF Contract is in effect, Transferee shall forward to the City copies of Transferee's State of Missouri sales tax return for its property located in the TIF District when and as they are filed with the Missouri Department of Revenue and, upon request, shall provide such other reports regarding other local taxes generated by Transferee's economic activities in the TIF District as the City shall reasonably require. Transferee, in accordance with Section 5.02 of the TIF Contract, shall include the provision set forth in Section 5.02 of the TIF Contract into any lease associated with the Property in order to require all tenants to comply with the economics activity taxes reporting requirements of the TIF Contract. The City is an intended third party beneficiary and has a separate and independent right to enforce such provisions directly against Transferee.

(g) Pursuant to Section 4.07 of the TIF Contract, and to assist the Developer and the City in calculating the "Actual Private/Public Ratio" (as that term is defined in the TIF Contract), Purchaser shall provide the Developer with a cost summary (the "Cost Summary") of the total amount expended by Purchaser, or any affiliate of Purchaser, with respect to "Redevelopment Project Costs" (as defined in the TIF Contract) associated with the Property, including, without limitation, the costs associated with grading and all other site work on the Property; construction costs associated with any buildings and other improvements on the Property; the costs of all studies, surveys, reports, and plans and specifications associated with the Property; and professional service costs associated with the Property, including legal, engineering, architectural, and financial. Purchaser shall provide the Cost Summary to Developer from time to time during construction and after completion of the improvements on the Property, at such times as the Developer may reasonably request, but not more often than quarterly, and the Cost Summary shall provide such cost detail of the various components of the Redevelopment Project Costs as the Developer may reasonably request.

(h) Pursuant to Section 5.03, Sale or Disposition of Project Property, of the TIF Contract, Transferee agrees that, at all times that the TIF Contract is in effect, no sale, transfer or other conveyance of the Property may be made except upon the prior written approval of the City, which approval shall not be unreasonably withheld. As permitted by Section 5.03(A) of the TIF Contract, Transferee may, however, without the City's approval, sell, transfer, or convey the Property to related business entities of the Transferee and to any third party entity that will use and occupy the property being acquired for the operation of its business, so long as the use of the property is permitted by Section 2.08 of the TIF Contract and Exhibit I of the TIF Contract. Transferee shall not sell the Property to any business operation that will operate under the same trade name as any business which is currently located in the City, except a related business entity of the Transferee, during the effective period of the TIF Contract without the prior written approval of both the City and Transferor. Transferee further agrees that pursuant to subsection 5.03(E) of the TIF Contract, no sale, transfer or other conveyance of the

Property may be made to any entity that may claim exemption, or is exempt, from real property taxes for all or part of the Property for the earlier of (i) 23 years from the date that a redevelopment project ordinance is approved for the area in which the Property is located or (ii) termination of the TIF Contract, without the prior written approval of the City in accordance with the provisions of subsection 5.03(E) of the TIF Contract. Transferee shall comply with the provisions of subsection 5.03(F) with respect to providing notice to the City of any proposed sale or transfer of the Property.

(i) Transferee shall not use the Property for any of the prohibited uses set forth in **Exhibit I** to the TIF Contract, unless approved by separate action by the City Council. **Exhibit I** to the TIF Contract is attached hereto as **Exhibit B**.

(j) The parties acknowledge and agree that in lieu of incorporating certain restrictions set forth in Sections 2.07.C, 3.09, 3.10, 5.03.A and 5.03.B of the TIF Contract into the deed conveying the Property to Transferee pursuant to Section 5.03.D of the TIF Contract, the restrictions are set forth in Section 3 of this Agreement, and this Agreement shall be recorded and the provisions hereof shall be covenants running with the land and shall encumber the Property and shall be binding upon all future owners of the Property during their periods of ownership.

4. City's Consent and Release. Upon the execution of this Agreement, and the transfer of the Property from Transferor to Transferee, the transfer shall be deemed to have been approved and consented to by the City, and Transferor is hereby released from all of Transferor's obligations under the TIF Contract relating to the Property.

5. Representations and Warranties of Transferor and City. Each of Transferor and City, to the best of its actual and present knowledge, hereby respectively represents and warrants to Transferee that it is not in default of its respective obligations under the Plan and TIF Contract.

6. Representations and Warranties of Transferee. Transferee is qualified to conduct its business in the State of Missouri and has all requisite power and authority to enter into, execute this Agreement and to perform its obligations hereunder. This Agreement, assuming the due execution and delivery hereof by Transferor and City, constitutes legal valid and binding obligations of Transferee, enforceable against Transferee in accordance with the terms and conditions herein.

7. Notices. All notices, requests and other communications hereunder shall be deemed to be duly given if delivered by hand or if mailed by certified or registered mail with postage prepaid as follows:

**If to Transferee:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**With copies to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If to Tranferor:**

c/o Drake Development, LLC  
Attn: Matt Pennington  
12701 Metcalf Avenue, Suite 100  
Overland Park, Kansas 66213

**With a copy to:**

Lewis Rice LLC  
  
Attn: Ralph E. Bellar, Jr.  
1010 Walnut, Suite 500  
Kansas City, Missouri 64106

**If to City:**

City Attorney  
City Hall  
220 SE Green Street  
Lee’s Summit, Missouri 64063

8. Successors and Assigns. All rights, benefits and obligations of Transferor and Transferee hereunder shall inure to and bind Transferor and Transferee, respectively, and this Agreement shall be binding upon and inure to the benefit of the parties’ respective successors and assigns. The provisions of this Agreement shall be covenants running with the land and

shall remain in effect for the duration of the Redevelopment Plan, as it pertains to the Property, and any renewal period or periods of the Redevelopment Plan, as it pertains to the Property. They shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and be enforceable by, City, its successors and assigns, against Transferee, its successors and assigns, and every successor in interest to the Property, or any part of it or any interest in it and any party in possession or occupancy of the Property or any part thereof.

9. Governing Law. This Agreement shall be governed by the laws of the State of Missouri.

10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

11. Expenses. Except as otherwise provided herein, each of the parties hereto will pay its own costs and expenses, including attorney's fees, incurred by such party or on its behalf in connection with this Agreement and the transactions contemplated herein, except that all administrative costs and expenses of the City shall be an obligation of the Transferor, as the Developer under the terms of the TIF Contract, and payable pursuant to Section 6.11 of the TIF Contract.

12. Consent to Release of Sales Tax Information. If the City, the CID and/or TDD are required to disclose Transferee's sales tax information in connection with offering documents or continuing disclosure requirements related to Obligations in order to market and sell obligations or comply with applicable laws or requirements of governmental authorities, Transferee hereby consents to (a) the release by appropriate officials of the City, the TDD and the CID of sales tax receipts and related information received by the City, the CID and TDD as the result of sales occurring on the Property to underwriters, financial advisors, consultants, trustees, paying agents or purchasers of Obligations in connection with the issuance or refunding of Obligations, (b) the publication of such sales tax receipts and related information in preliminary official statements and final official statements to be prepared by an underwriter and other consultants in connection with the issuance or refunding of Obligations, and (c) the continued disclosure of such sales tax receipts and related information as part of any continuing disclosure obligations or tax compliance obligations undertaken by the City, the Transferor, the IDA or another issuer related to the issuance or refunding of Obligations. Transferee further consents to the use of such sales tax information to permit the budget officers of the CID and TDD to comply with the requirements of Missouri law to adopt a budget for each fiscal year that the CID and TDD is in operation. The provisions of this paragraph may be relied upon by the City, the Transferor, the CID, the TDD, the IDA or another issuer of Obligations for the purposes stated in this paragraph.

13. Recordation. Following full execution of this Agreement, the Transferee shall record this Agreement in the records of the Office of the Jackson County, Missouri Recorder of Deeds.

14. Satisfaction of Condition Precedent. The City acknowledges that upon the full execution of this Agreement, the condition precedent set forth in Section 5.03.A., Sale of Property, of the TIF Contract with respect to the transfer of the Property to the Transferee shall be deemed satisfied.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**TRANSFEROR:**

**STREETS OF WEST PRYOR, LLC**, a Missouri limited liability company

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

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF JACKSON    )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, to me personally known, who being duly sworn, did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the Managing Member and is authorized to sign documents on behalf of STREETS OF WEST PRYOR, LLC, a Missouri limited liability company, and that said instrument was signed on behalf of said \_\_\_\_\_, and acknowledged to me that he executed the same for the purposes therein stated.

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

\_\_\_\_\_  
Notary Public

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

[SEAL]

My Commission Expires:  
\_\_\_\_\_



**TRANSFeree:**

\_\_\_\_\_ ,

a \_\_\_\_\_

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

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

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, personally known by me to be the person who executed the within instrument on behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

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

\_\_\_\_\_  
Notary Public

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

[SEAL]

My Commission Expires:  
\_\_\_\_\_

**CITY:**

CITY OF LEE'S SUMMIT, MISSOURI

By: \_\_\_\_\_  
Stephen Arbo, City Manager

STATE OF MISSOURI            )  
  )  
COUNTY OF JACKSON        )

ss:

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me personally appeared Stephen Arbo, to me known, who being by me duly sworn, did say that he is the City Manager of the City of Lee's Summit, Missouri, a Missouri municipal corporation, that said instrument was signed on behalf of said corporation by authority of its City Council, and acknowledged said instrument to be the free act and deed of said corporation.

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

\_\_\_\_\_  
Notary Public

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

[SEAL]

My Commission Expires:  
\_\_\_\_\_

**Exhibit A**

**Legal Description of the Property**

## EXHIBIT B

### **Permitted Uses And Prohibited Uses**

#### Permitted Uses

Except as modified by the list of Prohibited Uses below, all uses permitted as a principal use, or as an accessory use, whether permitted as of right, as of right with conditions, or as a special use in the district PMIX shall be allowed in the Redevelopment Project Area.

#### Prohibited Uses

Notwithstanding the foregoing Permitted Uses, the following uses shall be prohibited as a primary or principal use, unless such use is approved by separate action of the City Council; provided, however, that the uses identified with \*\* below shall be permitted as a secondary, accessory or incidental use to an otherwise permitted primary or principal use.

- A. Convalescent, Nursing or Retirement Home, provided that such uses may occur as part of the Age Restricted Apartments portion of the project
- B. Group Home for Persons with Disabilities, Hospice or Special Care
- C. Halfway House
- D. Manufactured Home Park
- E. Adult Business
- F. Adult Entertainment Services
- G. Adult Personal Services
- H. Crematories
- I. Equipment Rental – includes all motorized equipment not listed elsewhere \*\*
- J. Mini Warehouse
- K. Railroad Lines, Yards or Station
- L. Automotive Repair Services – Major Repairs - Defined to mean the repair of automotive bodies and/or major mechanical works, straightening of body parts, painting, welding, including storage of automobile not in operable condition waiting to be repaired (not to include automotive tire service or battery service) \*\*
- M. Automotive Sales or Leases \*\*
- N. Automotive Service Station \*\*
- O. Automotive Upholstery Shop \*\*
- P. Boat Sales or Leases \*\*
- Q. Boats & Recreational Vehicle Equipment Storage \*\*
- R. Heavy Equipment Rental \*\*
- S. Heavy Equipment Service and Sales \*\*
- T. Truck Sales and Lease \*\*
- U. Hospital, provided that this prohibition on hospitals shall not be construed as prohibiting medical office uses or urgent care facilities
- V. LP Gas or Fuel Oil Sales \*\*
- W. Quick Lube or Oil Changing Stations \*\*
- X. Construction Contractor - With Machinery, Equipment & Storage
- Y. Warehouse and Mini-Warehouse Facilities
- Z. Trucking & Courier Service
- AA. Reservoir, Water Supply or Storage Facility (other than provided by the Owner for domestic service to the project)

- BB. Pawn Shop
- CC. Furniture or Appliance Rental Shop \*\*
- DD. Intentionally Omitted
- EE. Warehousing and distribution
- FF. Any discount dollar store that sells the majority of their inventory for one dollar or less
- GG. Pay-Day Loan Operations as a Primary Use (not to include Banks, Credit Unions, etc.)
- HH. Check Cashing Operations as a Primary Use (not to include Banks, Credit Unions, etc.)
- II. Precious Stones & Metals Buyers or Similar Type Operations (not to include Jewelry Stores or other retailers that purchase such items as an incidental use) \*\*
- JJ. Thrift Stores (not to include first class second hand stores)  
Tattoo Parlors