

REDEVELOPMENT CONTRACT

BETWEEN

THE CITY OF LEE'S SUMMIT, MISSOURI

and

DTLS APARTMENTS, LLC

To implement the

2ND AND DOUGLAS TAX INCREMENT FINANCING PLAN

and the

2ND AND DOUGLAS LCRA REDEVELOPMENT PLAN

December 10, 2019

Table of Contents

ARTICLE 1: RULES OF INTERPRETATION AND DEFINITIONS..... 1
 Section 1.01. Rules of Interpretation1
 Section 1.02. Definitions2
ARTICLE 2: THE REDEVELOPMENT PROJECT8
 Section 2.01. Redevelopment Area8
 Section 2.02. Redevelopment Project Areas8
 Section 2.03. Project Improvements8
 Section 2.04. Lease Agreement and Sales Tax Exemption for Construction8
 Section 2.05. Redevelopment Schedule11
 Section 2.06. Design and Construction of Public Project Improvements11
 Section 2.07. Design Criteria and Review Procedures for Private Improvements12
 Section 2.08. Construction and Maintenance of the Project12
 Section 2.09. Permitted Uses13
 Section 2.10. Certificate of Substantial Completion13
ARTICLE 3: TAX INCREMENT FINANCING.....13
 Section 3.01. Payments in Lieu of Taxes13
 Section 3.02. Economic Activity Taxes14
 Section 3.03. Special Allocation Fund15
 Section 3.04. Disbursements from Special Allocation Fund16
 Section 3.05. Financing Plan17
 Section 3.06. Funding Sources and Uses of Funds17
 Section 3.07. Conditions Precedent to Issuance of Obligations18
ARTICLE 4: REIMBURSEMENT OF DEVELOPER COSTS19
 Section 4.01. Maximum Reimbursement Limit19
 Section 4.02. Developer Funding Obligation19
 Section 4.03. Reimbursable Project Cost Certification19
 Section 4.04. City Obligation to Reimburse Developer on a Pay As You Go Basis20
 Section 4.05. Payment of Project Costs with Bond Proceeds20
 Section 4.06. Cost Overruns21
 Section 4.07. Full Assessment of Redevelopment Area21
 Section 4.09. Development Cost Savings21
ARTICLE 5: PROJECT CONTROL AND OPERATIONS22
 Section 5.01. Tenant Approvals22
 Section 5.02. Lease of Project Property22
 Section 5.03. Sale or Disposition of Project Property22
 Section 5.04. Progress Reports23
 Section 5.05. Compliance with Laws24
 Section 5.06. Assignment of Developer’s Obligations24
 Section 5.07. Transfer of Interests in Developer – City Approval24
 Section 5.08. East Lot25
ARTICLE 6: GENERAL COVENANTS26
 Section 6.01. Indemnification26
 Section 6.02. Breach-Compliance27
 Section 6.03. Excusable Delays28

Section 6.04.	Notice	28
Section 6.05.	Modification	29
Section 6.06.	Effective Date	29
Section 6.07.	Recording	29
Section 6.08.	Applicable Law	29
Section 6.09.	Covenant Running With the Land	29
Section 6.10.	Relocation Costs	29
Section 6.11.	Administrative Costs and Expenses	29
Section 6.12.	Validity and Severability	30
Section 6.13.	Time and Performance are of the Essence	30
Section 6.14.	City’s Legislative Powers	31
Section 6.15.	Disputes between Private Parties and Affiliated Entities	31
Section 6.16.	Approvals by City	31
Section 6.17.	Electronic Storage	31

LIST OF EXHIBITS

<u>Exhibit A</u>	<u>Legal Description of Redevelopment Area and Redevelopment Project Area</u>
<u>Exhibit B</u>	<u>Map of Redevelopment Area</u>
<u>Exhibit C</u>	<u>Redevelopment Project Cost Budget</u>
<u>Exhibit D</u>	<u>Private Project Improvements</u>
<u>Exhibit E</u>	<u>Redevelopment Schedule</u>
<u>Exhibit F</u>	<u>Historic Preservation Easement</u>
<u>Exhibit G</u>	<u>Certificate of Substantial Completion</u>
<u>Exhibit H</u>	<u>Form of Assignment Agreement</u>

REDEVELOPMENT CONTRACT

THIS REDEVELOPMENT CONTRACT (the “**Contract**”) is made and entered into as of the 10th day of December, 2019 (the “**Effective Date**”), by and between THE CITY OF LEE’S SUMMIT, MISSOURI (“**City**”), and DTLs APARTMENTS, LLC, a Missouri limited liability company, the developer selected by the City (“**Developer**”) to implement its plan of redevelopment as more fully described herein.

RECITALS

1. On April 27, 2019, the Land Clearance for Redevelopment Authority of Lee’s Summit, Missouri (the “**LCRA**”), recommended that the City approve the 2nd and Douglas LCRA Redevelopment Plan (the “**LCRA Plan**”). On May 7, 2019, the City Council of the City (the “**City Council**”) approved the LCRA Redevelopment Plan through the adoption of Ordinance No. 8628 pursuant to the Land Clearance for Redevelopment Authority Act set forth in Sections 99.400 through 99.715 of the Revised Statutes of Missouri (the “**LCRA Act**”).

2. On March 25, 2019, the Tax Increment Financing Commission of Lee’s Summit, Missouri (the “**Commission**”), recommended against the City’s approval of the 2nd and Douglas Tax Increment Financing Plan (the “**TIF Plan**”). On May 7, 2019, the City Council approved the TIF Plan and the redevelopment project described therein pursuant to Ordinance No. 8625 and 8626, respectively, for the area described in the TIF Plan as the Redevelopment Area (the “**Redevelopment Area**”) pursuant to Missouri’s Real Property Tax Increment Allocation Redevelopment Act Sections 99.800 to 99.865, RSMo (the “**TIF Act**”).

3. Pursuant to Ordinance No. 7228 which was adopted on September 6, 2012, the City Council determined that the Redevelopment Area is a Blighted Area as that term is defined in the LCRA Act. Ordinance No. 8628 re-affirmed that prior blight finding, and made the same blight finding for the project under the TIF Act.

4. Pursuant to Ordinance Nos. 8628 and 8625, the City Council made several factual findings as it related to implementation of the LCRA Plan and the TIF Plan (collectively the “**Incentive Plans**”) and that those plans meet the other applicable requirements of the LCRA Act and the TIF Act, respectively. Those Ordinances also selected DTLs Apartments, LLC, as the developer to implement the Incentive Plans, and authorized City to enter into a contract with such party as the developer for the implementation of the Incentive Plans.

5. The LCRA Plan and TIF Plan call for the construction of the Redevelopment Project which will consist of an apartment complex containing approximately 274 residential apartment units and a parking structure to serve the apartments.

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 Incentive Plans shall have the meaning ascribed to them in the Incentive Plans. 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.

“**Acts**” means the LCRA Act and the TIF Act.

“**Actual Private/Public Ratio**” shall have the meaning set forth in **Section 4.09**.

“**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 Incentive Plans, this Contract and the Redevelopment Project, including all documented in-house legal costs, all cost certifications as set forth in **Section 2.04**, 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.

“**Annual Rate of Return**” shall have the meaning set forth in **Section 4.08**.

“**Approved Private/Public Ratio**” shall have the meaning set forth in **Section 4.09**.

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

“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” shall have the meaning set forth for such term in the LCRA Act and the TIF Act, as applicable to the LCRA Plan and the TIF Plan.

“Budgeted Private Sources” shall have the meaning set forth in **Section 4.09**.

“Budgeted Public Sources” shall have the meaning set forth in **Section 4.09**.

“Certification Application” shall have the meaning set forth in **Section 4.03**.

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

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

“Construction Contract” means each contract between the Developer and any Construction Contractor for the construction of the Private Improvements and Public Improvements on behalf of the City.

“Construction Contractor” means Cityscape Construction, LLC, its successor and assigns, or any other construction contractor chosen by Developer to construct all or any portion of the Project Improvements.

“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.

“Design and Construction Manual” means the Lee’s Summit Design and Construction Manual which is adopted by ordinance, as such document may be amended by the City.

“Developer” means DTLs Apartments, LLC, its successors and assigns.

“Developer Controlled Improvements” shall have the meaning set forth in **Section 2.08**.

“Draw Certificate” shall have the meaning set forth in **Section 4.03**.

“East Lot” means the lot with the street address of 107 SE Douglas Street which is Tax Parcel No. 61-340-19-02-00-0-00-000 as of the Effective Date of this Contract which will be purchased by Developer and transferred to the City in accordance with the terms of this Contract.

“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 TIF Act is terminated pursuant to Subsection 2 of Section 99.850 of the TIF Act.

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

“Financing Plan” shall have the meaning set forth in **Section 3.05**.

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

“Incentive Plans” means the LCRA Plan and the TIF Plan.

“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.

“LCRA” means the City of Lee’s Summit Land Clearance for Redevelopment Authority, which exercises its powers and authority through its Board of Commissioners.

“LCRA Plan” shall have the meaning assigned in the Recitals on Page 1.

“Lease” means the Lease Agreement between the City, as “Lessor,” and Developer, as the “Company” and lessee (as such terms are defined in such lease), to implement the LCRA Plan and the sales tax exemption provided through the LCRA Plan.

“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).

“**Materials**” means construction materials and supplies necessary for and used in the construction of the Project Improvements and all fixtures and supplies necessary for the completion of and operation of the Project Improvements acquired during construction.

“**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 the TIF Revenues to carry out the TIF Plan or to fund outstanding obligations.

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

“**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 TIF Act is terminated pursuant to subsection 2 of Section 99.850 of the TIF 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.

“**Preapproved Underwriters**” shall have the meaning set forth in **Section 3.06**.

“**Preliminary Development Plan**” means the Preliminary Development Plan located in District CBD that was approved by Ordinance No. 8627 on May 7, 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 3.04**.

“**Private Funds**” shall have the meaning set forth in **Section 4.02**.

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

“**Project**” means all of the development work contemplated to be undertaken by Developer within the Redevelopment Area pursuant to the Incentive Plans and this Contract.

“**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 D**.

“Public Investment” shall have the meaning set forth in **Section 4.08**.

“Public Project Improvements” shall mean those improvements which are required by the City to be constructed and dedicated to public use, located on public property, in public rights-of-way or in public easements.

“Purchasing Agents” shall have the meaning set forth in **Section 2.04**.

“Ratio Documentation” shall have the meaning set forth in **Section 4.09**.

“Ratio True-Up” shall have the meaning set forth in **Section 4.09**.

“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 TIF Plan in which the collection of TIF Revenues has been activated. As used in this Contract, all references to the Redevelopment Project and the Redevelopment Project Area for implementation of the TIF Plan shall also apply to implementation of the LCRA Plan unless clearly indicated to the contrary.

“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 TIF Revenues, and/or the proceeds of Obligations, attached hereto as **Exhibit C** 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 TIF 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 TIF Act for the administration of the TIF Plan, such costs shall be allowed only as an initial expense which, to be recoverable, shall be included in the costs of the TIF 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 TIF 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 the ordinance that will approve the Redevelopment Project pursuant to the TIF Plan and which activates the collection of TIF Revenues in such area.

“Redevelopment Schedule” shall have the meaning set forth in **Section 2.05**.

“Reimbursable Project Costs” means the portion of Redevelopment Project Costs, which pursuant to the TIF Plan and this Contract are to be funded or reimbursed with TIF 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 also include Administrative Costs.

“Reimbursable Project Costs Cap” shall have the meaning assigned in **Section 4.01**.

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

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

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

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

“Sanctuary” means the structure that served as the original Sanctuary for the United Methodist Church on the Property, which is located at the northwest corner of the intersection of Douglas Street and 2nd Street and which is more particularly described in **Exhibit F**.

“Special Allocation Fund” means the fund established by the City into which, as required by the TIF 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.

“Termination Ordinance” shall have the meaning set forth in **Section 4.07**.

“TIF Plan” shall have the meaning assigned in the Recitals on Page 1.

“TIF Revenues” means PILOTs and EATs and amounts which are deposited in the Special Allocation Fund as Additional Rent – PILOTs pursuant to the Lease.

“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.

“True-Up Date” shall have the meaning set forth in **Section 4.09**.

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

“Work” means all work, including, but not limited to, demolition, site preparation, development, design, engineering and construction, necessary to prepare the Property and to construct the Project.

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 TIF Act. If the Redevelopment Project Area is amended, the parties acknowledge that a corresponding amendment to the LCRA Plan may be necessary. The collection of TIF Revenues within the Redevelopment Project Area will commence upon the effective date of the Redevelopment Project Ordinance.

Section 2.03. Project Improvements. In accordance with the Acts and the terms and conditions of the Incentive Plans 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 Acts, Developer shall use best commercially reasonable efforts to cause the Redevelopment Project Area to be redeveloped through the construction of the Project Improvements; provided that, prior to commencing construction of the Project, Developer may terminate this Contract for any or no reason and the parties hereto shall thereafter have no further obligations hereunder except as specifically stated herein. In the event of such early termination, the City shall be entitled to reimbursement from the Administrative Costs Account for all Administrative Costs incurred through the date of such termination and thereafter for all final wrap-up work associated with completing such termination.

Section 2.04. Lease Agreement and Sales Tax Exemption for Construction.

A. Lease. Developer will transfer fee title to the Property to the City to implement the incentives provided by the LCRA Plan. The City and Developer will coordinate on the schedule for this transaction. Simultaneously with this Contract, the City and Developer will enter into the Lease which will provide the terms for acquisition of the Property by the City from Developer and the lease of the Property back to Developer for the effective period of the Lease, which duration will generally coincide with the construction period for the Project.

B. Rent.

1. Pursuant to the terms of the Lease, and as such additional capitalized terms used in this paragraph are defined in the Lease, Developer shall pay as annual **“Basic Rent”** an amount equal to the PILOTs that would be collected from the Redevelopment Project Area assuming

Developer continued to own the Property during the Lease term and assuming the market value of the Property is fixed at \$1,003,436 as assigned by the Jackson County Assessor to the Property for calendar year 2019. Further, Developer will pay as “Additional Rent” such additional amounts as may be charged pursuant to the terms of the Lease. The Additional Rent consists of two components:

(a) amounts which are attributable to an incremental increase in taxes that would be due for the Property as a result of an increase in the assessed valuation of the Property as determined by the County in the normal taxation process during the Lease Term (the “Additional Rent - PILOTS”); and

(b) amounts which are attributable to administrative or enforcement actions undertaken by the City to enforce or ensure compliance with rights, duties and obligations of the Lease (the “Additional Rent – Enforcement”).

2. The Basic Rent, when paid to the City, will be deposited in the Special Allocation Fund and disbursed to the taxing districts in the same manner and in the same proportions as real property taxes would be distributed by the County to the taxing districts that are located within the Redevelopment Project Area.

3. The Additional Rent – PILOTS, when paid to the City, will be deposited in the Special Allocation Fund and disbursed to reimburse Reimbursable Project Costs as set forth in this Contract. The Additional Rent – Enforcement shall be used to reimburse the City or other appropriate party for the costs incurred for administrative or enforcement actions pursuant to the terms of the Lease.

C. Construction Period. During the Term of the Lease, the Developer shall enter into all Construction Contracts with the Construction Contractors for the construction of the Project Improvements on the Property on behalf of the City and all contractors purchasing Materials for the Project on behalf of the City (the “**Purchasing Agents**”). The Developer shall cause each Construction Contract and contracts with Purchasing Agents to include provisions satisfactory to the City:

1. necessary to assure that the Construction Contractor and Purchasing Agent includes in contracts with the Suppliers that sell the Materials necessary for the construction of the Project Improvements: (a) a provision acknowledging that title to the Materials shall pass directly to the City from the Supplier, but only after the Materials have been inspected and accepted by the Construction Contractor or Developer, acting as the agents of the City; and (b) a provision that requires Suppliers to properly submit detailed invoices for Materials for review and approval to the Developer and the City or the City’s designee;

2. stating that the invoices for Materials must reflect that the Developer, Construction Contractor, or a Purchasing Agent is purchasing the Materials on behalf of the City as the City’s agent or subagent, respectively;

3. requiring that the Developer and the Construction Contractor keep full and complete records of the Materials purchased on behalf of the City, and providing that the Developer and the City shall each have reasonable access to those records, as may be necessary or desirable to ascertain that the Materials are, in fact, being acquired in accordance with this Contract;

4. providing that all Work performed under such contracts shall be in accordance with the LCRA Plan, this Contract and the TIF Plan, as applicable; and

5. providing that the Developer, Purchasing Agents and the Construction Contractor acknowledge and affirm that they are each buying the Materials on behalf of, and as agent or subagent, respectively, for, the City and that the Purchasing Agents and Construction Contractor further acknowledge and affirm that any such Materials purchased are the sole property of the City.

D. Agent. The City appoints and, confirms the appointment of the Developer as its agent to purchase the Materials for and on behalf of the City pursuant to power and authority delegated to the City by the LCRA. The Developer has the right to make the Construction Contractor and each Purchasing Agent a subagent for the purchase of the Materials and, accordingly, Developer appoints the Construction Contractor and each Purchasing Agent as a subagent for the City for the limited purpose of purchasing the Materials. The City and the Developer confirm that the Construction Contractor and each Purchasing Agent is authorized to appoint its subcontractors as subagents of the City for the limited purpose of purchasing Materials. The City will provide its sales tax exemption certificate to Developer, Purchasing Agents and Construction Contractor for purposes of purchasing the Materials. Notwithstanding anything in this Contract to the contrary, the Developer acknowledges that the City makes no representation or warranty with respect to any sales tax exemption during the Construction Period. In the event that the City's tax exempt status is reduced or eliminated, or City is otherwise unable to effectively extend sales tax exemption due to: (i) a change in federal or State law as to the purchase of all or any Materials used for construction of the Project Improvements and/or operation of the Project Improvements; or (ii) a lawsuit or administrative proceeding challenging the validity or legality of the sales tax exemption granted by the City during the Construction Period and which results in a determination by a court of competent jurisdiction or by a federal, state or local governing body or agency or department thereof that the sales tax exemption is invalid or illegal, then the Developer shall be fully responsible for payment of any sales or use taxes, interest, fees, charges, or penalties levied or imposed against the City or the LCRA. Developer shall indemnify, protect, defend and hold the City and the LCRA and their respective officers, elected officials, commissioners, agents and employees harmless from and against any and all sales or use taxes, interest, fees, charges, penalties, claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, resulting or arising from, or otherwise incurred in connection with, the loss of any sales tax exemption and/or any related lawsuit or administrative proceeding.

E. Title. Title to the Materials shall pass to the City directly from the Suppliers, but only after the Materials have been inspected and accepted by Developer acting as the agent of the City (or by the Construction Contractor or another person or entity acting as the Developer's subagent); thereafter title to the Materials shall remain in the City unless and until transferred, together with the City's title to the Property, and the Project Improvements, by the City pursuant to the Lease.

F. Enforcement of Warranties. The Developer, in its capacity as the agent of the City, is granted the right to make on behalf of the City, all warranty, indemnification or other claims to enforce any of the City's warranty rights related to the Materials. The Developer is assigned the benefits derived by the City from the actions of the Developer taken pursuant to this Section, insofar as such rights relate to the Materials.

G. Cost Certifications. As a material inducement for the City to enter into this Contract, the Developer shall pay, as part of the Administrative Costs, any costs and fees that may be incurred by the City to review and certify invoices for Materials submitted to the City in the event that the City is audited by a state agency, to ensure that the Materials were properly purchased and used in the construction of the Project Improvements, all in accordance with this Contract.

Section 2.05. Redevelopment Schedule.

A. It is the intention of the parties that development activities for the Redevelopment Project Area will be substantially commenced and completed on or before the dates set forth in **Exhibit E** 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 Incentive Plans that require an amendment under the Acts, as reasonably determined by City, shall be processed in accordance with the Acts, and changes in the development program contemplated by the Incentive Plans that do not require an amendment under the Acts, 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 Incentive Plans that are 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 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 Incentive Plans shall not be terminated in accordance with **Section 6.02** hereof.

Section 2.06. 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 all additional requirements that the City shall impose pursuant to the City’s Code of Ordinances and all applicable regulations and policies.

B. 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.

Section 2.07. 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 Preliminary Development Plan may be amended pursuant to the requirements of the UDO. 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 Area pursuant to this Contract.

B. Construction plans for the Private Project Improvements shall conform to the Final Development Plan, which shall be based on the Preliminary Development Plan.

Section 2.08. Construction and Maintenance of the Project.

A. Construction. Except as otherwise provided in this Contract or in the Lease, 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 the Redevelopment Area (but not private residences unless otherwise allowed pursuant to applicable laws) at reasonable times for the purpose of inspecting the Redevelopment Project.

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 all required Public Project Improvements has been issued by the City pursuant to the provisions of the Design and Construction Manual.

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, except for residents of residential units, to comply with the provisions of this **Section 2.08.C** for all portions of the Private Improvements. Developer shall enforce the provisions of this **Section 2.08.C** to the maximum extent permitted by law. Developer hereby agrees that every lease, sales contract or other contract regarding the Redevelopment Project Area, except for the lease of individual apartment units to residents, shall incorporate the provisions of this **Section 2.08.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.

D. Prevailing Wages. The Developer shall comply with all laws regarding the payment of prevailing wages to contractors or subcontractors of the Developer, as applicable. Upon written request by the City, Developer shall provide or cause to be provided written proof that the requirements of this paragraph have been satisfied from and after the date that the Work has commenced. In the event such request is made, no reimbursement payment shall be made by the City from TIF Revenues for the Reimbursable Project Costs which are subject to the payment of prevailing wages unless the Developer has provided or caused to be provided the written proof as required by this paragraph. Developer shall indemnify the City for any damage resulting to it from failure of either the Developer or any contractor or

subcontractor to pay prevailing wages pursuant to applicable laws. Such indemnification shall be limited to the amount of TIF reimbursement that Developer receives or is entitled to receive pursuant to this Contract, and payments due to Developer pursuant to this Contract from TIF Revenues may be withheld by the City in satisfaction of this indemnification obligation if Developer has not provided payment when due pursuant to the indemnification obligation of this paragraph.

E. Preservation of the Sanctuary. Developer covenants to maintain the integrity of the Sanctuary structure and incorporate the Sanctuary into the operations of the Project. The Sanctuary shall continuously be maintained and used during the effective period of this Contract and while TIF Revenues are being collected on the Property, and for such additional time period as set forth in the historic preservation easement. Developer shall execute an historic preservation easement in compliance with the form of easement attached as **Exhibit F** prior to receiving any reimbursement from TIF Revenues.

Section 2.09. Permitted Uses. Property within the Redevelopment Project Area may only be used for multi-family residential uses, along with associated parking, accessory uses and administrative offices for the residential apartments, while the collection of tax increment financing revenues is in effect for the Property.

Section 2.10. 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 G**. 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. Upon acceptance of the Certificate of Substantial Completion, 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: TAX INCREMENT FINANCING

Section 3.01. Payments in Lieu of Taxes.

A. Pursuant to the provisions of the TIF Plan and the TIF 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 TIF 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 TIF 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. While such information and any documents obtained by the City in this process would be subject to the Sunshine Law, the City agrees that it will not provide any such report or the information contained therein to the County Assessor or other governmental authority unless required by law.

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 3.02. Economic Activity Taxes. *The parties acknowledge that, on the Effective Date of this Contract, the Project is not expected to generate any taxable sales and Economic Activity Taxes. This Section and all references to Economic Activity Taxes within this Contract are included in the event that any retail sales occur within the Redevelopment Project Area during the effective period of the TIF Plan and this Contract.*

In addition to the payments in lieu of taxes described herein, and pursuant to Section 99.845.3 of the TIF 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 TIF Plan, Economic Activity Taxes shall be determined in accordance with the following procedures (subject, however, to the provisions of Section 99.835 of the TIF 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.

1. 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.

2. 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 TIF 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 3.03. 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 shall be deposited into the Economic Activity Account within the Special

Allocation Fund. Payments in Lieu of Taxes, Economic Activity Taxes 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 TIF Plan and this Contract.

Section 3.04. 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 not been issued and the parties anticipate that all of the Reimbursable Project Costs will be reimbursed on an “as collected” basis in accordance with **Section 4.04**, 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 and unreimbursed Reimbursable Project Costs together with interest determined in accordance with **part C of this Section**; and
3. Payment of any other Reimbursable Project Costs that are allowed by the TIF Plan, and approved and certified by the City in accordance with the TIF Act.

B. 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 together with interest determined in accordance with **part C of this Section**; and
4. Payment of any other Reimbursable Project Costs that are allowed by the TIF Plan, and approved and certified by the City in accordance with the TIF Act.

The items listed above may be modified or adjusted in the Bond Documents for any Obligations as mutually agreed by the Developer and the City at the time 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.

C. Reimbursable Project Costs shall include the reimbursement of simple interest on unreimbursed Reimbursable Project Costs at the rate of six percent (6%) per annum, which such interest shall accrue from the date such costs were paid.

The parties agree that it is not anticipated that the City will issue any Obligations for the Project, but the City reserves the right to issue Obligations in the event that such issuance is financially advantageous for the City. The remaining Sections in this Article shall govern the issuance of Obligations if such option is exercised by the City.

Section 3.05. 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 C** 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 3.05.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 3.05.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 3.06. Obligations

A. Issuance. City, in its sole discretion, may authorize the issuance of Obligations secured by all or a portion of the TIF Revenues. Obligations may 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 Columbia Capital Management, or another party selected by the City pursuant to its policies and procedures, 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. Subject to the provisions of subparagraph (2) below, the underwriter(s) for any Obligations shall be selected by City. The 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 TIF Revenues as are pledged to the Obligations.

B. Issuance Process.

1. 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.

2. 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).

3. 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.

C. Use of Proceeds. After funding the costs of issuance, any reserves and capitalized interest, and any unfunded Administrative Costs (subject to the limitations of Section 6.11), the proceeds from Obligations will be used to pay for or reimburse Developer for Private Funds advanced to pay costs certified by City as provided in **Section 4.03** hereof, together with interest determined in accordance with **Section 3.04.C** hereof, to fund Reimbursable Project Costs certified by City as provided in **Section 4.03** hereof.

D. 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 TIF 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.

Section 3.07. 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. 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 3.05**.

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. The City has verified that all required utilities for service within the Redevelopment Project Area are available or will be available upon completion of the Project.

ARTICLE 4: REIMBURSEMENT OF DEVELOPER COSTS

Section 4.01. Maximum Reimbursement Limit. The total amount of actual reimbursement on an as-collected basis from TIF Revenues, or from the proceeds of Obligations, shall not exceed \$8,039,380 (the “**Reimbursable Project Costs Cap**”), except that reimbursement of reimbursable interest under **Section 3.04.C**, Developer payments under the Funding Agreement, and Advanced Funds shall, notwithstanding anything in this Contract to the contrary, not count toward the Reimbursable Project Costs Cap.

Section 4.02. Developer Funding Obligation. If Obligations have not been issued, Developer shall construct, or cause to be constructed, the Private Project Improvements with private funds (the “**Private Funds**”). Developer shall also construct, or cause to be constructed, any Public Project Improvements with Private Funds. 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.

Section 4.03. Reimbursable Project Cost Certification.

A. Developer shall have the right to submit requests for certification for Reimbursable Project Costs as identified in **Exhibit C**, along with reimbursement for Developer’s payments under the Funding Agreement, of Advanced Funds, and of interest on Reimbursable Project Costs as provided in **Section 3.04.C**. The parties agree that, with respect to the design, development (e.g., City and Developer legal fees and development fees), and construction of the structured parking component of the Project, each Certification Application shall be for the reimbursement of such costs and no other hard or soft costs associated with the Project. Developer shall submit each request for certification of Reimbursable Project Costs within 180 days after 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.

B. 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 TIF 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.

1. If City determines that: (i) the Certification Application accurately reflects Reimbursable Project Costs paid in accordance with this Contract and the TIF 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, if any, and in accordance with the Redevelopment Project Cost

Budget, then it shall approve the Certification Application and issue a draw certificate (the “**Draw Certificate**”).

2. 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.

C. No Certification Application or portion thereof, as applicable, will be approved to the extent it causes the total Reimbursable Project Costs to exceed the Reimbursable Project Costs 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.

D. At the option of the City Manager or his designee, each Certification Application for Developer Reimbursable Project Costs 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.

Section 4.04. City Obligation to Reimburse Developer on a “Pay As You Go” Basis. The Parties agree that reimbursement will occur on a “pay as you go” basis as revenues are collected in the Special Allocation Fund in accordance with this Contract. The City shall have no obligation to reimburse Developer until funds are available in the Special Allocation Fund. The City shall have no obligation to reimburse Developer from any funds other than those funds in the Special Allocation Fund. To implement this process, 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. 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 five (5) business days following City’s approval of such Draw Certificate.

Section 4.05. Payment of Project Costs with Bond Proceeds.

A. If Obligations have been issued, then 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**”).

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 4.06. Cost Overruns. In no event shall the aggregate total of the Reimbursable Project Costs that is to be paid for in whole or in part from the Special Allocation Fund or from the proceeds of the Obligations, for costs associated with design and construction of the structures on the Property, exceed the Reimbursable Project Costs Cap in **Section 4.01**. If and to the extent that the Reimbursable Project Costs, for costs associated with design and construction of the structures on the Property, exceed such amount then Developer shall pay and be responsible for such Reimbursable Project Costs that exceed the Reimbursable Project Costs Cap.

Section 4.07. 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 TIF Act, but not later than twenty-three (23) years from passage of the effective date 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 TIF 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 TIF Act, of any rules or regulations adopted pursuant thereto, of the Ordinance, of the TIF Plan, and of this Contract, except as otherwise set forth herein or therein.

Section 4.08. Reserved.

Section 4.09. Development Cost Savings. Developer and the City agree that an appropriate maximum percentage of total Project costs to be reimbursed with TIF Revenues (excluding reimbursable interest under **Section 3.04.C**) is eighteen percent (18%). For purposes of determining total Project costs expended, Developer shall submit construction pay applications, the land closing settlement statement, and any other documentation reasonably required by the City to evidence such costs, but Developer shall not be required to undergo the cost certification process under **Section 4.03** for total Project costs that are not Reimbursable Project Costs. In the event that reimbursement would exceed 18% in the final year of Plan implementation, the City shall make a payment from available TIF Revenues to achieve no more than 18% reimbursement, and all remaining TIF Revenues shall be used to fund final Administrative Costs and then declared as surplus and distributed as required by the TIF Act.

ARTICLE 5: PROJECT CONTROL AND OPERATIONS

Section 5.01. Tenant Approvals. Subject to the provisions of **Section 2.09**, 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.

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. Except for residential leases, 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. As long as Obligations are outstanding or the Certificate of Substantial Completion under **Section 2.10** has not yet been issued, other than the sale of the Property to an entity that is a “**Related Entity**” (as defined in **Section 5.06**) that is obligated to manage and operate the Project and 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, 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. In considering the approval of such a transferee, City may require that the proposed 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 TIF Plan as a whole. City shall exercise its right to approve or deny any such 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.

A condition precedent to the sale, transfer, or other conveyance of any property in the Redevelopment Project Area shall be the transferee's execution of and delivery to the City an Assignment Agreement in the form attached as **Exhibit H** (the "**Assignment Agreement**"), with those modifications as requested by such transferee and acceptable to City. Upon execution of an Assignment Agreement, Developer shall be released from its obligations in this Contract relating to said transferred property.

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 2.10** 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. Reserved.

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. 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.

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 thereafter at the request of the City on each anniversary of said execution until all Project Improvements are completed, Developer shall report to the City Council the progress of its implementation of the Redevelopment Project. Such reports shall include such information as is required under the reporting requirements of the TIF 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 TIF Plan estimates;
4. actual Payments in Lieu of Taxes as compared to TIF Plan estimates;
5. actual Redevelopment Project Costs in the Redevelopment Project Area compared to TIF Plan estimates;
6. actual start and completion dates of Project Improvements in the Redevelopment Project Area compared to TIF Plan estimates; and
7. estimated start date of Project Improvements not yet commenced at date of report.

B. Until all Project Improvements are completed, Developer shall from time to time furnish such other reports on specific matters related to construction of the Project 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.

A. Restriction on Assignments. Unless in conjunction with a sale, transfer, or other conveyance pursuant to the terms of **Section 5.03** hereof, Developer may not assign this Contract or the rights and obligations hereunder to any assignee other than a Related Entity, without the written consent of the City; provided that, no City consent shall be required for Developer to assign its rights to receive reimbursement with TIF Revenues, as long as Developer remains responsible for the obligations hereunder.

B. Collateral Assignment of Payments. Notwithstanding subsection A above, Developer may collaterally assign or pledge its interests in this Contract or more narrowly its right to receive TIF Revenues hereunder by providing City with notice of any such assignment or pledge, and such assignment shall be in a form as approved by the City Attorney, which such approval shall not be unreasonably withheld, conditioned, or delayed.

Section 5.07. Transfer of Interests in Developer – City Approval.

A. Until the Certificate of Substantial Completion under **Section 2.10** has been issued, 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.

B. 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. 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.

Section 5.08. East Lot. On the date that the Property is transferred to the City to implement the Lease, Developer will also simultaneously transfer fee title for the East Lot to the City. The following terms and conditions shall apply to such transfer of the East Lot:

A. Transfer of the East Lot to the City shall be by special warranty deed and shall be for the consideration of \$1 and other good and valuable consideration as set forth in this Section regarding use and maintenance of the East Lot, which the Parties agree provides substantial benefit to Developer.

B. Transfer of the East Lot to the City shall be permanent with no reversionary interest being retained by Developer. The City may dispose of the East Lot at the City's discretion and in accordance with the additional terms and conditions of this Section.

C. The East Lot shall be available for use by Developer during the term of the Lease, plus any additional time as needed to complete construction of the Project, for use as a parking and staging area for construction of the Project. When a final certificate of occupancy has been issued by the City for the Project, the right of Developer to use the East Lot as a staging and parking area for construction shall cease.

D. After construction of the Project is completed, the City shall use the East Lot for a parking field and shall make [6] spaces available to Developer and dedicate such spaces exclusively for the parking of customers and tenants of Developer's business on the Property at all times. The location of such spaces may be identified by signage or pavement markings by the Developer after approval by the City.

E. The City shall maintain the parking field on the East Lot in a good state of repair and maintenance during the period of City ownership.

F. The City may attempt to acquire other properties in the vicinity of the East Lot, and if the City is successful in this effort and if the City is able to provide to Developer the same number of exclusively dedicated parking spaces set forth in paragraph D of this Section, at a location that is closer to the Sanctuary than the East Lot, then the City's obligation to provide parking spaces to Developer in the East Lot under paragraph D of this Section shall be transferred to such new lot. The City's obligation to provide such exclusively dedicated parking spaces under this Section 5.08 shall terminate ninety-nine (99) years after the Effective Date of this Contract and shall survive the expiration or termination of this Contract.

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; provided that, Developer shall have no obligations under this Section 6.01 where the liability at issue has arisen out of one or more Indemnified Party’s negligence or intentional actions.

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 after Developer receives notice from the Indemnified Party 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 for any liability arising during the Term of 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 TIF 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, 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 Acts, 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, and if the Certificate of Substantial Completion has not been issued pursuant to **Section 2.10**, 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 TIF 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. The City shall notify Developer if this Section is being relied upon to withhold disbursement.

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 or Developer's recovery of TIF Revenue that the City withheld from distribution to Developer in violation of 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.

A. 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, the Developer's inability to secure acceptable financing 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 the Project in accordance with this Contract, which in fact prevents the Developer from discharging its obligations hereunder.

B. 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 if financing commitments obtained by Developer 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 ninety (90) days to obtain new financing commitments. Notwithstanding the foregoing, 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 Public Project Improvements has been issued by City pursuant to the provisions of the Design and Construction Manual.

Section 6.04. Notice. Any notice required by this Contract shall be deemed to be given if it is mailed by United States certified mail, postage prepaid (which notice shall be deemed given two (2) business days after mailed), or Federal Express or comparable national overnight delivery service (which notice shall be deemed given the day it is deposited with such overnight delivery service) and addressed as hereinafter specified.

Any notice to City shall be addressed to:

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

With a copy to:

Any notice to Developer shall be addressed to:

James E. Thomas, Jr.
Cityscape Residential, LLC
8335 Keystone Crossing, Suite 220
Indianapolis, IN 46240

With a copy to:

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

Curt Petersen
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112

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 Incentive Plans 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 termination of tax increment financing in the Redevelopment Project Area pursuant to the Termination Ordinance.

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 until passage of the Termination Ordinance. Until such time, 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.

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 Incentive Plans. Developer shall provide the relocation services and benefits as provided for under the TIF 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 the TIF 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 C**, 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 July 26, 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 \$10,000, then Developer shall make a payment to the City (all amounts in the Advanced Funds Account are the “**Advanced Funds**”) so that the initial amount on deposit in the Advanced Funds Account, together with funds remaining from the Funding Agreement, is \$10,000. If there are no funds on deposit with the City pursuant to the Funding Agreement on the Effective Date, then the Developer shall advance the sum of \$10,000 to the City as Advanced Funds for deposit in the Advanced Funds Account. If there are more funds on deposit with the City pursuant to the Funding Agreement than what is necessary to advance the sum of \$10,000 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 TIF 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) \$10,000 or (ii) the amount necessary to fund up the Administrative Costs Account to a balance of \$10,000 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 Plans 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.

Section 6.17. Electronic Storage. The Parties agree that the transactions described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Remainder of 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: _____
Stephen A. 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 _____, 2019, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. 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:

DTLS APARTMENTS, LLC

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2019, before me, a notary public, appeared _____, to me personally known, who being by me duly sworn, did say that he is the Manager of DTLS Apartments, LLC, and is authorized to sign documents on behalf of said entity and that said instrument was signed on behalf of said entity 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
AND REDEVELOPMENT PROJECT AREA**

TRACT 1:

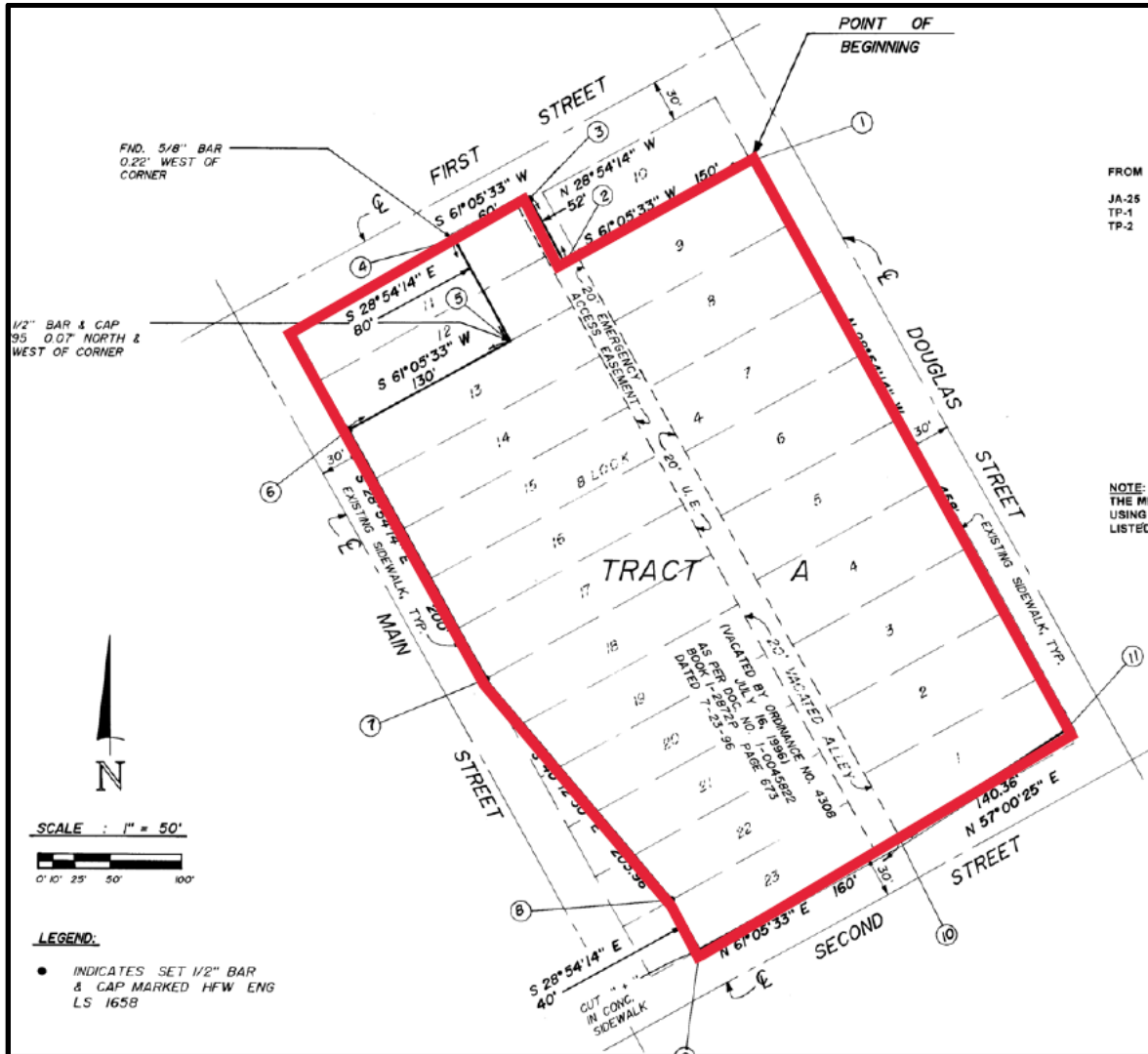
TRACT A, REPLAT OF LOTS 1 THRU 9 AND 11 THRU 23, INCLUSIVE, BLOCK 4, TOWN OF STROTHER, A SUBDIVISION IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI.

TRACT 2:

THE WEST 130 FEET OF LOTS 11 AND 12, BLOCK 4, CITY OF LEE'S SUMMIT, FORMERLY THE TOWN OF STROTHER, A SUBDIVISION IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI.

EXHIBIT B

MAP OF REDEVELOPMENT AREA



Note: This map is overlaid on the plat titled “Replat of Lots 1 thru 9 and 11 thru 23, Inclusive, Block 4 Town of Strother” before the Project received current zoning approvals, and is solely for the purpose of illustrating the general boundaries of the Redevelopment Area in relation to the adjacent streets.

EXHIBIT C

REDEVELOPMENT PROJECT COST BUDGET

Project Cost	Total	Projected TIF Reimbursed Costs	Developer Private Costs
Land Acquisition	\$2,800,000	\$0	\$2,800,000
Site Work/Infrastructure	\$1,500,000	\$0	\$1,500,000
less sales tax exemption savings	-\$47,100		-\$47,100
<i>Adjusted Site Work/Infrastructure Cost</i>	<i>\$1,452,900</i>		<i>\$1,452,900</i>
Building Construction	\$32,550,000	\$0	\$32,550,000
less sales tax exemption savings	-\$1,022,070		-\$1,022,070
<i>Adjusted Building Construction Cost</i>	<i>\$31,527,930</i>		<i>\$31,527,930</i>
Structured Parking	\$8,300,000	\$8,300,000	\$0
less sales tax exemption savings	-\$260,620	-\$260,620	
<i>Adjusted Structured Parking Cost</i>	<i>\$8,039,380</i>	<i>\$8,039,380</i>	
Soft Costs/Other	\$8,000,000	\$0	\$8,000,000
TOTAL PROJECT COSTS	\$51,820,210	\$8,039,380	\$43,780,830
	Projected TOTAL PROJECT COSTS	Projected TIF Reimbursed Costs	Developer Private Costs

Notes:

The amounts set forth in the Projected TIF Reimbursed Costs column totaling approximately \$8,039,380 are net reimbursable project costs reimbursements and do not include interest expenses, financing expenses, fees, or costs of issuance for Obligations or any other financing instrument, which may be Reimbursable Project Costs in addition to the cap established in Section 3.02.D of this Contract.

The amounts designated as “less sales tax exemption savings” are the projected amount of savings that will result from implementation the LCRA Plan and are not amounts that are reimbursable from TIF Revenues.

EXHIBIT D

PRIVATE PROJECT IMPROVEMENTS

The construction of an approximately 274 unit multi-family residential apartment structure, a four-story interior parking deck, and preservation reuse of the Sanctuary structure as part of the apartment operations as set forth in this Contract.

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 E

REDEVELOPMENT SCHEDULE

EVENT	ESTIMATED COMMENCEMENT	ESTIMATED COMPLETION
Demolition	Q2 2020	Q3 2020
Construction of Apartments	Q1 2021	Q3 2023

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 F
HISTORIC PRESERVATION EASEMENT

[Attached]

(Space above reserved for Recorder of Deeds certification)

1. *Title of Document:* **Historic Preservation Easement – United Methodist Church Sanctuary**
 2. *Date of Document:* **December __, 2019**
 3. *Grantor(s):* **DTLS Apartments, LLC**
 4. *Grantee(s):* **City of Lee’s Summit, Missouri, a municipal corporation**
 5. *Statutory Mailing Address(s):*

**Grantee’s Address: Lee’s Summit City Hall
220 SE Green Street
Lee’s Summit, MO 64063**
 6. *Legal Description:* **See Attached Exhibit A**
 7. *Reference Book and Page(s):* **N/A**
-

**HISTORIC PRESERVATION EASEMENT –
UNITED METHODIST CHURCH SANCTUARY**

THIS HISTORIC PRESERVATION EASEMENT (“Easement”) is made this ___ day of December __, 2019, by **DTLS APARTMENTS, LLC** (“Grantor”), and the **CITY OF LEE’S SUMMIT, MISSOURI**, a municipal corporation (“Grantee”).

RECITALS OF CONSIDERATION

A. Grantor is the owner in fee simple of a parcel of land located in the downtown area of the City of Lee’s Summit, Jackson County, Missouri, such parcel of land being legally described on **Exhibit A** attached hereto (together with all improvements on the land, the “Property”), the location of which is depicted in **Exhibit B**, generally situated at the northwest corner of 2nd Street and Douglas Street. The structure is commonly known as the original Sanctuary for the United Methodist Church (the “**Structure**”), is located on the Property, and is the subject matter of this Easement.

B. Grantor has agreed to preserve certain elements of the “Façade,” in accordance with the terms hereof. The term “**Façade**” means the easterly and southerly facing exterior surfaces and features of the Structure, and the northeasterly and southwesterly facing exterior corner surfaces and features of the Structure, which are visible from the Viewshed Areas (as such term is defined below), as shown on **Exhibit C** attached hereto, together with the structural portions of the Structure that support such exterior features. The term Façade shall not include those northerly and westerly facing portion of the exterior of the Structure that become adjoined to the apartment development when the redevelopment is completed, it being understood that the Structure will adjoin and connect to the apartment structure in order to integrate the Structure into the operations of the apartment redevelopment project.

C. The City has approved tax incentives to Grantor for the purpose of providing for the redevelopment of the Church property and structures which are located on the same block as the Property, in the form of the 2nd and Douglas Tax Increment Financing Plan and the 2nd and Douglas LCRA Redevelopment Plan which were approved on May 7, 2019 through the adoption of Ordinance No. 6825 and 6828, respectively, and through the execution of the Redevelopment Contract dated December 10, 2019, all of which serve as consideration to Grantor in exchange for providing this Easement and undertaking other obligations for redevelopment activities by Grantor.

D. Grantor and Grantee desire to ensure that certain significant exterior features of the Façade are preserved to the reasonable extent possible for benefit of future generations through the grant of this Easement.

NOW THEREFORE, in consideration of the foregoing and for other good and sufficient consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to Grantee, and Grantee hereby accepts, this Easement on the following terms and conditions:

Article I

BACKGROUND AND DEFINITIONS

A. Property Subject to Easement

The property subject to this Easement is comprised of the Façade.

B. Purpose

Subject to the terms hereof, this Easement is granted in perpetuity to preserve the Façade. This Easement, to be of the nature and character hereinafter further expressed, shall constitute a binding servitude upon the property of the Grantor subject to the terms contained herein, and to that end Grantor covenants on behalf of itself, its successors and assigns, with Grantee, its successors and assigns, such covenants being deemed to run as a binding servitude, in perpetuity, with the land, to do upon the Property each of the following covenants and stipulations, which contribute to the public purpose of which public incentives have been approved by Grantee for redevelopment of the Property and assure the present and future historic integrity of the Structure.

In furtherance of this purpose, after the Effective Date the Façade shall not be altered, restored, renovated or extended except in a way that would, in the reasonable opinion of Grantee, be in keeping with the historic character of the Structure. Alterations, renovations or improvements to the Façade shall be architecturally compatible with the original function and appearance of the Structure in Grantee's reasonable opinion. Except as otherwise may be specifically set forth herein, in no event may any exterior construction to, or alteration, renovation or redecoration of, the Façade be undertaken without the prior written approval of Grantee as hereinafter provided.

C. Baseline Data

In order to document the present condition of the Façade, to permit Grantor and Grantee to monitor the future condition of the Façade, and to assure compliance with the terms hereof, Grantee has prepared a photographic inventory of the condition of the Façade existing on the Effective Date which is attached hereto as **Exhibit C** (the "**Baseline Data**"). The identity and condition of each element of the Façade and all related exterior architectural features shall be detailed in the Baseline Data.

In the event Grantor alters, restores or modifies the Façade in accordance with the terms of this Easement, Grantor and Grantee will, together, periodically update the photographs and other documentation in the Baseline Data to reflect the upgraded condition of the Façade. Once the Façade has been restored to a good and sound state of repair, Grantee shall prepare a revised inventory of the Façade's condition to identify and document the condition of each element of the Façade depicted in the original Baseline Data. Once such revised Baseline Data has been completed, such revised Baseline Data shall be accepted by Grantor and Grantee as an accurate depiction of the condition of the Façade as restored.

Article II

RESTRICTIONS, COVENANTS AND AGREEMENTS.

Grantor covenants on behalf of itself, its successors and assigns to do, or refrain from doing, each of the following acts.

A. Maintenance

Grantor shall maintain the Façade in a good and sound state of repair, as depicted in the Baseline Data, in order to preserve the original architectural character and integrity of the Façade, as the same may be revised from time to time.

B. Façade and Viewshed Alterations Prohibited Without Grantee's Prior Written Approval

1. Exterior changes, alterations, additions and improvements to the Façade as would not, in the reasonable opinion of Grantee, adversely affect the structural soundness, or fundamentally alter the historic character, of the Façade may be made thereto by Grantor upon prior written consent of Grantee, which consent shall be granted or withheld in accordance with the terms of this Easement; provided that, Grantor may replace, without Grantee consent, any (1) exterior windows; (2) doors (including inscription in the doorway); (3) or any other items directly related to life/safety which are required to be replaced to meet the City's Building Code and Property Maintenance Code in Chapters 7 and 16 of the Code of Ordinances, as amended from time to time.

2. The view and visibility of the Façade and the Structure from public rights-of-way, including streets, sidewalks, pedestrian areas, parks and any other public areas where the public is generally allowed to gather or traverse (the "**Viewshed Areas**"), shall not be substantially blocked or obstructed by the placement or construction, whether temporary (except during periods of construction, maintenance, or repairs) or permanent, or by any other structure or object within the boundaries of the Property and any other adjacent areas or properties under ownership or control of Grantor, or any affiliated or related persons or entities of Grantor, without the prior written approval of the Grantee. Structures and objects which are prohibited from the Viewshed Areas include, but are not limited to, buildings, structures (whether temporary or permanent), poles, flags, banners, awnings, wires, tents, utility boxes and related structures, signage, bill boards, advertising, vehicles, trailers, automobiles (except for parking as allowed pursuant to the City Code), whether fixed to the Structure or standing independently of the Structure. Temporary gatherings, festivals and related events which are allowed by permission of the City pursuant to the City Code or a City-issued permit shall not be treated as prohibited Viewshed Area obstructions pursuant to this paragraph. Trees, plants and vegetation that are permitted by the final development plan, as may be amended from time to time, shall be allowed in the Viewshed Area. Notwithstanding the foregoing, items included in an approved final development plan that includes the Structure shall not be prohibited hereunder.

C. Commercial or Industrial Activities

No industrial or commercial activities shall be conducted on the Property except to the extent permissible under then applicable land use regulations or as set forth in that certain Redevelopment Contract by and between Grantor and Grantee dated as of December 10, 2019, as may be amended or modified by the parties.

D. Signage

No commercial signs, billboards or advertising shall be displayed on the Façade other than those approved by Grantee in its reasonable discretion. Notwithstanding the foregoing, Grantor and Grantee may mutually elect to affix at the Property such historical and interpretative signs as Grantor shall elect provided the historical or structural integrity of the Façade is not materially affected thereby.

E. Payment of Taxes

Grantor shall pay before delinquent all general taxes, special assessments, payments in lieu of taxes, water charges, sewer service charges and any and all other charges which, if unpaid, would become a lien on the Property. The obligation to pay shall not apply during (i) any period Grantor has (a) timely objected to the amount or validity of the charge, (b) diligently prosecuted the appeal of such assessment or charge, and (c) effectively stayed any enforcement action relating to any such lien against the Property, and (ii) any grace period following the conclusion of such appeal.

F. Reference on Conveyance

Grantor agrees (i) to insert a reference to the existence of this Easement in any deed or other legal instrument by which it transfers title to the Property or any interest therein (including a leasehold interest other than residential leases or a deed to the City in implementation of the 2nd and Douglas LCRA Redevelopment Plan) and (ii) to notify Grantee of any such conveyance or other transfer of interest (providing the name, address and contact information for such transferee) at least ten (10) days prior to the date of any such conveyance or transfer. The failure to include such reference in the legal instrument shall authorize the City to void such transaction upon such declaration by the City Council.

Article III

GRANTOR’S RESERVED RIGHTS

Grantor reserves for itself, its successors and assigns, all rights as fee owner of the Property, including, without limitation, the right to use and enjoy the Property in any way and for any purpose not prohibited by this Easement or otherwise prohibited by law. Without limiting the generality of the foregoing, Grantor reserves the right to make alterations to any interior features of the Structure without prior consultation with Grantee, except as prohibited by applicable City Code provisions, provided that any such interior alteration shall not materially impair the historical or structural integrity of the Façade or the structural integrity of the Structure.

Article IV

EASEMENT ADMINISTRATION

A. Evidence of Compliance

Grantee acknowledges that the intended uses of the Property are compatible with the purposes of this Easement. For any sale, leasing, refinancing, mortgaging or other business purpose, Grantee shall, within ten (10) business days of request, furnish Grantor or its designee with a statement that (i) provides to the best of Grantee's knowledge, information and belief after reasonable inquiry, Grantor is in full compliance with its obligations under this instrument or (ii) that details any noncompliance with its obligations under this Easement.

B. Grantee Marker

Grantee is authorized to maintain one plaque or marker, not to exceed twelve (12) inches by twenty-four (24) inches, at a location mutually agreeable to Grantor and Grantee to afford public notice of (i) the history of the Property, (ii) Grantee's ownership of the right to enforce the terms of this Easement, and (iii) Grantee's name, address and phone number.

C. Inspection

Upon prior reasonable written notice to Grantor, its successors and assigns, Grantee shall be entitled to enter upon the Property for the purpose of inspecting the Façade to ensure there are no violations under the terms of this Easement. Any such inspection will be conducted in a manner that will not unreasonably interfere with the uses being made of the Property and Grantor's quiet enjoyment of the same at the time of such entry. Grantee's right to enter upon the Property is solely for the purpose of inspecting the Façade and making determinations regarding enforcement of this Easement. In the absence of evidence of a violation of the terms of this Easement, such inspection will not take place more often than annually.

D. Initial Work

Grantee acknowledges that Grantor intends to repair, renovate and alter the Structure ("**Grantor's Initial Work**") to preserve the physical integrity of the Structure and prevent further deterioration and consents to such work, subject to the terms of this Easement. Grantor hereby agrees that Grantor's Initial Work shall be performed in accordance with plans and specifications submitted by Grantor and approved by Grantee, the approval of which shall be subject to the terms of this Easement.

E. Requests for Changes and Review of Proposed Work

Grantor shall notify Grantee promptly of any proposed work to the Façade requiring Grantee's prior approval pursuant to the terms of this Easement. Depending upon the nature of the proposed work, Grantee may request Grantor to furnish a written narrative, a sketch plan, or more detailed plans to enable Grantee to confer further with Grantor. Grantee shall notify Grantor within ten (10) business days following receipt of the initial requested information whether Grantee has sufficient information to complete its review of the proposed work and, if Grantee has

sufficient information, whether the proposed work appears permissible hereunder and any areas of particular concern. At that time, Grantee shall also (i) furnish Grantor with a description of any additional information Grantee will reasonably require to approve the proposed work, if possible, or (ii) schedule a meeting with Grantor and its professional advisors to discuss and refine the scope of the proposed work to render it eligible for conceptual approval. Notwithstanding anything in this Easement to the contrary, Grantor shall not need to obtain Grantee consent for routine maintenance tasks involving the Façade, including, without limitation, window washing, tuck pointing, brick washing, and window touch-up painting.

Once the scope of the proposed work is identified and Grantee has granted conceptual approval, Grantor shall submit to Grantee a set of plans and a work schedule in sufficient reasonable detail to enable Grantee to review the proposed work. Within twenty (20) business days of receipt of such plans (“**Approval Period**”), Grantee shall notify Grantor in writing whether it approves such plans, approves such plans with conditions, or disapproves such plans. If Grantee disapproves the plans or approves such plans with conditions, as the case may be, Grantee will identify with specificity its objections to the proposed plans. If the proposed plans cannot be modified to make them acceptable, Grantee shall furnish Grantor with a written statement of the reasons for denying approval.

F. Standards for Review

In exercising its review authority hereunder concerning the Façade, Grantee shall look to the Baseline Data, the original designs for the Façade, Grantee’s own reasonable general guidelines for review of alterations to historic resources located in Lee’s Summit, Missouri, and Grantor’s purpose in creating this instrument. Grantee agrees that any review of proposed changes shall take into account Grantor’s budgetary constraints, code compliance, federal, state and local laws, this Easement and the TIF Plan, while maintaining those features of the Façade that make them unique. All authority vested in the Grantee under this Easement shall be exercised by the Director of the Development Center for the City, or his/her designee.

G. Enforcement Rights of Grantee

In the event of a violation of any term, condition, covenant, or restriction contained in this Easement, upon prior written notice to Grantor, Grantee may institute a suit for one or more of the following: to compel the restoration of the Façade to the condition existing prior to the violation; or to enjoin by temporary or permanent injunction such violation. Grantee’s failure to act shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this Easement in the future. If any legal action is undertaken by Grantee to enforce this Easement or to enjoin a violation, the prevailing party in such action shall be entitled to recover its reasonable attorneys’ fees and costs incurred in connection with such action.

H. Notice

All notices required by this Easement must be in writing. Notices may be given either by hand delivery, mail service, Federal Express or comparable national overnight delivery service, or electronic mail. Mailed postal notice must be contained in an accurately addressed, sealed

envelope, marked for delivery by first class registered or certified mail, with sufficient prepaid postage affixed and with return receipt requested, and mailed to the following:

Notice to City shall be addressed to:

City Manager
Lee's Summit City Hall
220 SE Green Street
Lee's Summit, MO 64063
E-mail: stephen.arbo@cityofls.net

With a copy to:

City Attorney
Lee's Summit City Hall
220 SE Green Street
Lee's Summit, MO 64063
E-mail: David.Bushek@cityofls.net

Notice to Developer shall be addressed to:

James E. Thomas, Jr.
Cityscape Residential, LLC
8335 Keystone Crossing, Suite 220
Indianapolis, IN 46240
E-mail:
jthomas@cityscaperesidential.com

With a copy to:

Curt Petersen
Polsinelli PC
6201 College Blvd., Suite 500
Overland Park, KS 66221
E-mail: cpetersen@polsinelli.com

Notice shall be deemed given and received as of the date of its hand delivery, the date it is deposited with the national overnight delivery service, the date it is sent by electronic mail, or two business days following the date of its mailing.

I. Enforcement

Subject to the terms and provisions of Article VIII, Paragraph B. below, Grantee may hire or contract for advice and guidance regarding the administration and enforcement of this Easement, at no cost to Grantor except as may be specifically provided herein, which shall not be deemed an assignment and shall not require prior approval of Grantee. Any costs incurred by Grantee in connection with any such hiring or contracting shall be at the cost of Grantee, except that if such advice is sought in connection with an alleged violation of this Easement, and a violation by Grantor is established as provided in Article IV, Paragraph G. above, then the reasonable, actual, verified costs incurred by Grantee in connection with any such hiring or contracting shall be reimbursed to Grantee by Grantor.

Article V

CASUALTY DAMAGE OR DESTRUCTION; INSURANCE

A. Insurance

1. Property Insurance

Grantor shall keep the Structure insured against loss from the perils commonly insured under fire and extended coverage insurance policy in an amount equal to one hundred percent

(100%) of the full replacement cost of the Structure. Such insurance shall be issued by a company or companies reasonably acceptable to Grantee.

2. Issuance and Renewal of Insurance; Required Terms

Upon Grantee's acceptance of this instrument, and within ten (10) days following the City's written request thereafter, Grantor shall cause its insurance carrier to furnish to Grantee certificates of insurance policies required hereunder.

B. Casualty Damage or Destruction

If the Structure is damaged or destroyed by fire, flood, windstorm, tornado, earth movement, or other casualty, Grantor shall notify Grantee in writing within ten (10) days of the damage or destruction. Grantor's notice shall include a statement of any emergency work which has been completed or commenced. In the event of any damage or destruction, Grantor shall make no exterior repairs or reconstruction of any type to the Façade without Grantee's prior written approval, other than temporary emergency work reasonably required to stabilize the Façade to prevent further damage, or to protect public safety.

C. Grantee Rights Upon Determination that Reconstruction or Restoration is Impracticable

If Grantor determines that restoration or reconstruction of the Structure is impracticable within the limits of available insurance proceeds and funds advanced by Grantee, if any, Grantor may demolish, raze or remove the Structure, or the damaged elements thereof. Notwithstanding anything to the contrary in this Easement, Grantor and Grantee acknowledge that a mortgagee may require that insurance proceeds be used to retire its mortgage loan prior to using such funds to fund restoration or reconstruction of the Structure.

D. Review after Casualty Damage or Destruction

Unless Grantor shall determine that the restoration or reconstruction of the Structure and the Façade is impracticable (in accordance with the provisions of Article V.C. above), Grantor shall establish a schedule for completing the restoration or reconstruction work for the Structure and the Façade in accordance with plans and specifications to be submitted to Grantee for review and approval as set forth in this Easement, and promptly following such approval by Grantee, Grantor shall proceed to restore or reconstruct the Structure and the Façade.

Article VI

AMENDMENT, CONDEMNATION AND EXTINGUISHMENT

A. Amendment

Grantor and Grantee recognize that circumstances could arise that might justify the modification of certain of the restrictions contained in this Easement. To this end, Grantee shall consider in good faith any amendments to this Easement requested by Grantor provided that they

are not inconsistent with the basic purpose of this Easement to protect the Façade. This Easement may be amended in the same manner as other easements under the laws of the State of Missouri.

B. Condemnation

If all or any part of the Property is threatened to be taken under the power of eminent domain by public, corporate or other authority other than Grantee, or any agency, department or division thereof, or otherwise acquired by such authority through a purchase in lieu of such a condemnation, Grantor shall defend against the condemnation to recover the full value of the Property, together with all incidental and direct damages recoverable under applicable law. Grantor and Grantee shall first satisfy prior claims against the Property and any net expenses reasonably incurred by Grantor and Grantee in connection with the condemnation. Thereafter, Grantor and Grantee shall split the balance of the condemnation proceeds in accordance with the final ruling by a court of competent jurisdiction to the extent that such ruling provides for the receipt of damages by Grantee for damage to the property interest created by this Easement.

C. Extinguishment

Grantor and Grantee recognize that circumstances may arise which might make impossible the continued ownership or use of the Property in a manner consistent with the purposes of this Easement, in which event it might become desirable to extinguish this Easement. In the event the parties mutually determine that extinguishment is appropriate and desirable, they may mutually agree to such extinguishment by appropriate action which is in recordable form, or petition a court of competent jurisdiction to extinguish the easement by the parties.

Article VII

MORTGAGEE SUBORDINATION AND RIGHTS OF MORTGAGE LENDERS

A. Subordination of Mortgages

Grantor and Grantee agree that all mortgages and rights in the Property of all mortgagees are subject to and subordinate at all times to this Easement and the rights of Grantee to enforce this Easement. Grantor hereby warrants and represents that the Property is not currently subject to any mortgages or other liens or, to the extent any such mortgages or other liens exists, Grantor will deliver to Grantee, concurrently with the execution of this Easement, an instrument, acceptable in form and content to Grantee, pursuant to which the holder of any such mortgage or lien has agreed that all of its rights, titles and interests in the Property are subordinate to this Easement. Further, Grantor covenants that all mortgages and encumbrances which Grantor may be placed on the Property shall be subordinate at all times and subject to this Easement.

B. Rights of Mortgagees

(1) Proceeds on Condemnation or Casualty Loss

Notwithstanding any mortgage lender's relative priority in relation to this Easement, if a mortgage grants to a mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain or

the right to receive insurance proceeds as a result of any insured casualty occurring on the Property, the mortgagee shall have a prior claim to any such proceeds and shall be entitled to receive same in preference to Grantee until the mortgage has been paid off or discharged. This partial subordination of Grantee's relative priority in favor of a mortgage lender's competing claims to direct the application of condemnation or insurance proceeds shall only apply if the mortgage creating such mortgagee's right is recorded before the first discussion of the possibility of condemnation or eminent domain is published in the local news media, in the case of a condemnation, or before occurrence of the insured occurrence in the case of an insured loss.

(2) Mortgage Obligations Under Easement

Until a mortgagee or purchaser at foreclosure obtains ownership of the Property following foreclosure of its mortgage or deed in lieu of foreclosure, the mortgagee or purchaser shall have no obligation, debt or liability under this Easement; provided, however, that if at any time such mortgagee or purchaser shall operate the Property during the period of its ownership, it shall be obligated to maintain the Property, including without limitation the Façade, in accordance with the terms of this Easement.

(3) Extinguishment

Nothing contained herein shall give any mortgagee the right to extinguish this instrument, whether by foreclosure, deed in lieu of foreclosure, or otherwise.

Article VIII

THIRD PARTY RIGHTS NEGATED

A. Public Access Prohibited

This Easement shall not be construed to include a grant to the public of any right to enter the Property for any purpose.

B. No Third Party Enforcement Rights

Grantor and Grantee understand that strangers to this Easement may, by virtue of the grant, claim standing to influence Grantee's administration of its rights hereunder. Grantor and Grantee agree, to the maximum extent permissible by law, to deny standing to any persons, nonprofit institutions, or governmental entities to intervene, whether by action at law or equity, in Grantee's interpretation, administration, and enforcement of its rights, burdens and benefits under this Easement. Nothing contained herein is intended to create any beneficial interest in any party that is not a signatory to this Easement. Under no circumstances does Grantor intend to create, nor does it create, any rights in third parties to intervene in Grantee's exercise of the discretionary powers entrusted to Grantee hereunder.

Grantor and Grantee understand that Grantee has the right to appoint a neutral, unrelated person or entity as a "third party enforcer" to ensure that Grantor complies with the terms of this Easement.

Article IX

DEFINITIONS AND MISCELLANEOUS

A. Use of Pronouns

The terms “Grantor” and “Grantee”, wherever used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and its successors and assigns and the above-named Grantee and its successors and assigns approved by Grantor.

B. Severability

If any provision of this Easement, or the applicability thereof to any person or circumstance, are found to be invalid, the remainder of the provisions of this Easement and the application of such provisions shall remain in full force and effect.

C. Binding Effect

The restrictions and covenants contained herein shall be deemed to run with the land in perpetuity as covenants at law and equitable servitudes, and extend to and be binding on Grantor and Grantee and their respective heirs, administrators, devisees, successors, and assigns in perpetuity.

D. Non-Waiver

The failure of Grantee to exercise any right or remedy granted under this instrument with respect to any particular violation shall not have the effect of waiving or limiting the exercise of such right or remedy with respect to the identical (or similar) type of violation at any subsequent time or the effect of waiving or limiting the exercise of any other right or remedy.

E. Governing Law

This Easement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Missouri.

F. Recording and Effective Date

Grantee shall do and perform at Grantor's expense all acts necessary to the prompt recording of this Easement in the land records of Jackson County, Missouri. Grantor and Grantee intend that the “Effective Date” of this Easement shall be the date this instrument is accepted by Grantee, even though such date is before the date this instrument is recorded among the land records of Jackson County, Missouri.

G. Entire Agreement

This Easement reflects the entire agreement of Grantor and Grantee. Any prior or contemporaneous correspondence, understandings, agreements and representations are null and

void upon execution of this Easement unless the same are identified and incorporated herein by reference.

TO HAVE AND TO HOLD the said Easement, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said City of Lee's Summit, Missouri its successors and assigns, in fee simple.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Grantor and Grantee (who joins in this deed to evidence its acceptance of the burdens and undertakings imposed hereunder) have executed this Easement as of the day and year first above written.

GRANTOR:

DTLS APARTMENTS, LLC

Witness:

By: _____

Name: _____

Title: _____

COUNTY OF _____)
STATE OF _____), ss:

I hereby certify that on this ____ day of _____, 2019, before me, the undersigned officer, a notary Public in and for the County and State aforesaid, personally appeared _____, as _____ of DTLS Apartments, LLC, known to me or satisfactorily proven to be the person whose name is subscribed to the within deed and acknowledged that he executed the same on behalf of said company for the purposes therein contained, and further acknowledged that said Easement is its free act and deed or said company.

In Witness Whereof, I have set my hand and official seal this ____ day of _____, 2019.

Notary Public

My commission expires:_____.

GRANTEE:

CITY OF LEE'S SUMMIT, MISSOURI

(Corporate Seal)

Attest:

Trisha Fowler Arcuri, City Clerk

William A. Baird, Mayor

Approved As To Form:

Brian Head, City Attorney

COUNTY OF JACKSON)
STATE OF MISSOURI), ss:

BE IT REMEMBERED, that on this _____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the County and Sate aforesaid, came William A. Baird, the Mayor 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 act and deed of said City.

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

Notary Public

My commission expires:_____.

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

THAT PORTION OF TRACT A IN THE "REPLAT OF LOTS 1 THRU 9 AND 11 THRU 23, INCLUSIVE, BLOCK 4, TOWN OF STROTHER," A SUBDIVISION IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI, CONSISTING OF THE PROPERTY THAT WAS FORMERLY LOTS 1 AND 2 ON THE PLAT OF BLOCK 4, THE TOWN OF STROTHER, A PRIOR SUBDIVISION IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI.

Exhibit B

MAP SHOWING LOCATION OF PROPERTY

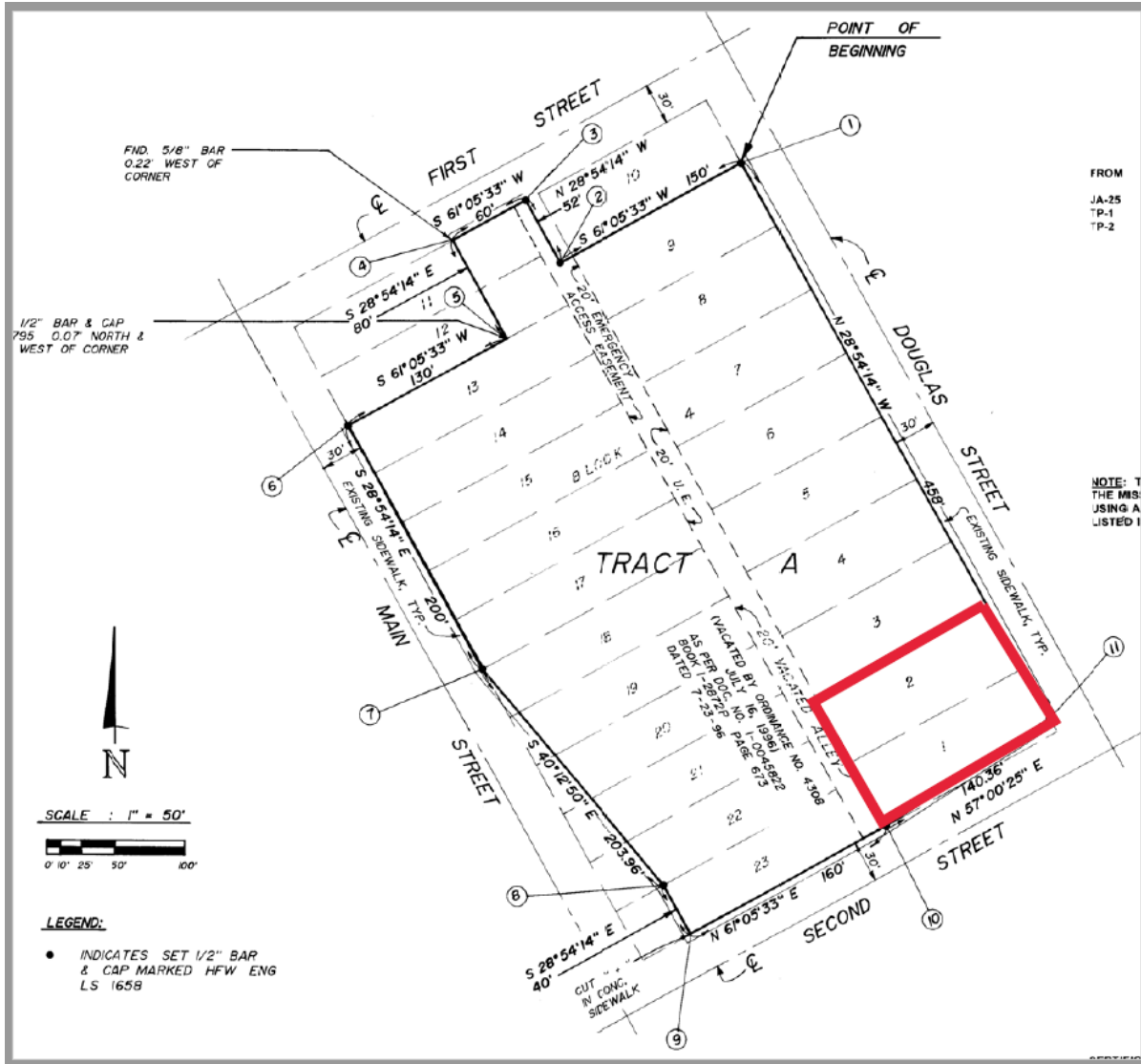


Exhibit C
BASELINE DATA

[Add pictures of the Facade]

EXHIBIT G

CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, DTLs Apartments, LLC (the “*Developer*”), pursuant to that certain Tax Increment Financing Redevelopment Contract dated as of June ___, 2019, 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.
3. Lien waivers for the 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____.

DTLS Apartments, 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 H

FORM OF ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is dated as of the _____ day of _____, _____ and is made by and among DTLs Apartments, LLC (“Assignor”), _____, a _____ (“Assignee”), and the City of Lee’s Summit, Missouri, a municipal corporation (the “City”).

RECITALS

A. On May 7, 2019, the City Council by Ordinance No. ___ approved the 2nd and Douglas Tax Increment Financing Plan, and by Ordinance No. ___ approved the 2nd and Douglas LCRA Redevelopment Plan (together the “Plans”).

B. On ____, 2019, the City and Assignor entered into a Redevelopment Contract that set forth the respective obligations and duties of the City and Assignor with respect to the implementation of the Plans (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,]¹ 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:

Capitalized terms that are not defined in this Assignment shall have the meaning assigned to them in the Redevelopment Contract.

1. Assignee acknowledges that it has been provided with and/or has reviewed true and accurate copies of the Plans, the Ordinances that approved the Plans, the Project Ordinance, the Redevelopment Contract and all other documents associated with the Plans that may be necessary for Assignee to make an informed decision regarding purchase of the Property with respect to the matters set forth in those documents and this Assignment Agreement.

2. [The Assignor hereby assigns to the Assignee all of the Assignor’s rights, duties, interests and obligations under the Plans, with respect to the Redevelopment Project Area, and the Redevelopment Contract.] [Assignor hereby assigns and Assignee hereby assumes all of Assignor’s obligations under the Agreement with respect to the Property, and Assignee also acknowledges and agrees that its acquisition of the Property and the transfer of the Property to Assignee is subject in all respects to the Redevelopment Contract, the requirements of the Plans, the Ordinances that approved the Plans, and the rights of the City pursuant to the Redevelopment Contract, the TIF Act and the LCRA Act.]

¹ Alternative bracketed language in the Form of Assignment Agreement reflects the fact that Assignor may determine to convey only its obligations under the Contract, or may decide to also convey some or all of its rights thereunder, including the right to reimbursement with TIF Revenues.

3. [Assignee acknowledges and agrees that the Property is or will be included in the Redevelopment Area created by the City pursuant to the TIF Plan and that certain taxes generated by Assignee's economic activities, including sales taxes, will be applied toward Reimbursable Project Costs after the Redevelopment Project is activated by the City. Assignee shall forward to the City copies of Assignee's State of Missouri sales tax returns for the Property located in the Redevelopment Area 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 Assignee's economic activities in the Redevelopment Area and/or as the City shall require, all in the format prescribed by the City. Assignee will set forth the obligation contained in this subparagraph in any further lease or sale contract affecting the Property.]

4. Assignee acknowledges that the Property will be subject to assessment for annual Payments in Lieu of Taxes ("PILOTs") when the Redevelopment Area is activated by the City. PILOTs are due on November 30 of each year and are considered delinquent if not paid by December 31 of each year. The obligation to make said PILOTs shall be a covenant running with the land and shall create a lien in favor of the City on the Property and shall be enforceable against Assignee and its successors and assigns in ownership of the Property.

5. Assignee acknowledges that in the event of the sale, lease, sublease, assignment, or other voluntary or involuntary disposition of any or all of the Property, PILOTs with respect to the Property shall continue and shall constitute a lien against the Property from which they are derived, and such obligations shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable as if such purchaser, tenant, transferee or other possessor thereof were originally a party to and bound by the Redevelopment Contract. Assignee assumes the duty to notify any purchaser, tenant, transferee or other possessor of the property its rights, duties and obligations under the Redevelopment Contract.

6. Assignee acknowledges that, for any subsequent conveyance, the City must be notified in writing of the proposed sale of the Property prior to the proposed effective date of the sale, which notification shall include a copy of the instrument affecting such sale. Assignee acknowledges that its purchase and any subsequent sale of the Property will be subject to any and all rights of the City or Developer, as are set forth in the Redevelopment Contract, the TIF Plan, the TIF Plan Ordinance and the TIF Act with respect to such purchaser or transferee of the Property, whether or not specifically enumerated herein.

7. The Incentive Plans and the Redevelopment Contract shall inure to and be binding upon the successors and assigns of Developer, as to the Property, including Assignee, as if they were in every case specifically named and shall be construed as a covenant running with the land and shall be enforceable against purchasers or other transferees as if such purchaser or transferee were originally a party to and bound by this Assignment Agreement.

8. Assignee and the City acknowledge that, upon the full execution of this Assignment Agreement, Developer is hereby released from all its obligations under the Redevelopment Contract relating to the Property.

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

10. 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 pursuant to the Redevelopment Contract.

[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:

DTLS Apartments, 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 DTLS Apartments, 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 MISSOURI)
)
COUNTY OF JACKSON)

ss:

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 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:
