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**COOPERATIVE AGREEMENT**

**among the**

**CITY OF INDEPENDENCE, MISSOURI,**

**the**

**NOLAND SOUTH SHOPPING CENTER COMMUNITY IMPROVEMENT DISTRICT,**

**and**

**NOLAND SOUTH DEVELOPMENT COMPANY, L.L.P.**

**dated as of**

\_\_\_\_\_, 2022

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## COOPERATIVE AGREEMENT

**THIS COOPERATIVE AGREEMENT** (“**Agreement**”), entered into as of \_\_\_\_\_, 2022, by and among the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri (the “**City**”), the **NOLAND SOUTH SHOPPING CENTER COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri (“**District**” or “**CID**”), and **NOLAND SOUTH DEVELOPMENT COMPANY, L.L.P.**, a Missouri limited partnership (the “**Developer**”), a Missouri limited partnership (the City, the District and the Developer being sometimes collectively referred to herein as the “**Parties**”, and individually as a “**Party**”, as the context so requires).

### WITNESSETH:

**WHEREAS**, the City Council of the City of Independence, Missouri (the “**City Council**”), did on June 6, 2022, pass Ordinance No. 19335 (“**Ordinance**”), which approved the formation of the District and the Petition to Establish the Noland South Shopping Center Community Improvement District (the “**Petition**”); and

**WHEREAS**, the City has subsequently approved the execution of this Agreement by ordinance; and

**WHEREAS**, the District is authorized under the CID Act to impose a district-wide sales tax (the “**District Sales Tax**”) and to enter into this Agreement for the collection, payment and administration of the proceeds of the District Sales Tax;

**WHEREAS**, the Parties desire to set forth through this Agreement their respective duties and obligations with respect to the administration, enforcement, and operation of the District Sales Tax and the use of the revenues collected by such tax.

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

### ARTICLE 1: DEFINITIONS, RECITALS AND EXHIBITS

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

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

“**Applicable Laws and Requirements**” means any applicable constitution, treaty, statute, rule, regulation, 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 unit of government.

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

**“Budget”** shall have the meaning set forth in Section 4.4.

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

**“CID Improvements”** means those improvements described in **Exhibit A**.

**“CID Services”** means those services described in **Exhibit A** and the Petition, along with any other CID Improvements that may be approved by the City and the District in accordance with the Petition, the CID Act, and this Agreement.

**“City”** means the City of Independence, Missouri, a constitutional charter city and political subdivision under applicable Missouri laws.

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

**“Director”** means a director of the District.

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

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

**“Event of Default”** means any event specified in Section 7.1 of this Agreement.

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

**“Fiscal Year”** means July 1 through June 30 of each year, which Fiscal Year coincides with the City’s fiscal year.

**“IPL”** means Independence Power & Light, a municipal electric utility owned and operated by the City.

**“Operating Costs”** means the actual, reasonable expenses which are necessary for the operation of the District which shall include, but is not limited to, costs associated with notices, publications, meetings, supplies, equipment, photocopying, insurance, the engagement of accountants, special legal counsel, financial auditing services, and other consultants or services including companies engaged by the District (or the City or IPL on behalf of the District) to review applications for reimbursement for payment of Reimbursable Project Costs, and shall also include costs, including reasonable attorneys’ fees, for the formation of the District.

**“Ordinance”** means Ordinance No. 19335 adopted by the City Council on June 6, 2022, establishing the District in accordance with the CID Act.

**“Parties”** or **“Party”** means the City, the District and the Developer, as the context requires.

**“Petition”** means the Petition to Establish the Noland South Shopping Center Community Improvement District, approved by Ordinance 19335 on June 6, 2022.

**“Private Improvements”** means that portion of the CID Improvements designated as “Private” on **Exhibit A** hereto.

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

A. actual and reasonable fees and expenses of architects, appraisers, attorneys, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of construction, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of architects, appraisers, attorneys, surveyors and engineers in relation to the construction of the CID Improvements and all actual and reasonable costs for the oversight of the completion of the CID Improvements including overhead expenses for administration, supervision and inspection incurred in connection with the CID Improvements; and

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

**“Public Improvements”** means that portion of the CID Improvements designated as “Public” on **Exhibit A** hereto.

**“Reimbursable Project Costs”** means Project Costs approved by the City pursuant to the cost certification process set out in Section 4.6, in the maximum total amount shown on **Exhibit A**, as adjusted pursuant to Section 4.6.

**“Report”** shall have the meaning set forth in Section 4.4.

**“Secured Lender”** means a bank, financial institution or other person or entity from which Developer has borrowed funds to finance all or a portion of the CID Improvements and in whose favor Developer has agreed to provide a security interest as collateral for such loan.

## **ARTICLE 2: REPRESENTATIONS**

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

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

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

C. The CID Improvements are authorized in the Petition.

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

E. Consideration and public benefit: The District acknowledges that construction of the CID Improvements are of significant value to the District, the property within the District and the general public. The District finds and determines that the CID Improvements are reasonably anticipated to remediate the blighting conditions within the District and will serve a public purpose by remediating the blighting conditions and will promote the economic welfare and the development of the City and the State of Missouri through: (i) the creation of temporary and permanent jobs; (ii) stimulating additional development in the area near the CID Improvements; (iii) increasing local and state tax revenues; and (iv) the remediation of blight within the District. Further, the District finds that the CID Improvements conform to the purposes of the CID Act.

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

G. The District acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the state of Missouri. District therefore covenants that it will not knowingly violate subsection 1 of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work related to this Agreement, and that its employees are lawfully eligible to work in the United States.

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

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

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

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

result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

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

E. In accordance with the CID Act, the City Council has determined that the expenditure of the District's revenues pursuant to this Agreement and that the actions to be taken by the Parties pursuant to this Agreement are reasonably anticipated to remediate the blighting conditions within the District and will serve a public purpose by remediating the blighting conditions and will promote economic welfare and development of the City and the State of Missouri through: (i) the creation of temporary and permanent jobs; (ii) stimulating additional development in the area near the CID Project; (iii) increasing local and state tax revenues; and (iv) the remediation of blight within the District. Further, the City acknowledges that the CID Project conforms to the purposes of the CID Act.

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

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

B. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

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

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

E. The Developer acknowledges that the funding and construction of the CID Project is of significant value to the property within the District and the general public. The Developer acknowledges that the CID Project is reasonably anticipated to assist in the remediation of blighting conditions within the District Area and will serve a public purpose by assisting in the remediation of blighting conditions and will promote the economic welfare and development of the City and the State of Missouri through: (i) the creation of temporary and permanent jobs; (ii) stimulating additional development in the area near the CID

Project; (iii) increasing local and state tax revenues; and (iv) the remediation of blight within the District. Further, the Developer acknowledges that the CID Project conforms to the purposes of the CID Act.

### **ARTICLE 3: DISTRICT SALES TAX**

**Section 3.1. Imposition of the District Sales Tax.** The Board of Directors has adopted a resolution imposing the District Sales Tax. The qualified voters within the District have approved the District Sales Tax at an election scheduled for June 28, 2022, and the Jackson County Election Board certified the election results on June \_\_, 2022. The District Sales Tax shall be imposed at a rate of 1.0% for the purpose of funding costs of the CID Improvements and CID Services as desired by the District and approved by the City. By letter dated June \_\_, 2022, the District notified the Missouri Department of Revenue of the District Sales Tax imposition and that the District Sales Tax will become effective on October 1, 2022. The District shall annually appropriate all District Sales Tax Revenues by resolution in accordance with this Agreement.

#### **Section 3.2. Collection and Administration of the District Sales Tax**

A. The District has adopted a resolution that (i) imposes the District Sales Tax (subject to qualified voter approval) and (ii) prescribes any required forms and administrative rules and regulations for reporting and collecting the District Sales Tax.

B. The District Sales Tax shall be collected by the Missouri Department of Revenue as provided in the CID Act. The District shall receive the District Sales Tax Revenues from the Missouri Department of Revenue, which shall be disbursed in accordance with this Agreement.

**Section 3.3. Operating Costs.** The District shall pay for the Operating Costs of the District from District Sales Tax Revenues. The Operating Costs shall be included in the District's annual budget, as provided in Section 4.4. Developer shall fund the Operating Costs and be reimbursed for such advances until sufficient revenues are available to fund Operating Costs from District Sales Tax Revenues on an annual basis.

**Section 3.4. Distribution of the District Sales Tax Revenue.** Beginning in the first month following the effective date of the District Sales Tax and continuing each month thereafter until the expiration or repeal of the District Sales Tax, the District shall distribute the District Sales Tax Revenues received in the preceding month in the following order of priority:

1. Reimburse the City for any Operating Costs or other costs incurred by the City in connection with the performance of any function related to the District.
2. Pay the Operating Costs of the District.
3. Pay the costs of the CID Improvements that have been approved as Reimbursable Project Costs.
4. Pay the CID Services of the District, provided that no CID Services shall be funded by the District until all costs of the CID Improvements have been fully reimbursed.

**Section 3.5. Records of the District Sales Tax.** The District, shall keep accurate records of the District Sales Tax due and collected and copies of such records shall be made available to the District on a monthly basis. Any records pertaining to the District Sales Tax shall be provided to the City upon written request.

**Section 3.6. Repeal of the District Sales Tax.** The qualified voters of the District approved the District Sales Tax for a period of twenty-seven (27) years after from the effective date of the Ordinance, or for such other shorter period to coincide with the termination of the District. However, unless extended by mutual agreement of the Parties and in accordance with the CID Act, the District shall, and the Developer shall cooperate with the District as necessary to, implement the procedures in the CID Act for repeal of the District Sales Tax and abolishment of the District as provided in Section 6.4 below. Upon repeal of the District Sales Tax, the District shall:

- A. Pay all outstanding Operating Costs and Reimbursable Project Costs, in that order.
- B. Retain any remaining District Sales Tax until such time as the District is abolished and the District has provided for the transfer of any funds remaining in a manner permitted by the CID Act.

#### **ARTICLE 4: FINANCING DISTRICT PROJECTS**

**Section 4.1. Design and Construction of CID Improvements.** The CID Improvements shall be designed and constructed by or at the direction of the Developer. The CID Improvements shall be designed and constructed in accordance with applicable City-approved zoning and subdivision ordinances and associated plans and specifications. The Developer shall comply with all Applicable Laws and Requirements, including (with respect to the Public Improvements) laws related to the construction of public improvements, such as the payment of prevailing wages to contractors or subcontractors of Developer for construction of the Public Improvements and obtaining a payment bond in compliance with Section 107.170, RSMo; provided that this Agreement shall not be deemed to impose such requirements if not otherwise required by Applicable Laws and Requirements. Developer shall indemnify and hold harmless the City and the District for any damage resulting to it from failure of either Developer or its contractor or subcontractors to comply with any such requirements. Developer shall use commercially reasonable efforts to clear blight or rehabilitate to eliminate the physical blight existing within the blighted area, or make adequate provisions satisfactory to the City for the clearance of such blight, which obligation may be satisfied by performing the CID Improvements. Notwithstanding the foregoing, to the extent Developer fails to perform the CID Improvements, whether fully or partially, the sole remedy hereunder shall be that the Developer shall not be entitled to reimbursement of Reimbursable Project Costs, and in no event shall Developer be required to perform such obligations or expend money in furtherance thereof in excess of what may be reimbursed to Developer hereunder.

**Section 4.2. Financing the CID Improvements and CID Services.** The District shall impose the District Sales Tax within the boundaries of the District to fund the CID Improvements, CID Services and other costs authorized by this Agreement. The District shall not use or impose any taxes other than a District Sales Tax or impose any other funding mechanisms unless the City Council, by ordinance, modifies the limitations on the District's authority as set forth in the Petition.

**Section 4.3. Ownership and Maintenance of CID Improvements.** Neither the City nor the District shall have ownership of the CID Improvements, and the Developer shall at all times be responsible for maintenance of the CID Improvements, except as certain improvements are dedicated to and accepted by the City in accordance with Applicable Laws and Requirements. The Developer shall be responsible for obtaining and maintaining insurance for the design, construction, operation and maintenance of the CID Improvements, except as certain improvements are dedicated to and accepted by the City in accordance with Applicable Laws and Requirements.

**Section 4.4. Annual Budget.** The District shall annually prepare or cause to be prepared a budget (the "**Budget**") and an annual report (the "**Report**") describing the major activities of the District



during the preceding year and upcoming year. The Budget and Report shall be submitted to and reviewed by appropriate City staff and officials, as determined by the City in accordance with the CID Act, not less than ninety (90) days prior to the intended date of approval of the Budget by the District. Not later than the first day of each Fiscal Year of the District, the Board of Directors shall adopt a Budget for the District for the ensuing budget year, for every fund of the District of any kind, in such a manner as may be provided by law. If the Board of Directors fails to adopt a Budget by the first day of a Fiscal Year, the District shall be deemed to have adopted for such Fiscal Year a Budget, which provides for application of the District Sales Tax Revenues collected in such Fiscal Year in accordance with the budget for the prior Fiscal Year.

**Section 4.5. New CID Improvements.** The District shall not undertake new District projects, aside from the improvements shown on the attached **Exhibit A** and in the amount shown on **Exhibit A**, without the prior approval of the City Council.

**Section 4.6. Certification of Reimbursable Project Costs.** From time to time, the Developer may submit a certification of reimbursable project costs by the Developer in substantially the form attached to this Agreement as **Exhibit B** (a “Cost Certification”). Upon receipt by the City and the District of an executed and completed Cost Certification (together with supporting invoices), the City and the District shall have thirty calendar days to inform the Developer of any inadequacy of the Cost Certification, based on the determination that the Cost Certification requests payment for costs that either are not reimbursable under this Agreement or have already been the subject of a Cost Certification. If the City or the District has no such reason to contest the Cost Certification, or if the thirty-day time period passes without such notification, the District shall approve the Cost Certification by signature. The total Project Costs certified for any line item shown on **Exhibit A** shall not exceed the estimated cost shown on **Exhibit A** for such line item by more than 10% without the prior written consent of the City. The aggregate of all Reimbursable Project Costs certified under this Section shall not exceed the aggregate total shown on **Exhibit A** without the prior written consent of the City and in no case shall exceed such total by more than 10%.

**Section 4.7 Electric Vehicle Charging Stations.** As part of the CID Improvements, the Developer intends to purchase electric vehicle charging stations (“Charging Stations”) to be located in a parking area within the District. The exact number of Charging Stations is subject to Developer funding availability. The Developer shall either own the Charging Stations or lease the Charging Stations from the payment system vendor and the Developer shall pay all fees required to operate and maintain the Charging Stations pursuant to separate agreement with the payment system vendor; provided, however, that the cost to use the Charging Stations is payable solely by electric vehicle owners. The cost incurred by the Developer to purchase, operate and maintain the electric vehicle charging stations shall be a Reimbursable Project Cost under this Agreement and the Developer shall be the recipient of any available tax credits or other incentives provided that the Developer satisfies the terms and conditions of such applicable governmental program. To promote the use of electric vehicles in the City, the City shall cooperate with the District and Developer to provide the standard infrastructure the City would provide in its ordinary course of business for the installation of the Charging Stations purchased by the Developer. Any installation using any combination/number of charging stations rated above a Level 2 Charging Station as defined by IPL or bank of two or more charging stations rated above a Level 1 Charging Station as defined by IPL requires separate approval from IPL. Any cost of installation by IPL shall be paid by the Developer and can be reimbursed as a Reimbursable Project Cost for the infrastructure investment required to provide electrical service. The Developer shall indemnify, release, defend, be responsible for and forever hold harmless the City and the District, their officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney’s fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of loss or damage received or sustained, by any person, persons, property owners or property arising out of or resulting from the purchase, lease, use, operation, or maintenance of the Charging Stations.

## **ARTICLE 5: DISTRICT OPERATIONS AND MANAGEMENT**

### **Section 5.1. Composition of the Board of Directors and Officers.**

A. In accordance with the Petition, the Board of Directors shall be composed of six (6) directors. The Board of Directors shall consist of representatives of the owners of property within the District. Replacement directors shall be appointed in the manner set out in the Petition.

B. All directors shall meet all qualifications of the CID Act and the Missouri Constitution.

C. Successor Directors shall be appointed by the Mayor with the consent of the City Council as provided in the Petition and in compliance with Section 67.1451.5, RSMo.

**Section 5.2. District Meetings.** The Parties agree that the Board of Directors shall not meet and conduct District business unless all Directors receive notice of the meeting and are provided with the opportunity to participate in all District meetings, either in person or by phone. The Parties agree that the District bylaws shall contain the requirements of this Section, and shall include other safeguards as mutually agreed by the Parties to provide for participation of all Directors in all matters coming before the Board of Directors.

## **ARTICLE 6: SPECIAL COVENANTS**

**Section 6.1. Records of the District.** The District shall designate an appropriate official to be the official record keeper of the District, who shall keep proper books of record and account on behalf of the District in which full, true, and correct entries will be made of all dealings or transactions of or in relation to its business affairs in accordance with accounting principles generally accepted in the United States and consistently applied. The District shall furnish annual financial statements for each Fiscal Year no later than one hundred eighty (180) days following the end of such Fiscal Year. The District shall prepare, or cause to be prepared, an annual financial report of the District's financial transactions which may be either an un-audited report or an audited report prepared by a certified public accountant. All pertinent books, documents, and vouchers relating to District business, affairs, and properties shall at all times during regular business hours be open to the inspection of such accountant or other agent (who may make copies of all or any part thereof provided that the confidentiality of all records shall be maintained pursuant to such confidentiality agreements as reasonably required) as shall from time to time be designated and compensated by the inspecting party.

### **Section 6.2. Consent by Developer, Tenants and Transferees.**

A. Developer will use commercially reasonable efforts to cause all leases of property in the District entered into after the date of this Agreement to contain a provision that is in substantial compliance with the following:

**Community Improvement District:** Tenant acknowledges and consents that the Leased Premises are a part of the Noland South Shopping Center Community Improvement District ("District") created by ordinance of the City of Independence, Missouri ("City"), that the District imposes a sales tax on Tenant's eligible retail sales that will be applied toward the costs of CID Improvements that will provide a generalized benefit to the development. Tenant shall forward to the District and City copies of Tenant's State of Missouri sales tax returns for its property located in the District when and as they are filed with the Missouri Department of Revenue. Tenant hereby acknowledges and agrees that

the City and the District are third party beneficiaries of the obligations in this paragraph and shall have a separate and independent right to enforce these reporting requirements.

B. Developer, or any third party, may transfer real property within the CID area. Developer shall insert in any document transferring any interest in real property within the CID area, and shall cause any transferee to insert language reasonably similar to the following, and shall have such document signed by the transferee indicating acknowledgment and agreement to the following provision:

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

C. The Developer shall enforce the lease/sales contract obligation set forth in this Section and shall require any purchaser, lessee or other transferee or possessor of the property within the District, to provide to the District and the City a copy of their Missouri sales tax returns. The Developer shall ensure that any documents transferring its interest in property located within the District shall make the obligations set forth in this Section a covenant running with the land that shall be enforceable against the Developer and against any purchaser, lessee or other transferee or possessor as if such purchaser, lessee or possessor were originally a party to and bound by this Agreement, which obligations shall only terminate upon the end of the term of the District.

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

E. Developer acknowledges that the District is implemented for the purpose of funding CID Improvements that benefit the development. Developer and its successors and assigns agree not to contest or protest the creation and operation of the District or the levy, collection or enforcement of the District Sales Tax. Developer further agrees to cooperate in good faith regarding any effort by the City and District to add additional property to the District when requested by the City.

F. In lieu of compliance with this Section 6.2, City hereby acknowledges that Developer may include the requirements applicable to tenants and subsequent owners of real property within the District within the Memorandum of this Agreement to be recorded pursuant to Section 8.11 hereof, and in such case, Developer shall have no further obligation to include provisions stated herein in leases or sale contracts.

### **Section 6.3. Collateral Assignment.**

A. Developer and its successors and assigns shall have the right, without the City's consent, to collaterally assign to any Secured Lender as collateral any and all of Developer's rights and/or obligations under this Agreement, and such Secured Lender shall have the right to perform any term, covenant, condition or agreement and to remedy, in accordance with the terms of this Agreement, any default by Developer under this Agreement, and City shall accept such performance by any such Secured Lender with the same force and effect as if furnished by Developer. No Secured Lender shall be personally liable or obligated to perform the obligations of Developer under the Agreement unless and until such Secured Lender takes possession of the property as a mortgagee or by a receiver appointed at the request of mortgagee or becomes the owner of the fee estate of property within the District by foreclosure, or deed in lieu of foreclosure or otherwise.

B. Before a Secured Lender may exercise any rights of the Developer under the Agreement, the City shall receive: (a) within thirty (30) days following the date of such collateral assignment, a notice from the Developer that it has entered into a collateral assignment with a Secured Lender in connection with the property, which shall specify the name, address and telephone number of the Secured Lender, as well as the title, date and parties to the collateral assignment agreement; and (b) not less than ten (10) days' notice of the Secured Lender's intent to exercise its right to become the assignee of the Developer under the Agreement, which notice shall include the effective date of the collateral assignment, and the title, date and parties to such collateral assignment agreement. The City is entitled to rely upon representations made in the notices described in this paragraph without further investigation or inquiry.

C. Provided that the Developer has provided the City with notice of a collateral assignment as described in this Section, the City agrees to provide the Secured Lender with the same notice of default at the same time such notice is given to the Developer, and the Secured Lender shall have the same rights (but shall have no obligation) to cure, correct or remedy a default as are provided to the Developer.

**Section 6.4. District Termination.** Notwithstanding anything in this Agreement to the contrary, the District shall terminate twenty-seven (27) years after the date of the Ordinance, or such earlier date in accordance with the provisions of the CID Act and Petition, upon payment of all costs described hereunder, unless such termination date is extended by action of the City Council.

## **ARTICLE 7: DEFAULTS AND REMEDIES**

**Section 7.1. Default and Remedies.** An Event of Default shall occur upon the failure by either Party in the performance of any covenant, agreement or obligation imposed or created by this Agreement and the continuance of such failure for fifteen (15) days after the other Party has given written notice to such Party specifying such failure.

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

**Section 7.2. Rights and Remedies Cumulative.** The rights and remedies maintained by any Party under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. Any Party shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened

breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and any Party hereby waives the right to raise such defense in any proceeding in equity.

**Section 7.3. Waiver of Breach.** No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting Party may nevertheless accept from the defaulting party, any payment or payments without in any way waiving the non-defaulting party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting party.

**Section 7.4. Excusable Delays.** No Party shall be deemed to be in default of this Agreement because of Excusable Delays. Excusable Delays shall extend the time of performance for the period of such Excusable Delay.

## **ARTICLE 8: MISCELLANEOUS**

**Section 8.1. Effective Date and Term.** This Agreement shall become effective on the date this Agreement has been fully executed by the Parties. This Agreement shall remain in effect for as long as the District is legally in existence.

**Section 8.2. Immunities.** No recourse shall be had for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement contained against any past, present or future officer, member, employee, director or agent of the City or the District, or of any successor thereto, as such, either directly or through the City or the District, or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

The Developer shall indemnify, release, defend, be responsible for and forever hold harmless the City and the District, their officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of loss or damage received or sustained, by any person, persons, property owners or property arising out of or resulting from any act, error, omission, or intentional act of the Developer or its agents, employees, or subcontractors, to the extent conducted pursuant to this Agreement and/or in connection with the ownership, design, development, redevelopment, use or occupancy of the property within the District or a portion thereof and the CID Improvements.

**Section 8.3. Modification.** The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement among the City, the District and the Developer. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

**Section 8.4. Jointly Drafted.** The Parties agree that this Agreement has been jointly drafted and shall not be construed more strongly against another Party.

**Section 8.5. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

**Section 8.6. Validity and Severability.** It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

**Section 8.7. Execution of Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**Section 8.8. City Approvals.** Unless specifically provided to the contrary herein, all approvals of the City hereunder may be given by the Mayor or his or her designee without the necessity of any action by the City Council. The Mayor may seek the input from the City Council before granting any approval.

**Section 8.9. District Approvals.** Unless specifically provided to the contrary herein, all approvals of the District hereunder may be given by the Chairman of the District or his or her designee without the necessity of any action by the Board of Directors.

**Section 8.10. Electronic Storage.** The parties agree that the transactions described herein may be conducted and related documents may be received, sent 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.

**Section 8.11. Recordation of Memorandum of Agreement.** The Parties agree to execute and deliver a Memorandum of this Agreement in proper form for recording and/or indexing in the appropriate land or governmental records within 30 days of execution. Such Memorandum shall be recorded by the Developer, and proof of recording shall be provided to the City.

**Section 8.12. Notices.** Any notice, demand, or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally or by a reputable overnight delivery service to all parties listed below. Mailed notices shall be deemed effective on the third day after mailing and all other notices shall be effective when delivered.

To the City:

City of Independence, Missouri  
111 E. Maple Ave  
Independence, Missouri 64050  
Attn: Tom Scannell  
tscannell@indepmo.org

with copy to:

Gilmore & Bell, P.C.  
2405 Grand Blvd., Suite 1100  
Kansas City, Missouri 64108  
Attn: David Martin  
dmartin@gilmorebell.com

To the District:

Noland South Shopping Center Community  
Improvement District  
Attn: Christopher S. Shank, Executive Director  
c/o Noland South Development Company,  
L.L.P.  
1969 Shawnee Mission Parkway, Suite 100  
Mission Woods, KS 66205  
with copy to:

Rouse Frets White Goss Gentile Rhodes, P.C.  
Attn. William B. Moore  
4510 Belleview Avenue, Suite 300  
Kansas City, Missouri 64111

To the Developer:

Noland South Development Company, L.L.P., a  
Missouri limited partnership  
Attn: Christopher S. Shank  
1968 Shawnee Mission Parkway, Suite 100  
Mission Woods, KS 66205

with copy to:  
Rouse Frets White Goss Gentile Rhodes, P.C.  
Attn. William B. Moore  
4510 Belleview Avenue, Suite 300  
Kansas City, Missouri 64111

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

**Section 8.13. Anti-Discrimination.** The Developer hereby certifies and agrees that, to the extent that the “Anti -discrimination Against Israel Act,” Section 34.600, Revised Statutes of Missouri (the “Israel Act”), is applicable to this Agreement, the Developer is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel (“Israel”), companies doing business in or with Israel or authorized by, licensed by or organized under the laws of Israel or persons or entities doing business with Israel, in all respects within the meaning of the Israel Act. The foregoing certification shall not be deemed an admission or agreement that the Israel Act is applicable to this Agreement but the foregoing certification is enforceable if the Israel Act is applicable. If the Israel Act is determined not to apply to this Agreement for any reason including the repeal or amendment of the Israel Act or any ruling of a court of competent jurisdiction as to the unenforceability or invalidity of the Israel Act, then the certification shall be of no effect.

*[Remainder of this page intentionally left blank]*

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

**CITY OF INDEPENDENCE, MISSOURI**

[SEAL]

By: \_\_\_\_\_  
Rory Rowland  
Mayor

ATTEST:

\_\_\_\_\_  
Becky Behrens  
City Clerk

**STATE OF MISSOURI**            )  
  ) **SS.**  
**COUNTY OF JACKSON**        )

On this \_\_\_\_ day of \_\_\_\_\_, 2022 before me appeared, Rory Rowland, who being, by me duly sworn, did say that she is the Mayor of the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri, and did say that the seal affixed to the foregoing instrument is the seal of said City, and that said instrument was signed and sealed on behalf of said City, by authority of its City Council, and said Mayor acknowledged said instrument to be the free act and deed of said City.

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

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

(SEAL)

My commission expires: \_\_\_\_\_



**NOLAND SOUTH SHOPPING CENTER  
COMMUNITY IMPROVEMENT  
DISTRICT**

[SEAL]

By: \_\_\_\_\_  
Christopher S. Shank, Executive Director

ATTEST:

\_\_\_\_\_  
Secretary

**STATE OF MISSOURI**                    )  
  ) **SS.**  
**COUNTY OF JACKSON**                )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me appeared Christopher S. Shank, who being by me duly sworn, did say that he is the Executive Director of the Board of Directors of the **NOLAND SOUTH SHOPPING CENTER COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district organized and existing under the laws of the State of Missouri, and that said instrument was signed in behalf of said District by authority of its Board of Directors and said individual acknowledged said instrument to be the free act and deed of said District.

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

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

(SEAL)

My commission expires: \_\_\_\_\_

**NOLAND SOUTH DEVELOPMENT  
COMPANY, L.L.P.**

By: \_\_\_\_\_  
Christopher S. Shank, Authorized Signatory

**STATE OF MISSOURI**            )  
  ) **SS.**  
**COUNTY OF JACKSON**        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me appeared Christopher S. Shank, who being by me duly sworn, did say that he is the Authorized Signatory of **NOLAND SOUTH DEVELOPMENT COMPANY, L.L.P.**, a Missouri limited partnership organized and existing under the laws of the State of Missouri, and that said instrument was signed in behalf of said limited partnership by authority of its partners and said individual acknowledged said instrument to be the free act and deed of said limited partnership.

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

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

(SEAL)

My commission expires: \_\_\_\_\_

**EXHIBIT A**

**CID IMPROVEMENTS AND CID SERVICES**

CID Improvement	Public or Private	Cost Budget
Capital Improvements to remediate blight – parking lot (including vehicle charging stations)	Private	\$1,571,563
Capital Improvements to remediate blight – landscaping	Private	\$ 315,439
Capital Improvements to remediate blight – façade	Private	\$ 540,487
Capital Improvements to remediate blight – signage	Private	\$ 160,042
		<u>\$2,581,835</u>

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**EXHIBIT B**

**FORM OF COST CERTIFICATION**

Date: \_\_\_\_\_

CERTIFICATION OF PROJECT COSTS PURSUANT TO THE COOPERATIVE AGREEMENT  
RELATING TO THE NOLAND SOUTH SHOPPING CENTER COMMUNITY  
IMPROVEMENT DISTRICT

To: City of Independence, Missouri (the “City”) and the Noland South Shopping Center Community Improvement District (the “District”)

Noland South Development Company, L.L.P. (the “Developer”) hereby requests reimbursement from District Sales Tax Revenues in accordance with this request and the Cooperative Agreement (the “Cooperative Agreement”) among the City, the Developer, and the District, and hereby states and certifies as follows:

1. Capitalized terms used but not defined in this Cost Certification have the meanings given in the Cooperative Agreement.
2. The following costs (the “Certified Costs”) have been paid by the Developer and are hereby submitted for reimbursement from District Sales Tax Revenues:

<i>Cost Description</i>	<i>Contractor or Service Provider</i>	<i>Amount</i>

3. Each item included as a Certified Cost in this Cost Certification is a valid cost of implementing the CID Improvements authorized under CID Act and described in the Petition and the Cooperative Agreement or is a valid cost of formation of the District.

4. The Certified Costs included in this Cost Certification are reasonable costs that are payable under the Petition and reimbursable to the Developer under the Cooperative Agreement.

5. No item included in the above request has previously been paid or reimbursed from District Sales Tax Revenues and no part thereof has been included in any other Cost Certification previously filed by the Developer.

6. The Developer is not in material default of any provision of the Cooperative Agreement.

**SIGNATURE PAGE TO COST CERTIFICATION**

Certified by:

**NOLAND SOUTH DEVELOPMENT COMPANY,  
L.L.P.**

By: \_\_\_\_\_  
Christopher S. Shank, Authorized Signatory

Approved and Accepted:

**NOLAND SOUTH SHOPPING  
CENTER COMMUNITY  
IMPROVEMENT DISTRICT**

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

**CITY OF INDEPENDENCE,  
MISSOURI**

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