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TITLE OF DOCUMENT: REDEVELOPMENT AGREEMENT

DATE OF DOCUMENT: [\*Date\*], 2023

GRANTOR: T-L HUB LLC

GRANTOR'S MAILING ADDRESS: c/o Tri-Land Developments, Inc.  
One East Oak Hill Drive #302  
Westmont, IL 60559  
Attn: Richard Dube

GRANTEE: CITY OF INDEPENDENCE, MISSOURI

GRANTEE'S MAILING ADDRESS: City Manager's Office  
City of Independence, Missouri  
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Independence, MO 64050

RETURN DOCUMENTS TO: David Martin  
Gilmore & Bell, P.C., Suite 1100  
2405 Grand Blvd.  
Kansas City, Missouri 64108

LEGAL DESCRIPTION: See **Exhibit A**

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**REDEVELOPMENT AGREEMENT**

**between the**

**CITY OF INDEPENDENCE, MISSOURI,**

**and**

**T-L HUB LLC**

**dated as of**

**[\*Date\*], 2023**

\_\_\_\_\_

**HUB DRIVE REDEVELOPMENT AREA**

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**TABLE OF CONTENTS**

Page

Recitals ..... - 1 -

**ARTICLE I**

**DEFINITIONS**

1.1. Definitions ..... - 2 -

**ARTICLE II**

**DESIGNATION OF DEVELOPER; ADVANCED COSTS**

2.1. Developer Designation ..... - 8 -  
2.2. Developer to Advance Costs..... - 8 -

**ARTICLE III**

**OWNERSHIP OF THE PROPERTY; SCHEDULE; CONSTRUCTION OF REDEVELOPMENT PROJECT; CITY APPROVALS**

3.1 Ownership of Property ..... - 9 -  
3.2 Relocation ..... - 9 -  
3.3. Project Construction ..... - 9 -  
3.4. Construction of the Redevelopment Project ..... - 10 -  
3.5. Construction Contracts; Insurance ..... - 10 -  
3.6. Competitive Bids; Prevailing Wage; Federal Work Authorization ..... - 11 -  
3.7. Governmental Approvals; Building Permit Fees ..... - 11 -  
3.8. Concept Site Plan; Approved Site Plan; Zoning ..... - 11 -  
3.9 Construction Plans ..... - 12 -  
3.10. Special Development Conditions..... - 12 -  
3.11. Tenant Selection; Prohibited Uses ..... - 12 -  
3.12. Certificate of Substantial Completion..... - 13 -  
3.13. Community Improvement District..... - 13 -  
3.14. Transportation Development District ..... - 14 -  
3.15. Sales Tax Exemption on Construction Materials..... - 15 -

**ARTICLE IV**

**REIMBURSEMENT OF DEVELOPER COSTS**

4.1. City’s Obligation to Reimburse Developer..... - 15 -  
4.2. Reimbursable Redevelopment Project Cost Approval Process ..... - 15 -

4.3.	City’s Obligations Limited to Special Allocation Fund and Bond Proceeds.....	- 16 -
4.4.	Interest on Reimbursable Redevelopment Project Costs .....	- 16 -

**ARTICLE V**

**OBLIGATIONS**

5.1.	Issuance of TIF Obligations.....	- 17 -
5.2.	Cooperation in the Issuance and Administration of TIF Obligations .....	- 18 -
5.3.	City to Select Financial Advisor; Term and Interest Rate of TIF Obligations .....	- 19 -
5.4.	No Other Obligations or Uses of Available Revenues .....	- 19 -
5.5.	Corridor Improvement Project.....	- 19 -

**ARTICLE VI**

**SPECIAL ALLOCATION FUND; COLLECTION AND USE OF REVENUES**

6.1.	Special Allocation Fund.....	- 20 -
6.2.	Application of Available Revenues .....	- 20 -
6.3.	Developer Cooperation in Determining Available Revenues.....	- 22 -
6.4.	Obligation to Report EATS, CID Sales Tax and TDD Sales Tax .....	- 23 -

**ARTICLE VII**

**GENERAL PROVISIONS**

7.1.	Developer’s Right of Termination.....	- 24 -
7.2.	City’s Right of Termination.....	- 24 -
7.3.	Results of Termination.....	- 24 -
7.4.	Term of Agreement.....	- 24 -
7.5.	Successors and Assigns; Transfers to Tax-Exempt Organizations .....	- 25 -
7.6.	Remedies.....	- 26 -
7.7.	Extensions of Time for Performance .....	- 26 -
7.8.	Notices .....	- 27 -
7.9.	Conflict of Interest.....	- 28 -
7.10.	Insurance; Damage or Destruction of Redevelopment Project.....	- 28 -
7.11.	Inspection.....	- 29 -
7.12.	Choice of Law.....	- 29 -
7.13.	Entire Agreement; Amendment .....	- 29 -
7.14.	Counterparts.....	- 29 -
7.15.	Severability .....	- 29 -
7.16.	Representatives Not Personally Liable .....	- 29 -
7.17.	Actions Contesting the Validity and Enforceability of the Redevelopment Plan .....	- 29 -
7.18.	Release and Indemnification.....	- 30 -
7.19.	Survival.....	- 31 -
7.20.	Maintenance of the Property .....	- 31 -
7.21.	Enforcement of Agreement.....	- 31 -
7.22.	Recording of Agreement.....	- 31 -
7.23.	No Waiver of Sovereign Immunity.....	- 32 -
7.24.	No Third-Party Beneficiaries.....	- 32 -

**ARTICLE VIII**

**REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES**

8.1. Representations of the City..... - 32 -  
8.2. Representations of the Developer ..... - 32 -  
8.3. Contractual Liability Insurance..... - 33 -  
8.4. Anti-Israel Discrimination ..... - 34 -  
  
Signatures ..... - 35 -

- EXHIBIT A – Legal Description of Redevelopment Area
- EXHIBIT B – Concept Site Plan
- EXHIBIT C – Form of Certificate of Substantial Completion
- EXHIBIT D – Form of Certificate of Reimbursable Redevelopment Project Costs
- EXHIBIT E – Architectural Renderings
- EXHIBIT F – Project Budget

## REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT** (this “*Agreement*”) is made and entered into as of [\*Date\*], 2023, by and between the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the “*City*”) and **T-L HUB LLC**, a Delaware limited liability company (the “*Developer*”). *All capitalized terms used but not otherwise defined herein shall have the meanings ascribed in Article I of this Agreement.*

### RECITALS

A. The City Council of the City created the Tax Increment Financing Commission of Independence, Missouri (the “*TIF Commission*”) and empowered the TIF Commission to exercise those powers and fulfill such duties as are required or authorized for the TIF Commission under Sections 99.800 to 99.865 of the Revised Statutes of Missouri (the “*TIF Act*”).

B. On March 16, 2023, the Developer submitted an application for tax increment financing assistance (the “*Application*”) in connection with the proposed redevelopment of approximately 16 acres generally located at the intersection of East 23rd Street and Hub Drive in Independence, Missouri (as further described on **Exhibit A** attached hereto, the “*Redevelopment Area*”) by remodeling and/or tearing down portions of blighted buildings and redeveloping the Redevelopment Area into a remodeled and newly constructed grocery-anchored shopping center development for continued use for retail and other commercial purposes (as further described in the below-defined Redevelopment Plan, the “*Redevelopment Project*”).

C. On April 7, 2023 the Commission published a Notice of Public Hearing relating to the Hub Drive Tax Increment Financing Plan and Notice of Request for Redevelopment Project Proposals (the “*RFP*”) in *The Examiner* seeking alternative proposals for the Redevelopment Area. No alternative proposals were received by the Commission.

D. On May 4, 2023, the TIF Commission held a duly-noticed public hearing regarding the Hub Drive Tax Increment Financing Redevelopment Plan (the “*Redevelopment Plan*”), the Redevelopment Area and the Redevelopment Project, at which all interested parties had the opportunity to be heard and at which the TIF Commission heard and considered all protests and objections concerning the Redevelopment Plan, the Redevelopment Area and the Redevelopment Project.

E. Upon conclusion of the above-described public hearing, the TIF Commission passed a resolution recommending that the City Council approve the Redevelopment Plan, designate the Redevelopment Area as a “redevelopment area” pursuant to the TIF Act, approve the Redevelopment Project and adopt tax increment financing.

F. On \_\_\_\_\_, 2023, the Developer filed a petition with the Circuit Court of Jackson County to establish the HUB Drive Transportation Development District (the “*TDD*”) with boundaries coterminous with the Redevelopment Area to assist in financing and implementing the Redevelopment Project.

G. On May 19, 2023, the Developer filed a petition with the City to establish the HUB Drive Community Improvement District (the “*CID*”) with boundaries coterminous with the Redevelopment Area to assist in financing and implementing the Redevelopment Project.

H. On June 5, 2023, the City Council held a duly-noticed public hearing regarding the establishment of the CID, and gave due consideration to the TIF Commission’s recommendation, comments by the public and taxing districts and the requirements of the applicable statutes. On \_\_\_\_\_, 2023, the City Council gave final reading to and passed the following ordinances:

(a) Ordinance No. \_\_\_\_\_ establishing the CID;

(b) Ordinance No. \_\_\_\_\_ approving the Redevelopment Plan, designating the Redevelopment Area, designating the Developer as the developer of record for the Redevelopment Area and approving this Agreement; and

(c) Ordinance No. \_\_\_\_\_ approving the issuance of taxable industrial revenue bonds associated with the Redevelopment Project pursuant to Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended, to facilitate a sales tax exemption on construction materials purchased for the Redevelopment Project.

I. On \_\_\_\_\_, 2023, the City Council gave final reading to and passed Ordinance No. \_\_\_\_\_ approving the Redevelopment Project and adopting tax increment financing within the area legally described for the Redevelopment Project.

J. The City Council hereby determines that the implementation of the Redevelopment Plan and the fulfillment generally of this Agreement are in the best interests of the City, and the health, safety, morals and welfare of its residents, and in accordance with the public purposes specified in the Redevelopment Plan.

K. Pursuant to provisions of the TIF Act and Ordinance No. \_\_\_\_\_, the City is authorized to enter into this Agreement.

## AGREEMENT

Now, therefore, in consideration of the premises and mutual promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

**1.1. Definitions.** As used in this Agreement, the following words and terms shall have the following meanings:

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

“*Approved Site Plans*” means the combination of site plans reflecting one or more portions of the Work approved by all entities required to approve a site plan pursuant to the Municipal Code and **Section 3.8**, as such site plans may be submitted, approved and amended from time to time in accordance with the Municipal Code and **Section 3.8**.

“*Available Revenues*” means all money on deposit from time to time (including investment earnings thereon) in or consisting of:

- (a) the PILOTS Account (except for the Surplus PILOTS);
- (b) subject to annual appropriation by the City, the EATS Account;
- (c) CID Revenues appropriated by the CID for the payment of Reimbursable Redevelopment Project Costs or the repayment of any TIF Obligations pursuant to the terms of, and for the purposes set forth in, the CID Act; and
- (d) TDD Revenues appropriated by the TDD for the payment of Reimbursable Redevelopment Project Costs or the repayment of any TIF Obligations pursuant to the terms of, and for the purposes set forth in, the TDD Act;

excluding in each case (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, or (ii) any sum received by the City, the CID or the TDD that is the subject of a suit or other claim communicated to the City, the CID or the TDD, as applicable, which suit or claim challenges the collection of such sum.

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

“*Bond Indenture*” means the trust indenture or indentures executed by the IDA and the Bond Trustee in connection with the issuance of TIF Obligations.

“*Bond Proceeds*” means the net cash proceeds from the sale of TIF Obligations available for deposit in the Project Fund (after deposit of funds for Issuance Costs, capitalized interest and any debt service reserve), together with any interest earned thereon.

“*Bond Trustee*” means UMB Bank, N.A. or such other trustee designated by the City Manager; provided, however, that successor Bond Trustee may be appointed in accordance with the terms of the Bond Indenture.

“*Certificate of Reimbursable Redevelopment Project Costs*” means a document, substantially in the form of **Exhibit D** attached hereto, delivered by the Developer to the City in accordance with **Article IV** hereof.

“*Certificate of Substantial Completion*” means a document, substantially in the form of **Exhibit C** attached hereto, delivered by the Developer and which, upon the City’s written acceptance thereof, will evidence the Developer’s satisfaction of all obligations and covenants to perform the Work. The Certificate of Substantial Completion does not constitute a final occupancy certificate, final inspection certificate, or other documentation required by the Municipal Code to occupy the Redevelopment Project or any portion thereof.

“*CID*” means the HUB Drive Community Improvement District, a community improvement district and political subdivision of the State of Missouri, as established pursuant to Ordinance No.



\_\_\_\_\_, which shall be maintained pursuant to **Section 3.13**, the CID Act, and the CID Cooperative Agreement.

“*CID Act*” means the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri.

“*CID Annual Operating Costs*” means an amount equal to \$[\_\_\_\_\_] for calendar years 2023 and 2024 and increased by 2% for each subsequent calendar year.

“*CID Cooperative Agreement*” means the cooperative agreement to be entered among the City, the Developer and the CID relating to the operation of the CID and the collection and distribution of the CID Revenues, as amended from time to time.

“*CID Project*” means the improvements described in the CID Cooperative Agreement that shall, in the opinion of counsel to the CID, be qualified expenditures for the CID under Missouri law.

“*CID Revenues*” means the revenues received by the CID from the CID Special Assessment and the CID Sales Tax, less CID Annual Operating Costs, to the extent the same are not required to be deposited into the Special Allocation Fund by operation of the TIF Act.

“*CID Sales Tax*” means the community improvement district sales and use tax to be levied by the CID at a rate of not more than 1% in accordance with the CID Act.

“*CID Special Assessment*” means the special assessment to be imposed by the CID in the amount of \$0.50 per square foot of gross leasable area of each building within the CID.

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

“*City Administrative Fee*” means 2.0% of the PILOTS and EATS paid into the Special Allocation Fund during the first full calendar year of collections and annually thereafter, the greater of \$5,000 or 1.0% of the PILOTS and EATS paid into the Special Allocation Fund.

“*City Attorney*” means, at any time, the then-current City Attorney or Acting City Attorney of the City.

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

“*City Manager*” means, at any time, the then-current City Manager or Acting City Manager of the City.

“*Concept Site Plan*” means the conceptual site plan attached hereto as **Exhibit B** and incorporated herein by this reference.

“*Construction Plans*” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections approved by the City in accordance with the Municipal Code.

“*Cooperative Agreements*” means the CID Cooperative Agreement and the TDD Cooperative Agreement.

*“Corridor Improvement Project”* means the City’s 23rd Street corridor project, which may consist of but not be limited to construction of new sidewalks and ramps, island removal and reconstruction, signal upgrades, and landscaping and streetscape on both sides of 23rd Street between Lee’s Summit Road and Speck Road.

*“Developer”* means T-L HUB LLC, a Delaware limited liability company, or its permitted successors or assigns in interest.

*“Developer-Paid City Administrative Costs”* means all amounts paid or reimbursed to the City in connection with the administration of the Redevelopment Plan or otherwise in connection with the redevelopment of the Property, other than the City Administrative Fee.

*“EATS Account”* means an account of the Special Allocation Fund into which 50% of the Economic Activity Taxes are deposited pursuant to Section 99.845 of the TIF Act.

*“Economic Activity Taxes”* or *“EATS”* shall have the meaning ascribed to such term in Section 99.805 of the TIF Act, but not including any taxes that are excluded from tax increment financing by Missouri law.

*“Financing Agreement”* means an agreement to be entered into among the CID, the TDD, the IDA and (in the City’s sole discretion) the City, pursuant to which the IDA will issue TIF Obligations and the other parties thereto will transfer Available Revenues to the Bond Trustee for the repayment of such TIF Obligations.

*“Governmental Approvals”* means all plat approvals, re-zoning or other zoning changes, planned unit development approvals, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals, or approvals related to the creation of the CID, or approvals related to the CID Project or the TDD Project required by the Municipal Code, the Cooperative Agreements or this Agreement for the implementation of the Redevelopment Project.

*“IDA”* means The Industrial Development Authority of Independence, Missouri or another issuer of municipal bonds acceptable to the City and the Developer.

*“Issuance Costs”* means all costs reasonably incurred by the IDA, the City, the CID and/or the TDD in connection with the issuance of the TIF Obligations, including, but not limited to, the fees and expenses of the City’s financial advisors and consultants, the City’s and the IDA’s attorneys (including the City Attorney, issuer’s counsel, Bond Counsel and disclosure counsel), Developer’s counsel and consultants, the CID’s attorneys, the TDD’s attorneys, the IDA’s underwriter and underwriter’s counsel, underwriters’ discounts and fees, initial fees and charges of the trustee, the cost of obtaining CUSIP numbers, the costs of printing any TIF Obligations and any offering documents relating thereto, and any other costs related to the issuance of TIF Obligations and approved by Bond Counsel.

*“Maximum Developer Reimbursement Amount”* means (1) with respect to Reimbursable Redevelopment Project Costs, \$12,000,000 of principal amount of reimbursement that may be paid to the Developer under this Agreement, (2) all Reimbursable Interest, and (3) all Developer-Paid City Administrative Costs.

*“Municipal Code”* means the Code of Ordinances City of Independence, Missouri, as it may be amended from time to time.

“*Payments in Lieu of Taxes*” or “*PILOTS*” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act.

“*PILOTS Account*” means an account of the Special Allocation Fund into which Payments in Lieu of Taxes are deposited pursuant to Section 99.845 of the TIF Act.

“*Preliminary Funding Agreement*” means the Preliminary Funding Agreement dated as of February 22, 2023, between the City and the Developer, as amended from time to time in accordance with its terms.

“*Prime Rate*” means, as of January 1 of each calendar year for which the Prime Rate is to apply, the prime rate reported in the most recently published “Money Rates” column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks. If *The Wall Street Journal* ceases publication of the Prime Rate, then “Prime Rate” shall mean the “prime rate” or “base rate” announced by Bank of America, N.A., or any successor thereto. In no case shall the Prime Rate applied under this Agreement exceed 10%.

“*Project Fund*” means the Project Fund created in the Bond Indenture.

“*Property*” means all privately-owned land within the Redevelopment Area.

“*Redevelopment Area*” means the area described in the Redevelopment Plan.

“*Redevelopment Plan*” means the plan entitled “Hub Drive Tax Increment Financing Redevelopment Plan,” as approved by the City Council pursuant to the TIF Ordinances, as such plan may from time to time be amended in accordance with the TIF Act.

“*Redevelopment Project*” means the redevelopment project described in the Redevelopment Plan.

“*Redevelopment Project Costs*” shall have the meaning assigned to such term in Section 99.805 of the TIF Act.

“*Reimbursable Interest*” means interest on the Reimbursable Redevelopment Project Costs that is payable to the Developer under **Section 4.4** of this Agreement.

“*Reimbursable Redevelopment Project Costs*” means those Redevelopment Project Costs that are reimbursable to the Developer under **Article II, Article IV** (other than Reimbursable Interest), the Redevelopment Plan and the TIF Act.

“*Related Party*” means any party related to the Developer by one of the relationships described in Section 267(b) or 707(b) of the United States Internal Revenue Code of 1986, as amended, or any party controlled by or under common control with the Developer.

“*Relocation Costs*” means all costs incurred to relocate the occupants of and businesses in the Redevelopment Area in accordance with the Relocation Policy, including, but not limited to, relocation payments to displaced persons or businesses, and all costs of implementing the Relocation Policy including costs of referrals, relocation specialists, planners, attorneys’ fees, brokers’ commissions and staff costs.

“Relocation Policy” means the relocation policy of the City described in the Redevelopment Plan.

“Special Allocation Fund” means the HUB Drive Special Allocation Fund authorized by the TIF Ordinances.

“State” means the State of Missouri.

“Surplus PILOTS” means 50% of the PILOTS deposited into the Special Allocation Fund.

“TDD” means the HUB Drive Transportation Development District, a transportation development district and political subdivision of the State of Missouri, [\*\*anticipated to be\*\*] established by order of the Circuit Court of Jackson County, Missouri pursuant to Case No. \_\_\_\_\_, which shall be maintained pursuant to **Section 3.14**, the TDD Act, and the TDD Cooperative Agreement.

“TDD Act” means the Missouri Transportation Development District Act, Sections 238.200 to 238.280 of the Revised Statutes of Missouri.

“TDD Annual Operating Costs” means an amount equal to \$[\_\_\_\_\_] for calendar years 2023 and 2024 and increased by 2% for each subsequent calendar year.

“TDD Cooperative Agreement” means the cooperative agreement to be entered among the City, the Developer and the TDD relating to the operation of the TDD and the collection and distribution of the TDD Revenues, as amended from time to time.

“TDD Project” means the improvements described in the TDD Cooperative Agreement that shall, in the opinion of counsel to the TDD, be qualified expenditures for the TDD under Missouri law.

“TDD Revenues” means the revenues received by the TDD from the TDD Sales Tax, less TDD Annual Operating Costs, to the extent the same are not required to be deposited into the Special Allocation Fund by operation of the TIF Act.

“TDD Sales Tax” means the community improvement district sales tax to be levied by the TDD at a rate of not more than 1% in accordance with the TDD Act.

“TIF Act” means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri.

“TIF Activation Ordinance” means Ordinance No. \_\_\_\_\_ adopted by the City Council on \_\_\_\_\_, 2023.

“TIF Commission” means the Tax Increment Financing Commission of Independence, Missouri.

“TIF Obligations” means bonds issued by the IDA that are repayable from all or a portion of the Available Revenues, subject to the requirements of **Section 5.1**.

“TIF Ordinances” means the TIF Activation Ordinance and Ordinance No. \_\_\_\_\_ adopted by the City Council on \_\_\_\_\_, 2023.

“TIF Revenues” means, collectively the Payments in Lieu of Taxes (with the exception of the Surplus PILOTS) and 50% of the Economic Activity Taxes.

“Work” means the:

(a) demolition of a portion of the existing improvements within the Redevelopment Area, development of new commercial uses including new outlot buildings, and remodeling of the existing improvements which may include but not be limited to such uses as retail, restaurants and other commercial uses; and

(b) construction within and nearby the Redevelopment Area of all support facilities such as signage, lighting, parking lots, curbed islands, landscaping, drainage, storm water management, street improvements, utilities and site improvements essential to the preparation of the Redevelopment Area for use in accordance with the Redevelopment Plan.

## ARTICLE II

### DESIGNATION OF DEVELOPER; ADVANCED COSTS

**2.1. Developer Designation.** The City hereby selects the Developer to perform the Work, and to carry out the Redevelopment Project, in accordance with the Approved Site Plans, the Redevelopment Plan, this Agreement and all Governmental Approvals. To the extent of any inconsistency among the foregoing, the parties agree that the Work described in the Governmental Approvals shall govern so long as such approvals do not constitute a change to the Redevelopment Plan or Redevelopment Project as would, in the opinion of the City Attorney or special counsel retained by the City, require further hearing pursuant to the TIF Act.

**2.2. Developer to Advance Costs.** The Developer agrees to advance all Redevelopment Project Costs as necessary to complete the Work, subject to the Developer’s right to abandon the Redevelopment Project and terminate this Agreement as set forth in **Section 7.1**. Additionally, and not by way of limitation:

(a) *Preliminary Funding Agreement.* The Developer has heretofore advanced, or caused to be advanced, pursuant to the Preliminary Funding Agreement, the sum of \$35,000.00 for certain planning, legal, administrative and other costs associated with the Redevelopment Project, the negotiation of this Agreement, and the formation of the CID and the TDD. The Preliminary Funding Agreement shall terminate upon the date of this Agreement.

(b) *Expenses after Termination of Preliminary Funding Agreement.* Upon termination of the Preliminary Funding Agreement, the City shall retain an amount not greater than \$35,000.00 to pay administrative costs and actual out-of-pocket expenses that are incurred in connection with the administration of the Redevelopment Plan (including, without limitation, the review of Certificates of Reimbursable Redevelopment Project Costs, the Certificate of Substantial Completion, site plans and construction plans, and the formation of the CID and the TDD). The City shall advise Developer in writing if it intends to utilize the services of any consultant to perform its obligations under the terms of this Agreement. Such written notice shall include the name of the consultant, the service to be performed and an estimate of the cost expected. If the amount initially deposited pursuant to this subsection is insufficient for the purposes described herein, the Developer shall deposit any additional amount necessary for such purposes and requested by the City within 10 days of a written request therefor; provided, however, that (i) the City shall obtain the Developer’s approval before entering into any new engagements with any third party and (ii) the City shall provide the Developer with a monthly

statement showing each agreement executed, amounts paid pursuant to each agreement, and amounts remaining due with respect to each agreement. The obligation under this subsection shall terminate at such time as the proceeds of the City Administrative Fee are equal to \$5,000 in one year. Upon such termination, the remaining amounts held by the City under this subsection shall be returned to the Developer. All amounts paid by Developer under this subsection shall be included in the Developer-Paid City Administrative Costs.

(c) *No Waivers.* Payments under this Section will not be credited against any application fee or other cost to the Developer associated with any Governmental Approval required by the Municipal Code.

(d) *Advances to be Reimbursable.* To the extent permitted by law, all sums advanced under this Section shall constitute Reimbursable Redevelopment Project Costs to the extent submitted and approved in accordance with **Article IV**.

### **ARTICLE III**

#### **OWNERSHIP OF THE PROPERTY; SCHEDULE; CONSTRUCTION OF REDEVELOPMENT PROJECT; CITY APPROVALS**

**3.1. Ownership of Property.** The Developer represents that either it or a Related Party currently owns all of the Property.

**3.2 Relocation.** The Developer shall relocate those occupants or businesses displaced from any portion of the Redevelopment Area acquired by the Developer in accordance with and to the extent required by the requirements of the Relocation Policy and any applicable law. Notwithstanding the foregoing, the displaced occupant or business and the Developer may agree in writing upon a different amount or different benefits, it being understood and agreed that any displaced occupant or business may waive his/her/their rights to statutory and other relocation benefits and assistance under the Relocation Policy or otherwise.

**3.3. Project Construction.**

(a) Subject to **Section 7.7**, the Developer shall commence and complete the Redevelopment Project pursuant to the following schedule:

*[remainder of page intentionally left blank]*

<u>Activity</u>	<u>Maximum Time for Performance</u>
Commence necessary demolition within the Redevelopment Area	December 31, 2024
Complete remodeling of grocery store and building shell for other existing inline buildings within Redevelopment Area	December 31, 2025
Complete items in paragraph (b) of the definition of “Work,” to the extent not solely related to the construction of outlot buildings	December 31, 2026
Submit Certificate of Substantial Completion for Work, including tenant improvements and outlot buildings	December 31, 2029 *

\* Developer may apply to the City for up to two one-year extensions of this final completion date. The grant of any such extension shall be in the sole discretion of the City and shall be evidenced by the signature of the City Manager on a written one-year extension.

(b) The Developer and its project teams shall (1) submit monthly written reports to the City Council regarding the status of constructing the Work and leasing the commercial space included therein (provided, the Developer does not have to disclose any tenants or prospective tenants that the Developer, in its sole discretion, determines the disclosure of which will harm lease negotiations or other business relationships, unless the City or its designated legal or financial consultants enter into a non-disclosure agreement to keep such information confidential) and (2) upon reasonable notice, meet with the City Manager and/or such other City staff and consultants as designated by the City Manager to review and discuss the design and construction of the Work to enable the City to monitor the status of construction and to determine that the Work is being performed and completed in accordance with this Agreement and the Municipal Code.

**3.4. Construction of the Redevelopment Project.**

(a) Construction of the Work shall be pursued in a good and workmanlike manner in accordance with the terms of this Agreement.

(b) Before entering into a joint venture, co-developer or sub-development arrangement with an entity whose principals are not a Related Party (other than any such joint venture, co-developer or sub-development arrangement entered into to provide financing or financial resources and such entity is not being relied upon to provide development assistance), the Developer will provide the City Manager with information reasonably demonstrating that such entity has sufficient expertise to carry out each component of the Redevelopment Project for which such entity is responsible.

**3.5. Construction Contracts; Insurance.**

(a) The Developer may enter into one or more construction contracts to complete the Work. All construction contracts entered into by or on behalf of the Developer shall state that the contractor has no recourse against the City in connection with the contractor’s construction of the applicable portion of

the Work. The Developer will provide written notice to the City of any mechanic's or materialmen's liens filed against the Redevelopment Projects within 10 days of receipt of service of such lien. The Developer shall resolve all such liens within 60 days of receipt of service unless, before such time, the Developer provides a written explanation of the nature of the business dispute to the City Manager and the Developer continues to proceed in a commercially reasonable manner to resolve such dispute prior to the enforcement of any court order authorizing the foreclosure of such lien.

(b) The Developer shall obtain or shall require any contractor to obtain workers' compensation, commercial public liability and builder's risk insurance coverage in amounts required by the City pursuant to **Section 7.10** and shall deliver evidence of such insurance to the City. The Developer shall require that such insurance be maintained by the contractors for the duration of the construction of the applicable portion of the Work. The Developer shall be responsible for ensuring that contractors construct the Work in a good and workmanlike manner in accordance with the terms of this Agreement.

### **3.6. Competitive Bids; Prevailing Wage; Federal Work Authorization.**

(a) The Developer shall comply with all federal, State and local laws relating to the construction of the Redevelopment Project, including, but not limited to, Section 107.170, RSMo., and laws relating to the payment of prevailing wages and competitive bidding, to the extent such laws are applicable to the Redevelopment Project or portions thereof.

(b) The Developer acknowledges that it must comply with Section 285.530, RSMo. regarding enrollment and participation in a federal work authorization program with respect to its employees working in connection with the Redevelopment Project. The Developer represents and warrants that it is in compliance with Section 285.530, RSMo. at the time of execution of this Agreement and has provided a sworn affidavit and supporting documentation affirming participation in a qualified work authorization program as evidence thereof.

**3.7. Governmental Approvals; Building Permit Fees.** The City agrees to cooperate with the Developer and to process and timely consider all complete applications for the Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State. The City agrees to waive the first \$50,000.00 in building application and permit fees that would otherwise have been chargeable to the improvements that are part of the Redevelopment Project under the Municipal Code.

### **3.8. Concept Site Plan; Approved Site Plans; Zoning.**

(a) *Approval of Concept Site Plan and Approved Site Plan.* The City hereby approves the Concept Site Plan. Such approval does not exempt the Developer from any zoning or site plan review process required by the Municipal Code. The parties agree that the Approved Site Plans shall govern the ultimate design and construction of the Redevelopment Project. Notwithstanding the foregoing, any site plan submitted by the Developer for approval as the Approved Site Plans must not, without the City's advance consent, result in such a change in the Redevelopment Project as would require compliance with the notice and hearing requirements of Section 99.825 of the TIF Act.

(b) *Changes.* During the progress of the Work, the Developer may make changes to the Approved Site Plans as permitted by the Municipal Code.

(c) *Zoning.* The Developer will apply to the City for any zoning changes or variances required to construct and operate the Redevelopment Project on the Property. Nothing in this Agreement is intended to alter the City's generally applicable procedures for land use approvals.



### **3.9 Construction Plans.**

(a) The Construction Plans shall be prepared by one or more professional engineers or architects licensed to practice in the State. The Construction Plans and all construction practices and procedures with respect to the Work shall conform with all applicable State and local laws, ordinances and regulations, including, but not limited to, any performance, labor and material payment bonds required for public improvements. The Developer shall submit Construction Plans for approval by the City's Community Development Department in sufficient time to allow for review of the plans in accordance with applicable City ordinances and procedures and in accordance with the schedule set forth in **Section 3.3**. The plans shall be in sufficient completeness and detail to meet the requirements of the Municipal Code.

(b) Before commencement of construction or during the progress of the Work, the Developer may make such reasonable changes, including, without limitation, modification of the areas in which the Work is to be performed, relocation, expansion or deletion of items, revisions to the areas and scope of the Work, and any and all such other changes as site conditions or orderly development may dictate or as may be required to meet any reasonable requests of prospective tenants or purchasers of any real property located within the Redevelopment Area or as may be necessary or desirable, in the sole determination of the Developer, to enhance the economic viability of the Redevelopment Project and as may be in furtherance of the general objectives of the Redevelopment Plan; provided that, (1) the Developer shall obtain all necessary approvals under, and comply with the requirements of, the Municipal Code, (2) any changes shall not result in an extension of the time for performance of any obligation under this Agreement, and (3) the Developer shall obtain the City's advance written consent to any change that would, in the opinion of the City Attorney or special counsel retained by the City, result in such a change in the Redevelopment Projects as would require compliance with the notice and hearing requirements of Section 99.825 of the TIF Act.

**3.10. Special Development Conditions.** The Developer acknowledges that in consideration of the public participation in financing Redevelopment Project Costs, the City expects that the Redevelopment Project will include enhanced aesthetic features, including facades, landscaping and signage in similar or superior quality and design to the renderings attached hereto as **Exhibit E**.

### **3.11. Tenant Selection; Prohibited Uses.**

(a) The Developer agrees to use best efforts to secure high quality, unique users for the Redevelopment Project (unique users being users that do not already have locations within 5 miles of the Redevelopment Area), provided that the City understands the Developer's goal of retaining certain existing users within the Redevelopment Area.

(b) Unless approved in writing by the City, the following types of uses shall not be permitted within the Redevelopment Area: adult business; adult entertainment; adult book or video stores; liquor stores as a primary use (not including liquor sales within or relating to a grocery store); laundromats; marijuana-related businesses; smoke shops; pawn shops; payday loan, title loan, check-cashing and similar uses; secondhand stores; automobile sales, leasing and rental, ATV/RV/boat sales, repair, service and leasing; manufactured housing (mobile home) and trailer sales, service or leasing; self-service storage facilities; taxi dispatch yards and offices; or any lodging use that is rented or leased as a single housekeeping unit to guests for less than 30 consecutive nights in exchange for a fee, money, goods, services or other performances.

**3.12. Certificate of Substantial Completion.**

(a) Upon substantial completion of the Work, the Developer shall furnish a Certificate of Substantial Completion to the City. The Certificate of Substantial Completion shall be in substantially the form of **Exhibit C**.

(b) The appropriate City official shall diligently process the submitted Certificate of Substantial Completion, including making such inspections as may be reasonably necessary to verify the accuracy of the project architect's certifications accompanying the Certificate of Substantial Completion. The appropriate City official shall accept or reject the Certificate of Substantial Completion, and the accompanying certifications of the project architect, and shall do so in writing within 60 days following delivery to the City. If the City fails to approve or reject the Certificate of Substantial Completion in writing within such 60-day period, then the Developer shall notify the City in writing of its failure to take action on the Certificate of Substantial Completion and the City shall have 30 days from receipt of such notice to accept or reject the Certificate of Substantial Completion in writing. If the City has not accepted or rejected the Certificate of Substantial Completion within such 30-day period, the Certificate of Substantial Completion shall be deemed accepted by the City. If the appropriate City official rejects the Certificate of Substantial Completion and/or accompanying certifications, such rejection shall specify in reasonable detail in what respects the Developer has failed to complete the applicable Work in reasonable accordance with the provisions of this Agreement, or in what respects the Developer is otherwise in default, and what reasonable measures or acts the Developer must take or perform, in the opinion of such City official, to obtain such acceptance.

(c) Upon acceptance (or deemed acceptance) of the Certificate of Substantial Completion by the City, the Developer may record the Certificate of Substantial Completion with the Jackson County Recorder, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to perform the applicable Work in accordance with this Agreement.

**3.13. Community Improvement District.**

(a) The City shall cause the CID, promptly following constitution of a board of directors, to (1) authorize and enter into the CID Cooperative Agreement, and (2) to authorize the imposition of the CID Sales Tax and the CID Special Assessment.

(b) The Developer shall take such steps as are necessary (including casting votes as a qualified voter under the CID Act) to cause the qualified voters within the CID to authorize the CID Sales Tax.

(c) The City acknowledges that the CID is integral to the financing of the Redevelopment Project, and in that regard City Staff will, at the Developer's expense, cooperate with and assist the Developer in proceedings relating to the creation of the CID.

(d) While the TIF Obligations are outstanding, the CID will not issue any bonds, notes or other obligations and will not pledge the CID Sales Tax or CID Special Assessment revenues to the repayment of any obligation senior to or on parity with the TIF Obligations (provided that a subordinate pledge may be made while the TIF Obligations are outstanding only if allowed under the Financing Agreement).

(e) The parties agree that 50% of the revenues attributable to the CID Sales Tax will, pursuant to Section 99.845 of the TIF Act, be transferred to or at the direction of the City for deposit into the EATS Account of the Special Allocation Fund, and the City will cause the CID to provide the

necessary consents thereto required by Section 99.845.3 of the TIF Act. In addition, the City will cause the CID to transfer all other CID Revenues that constitute Available Revenues (i.e., CID Special Assessment Revenues and portion of CID Sales Tax revenues not required to be deposited into the Special Allocation Fund by operation of the TIF Act, less the CID Annual Operating Costs) to the Bond Trustee in accordance with the Financing Agreement and the Bond Indenture. Developer hereby consents to the transfers of CID Revenues as provided in this subsection.

(f) Once all TIF Obligations have been paid in full and all Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs and Reimbursable Interest have been paid, the City and the Developer will cooperate to cause the CID to be dissolved.

(g) So long as any TIF Obligations are outstanding, the CID Sales Tax and the CID Special Assessment may not be repealed or reduced.

### **3.14. Transportation Development District.**

(a) The Developer shall cause the TDD, promptly following constitution of a board of directors, to (1) authorize and enter into the TDD Cooperative Agreement and (2) take such steps as are necessary (including casting votes as a qualified voter under the TDD Act) to impose the TDD Sales Tax.

(b) The Developer shall have the right from time to time to grant a proxy (the "Proxy") to the City Manager to allow the City Manager to cause the election of members of the board of directors of the TDD from time to time, and if Developer elects to grant the Proxy to the City Manager, the City Manager will act to exercise the Proxy to elect the board of directors of the TDD (any board of directors selected through such Proxy or otherwise consisting of a majority of members selected by the City being referred to as a "City Selected TDD Board").

(c) The City acknowledges that the TDD is integral to the financing of the Redevelopment Project, and in that regard the City will, at the Developer's expense, cooperate with and assist the Developer in proceedings relating to the creation and certification of the TDD.

(d) While the TIF Obligations are outstanding, the TDD will not issue any bonds, notes and other obligations and will not pledge the TDD Sales Tax revenues to the repayment of any obligation senior to or on parity with the TIF Obligations (provided that a subordinate pledge may be made while the TIF Obligations are outstanding only if allowed under the Financing Agreement).

(e) The parties agree that 50% of the revenues attributable to the TDD Sales Tax will, pursuant to Section 99.845 of the TIF Act, be transferred to or at the direction of the City for deposit into the EATS Account of the Special Allocation Fund, and the Developer (or the City in the case of a City Selected TDD Board) will cause the TDD to provide the necessary consents thereto required by Section 99.845.3 of the TIF Act. In addition, the Developer (or the City in the case of a City Selected TDD Board) will cause the TDD to transfer all other TDD Revenues that constitute Available Revenues (i.e., the portion of TDD Sales Tax revenues not required to be deposited into the Special Allocation Fund by operation of the TIF Act, less the TDD Annual Operating Costs) to the Bond Trustee in accordance with the Financing Agreement and the Bond Indenture. Developer hereby consents to the transfers of TDD Revenues as provided in this subsection.

(f) Once all TIF Obligations have been paid in full and all Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs and Reimbursable Interest have been paid, the City and the Developer will cooperate to cause the TDD to be dissolved

(g) So long as any TIF Obligations are outstanding, the TDD Sales Tax may not be repealed or reduced.

**3.15. Sales Tax Exemption on Construction Materials.** In order to provide sales tax exemption on construction materials used or consumed in the process of constructing the Redevelopment Project, the City has approved a plan for industrial development (a “Chapter 100 Plan”) pursuant to Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (“Chapter 100”) for the Redevelopment Project. Under the Chapter 100 Plan, the City will (1) take title to the Property during the construction period, after which point title will conveyed back to the Developer, and (2) issue industrial development revenue bonds (“Chapter 100 Bonds”) in an amount equal to the total costs of the Redevelopment Project. The Developer may request that portions of the Property be conveyed back to the Developer at up to three separate times under the Chapter 100 Plan. The Chapter 100 Bonds shall be issued under documents acceptable to the City and shall provide for the City to grant its sales tax exemption certificate for the Redevelopment Project, provided that the Developer indemnifies the City for any use of the sales tax exemption certificate found to be unlawful by the Missouri Department of Revenue.

## ARTICLE IV

### REIMBURSEMENT OF DEVELOPER COSTS

**4.1. City’s Obligation to Reimburse Developer.** The City agrees to reimburse the Developer, but solely from Available Revenues and Bond Proceeds, for approved Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs and Reimbursable Interest. Issuance Costs shall be paid solely from proceeds from the sale of TIF Obligations. The total amount to be paid to the Developer under this Agreement shall not exceed the Maximum Developer Reimbursement Amount. All payments to the Developer under this Agreement, whether from Bond Proceeds, TIF Revenues, CID Revenues or TDD Revenues shall be counted toward the Maximum Developer Reimbursement Amount, provided that the amounts of Reimbursable Interest and Developer-Paid City Administrative Costs to be paid are not limited by that definition.

**4.2. Reimbursable Redevelopment Project Cost Approval Process.** Reimbursements to the Developer are limited to costs that qualify as “redevelopment project costs” under Section 99.805(15) of the TIF Act. Reimbursable Redevelopment Project Costs incurred by the Developer will be eligible for reimbursement upon compliance with the following procedures:

(a) The Developer may submit to the City a Certificate of Reimbursable Redevelopment Project Costs in substantially the form attached as **Exhibit D** hereto. Such Certificate shall be accompanied by itemized invoices, receipts or other information that will demonstrate that any cost has been incurred and qualifies for reimbursement pursuant to this Agreement.

(b) The City shall notify the Developer in writing within 30 days after each submission of its approval or disapproval of the costs identified in each Certificate of Reimbursable Redevelopment Project Costs. If the City determines that any cost identified as a Reimbursable Redevelopment Project Cost is not a Reimbursable Redevelopment Project Cost under this Agreement, the City shall so notify the Developer in writing within 30 days after the submission, identifying the ineligible cost and the basis for determining the cost to be ineligible. The Developer shall then have the right to identify and substitute other Redevelopment Project Costs as Reimbursable Redevelopment Project Costs, which shall be included with a

supplemental application for payment submitted within 15 days after the City's notification of any ineligible costs. The City shall then review and notify the Developer in writing within 30 days after submission of its approval or disapproval of the costs identified in the supplemental application for payment. If the City fails to approve or disapprove the Certificate of Reimbursable Redevelopment Project Costs within 30 days of submission, the Certificate shall be deemed approved. The amount of Reimbursable Redevelopment Project Costs included in all approved Certificates of Reimbursable Redevelopment Project Costs shall not exceed the Maximum Project Cost Reimbursement Amount. City will process and approve each Certificate of Reimbursable Redevelopment Project Costs submitted by Developer in accordance with the provisions of this **Section 4.2** regardless of whether there are sufficient funds available, either from Bond Proceeds or from Available Revenues (including amounts held the Special Allocation Fund), to reimburse Developer for the Reimbursable Redevelopment Project Costs included in such Certificate of Reimbursable Redevelopment Project Costs.

(c) The Developer shall provide such information, books and records as the City may reasonably request for the City to confirm that any cost submitted qualifies as a Reimbursable Redevelopment Project Cost under this Agreement and has been incurred and paid by the Developer or will be paid from the Project Fund upon approval of the Certificate. The City may retain such consultants as it deems necessary in connection with such review, the cost of which shall be paid from the funds deposited pursuant to **Section 2.2(b)**.

(d) Reimbursable Redevelopment Project Costs shall include only costs for those categories of Redevelopment Project Costs set forth in the Project Budget set out in **Exhibit F** under the "Reimbursable Redevelopment Project Costs" column. The amounts provided as reimbursement for any line-item of costs in the "Reimbursable Redevelopment Project Costs" column may exceed the amounts for each such line-item set forth in **Exhibit F**; provided that (1) the amounts approved as Reimbursable Redevelopment Project Costs for any line-item shall not exceed 110% of the amount shown for such line-item in the "Reimbursable Redevelopment Project Costs" column without the prior consent of the City, to be granted in the sole discretion of the City, provided that the amount shown as "Contingency" in the "Reimbursable Redevelopment Project Costs" column may be allocated to any line item to which Reimbursable Redevelopment Project Costs are allocated in such column without the consent of the City, (2) no line item in the "Reimbursable Redevelopment Project Costs" column for which a zero value is shown shall be the basis for any Reimbursable Redevelopment Project Costs, and (3) the total reimbursement to the Developer for all Reimbursable Redevelopment Project Costs shall not exceed the Maximum Developer Reimbursement Amount.

**4.3. City's Obligations Limited to Available Revenues and Bond Proceeds.** Notwithstanding any other term or provision of this Agreement, the City shall have no obligation to make any payment under this Agreement other than from Bond Proceeds and from Available Revenues (including amounts held the Special Allocation Fund). The City shall have no liability for the failure of such sources of revenue to provide full reimbursement of all costs incurred by the Developer that are otherwise reimbursable under this Agreement.

**4.4. Interest on Reimbursable Redevelopment Project Costs.** Reimbursable Redevelopment Project Costs which have been approved by the City through a Certificate of Reimbursable Redevelopment Project Costs submitted in accordance with this Agreement shall accrue simple interest at the Prime Rate starting on the day that the City approves such application (or such application is deemed to have been approved) in accordance with **Section 4.2** until the principal amount of such approved Reimbursable Redevelopment Project Costs are paid, or until this Agreement is terminated as provided herein. Interest due on approved Reimbursable Redevelopment Project Costs

shall be calculated by the City and shall constitute Reimbursable Interest under this Agreement. Unpaid Reimbursable Interest shall accrue but shall not be compounded.

## ARTICLE V

### TIF OBLIGATIONS

**5.1. Issuance of TIF Obligations.** The Developer shall cause the CID and the TDD to cooperate with the IDA to issue to TIF Obligations, and the City shall request the IDA to issue such TIF Obligations, subject to the following conditions:

- (a) the City shall select Bond Counsel and the Bond Trustee for any TIF Obligations;
- (b) the Developer may select the underwriter or placement agent for the TIF Obligations, subject to the approval of the City Manager, which shall not be unreasonably withheld;
- (c) the CID, the TDD, the IDA and (in the City's sole discretion) the City shall enter into a Financing Agreement providing for the transfer of Available Revenues to the Bond Trustee for application under the Bond Indenture, *provided that*, should the City decide not to enter into a Financing Agreement with respect to the TIF Obligations, the City shall execute a certificate in connection with the TIF Obligations recognizing such obligations as TIF Obligations under this Agreement and stating that the transfers of Available Revenues required of the City with respect to the TIF Obligations under this Agreement will be made with respect to such obligations;
- (d) the City shall have approved the Bond Indenture in substantially final form;
- (e) at the time of issuance, no default or event of default has occurred and is continuing, nor has the City issued any notice to Developer under **Section 7.6** with respect to any event that has occurred and is continuing which with the lapse of time would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement;
- (f) the Developer shall have (or will simultaneously with the issuance of the TIF Obligations) enter into a guaranteed maximum price construction contract or contracts for the construction of the applicable portion of the Redevelopment Project included in the bond underwriting;
- (g) the Developer shall have provided to the City's reasonable satisfaction, (1) evidence of commitments to build the applicable improvements included in the Redevelopment Project and included in the bond underwriting, and (2) evidence of the execution of a lease extension or new lease, having a minimum term of not less than 15 years, by the current grocery store tenant on the Property;
- (h) the payments to be made under the TIF Obligations must not exceed the Available Revenues reasonably anticipated to be available for repayment of the TIF Obligations, as set out in a revenue study produced by a consultant acceptable to the City;
- (i) the IDA, in consultation with its (or the City's) financial advisor and the underwriter or placement agent, determines that a reasonably prudent issuer of municipal

securities would find that the then-current market conditions are sufficient to support the proposed issuance of TIF Obligations;

(j) each issue of TIF Obligations shall provide sufficient funds to pay all Issuance Costs relating to such TIF Obligations; and

(k) the first issue of TIF Obligations shall be structured to provide the deposit described in **Section 5.5**.

Notwithstanding the foregoing, the City and the Developer agree and acknowledge that additional conditions and restrictions on the issuance of TIF Obligations and the use of Bond Proceeds may be included in the Financing Agreement and the Bond Indenture. Following issuance of the initial TIF Obligations, the Developer shall cooperate and the City shall request the IDA to cooperate, from time to time (and subject to the IDA's determination of acceptable market conditions in similar manner to (i) above), to issue additional TIF Obligations to (1) reimburse any remaining Reimbursable Redevelopment Project Costs not paid from Bond Proceeds from prior TIF Obligations (but not to exceed the Maximum Developer Reimbursement Amount) and (2) refund any previously issued TIF Obligations to achieve interest cost savings or to restructure debt service for the purpose of providing additional reimbursement of remaining Reimbursable Redevelopment Project Costs.

Under no circumstances shall the City be liable for any failure of the IDA to issue TIF Obligations. The City makes no guarantee that TIF Obligations will be marketable or that the IDA will approve the issuance of TIF Obligations. The City itself will not issue any TIF Obligations. The City will not be required to participate in the preparation of or give representations with respect to the content of any offering documents relating to the TIF Obligations.

If for any reason the IDA shall determine not to proceed with the issuance of the TIF Obligations, the Developer shall have the right to seek to engage another issuer for the TIF Obligations, and City agrees to consider in good faith an alternative issuer identified by the Developer so long as such alternative issuer does not seek to impose any requirements or obligations upon the City that are not acceptable to the City in its sole discretion.

## **5.2. Cooperation in the Issuance and Administration of TIF Obligations.**

(a) If the IDA issues TIF Obligations, the Developer covenants to cooperate and take all reasonable actions necessary to assist the IDA, Bond Counsel, underwriters and financial advisors in the preparation of offering statements, private placement memorandum or other disclosure documents and all other documents necessary to market and sell the TIF Obligations, including (1) disclosure of tenants of the Redevelopment Area and the non-financial terms of the leases and operating agreements between the Developer and such tenants, and (2) providing sufficiently detailed estimates of Reimbursable Redevelopment Project Costs so as to enable Bond Counsel to render its opinion as to the tax-exemption of TIF Obligations and to analyze the applicability of the various sources of Available Revenues. The Developer shall, if requested by the City, execute a continuing disclosure agreement or undertaking, whereby the Developer will be required to provide annual updates to certain operating information, including the information regarding tenant leases described above, and notice of certain events. The Developer will not be required to disclose to the general public or any investor the rent payable under any such lease or any proprietary or confidential financial information pertaining to the Developer, its tenants or the leases with its tenants, but upon the execution of a confidentiality agreement acceptable to the Developer, the Developer will provide such information to the City's financial advisor and to the underwriter and its counsel to enable such parties to satisfy their due diligence obligations. Such

compliance obligation shall be a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

(b) Except for the certificate described in **Section 5.1(c)**, above, the execution of any documents relating to the TIF Obligations by the City shall be in the sole discretion of the City. It should be assumed that the City's maximum involvement in terms of taking on duties or obligations relating to the TIF Obligations will be the transfer of Available Revenues held by the City to the Bond Trustee and that the City will not agree to any other payment, reporting or other obligations relating to the TIF Obligations.

**5.3. City to Select Financial Advisor; Term and Interest Rate of TIF Obligations.** The City shall have the right to select its own financial advisor in connection with the issuance of the TIF Obligations, the fees of which advisor shall be paid as Issuance Costs. Prior to the selection of such financial advisor, the City shall provide Developer ten (10) days' notice of such intended selection during which time Developer may [on a one-time basis only] request reconsideration by the City of such selection. The City's consideration or rejection of the Developer's request for reconsideration shall be in the City's sole discretion. The TIF Obligations shall bear interest at such rates, shall be subject to redemption and shall have such terms as the City and the Developer shall agree, following consultation with the underwriter, financial advisors and consultants.

**5.4. No Other Obligations or Uses of Available Revenues.** The City shall not issue any other indebtedness or obligations secured by Available Revenues deposited into the account of the Special Allocation Fund from which the TIF Obligations are or will be secured. Following the redemption and payment in full of the TIF Obligations and payment of any remaining Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs and Reimbursable Interest, the City may dissolve the Special Allocation Fund; provided, however, that City will provide thirty (30) days prior written notice to Developer before proceeding with such dissolution (but further provided that the City shall have no monetary liability to the Developer for failure to give such notice).

**5.5. Corridor Improvement Project.** From the Bond Proceeds from the initial issuance of TIF Obligations, the amount of \$1,000,000 shall be deposited with the City for purposes of paying costs of the Corridor Improvement Project. Such deposit shall constitute a Reimbursable Redevelopment Project Cost under this Agreement and the transfer of such deposit to the City from Bond Proceeds shall constitute payment of such Reimbursable Redevelopment Project Cost to the Developer. The City shall apply such deposit in a manner consistent with the TIF Act and the TDD Act (including without limitation, by making deposits due under one or more cost sharing agreements relating to the Corridor Improvement Project) so that the principal amount of TIF Obligations, together with interest thereon, allocable to such deposit is repayable from TIF Revenues and TDD Revenues, and the City shall maintain documentation of all expenditures of such deposit sufficient to demonstrate the same. No payment to the Developer for Developer-Paid City Administrative Costs, Reimbursable Interest or approved Reimbursable Redevelopment Project Costs shall be made until the deposit described in this Section has been fully funded.



## ARTICLE VI

### SPECIAL ALLOCATION FUND; COLLECTION AND USE OF REVENUES

**6.1. Special Allocation Fund.** The City agrees to cause its finance department to maintain the Special Allocation Fund, including within such fund a “*PILOTS Account*,” and an “*EATS Account*.” Subject to the requirements of the TIF Act and, with respect to Economic Activity Taxes, subject to annual appropriation by the City Council, the City will, promptly upon receipt thereof, deposit all Payments in Lieu of Taxes generated from the Redevelopment Area into the PILOTS Account and all Economic Activity Taxes generated from the Redevelopment Area into the EATS Account. The City shall take such actions as it deems reasonable to cause the county assessor, the county collector, and the Missouri Department of Revenue to perform all duties required to be performed pursuant to Section 99.845 of the TIF Act.

(a) *Certificate of Total Initial Equalized Assessed Value.* The City shall provide to the Developer, within 30 days after the City’s receipt thereof, the Jackson County Assessor’s calculation of the total initial assessed value of all taxable property within the Redevelopment Area, determined pursuant to Section 99.855.1 of the TIF Act.

(b) *Certificate of Initial Economic Activity Tax Revenues.* The City shall provide to the Developer and shall file with Jackson County, within 30 days after the City’s adoption of the TIF Activation Ordinance, a certification of the total additional revenues from Economic Activity Taxes that are eligible pursuant to the TIF Act or other Missouri law for deposit into the Special Allocation Fund and which were imposed by the City or other taxing districts for economic activities within the Redevelopment Area in the calendar year prior to the adoption of tax increment financing for such area.

(c) *Consent to Release of Sales Tax Information.* If there are five (5) or fewer tenants generating sales taxes within the Redevelopment Area, the CID or the TDD, the Developer shall use commercially reasonable efforts to cause each such tenant to deliver a consent to disclose sales tax information allowing the City, the CID and the TDD to make public sales tax information for the purposes of (1) complying with reporting requirements contained in the TIF Act, the CID Act and the TDD Act, (2) providing such information to the Trustee for any TIF Obligations and (3) making certain disclosures associated with any offering of TIF Obligations. Receipt of such consent, to the extent required by this subsection, shall be a prerequisite to the disclosure of sales tax collections information in connection with the offering of TIF Obligations.

### **6.2. Application of Available Revenues.**

(a) Available Revenues will be applied in the manner required by the Financing Agreement and the Bond Indenture during the time that any TIF Obligations are outstanding.

(b) The City and the Developer agree that Available Revenues may, if recommended by Bond Counsel and approved by the Developer, be separated so that portions of the Available Revenues are used to pay separate series of TIF Obligations.

(c) The City agrees to direct the officer of the City charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the City Council for each

fiscal year a request to appropriate all moneys in the EATS Account to the applications described in this Section and in the Bond Indenture.

(d) Following the redemption and payment in full of the TIF Obligations, or otherwise during any time that no TIF Obligations are outstanding, the Available Revenues shall be applied as follows:

The TIF Revenues shall be applied in the following order of priority:

1. Payment of the City Administration Fee;
2. Reimbursement to the City for any costs of the City incurred pursuant to Section 7.17 or otherwise in the enforcement of any provision of this Agreement or in defense of the establishment, existence or implementation of the Redevelopment Plan or Redevelopment Project, to the extent not paid or reimbursed to the City by the Developer;
3. Reimbursement to the Developer for any amounts paid to the City as reimbursement or indemnification for costs incurred by the City or for costs directly incurred by the Developer in the enforcement of any provision of this Agreement (unless stemming from a default by the Developer) or in defense of the establishment, existence or implementation of the Redevelopment Plan or Redevelopment Project;
4. Payment of Developer-Paid City Administrative Costs;
5. Payment of Reimbursable Interest; and
6. Payment of the principal of the Developer's approved Reimbursable Redevelopment Project Costs.

The CID Revenues shall be applied in the following order of priority:

1. Payment of the CID Annual Operating Costs;
2. Reimbursement to the City and/or the CID for any costs incurred in the enforcement of any provision of the CID Cooperative Agreement or in defense of the establishment, existence or implementation of the CID, to the extent not paid or reimbursed to the City or CID, as applicable, by the Developer;
3. Reimbursement to the Developer for any amounts paid to the City or CID as reimbursement or indemnification for costs incurred by the City or CID, or for costs directly incurred by the Developer in the enforcement of any provision of the CID Cooperative Agreement (unless stemming from a default by the Developer) or in defense of the establishment, existence or implementation of the CID;
4. Payment of Developer-Paid City Administrative Costs that are eligible for payment from the CID Revenues;
5. Payment of Reimbursable Interest on the Developer's approved Reimbursable Redevelopment Project Costs that are eligible for payment from the CID Revenues; and
6. Payment of the principal of the Developer's approved Reimbursable Redevelopment Project Costs that are eligible for payment from the CID Revenues.

The TDD Revenues shall be applied in the following order of priority:

1. Payment of the TDD Annual Operating Costs;
2. Reimbursement to the City and/or the TDD for any costs incurred in the enforcement of any provision of the TDD Cooperative Agreement or in defense of the establishment, existence or implementation of the TDD, to the extent not paid or reimbursed to the City or TDD, as applicable, by the Developer;
3. Reimbursement to the Developer for any amounts paid to the City or TDD as reimbursement or indemnification for costs incurred by the City or TDD, or for costs directly incurred by the Developer in the enforcement of any provision of the TDD Cooperative Agreement (unless stemming from a default by the Developer) or in defense of the establishment, existence or implementation of the TDD;
4. Payment of Developer-Paid City Administrative Costs that are eligible for payment from the TDD Revenues;
5. Payment of the Reimbursable Interest on the Developer's approved Reimbursable Redevelopment Project Costs that are eligible for payment from the TDD Revenues; and
6. Payment of the principal of the Developer's approved Reimbursable Redevelopment Project Costs that are eligible for payment from the TDD Revenues.

The Developer shall cause the CID and the TDD to enter into Cooperative Agreements with provisions relating to the CID Revenues and TDD Revenues that reflect the terms of this Section.

(e) In accordance with the Redevelopment Plan, 50% of the PILOTS deposited into the PILOTS Account of the Special Allocation Fund is hereby declared as surplus by the City. Such declaration of surplus shall continue at a level of 50% throughout the entire term of the Redevelopment Plan and this Agreement. Any Surplus PILOTS received by the City shall be separately accounted for in the PILOTS Account of the Special Allocation Fund and distributed in accordance with this paragraph, less the City Administration Fee attributable to such Surplus PILOTS. The City shall, or, if an agreement between the City and County has been executed for such purpose then the county collector shall on behalf of the City, pay such Surplus PILOTS to the appropriate taxing districts affected by the Redevelopment Project as provided in the TIF Act. Such declaration of Surplus PILOTS may not be modified by any subsequent agreement, contract, indenture, or other legal document and any attempted modification shall be void and have no effect on the amount of Surplus PILOTS distributed to the appropriate taxing districts.

### **6.3. Developer Cooperation in Determining Available Revenues.**

(a) The Developer (or its successor(s) in interest as an owner or owner(s) of the affected portion(s) of the Redevelopment Area) shall:

- (1) contractually obligate each "seller" (as that term is defined in Section 144.010(10) of the Revised Statutes of Missouri, as amended) located in the Redevelopment Area that has multiple business operations within the City to file a separate Missouri Department of

Revenue Form 53-1 for each location in order to separately identify and declare all sales taxes originating within the Redevelopment Area;

(2) contractually obligate each “seller” (as that term is defined in Section 144.010(10), RSMo.) to supply or cause to be promptly supplied to the City, monthly sales tax information of such “seller” in a form substantially similar to the monthly sales tax returns filed with the Missouri Department of Revenue;

(3) make good faith efforts to assist the City in compiling any information that the City must publicly report, including, without limitation, the information required by Section 99.865.1 of the TIF Act; and

(4) include a provision in every new or amended lease, purchase agreement or similar agreement requiring any lessee, purchaser or transferee of real property or other user of real property located within the Redevelopment Area that states:

**Economic Activity Taxes:** [\*Tenant/Purchaser/Transferee\*] acknowledges that the [Premises] are a part of a tax increment financing redevelopment area (the “TIF District”) created by the City of Independence, Missouri (the “City”) and that certain taxes generated by [\*Tenant/Purchaser/Transferee\*]’s economic activities, including sales taxes, will be applied toward the costs of improvements for the development that the [Premises] are part of. Upon the request of [\*Landlord/Seller/Transferor\*] or the City, [\*Tenant/Purchaser/Transferee\*] shall forward to the City monthly or quarterly, as applicable, sales tax information in a form substantially similar to the sales tax returns filed with the Missouri Department of Revenue for its property located in the TIF District, and, upon request, shall provide such other reports and returns regarding other local taxes generated by [\*Tenant/Purchaser/Transferee\*]’s economic activities in the TIF District as the City shall require, all in the format prescribed by them. Sales tax confidentiality shall be protected by the City as required by law. [\*Tenant/Purchaser/Transferee\*] acknowledges that the City is a third-party beneficiary of the obligations in this Section, and that the City may enforce these obligations in any manner provided by law.

Alternate language may be used by the Developer if such language is approved by the City Attorney. At the request of the City, the Developer shall provide a certification to the City confirming that a lease, purchase agreement or similar agreement includes the provisions satisfying the Developer’ obligation as set forth above.

(b) The Developer hereby waives any claim to utility tax revenues and hereby agrees to bring no suit, claim or other action against the City seeking the deposit of utility tax revenues into the Special Allocation Fund. Any utility tax revenues generated from the Redevelopment Area are hereby declared to be surplus by the City pursuant to the TIF Act. The Developer hereby acknowledges and agrees that the City will not be able to readily determine whether use tax revenues are generated within the Redevelopment Area and, therefore, subject to tax increment financing. Accordingly, the Developer hereby waives any claim to use tax revenues as having been generated in the Redevelopment Area, and hereby agrees to bring no suit, claim or other action against the City seeking deposit of use tax revenues into the Special Allocation Fund. To the extent any use tax revenues generated in Redevelopment Area qualify as Economic Activity Taxes, such taxes shall be declared as surplus under the TIF Act.

**6.4. Obligation to Report EATS, CID Sales Tax and TDD Sales Tax.** Any purchaser or transferee of the Property, and any lessee or other user of the Property required to pay EATS, CID Sales

Tax and the TDD Sales Tax that leases its premises after the date of this Agreement, shall use all reasonable efforts to timely furnish to the City such documentation as is required by **Section 6.3**. So long as any TIF Obligations are outstanding, the Developer shall cause such obligation to be a covenant running with the land and shall be enforceable as if such purchaser, transferee, lessee or other user of such real property were originally a party to and bound by this Agreement; subject, however, to the provisions of existing leases of premises located in the Redevelopment Area.

## ARTICLE VII

### GENERAL PROVISIONS

**7.1. Developer's Right of Termination.** At any time prior to the issuance of the TIF Obligations, the Developer may, by giving written notice to the City, abandon the Work and terminate this Agreement and the Developer's obligations hereunder (except as may expressly survive termination) if the Developer determines, in its sole discretion, that the Redevelopment Project is no longer economically feasible.

**7.2. City's Right of Termination.** The City may terminate this Agreement (or, if any TIF Obligations are then outstanding, terminate the Developer's right to any continued payment of Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs or Reimbursable Interest under this Agreement) at any time prior to the delivery of the Certificate of Substantial Completion if:

(1) the Developer defaults in or breaches any material provision of this Agreement and fails to cure such default or breach pursuant to **Section 7.6** (subject to extension in accordance with **Section 7.7**), or materially breaches any representation or warranty contained in **Section 8.2**; or

(2) the Developer fails to complete the Work within the time set forth in **Section 3.3(a)** (subject to extension in accordance with **Section 7.7**).

**7.3. Results of Termination.** If this Agreement is terminated in whole or in part pursuant to **Section 7.1** or **Section 7.2**, then the City shall have no further obligation to reimburse the Developer for any amounts advanced under this Agreement, any remaining Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs or Reimbursable Interest, or any other costs otherwise incurred or paid by the Developer with respect to the Redevelopment Project (however, any previously issued TIF Obligations will remain outstanding and payable from Available Revenues as provided in the Financing Agreement and the Bond Indenture).

**7.4. Term of Agreement.** This Agreement, and all of the rights and obligations of the parties hereunder, shall terminate and shall become null and void on that date which is the earliest of (a) 23 years from the date of adoption of the TIF Activation Ordinance, (b) the payment of all Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs and Reimbursable Interest and the retirement in full of all TIF Obligations, or (c) the delivery of a written notice by the City (and recordation of a copy of such notice with the Jackson County Recorder) that this Agreement has been fully terminated pursuant to **Section 7.1** or **7.2**.

## 7.5. Successors and Assigns; Transfers to Tax-Exempt Organizations.

### (a) *Successor and Assigns.*

(1) This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective successors and assigns.

(2) Without limiting the generality of the foregoing and subject to subpart (3) below, all or any part of the Redevelopment Area or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of the Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after redevelopment of the Redevelopment Project, whereupon the party disposing of its interest in any portion of the Redevelopment Area or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement with respect thereto (although any such portion of the Redevelopment Area so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement); provided, except as set forth below, prior to the City's acceptance of the Certificate of Substantial Completion, the Developer may not sell any portion of the Redevelopment Area it owns or assign its rights or obligations hereunder without the City's prior written approval.

(3) The Developer may, without the City's prior approval:

(i) assign all of its rights, duties and obligations hereunder to a Related Party if (A) such entity expressly assumes all of the applicable Developer's rights, duties and obligations hereunder and satisfies the requirements set forth in **Section 8.3**, (B) such entity provides evidence of insurance as required by **Section 7.10**, (C) the Developer provides at least 15 days' advance written notice of the proposed assignment (and a copy of the proposed assignment agreement) to the City, and (D) the Developer promptly provides a copy of the executed assignment to the City; or

(ii) encumber or collaterally assign its interests in the Redevelopment Area or any portion thereof to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Redevelopment Project Costs or associated costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment and for the successor to further transfer the property to its successors;

(iii) lease or sell portions of the Redevelopment Area to tenants or users in the ordinary course of the Developer's business, provided that, for the purposes of clarity, in the event of a lease or sale of such property, such tenant or user shall not be entitled to seek reimbursement from the City for any costs incurred; or

(iv) subject to **Section 3.4(b)**, enter into joint venture or other similar arrangements so long as Developer remains responsible to City for all requirements under this Agreement.

(b) *Tax-Exempt Organizations.* The Developer, without the prior written consent of the City, shall not, until all Reimbursable Redevelopment Project Costs have been paid (including TIF Obligations issued to finance such Reimbursable Redevelopment Project Costs), sell any Property within the Redevelopment Area to an organization exempt from payment of ad valorem property taxes, unless such

organization agrees to pay to the City, for deposit into the Special Allocation Fund, payments in lieu of taxes equal to the ad valorem real property taxes that would be due on such portion of the Redevelopment Area, but for the organization's exempt status. Any organization that is or may, following any such purchase, become exempt from payment of ad valorem property taxes shall, by its purchase of a portion of the Redevelopment Area and for each year that it is exempt from paying ad valorem property taxes on such portion of the Redevelopment Area, agree to pay to the City, for deposit into the Special Allocation Fund, payments in lieu of taxes equal to the ad valorem real property taxes that would be due on such portion of the Redevelopment Area, but for the organization's exempt status. This obligation to make payments in lieu of taxes shall terminate upon the retirement of all TIF Obligations. This requirement shall be a covenant running with the land and shall be enforceable for such period as if such purchaser or other transferee or possessor thereof were originally a party to and bound by this Agreement. The recording of this Agreement, or a memorandum of this Agreement, shall evidence the requirements of this subsection as a covenant running with the land.

**7.6. Remedies.** In the case of any default in or breach of any term or condition of this Agreement by either party, the defaulting or breaching party shall, upon written notice from the other party specifying such default or breach, cure or remedy such default or breach within 30 days after receipt of notice (or such longer period as shall be reasonably required to cure such default, provided that (1) the breaching party has commenced such cure within said 30-day period, and (2) the breaching party diligently prosecutes such cure to completion. If such cure or remedy is not taken or not diligently pursued, or the default or breach is not cured or remedied as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching party or, at any time when no TIF Obligations are outstanding, to terminate this Agreement. Neither party shall have the right to terminate this Agreement at any time that any TIF Obligations are outstanding.

**7.7. Extensions of Time for Performance.**

(a) Neither the City nor (upon satisfaction of the provisions of subsection (b)(3) of this Section) the Developer or any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or casualty; strike; lockout; pandemic; civil disorder; acts of terrorism; significant escalation of hostilities involving U.S. armed forces; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the applicable Developer to proceed with construction of the applicable portion of the Work, including rezoning and approval of the Concept Site Plan (but only if the Developer files all necessary documentation relating thereto in a timely manner considering the dates set forth in Section 3.3 of this Agreement); shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other causes beyond the reasonable control of the party required to perform, including, but not limited to, any litigation, court order or judgment resulting from any litigation affecting the validity of the Redevelopment Plan, the Redevelopment Project, the TIF Obligations, this Agreement or any other litigation that adversely affects the development of the Redevelopment Project. Notwithstanding the foregoing, the parties agree that economic conditions, market conditions, financial conditions, lender restrictions, lack of tenant interest, and similar conditions or events do not constitute events of force majeure hereunder. The parties further agree that, to the best of their knowledge, no event of force majeure exists at the time of execution of this Agreement.

(b) No event under (a) shall be deemed to exist (1) as to any matter that could have been avoided by the exercise of due care in accordance with industry standards, and (2) (i) unless the

Developer uses good faith efforts to provide the City with a written notice specifying the event of force majeure within 20 days of the Developer's knowledge of (A) the commencement of such claimed event, and (B) that the occurrence of such event will result in delay in performance by Developer of its obligations under this Agreement, or (ii) the Developer demonstrates to the City's reasonable satisfaction that the Developer has diligently pursued its obligations under this Agreement, but for reasons beyond the Developer's control, has been unable to complete such obligations within the time specified in this Agreement. Times for performance shall be extended only for the amount of delay resulting from the event of force majeure.

**7.8. Notices.** Any notice, demand or other communication required by this Agreement to be given by one party hereto to another shall be in writing and shall be sufficiently given or delivered if dispatched by overnight delivery service, certified United States first class mail, postage prepaid or delivered personally:

(a) If to the City:

City Manager's Office  
City of Independence, Missouri  
111 E. Maple Ave.  
Independence, MO 64050

with a copy to:

David Martin  
Gilmore & Bell, P.C., Suite 1100  
2405 Grand Blvd.  
Kansas City, Missouri 64108

(b) If to the Developer:

T-L Hub, LLC  
c/o Tri-Land Developments, Inc.  
One East Oak Hill Drive #302  
Westmont, IL 60559  
Attn: Richard Dube

with a copy to:

Burke, Warren, MacKay & Serritella, P.C.  
330 North Wabash, Suite 2100  
Chicago, IL 60611  
Attn: Jeff Warren

and with a copy to:

David W. Frantze  
Stinson LLP  
1201 Walnut Street, Suite 2900  
Kansas City, MO 64106-2150



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. A duplicate copy of each notice or other communication given hereunder shall be given to each other party.

**7.9. Conflict of Interest.** No member of the City Council, the TIF Commission, or any branch of the City's government who has any power of review or approval of any of the Developer's undertakings, or of the City's contracting for goods or services for the Redevelopment Area, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation, partnership or other entity in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City Council the nature of such interest and seek a determination by the City Council with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

**7.10. Insurance; Damage or Destruction of Redevelopment Project.**

(a) The Developer will cause there to be insurance as hereinafter set forth at all times during the process of constructing the Work and continuing so long as any TIF Obligations are outstanding. The Developer shall, from time to time at the request of the City, furnish the City with proof of coverage for:

(1) Commercial liability insurance with coverages of not less than the current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri (which for calendar year 2023 is equal to \$3,258,368 for all claims arising out of a single accident or occurrence and \$488,755 for any one person in a single accident or incurrence). Further, the policy shall be adjusted upward annually, to remain at all times not less than the inflation-adjusted sovereign immunity limits as published in the Missouri Register on an annual basis by the Department of Insurance pursuant to Section 537.610 of the Revised Statutes of Missouri, as amended; and

(2) Workers' Compensation insurance, with statutorily required coverage.

(b) The policies of insurance required pursuant to clause (1) above shall be in form and content reasonably satisfactory to the City and shall be placed with financially sound and reputable insurers licensed to transact business in the State with a financial strength rating of not less than A- and a financial size category of not less than VIII as designated in the most current available "Best's" insurance reports. The policies of insurance delivered pursuant to clause (1) above shall name the City as an additional insured, shall be primary and non-contributory with respect to any insurance maintained by the City, and shall contain an agreement of the insurer to give not less than ten (10) days advance written notice to the City in the event of cancellation of such policy or change affecting the coverage thereunder. Limits of insurance can be satisfied through a combination of primary and excess liability coverage. The Developer shall deliver or cause to be delivered to the City evidence, in the form of certificates of insurance, of all insurance to be maintained hereunder. The certificates of insurance shall state that "the City of Independence is an additional insured on a primary and non-contributory basis."

(c) The Developer hereby agrees that, so long as any TIF Obligations are outstanding, if any portion of the Redevelopment Project owned by the Developer is damaged or destroyed, in whole or in part, by fire or other casualty (whether or not covered by insurance), or by any taking in condemnation proceedings or the exercise of any right of eminent domain, the Redevelopment Project shall be restored, replaced or rebuilt with such alterations or changes as may be approved in writing by the City, which approval shall not be unreasonably withheld. The Developer (upon learning of the same) shall give

prompt written notice to the City of any material damage or destruction (meaning damage or destruction anticipated to cost in excess of \$500,000 to remediate) to any portion of the Redevelopment Project by fire or other casualty, and in such circumstances the Developer use commercially reasonable efforts to shall make the portions of the Redevelopment Area that it controls safe and in compliance with all applicable laws as provided herein.

(d) These covenants are for the benefit of the City and may be enforced by the City by a suit for specific performance or for damages, or both.

**7.11. Inspection.** The City may conduct such periodic inspections of the Work as may be generally provided for in the Municipal Code. In addition, the Developer shall allow other authorized representatives of the City access to the Redevelopment Area from time to time upon reasonable advance notice for inspection of the Redevelopment Project. The Developer shall also allow the City and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as the City determines is reasonable and necessary to verify the applicable Developer's compliance with the terms of this Agreement. The Developer shall advise each contractor for the Redevelopment Project of the contractor's obligations under the Municipal Code regarding permits and inspections. The provisions of this Section shall terminate upon the approval or deemed approval of the Certificate of Substantial Completion.

**7.12. Choice of Law.** This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State for all purposes and intents. Any action arising out of, or concerning, this Agreement shall be brought only in the Circuit Court of Jackson County, Missouri. All parties to this Agreement consent to the jurisdiction and venue of such court.

**7.13. Entire Agreement; Amendment.** The parties agree that this Agreement constitutes the entire agreement among the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

**7.14. Counterparts.** This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

**7.15. Severability.** If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

**7.16. Representatives Not Personally Liable.** No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement. No member, agent, employee or representative of the Developer shall be personally liable to the City in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

**7.17. Actions Contesting the Validity and Enforceability of the Redevelopment Plan.**

(a) If a third party brings an action against the City or the City's officials, agents, employees or representatives contesting the validity or legality of the Redevelopment Area, the Redevelopment Project, the Redevelopment Plan, the TIF Obligations or this Agreement, the Developer may, at its

option, assume the defense of such claim or action with counsel of the Developer's choosing, but the Developer may not settle or compromise any claim or action for which the Developer has assumed the defense without the prior approval of the City. If the City does not approve a settlement or compromise which the Developer would agree to, the Developer shall not be responsible for any costs or expenses incurred thereafter in the defense of such claim or action or any portion of any settlement or compromise in excess of the settlement or compromise the Developer would agree to (provided, however, that such costs may be paid under the provisions in the Bond Indenture, if allowed thereunder). The parties expressly agree that so long as no conflicts of interest exist between them with regard to the handling of such litigation, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding; provided, the Developer and its counsel shall consult with the City, and the City and its counsel shall consult with the Developer, throughout the course of any such action and the Developer shall pay all reasonable and necessary costs incurred by the City in connection with such action. All costs of any such defense, whether incurred by the City or the Developer, shall be reimbursable as described in **Article IV** hereof. The City shall have no obligation to defend the validity or legality of the Redevelopment Area, the Redevelopment Project, the Redevelopment Plan, the TIF Obligations or this Agreement if the Developer chooses not to assume the defense of such claim or action as described above.

(b) In addition, if a third party brings an action against the City or the City's officials, agents, employees or representatives with respect to any other matter as to which the Developer is obligated to indemnify pursuant to **Section 7.18(b)**, the Developer may, at its option, assume the defense of such claim or action with counsel of the Developer's choosing, but the Developer may not settle or compromise any claim or action for which the Developer has assumed the defense without the prior approval of the City. If the City does not approve a settlement or compromise which the Developer would agree to, the Developer shall not be responsible for any costs or expenses incurred thereafter in the defense of such claim or action or any portion of any settlement or compromise in excess of the settlement or compromise the Developer would agree to. The parties expressly agree that so long as no conflicts of interest exist between them with regard to the handling of such litigation, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding; provided, the Developer and its counsel shall consult with the City, and the City and its counsel shall consult with the Developer, throughout the course of any such action and the Developer shall pay all reasonable and necessary costs incurred by the City in connection with such action.

#### **7.18. Release and Indemnification.**

(a) *Releases.* Notwithstanding anything herein to the contrary, the City and its elected officials, officers, agents, servants, employees and independent contractors shall not be liable to the Developer for any damages or losses (including injuries and deaths) (1) resulting from any part of the TIF Act, or any ordinance adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, being declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof, (2) occurring at or about or resulting from the construction of the Work and the maintenance of the Redevelopment Area or (3) resulting from any lawful decision made or position taken by the City relating in any manner whatsoever to this Agreement, the Redevelopment Plan, the Redevelopment Project, the Approved Site Plans, the Work or the Redevelopment Area. The Developer hereby acknowledges and agrees that all covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its elected officials, officers, agents, servants or employees in their individual capacities.

(b) *Indemnifications.* The Developer covenants and agrees to indemnify, defend and hold harmless the City, its elected officials, officers, agents, servants, employees and independent contractors against any loss or damage to property or any injury to or death of any person:

(1) occurring or resulting from the construction of the Work, including but not limited to location of hazardous wastes, hazardous materials or other environmental contaminants in the Redevelopment Area and the design and development of the Redevelopment Project;

(2) connected in any way to the negligence or willful misconduct of the Developer, its employees, agents or independent contractors; or

(3) resulting from the lack of compliance by the Developer with any state, federal or local environmental law, regulation or ordinance applicable to the Redevelopment Area.

The indemnification provided under this Section includes all costs of defense, including attorneys' fees, interest fees and other penalties. Notwithstanding anything to the contrary contained herein, the indemnity provided in this Section will not extend to any matters arising out of the gross negligence or willful misconduct of the City and its elected officials, officers, agents, servants, employees and independent contractors.

(c) The releases and indemnifications contained in this Section shall survive termination or expiration of this Agreement, but nothing in this Agreement (including **Section 7.19**) shall be construed to require the Developer to indemnify the City, its elected officials, officers, employees, agents and independent contractors for any claims related to actions or events that occur after the termination of this Agreement.

**7.19. Survival.** Notwithstanding anything to the contrary in this Agreement, the following provisions shall survive the expiration or termination of this Agreement: (a) the Developer's reimbursement obligation in **Section 2.2** with respect to costs incurred by the City prior to termination of this Agreement; (b) the limitation on liability in **Section 7.16**; and (c) the provisions of **Sections 7.17** and **7.18**.

**7.20. Maintenance of the Property.** The Redevelopment Project shall remain in compliance with all provisions of the Municipal Code relating to maintenance and appearance during the construction of the Redevelopment Project or any portions thereof. The obligations under this Section shall be a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

**7.21. Enforcement of Agreement.** The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to obtain an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof.

**7.22. Recording of Agreement.** The Developer shall cause the obligations arising pursuant to this Agreement to be a covenant running with the land by recording this Agreement or a memorandum of this Agreement in the real estate records of Jackson County, Missouri. Upon the expiration or termination of this Agreement, the City will, at the expense and request of the Developer, join with the Developer to execute and record a notice of such expiration or termination in the real estate records of Jackson County.

**7.23. No Waiver of Sovereign Immunity.** Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's sovereign immunity.

**7.24. No Third-Party Beneficiaries.** This Agreement constitutes a contract solely between the City and the Developer. No third party has any beneficial interest in or derived from this Agreement.

## ARTICLE VIII

### REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES

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

(a) *No Violations.* 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 agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

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

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

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

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

(a) *No Violations.* 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.

(b) *No Litigation.* No litigation, proceedings or investigations are pending or, to the best of the Developer's knowledge (including the knowledge of any member of the Developer executing this Agreement), threatened against the Developer (or any member of the Developer) with respect to the Redevelopment Plan or against the Redevelopment Project. In addition, to the

best of the Developer's knowledge, no litigation, proceedings or investigations are pending or, to the knowledge of the Developer (including the knowledge of any member of the Developer executing this Agreement), threatened against the Developer (or any member of the Developer) seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer (or any member 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 (or any member of the Developer) of, the terms and provisions of this Agreement.

(c) *Governmental or Corporate Consents.* To the best of the Developer's knowledge, no consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement, except for consents that must be secured subsequent to the execution of this Agreement.

(d) *No Default.* No default or event of default has occurred and is continuing, and to the best of the Developer's knowledge, no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument related to the Developer's ability to perform pursuant to this Agreement to which the Developer is a party or by which the Developer is or may be bound.

(e) *Compliance with Laws.* With respect to its ability to perform pursuant to this Agreement, the Developer is, to the best of its knowledge, in compliance in all material respects with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

(f) *Accuracy of Project Data.* The Developer represents that the information regarding project costs, projected rents and other information included in the Redevelopment Plan and related cost benefit analysis and other information submitted to the City in connection with the request for consideration of the Redevelopment Plan (altogether, the "*Project Data*") was, to the best of the Developer's knowledge, information and belief, developed and provided in good faith and includes a good faith representation of the Developer's estimates and expectations with regard to the Redevelopment Project as of the date of this Agreement and, to the best of the Developer's knowledge, information and belief, the Concept Site Plan attached as **Exhibit B** hereto is a good faith representation of the uses that the Developer will endeavor to locate in the Redevelopment Area.

### **8.3. Contractual Liability Insurance.**

(a) The Developer shall provide evidence (in form and substance reasonably acceptable to the City) that the insurance policy referenced in **Section 7.10(a)(1)** or another applicable policy includes contractual liability insurance covering the Developer's obligations to indemnify the City, as provided in this Agreement.

(b) Simultaneously with the delivery of this Agreement and annually thereafter prior to the acceptance or deemed acceptance of the Certificate of Substantial Completion, the Developer shall provide to the City Attorney evidence of continued insurance demonstrating compliance with paragraph (a). The Developer agrees to provide immediate written notice to the City when the cancellation, termination, expiration or modification of the applicable contractual liability policy occurs.

**8.4 Anti-Israel Discrimination.** Pursuant to Section 34.600, RSMo., the Developer certifies it 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; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

[Remainder of page intentionally left blank.]







## EXHIBIT A

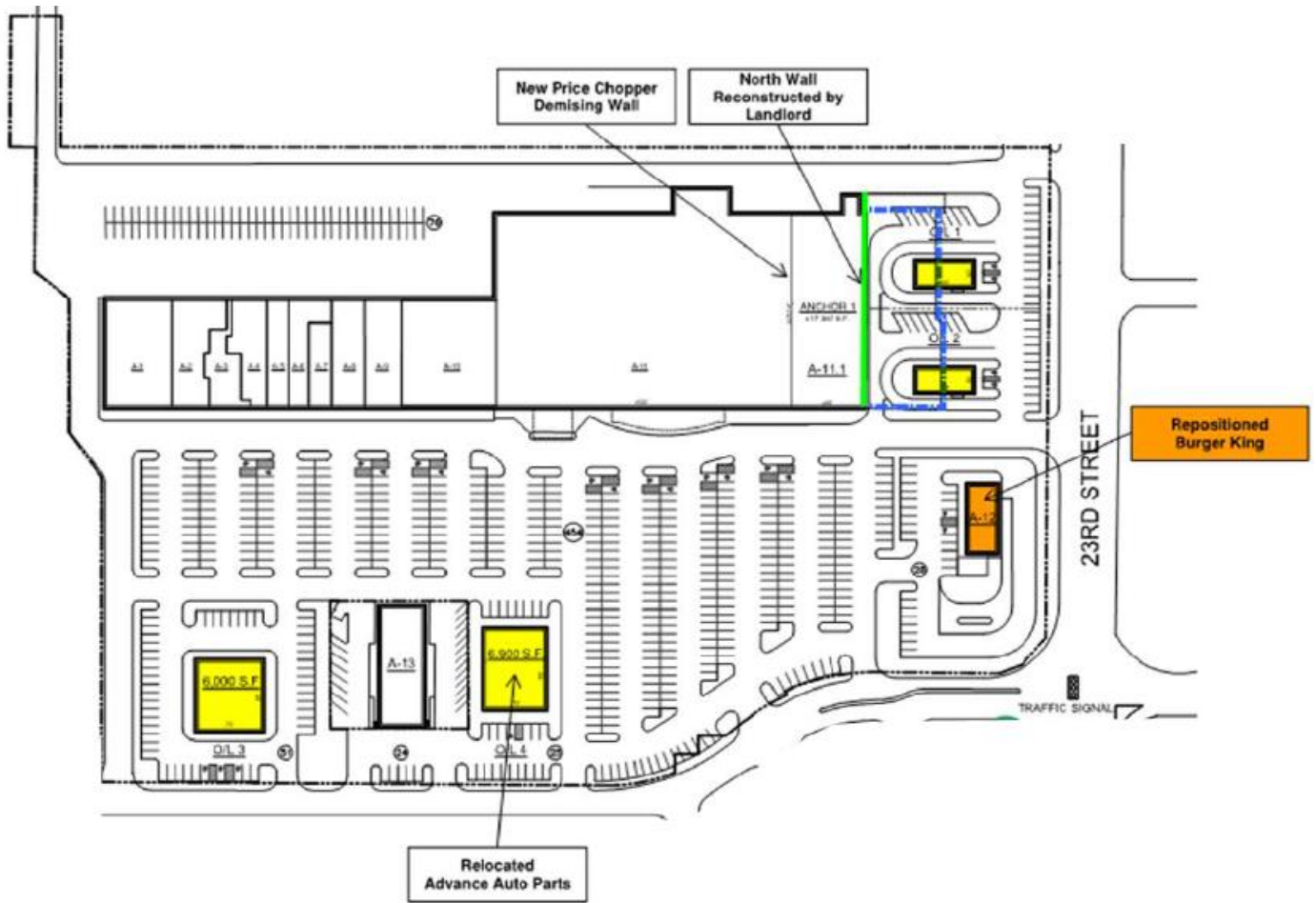
### LEGAL DESCRIPTION OF REDEVELOPMENT AREA

A tract of land being part of LOT 46, "TWIN TRAILS" and part of LOTS 2, 3 and 4, "ESGAR'S ACRES", both subdivisions in Independence, Jackson County, Missouri and part of the North 1/2 of the Southwest 1/4 of Section 7, Township 49 North, Range 31 West, more particularly described as follows:

Beginning at a point on the East line of LOT 5, of said "TWIN TRAILS", said point being on the South right-of-way line of 23rd Street; thence South 87 degrees 43 minutes 04 seconds East (deed North 89 degrees 59 minutes 38 seconds East), along said South right-of-way of 23rd Street, 45.00 feet from the centerline thereof, a distance of 674.36 feet to a point 93.00 feet East of the West line of the Northeast 1/4 of the Southwest 1/4 of said Section 7; thence South 02 degrees 07 minutes 36 seconds West, (deed South 0 degrees 07 minutes 12 seconds East), parallel with said West line, a distance of 397.99 feet (deed 398.95 feet); thence South 87 degrees 43 minutes 04 seconds East, (deed North 89 degrees 59 minutes 38 seconds East), a distance of 71.33 feet (deed 70.84 feet); thence South 02 degrees 07 minutes 36 seconds West (deed South 0 degrees 06 minutes 14 seconds East), a distance of 616.40 feet (deed 615.44 feet) to a point; thence North 88 degrees 14 minutes 06 seconds West, (deed South 89 degrees 24 minutes 54 seconds West, a distance of 380.82 feet (deed 381.02 feet); thence South 55 degrees 50 minutes 03 seconds West (deed South 53 degrees 29 minutes 03 seconds West), a distance of 60.91 feet; thence North 88 degrees 04 minutes 46 seconds West (deed South 89 degrees 34 minutes 14 seconds West), a distance of 144.65 feet (deed 144.68 feet); thence South 40 degrees 11 minutes 12 seconds West (deed South 37 degrees 50 minutes 12 seconds West), a distance of 46.73 feet; thence North 87 degrees 45 minutes 53 seconds West (deed South 89 degrees 53 minutes 07 seconds West), a distance of 135.20 feet (deed 135.22 feet) to a point on the East line of LOT 46 of above said "TWIN TRAILS"; thence South 01 degree 45 minutes 09 seconds West (deed South 0 degrees 27 minutes 09 seconds East) along said East line, a distance of 28.34 feet to the Southeast corner of above said LOT 46; thence North 87 degrees 58 minutes 02 seconds West (deed South 89 degrees 56 minutes 15 seconds West) along the South line of above said LOT 46, a distance of 142.77 feet to the Southwest corner of said LOT 46; thence North 01 degree 45 minutes 09 seconds East (deed North 0 degrees 27 minutes 09 seconds West) along the West line of LOT 46, a distance of 55.22 feet; thence South 87 degrees 58 minutes 02 seconds East (deed North 88 degrees 11 minutes 41 seconds East), a distance of 142.77 feet (deed 142.81 feet) to the East line of above said LOT 46; thence North 01 degree 45 minutes 09 seconds East (deed North 0 degrees 27 minutes 09 seconds West) along the East line of LOTS 5 through 13 and part of LOT 46 of above said "TWIN TRAILS", a distance of 1065.07 feet to the point of beginning.

TOGETHER WITH all of the public street known as Hub Drive east of and adjacent to the foregoing parcel.

**EXHIBIT B**  
**CONCEPT SITE PLAN**



**EXHIBIT C**

**FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION**

Certificate of Substantial Completion

TO: City of Independence, Missouri  
111 E. Maple Ave.  
Independence, MO 64050  
City Manager's Office

The undersigned, T-L HUB LLC, a Delaware limited liability company (the "*Developer*"), pursuant to that certain Redevelopment Agreement dated as of \_\_\_\_\_, 2023, between the City of Independence, Missouri (the "*City*") and the Developer (the "*Agreement*"), hereby certifies to the City as follows:

1. That as of \_\_\_\_\_, 20\_\_\_\_, the Work (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. The Work has been performed in a workmanlike manner and in accordance with the Construction Plans (as defined in the Agreement).
3. Lien waivers for the Work have been obtained.
4. This Certificate of Substantial Completion is accompanied by one or more architect's or engineer's certificate(s) 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 Work has been substantially completed in accordance with the Agreement.
5. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer's satisfaction of all obligations and covenants with respect to the Work.
6. The City's acceptance (below) or the City's failure to object in writing to this Certificate within 60 days of the date of delivery of this Certificate to the City (which written objection, if any, must be delivered to the Developer prior to the end of such 60-day period), and the recordation of this Certificate with the Jackson County Recorder shall evidence the satisfaction of the Developer's agreements and covenants to perform the Work.

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

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



ACCEPTED:

**CITY OF INDEPENDENCE, MISSOURI**

By: \_\_\_\_\_  
[Name], [Title]

(Insert Notary Form(s) and Legal Description)

**EXHIBIT D**

**FORM OF CERTIFICATE OF  
REIMBURSABLE REDEVELOPMENT PROJECT COSTS**

Certificate of Reimbursable Redevelopment Project Costs

TO: City of Independence, Missouri  
111 E. Maple Ave.  
Independence, MO 64050  
City Manager's Office

**Re: City of Independence, Missouri, HUB Drive Redevelopment Area**

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Redevelopment Agreement dated as of \_\_\_\_\_, 2023 (the "Agreement") between the City of Independence, Missouri (the "City") and T-L HUB LLC (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

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

8. The amounts of the Reimbursable Redevelopment Project Costs requested under this certificate that are eligible for payment from CID Revenues and TDD Revenues, respectively, are set out on **Schedule 1**.

9. The Developer is not in material default or breach of any term or condition of the Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**T-L HUB LLC**

By: \_\_\_\_\_  
Name:  
Its:

Attorney Certification:

**[Name of Law Firm]**

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

Approved on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

**CITY OF INDEPENDENCE, MISSOURI**

By: \_\_\_\_\_  
[Name], [Title]



**Schedule 1**

<b>Payee</b>	<b>Description of Reimbursable Redevelopment Project Costs</b>	<b>Total Amount of Reimbursable Redevelopment Project Costs</b>	<b>Amount Eligible for Payment from CID Revenues</b>	<b>Amount Eligible for Payment from TDD Revenues</b>
	Total			

**EXHIBIT E**  
**ARCHITECTURAL RENDERINGS**

[\*\*to be added\*\*]

**EXHIBIT F**  
**PROJECT BUDGET**

<b>Redevelopment Project Component</b>	<b>Redevelopment Project Costs</b>	<b>Reimbursable Redevelopment Project Costs</b>
Acquisition Costs	\$11,300,000	\$-0-
Building Construction	5,242,843	5,242,843
Tenant Improvements - FFE	11,603,480	974,965
Site Construction	2,782,192	2,782,192
23rd Street Corridor Project Contribution	1,000,000	1,000,000
Professional Services (Engineering /Architectural/Legal/Other Consultants)	1,950,058	1,000,000
Commissions and Marketing	650,000	-0-
Development Costs	725,000	-0-
Contingency	1,684,786	1,000,000*
<b>Total</b>	<b>\$36,938,359</b>	<b>\$12,000,000</b>

\* May be applied to any line item for which Reimbursable Redevelopment Project Costs are allocated.