

**TAX INCREMENT FINANCING
CONTRACT**

between

KIRKSVILLE, MISSOURI

and

KIRKSVILLE MALL, LLC

**For Implementation of the
South Highway 63 Corridor
Tax Increment Financing Plan As
Revised and Restated as
of April 22, 2009**

Approved by City Council July 20, 2009

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CONTRACT

THIS CONTRACT (this “Contract”), entered into this 20th day of July, 2009 (the “Effective Date”), by and between the CITY OF KIRKSVILLE, MISSOURI (the “City”), and KIRKSVILLE MALL, LLC, a Missouri limited liability company and the developer selected by the City (the “Developer”) to implement the South Highway 63 Corridor Tax Increment Financing Plan (the “Plan”) as more fully described herein;

W I T N E S S E T H:

WHEREAS, the City Council of the City of Kirksville, Missouri (the “City Council”), did on July 20, 2009, pass Ordinance No. 11883, which approved the South Highway 63 Corridor Tax Increment Financing Plan (the “Plan”) providing for the construction of a certain redevelopment project (the “Redevelopment Project”) as further described herein, in Kirksville, Adair County, Missouri in the area described in the Plan (the “Redevelopment Area”), and legally described in **Exhibit 1**, attached hereto and incorporated herein by reference; and

WHEREAS, the Plan contemplates that the Redevelopment Area will be developed as one Redevelopment Project in conformance with Missouri’s Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 R.S.Mo., as amended (the “Act”); and

WHEREAS, the City Council by passage of Ordinance No. 11883, a copy of which is attached hereto as **Exhibit 2**, designated Developer as the Developer of the Plan, and authorized and directed the Mayor of the City to execute a contract with Developer for the implementation of the Plan.

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

1. Rules of Interpretation.

a. All capitalized words or terms used in this Contract and defined in the Plan shall have the meaning ascribed to them in the Plan. In addition thereto and in addition to words and terms defined elsewhere in this Contract, the following words and terms shall have the meanings ascribed to them in this **Section 1** unless the context in which such words and terms are used clearly requires otherwise.

b. Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Contract:

(1) The terms defined in this Contract which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided, that nothing contained in this sentence shall be construed to authorize any such renewal,

extension, modification, amendment or restatement other than in accordance with **Section 33** of this Contract.

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

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

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

2. Definitions.

- (a) “Act.” the Real Property Tax Increment Allocation Redevelopment Act, Section 99.800 et. seq., Revised Statutes of Missouri.
- (b) “Blighted area.” an area which, by reason of the predominance of defective or inadequate street layout, unsanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals, or welfare in its present condition and use.
- (c) “City Council.” the governing body of the City of Kirksville, Missouri.
- (d) “City.” the City of Kirksville, Missouri.
- (e) “City Collector.” means the Finance Director of the City.
- (f) “City Treasurer.” means the Finance Director of the City.
- (g) “County Assessor.” the assessor of Adair County, Missouri.
- (h) “County Collector.” the collector of Adair County, Missouri.

- (i) “Debt Service,” amount required for the payment of interest and principal on Obligations as they come due, for the payment of mandatory or optional redemption payments and for payments to reserve funds required by the terms of the Obligations to retire or secure the Obligations.
- (j) “Developer,” Kirksville Mall, LLC, a Missouri limited liability company, or its successors or assigns.
- (k) “Economic Activity Account,” separate segregated account within the Special Allocation Fund into which Economic Activity Taxes are to be deposited.
- (l) “Economic Activity Taxes,” (or “EATs”) fifty percent (50%) of the total additional revenue from taxes which are imposed by the City or other taxing districts, which are generated by economic activities within the Redevelopment Project Area, while tax increment financing remains in effect, excluding licenses, fees or special assessments, other than Payments in Lieu of Taxes and other taxes specifically excluded by the Act, until the designation is terminated pursuant to Section 99.850 of the Act.
- (m) “Financing Costs,” means those costs incurred, or to be incurred, by any issuer of Obligations or the Developer as a result of issuing Obligations or Private Loans to pay all or any portion of Reimbursable Project Costs incurred, or estimated to be incurred, including, but not limited to, interest, loan fees, financial advisor fees, legal fees, broker fees or discounts, printing, and other costs related to such financing. If Developer should pay for any Reimbursable Project Costs with cash or its equivalent, Financing Costs shall also include interest to the Developer on such cash expenditures at a rate per annum equal to ten percent (10%).
- (n) “Obligations,” bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by the City to carry out a Redevelopment Project or to fund outstanding obligations.
- (o) “Ordinance,” an ordinance enacted by the City Council.
- (p) “Payment in Lieu of Taxes,” (or “PILOTs”) those estimated revenues from real property in the area selected for a Redevelopment Project, which revenues are to be used to retire Obligations and pay other Reimbursable Project Costs, which Taxing Districts would have received had the City not adopted Tax Increment Allocation Financing, and which would result from levies made after the time of the adoption of Tax Increment Allocation Financing during the time the Current Equalized Value of real property in the Redevelopment Project Area exceeds the Total Initial Equalized Value of real property in such area until the designation is terminated pursuant to Section 99.850 of the Act, which shall not be later than 23 years after the Redevelopment Project is approved by an Ordinance. Payments in lieu of taxes which are due and owing shall constitute a lien against the real estate of the Redevelopment

Project from which they are derived, the lien of which may be foreclosed in the same manner as a special assessment lien as provided by the laws of the State of Missouri.

- (q) “Payment in Lieu of Taxes Account,” separate segregated account within the Special Allocation Fund into which payments in lieu of taxes are to be deposited.
- (r) Phase I Reimbursable Project Costs: Reimbursable Project Costs funded by the Developer as part of the Phase I Redevelopment Project as detailed on the attached **Exhibit 5**.
- (s) Phase II Reimbursable Project Costs: Reimbursable Project Costs funded by the City and/or the Developer as part of the Phase II Redevelopment Project as detailed on the attached **Exhibit 5**.
- (t) Phase I Redevelopment Project: The construction and renovation of various commercial uses, including without limitation, office, general commercial, institutional and retail with an estimated building area of all such uses of approximately 137,918 square feet of gross leaseable retail area, along with adequate parking, and sidewalks.
- (u) Phase II Redevelopment Project: The construction of related necessary public improvements such as sidewalks, roads, traffic control improvements, and utility infrastructure.
- (v) “Plan,” the South Highway 63 Corridor Tax Increment Financing Plan.
- (w) “Preliminary Site Plan,” The preliminary site plan for the Redevelopment Area is attached as **Exhibit 4** as such may be amended from time to time in connection with zoning and or subdivision processes undertaken by the Developer and approved by the City.
- (x) “Private Loans,” loans or indebtedness incurred by the Developer or any other private entity or individual to pay for Reimbursable Project Costs incurred, or estimated to be incurred, to carry out the Redevelopment Projects, to finance the creation of such Private Loans, to establish reserves, to fund or secure such Private Loans, to finance interest costs associated with such Private Loans, or to refund or refinance any such outstanding Private Loans.
- (y) “Public Improvements,” Those improvements to be completed as part of the Redevelopment Project that will be dedicated to the City, the County, the State or such other municipality, as the case may be, said improvements to include without limitation, sidewalks, roads, traffic control improvements, various water and sewer improvements and other utility infrastructure, all as generally described on **Exhibit 5**.
- (z) “Redevelopment Area,” the real property legally described in **Exhibit 1**, in respect to which the City has made a finding that there exist conditions which cause the area to

be classified as a Blighted Area, an Economic Development Area, a Conservation Area or a combination thereof. For purposes of the Plan, the City Council has designated the Redevelopment Area as a Blighted Area.

- (aa) “Redevelopment Project,” the Redevelopment Project is the development activities to be undertaken within and adjacent to the Redevelopment Area which are intended to accomplish the objectives of the Plan and as specifically detailed on **Exhibit 3**.
- (bb) “Redevelopment Project Costs,” shall at all times be consistent with the Act or any judicial interpretation of the Act and shall include the sum total of all reasonable or necessary costs incurred or estimated to be incurred, any such costs incidental to a Redevelopment Plan and a Redevelopment Project. Such costs include, but are not limited to the following:
 - (1) Costs of studies, surveys, plans and specifications;
 - (2) Professional service costs, including, but not limited to, architectural, engineering, legal, marketing, financial planning or special services (except for the reasonable administrative costs of the TIF Commission, such costs shall be allowed only as an initial expense which is included in the costs set forth in the Plan or the Redevelopment Project);
 - (3) Property assembly costs, including but not limited to, acquisition of land and other property, real or personal, or rights or interests therein, demolition of buildings, and the clearing and grading of land;
 - (4) Costs of rehabilitation reconstruction, or repair or remodeling of existing buildings and fixtures;
 - (5) Cost of construction of public works or improvements, including special assessments made against property in the Redevelopment Area;
 - (6) Financing costs, including, but not limited to all necessary and incidental expenses related to the issuance of Obligations, and which may include payment of interest on any Obligations accruing during the estimated period of construction of any Redevelopment Project for which such Obligations are issued and for not more than eighteen (18) months thereafter, and including reasonable reserves related thereto;
 - (7) All or a portion of a Taxing District’s capital cost resulting from the Redevelopment Projects necessarily incurred or to be incurred in furtherance of the objectives of the Plan and Redevelopment Projects, to the extent the City, by written agreement, accepts and approves such costs;

- (8) Relocation costs to the extent that the City determines that relocation costs shall be paid or are required to be paid by federal or state law; and
- (9) Payments in Lieu of Taxes.
- (cc) “Reimbursable Project Costs,” All costs identified as Phase I Reimbursable Project Costs and Phase II Reimbursable Project Costs in the Plan inclusive of: (1) costs incurred by the City or the TIF Commission, including, without limitation, Financing Costs, and administration costs, (2) costs incurred by the Developer, or at Developer’s direction, in connection with: (a) the preparation and approval of the Plan, (b) planning, financing, acquiring, and constructing the Redevelopment Project, including, without limitation, fees of architects, accountants, attorneys, consultants, and other professionals, more specifically identified as Phase I Reimbursable Project Costs and Phase II Reimbursable Project Costs on **Exhibit 5**, plus all Debt Service and Financing Costs and any Administrative Costs. The parties acknowledge and agree that the estimated Reimbursable Project Costs do not purport to cap any particular line item of costs, and that amounts reimbursable to Developer shall include any and all actual costs incurred for any cost category, provided that in no event will the aggregate principal amount to be reimbursed to the Developer related to Phase I Reimbursable Project Costs exceed \$1,545,636, plus any actual Financing Costs and Administrative Costs.
- (dd) “Relocation Plan,” the relocation plan attached to the Plan.
- (ee) “Special Allocation Fund,” the fund into which, as required by the Act, all Payments in Lieu of Taxes and Economic Activity Taxes are deposited for the purpose of paying Reimbursable Project Costs.
- (ff) “Special District,” The South Highway 63 Corridor Community Improvement District or a transportation development district either of which will be formed in accordance with the Special District Act.
- (gg) “Special District Act”: Sections 67.1401 to 67.1571 RSMo in the case of a Community Improvement District or 238.200 to 238.280 RSMo in the case of a Transportation Development District.
- (hh) “Special District Project,” The project as authorized and generally described in the Petition for formation of the Special District, including but not limited to upgrades to U,S, Highway 63 adjacent to the Redevelopment Area and as detailed in the attached **Exhibit 5**.
- (ii) “Special District Sales Tax”: The sales tax revenue imposed by the Special District and which is anticipated will be equal to 1% applicable to all retail sales generated within the boundaries of the Special District.
- (jj) “Surplus Distribution”: An annual amount equivalent to 50% of the actual Payment in Lieu of Taxes generated within the Redevelopment Project Area and actually received into the

Special Allocation Fund in any given year that are returned to the Taxing Districts that actually levy the real property taxes within the Redevelopment Area that generate the Payment in Lieu of Taxes in accordance with section 17 (d). The annual amount(s) described in this paragraph shall be specifically calculated, after the date tax increment financing is approved for the Redevelopment Project Area, by dividing the Payment in Lieu of Taxes received from a particular taxing district for deposit in the special allocation fund by 2.

- (kk) “Taxing Districts,” any political subdivision of the State of Missouri having the power to levy taxes.
- (ll) “TIF Commission” or “Commission,” the Tax Increment Financing Commission of the City.
- (mm) “TIF Revenue,” those PILOTs and EATs generated by the Redevelopment Projects located within the Redevelopment Project Areas.
- (nn) “Total Initial Equalized Assessed Value,” that amount certified by the County Assessor which equals the most recently ascertained equalized land assessed value of each taxable lot, block, tract or parcel or real property within a Redevelopment Project Area immediately after tax increment financing for such areas has been approved by the City Council by an Ordinance.

3. Items Incorporated in This Contract. The provisions of the Plan, a copy of which is on file with the office of the City Clerk; such Ordinances adopted by the City Council which designate the Redevelopment Project Area and the provisions of the Act as amended as of and including the date of this Contract are hereby incorporated herein by reference and made a part of this Contract.

4. Legal Description. The Redevelopment Area is legally described in **Exhibit 1**, attached hereto and incorporated herein by reference.

5. Redevelopment Area. The Redevelopment Area will be developed as one Redevelopment Project. Tax increment financing for the Redevelopment Area shall become effective upon the second reading of an Ordinance of the City Council pertaining to the Redevelopment Project. The Developer and the City agree to cooperate in good faith to determine a mutually acceptable time at which the City Council will consider a second reading of an Ordinance to approve tax increment financing within the Redevelopment Area identified by the Developer. The City shall not unilaterally initiate any action for a second reading of an Ordinance affecting the Redevelopment Project. The Redevelopment Area is legally described in **Exhibit 1** attached hereto and incorporated herein by reference.

6. Redevelopment Project. In accordance with the Act and subject to the terms and conditions of the Plan and this Contract: the Developer is authorized by the City to construct or cause to be constructed, within the Redevelopment Area, the Phase I Redevelopment Project described in **Exhibit 3** attached hereto and incorporated herein by reference, in accordance with the terms of this Contract, the Plan and Land Use Approvals; the Developer Special District

and/or the City are authorized to construct or cause to be constructed, within and adjacent to the Redevelopment Area, the Phase II Redevelopment Project and Special District Project described in **Exhibit 3** attached hereto and incorporated herein by reference, in accordance with the terms of this Contract, the Plan and MoDOT Approval.

7. Project Budget and Financing Commitments.

(a) The Redevelopment Project shall be constructed in accordance with the estimated Redevelopment Project Costs attached hereto as **Exhibit 5**. The parties acknowledge and agree the Redevelopment Project Costs including the Reimbursable Project Costs and Special District Project Costs in **Exhibit 5** are estimates which will vary from the actual costs incurred to construct the Redevelopment Project. The estimated costs are based on prices existing in 2009. It is anticipated that the Redevelopment Project Cost will be incurred over a period of several years. It is recognized that general inflation, supply and demand and other factors will affect the Redevelopment Project Cost over this period. Because of these and other factors, the actual Redevelopment Project Cost may vary from the estimated costs and any such variance shall not impact the Developer's right to receive reimbursement. Notwithstanding, the Phase I Reimbursable Project Costs shall not exceed \$1,545,636.

8. Removal of Blight. The Developer, with respect to the Redevelopment Area, shall clear the blighting influences, or eliminate the physical blight existing in the Redevelopment Project Area.

The Developer's undertakings under this **Section 8** of this Contract are intended to ameliorate and eliminate those conditions which are the basis for eligibility and designation of the Redevelopment Project Area as a Blighted Area in accordance with the Plan. The parties acknowledge and agree that construction of the Redevelopment Project in accordance with the Plan fully satisfies the Developer's obligations set out in this **Section 8**.

9. Development Schedule.

(a) While acquisition, demolition, rehabilitation and construction activities are not mutually exclusive and may therefore be undertaken simultaneously, it is the intention of the parties that, subject to Excusable Delays, development activities for the Redevelopment Project Area proceed substantially in accordance with the development schedule set forth in attached **Exhibit 6** (the "Development Schedule"). The parties recognize and agree that the Development Schedule sets forth only estimated dates for commencement and completion of the Redevelopment Project and that those dates are likely to require adjustment on account of financing and other conditions that may affect the Development Schedule. Therefore, the Development Schedule for the Redevelopment Project is subject to change and/or modification.

(b) The City agrees to cooperate with the Developer and act in good faith and use its reasonable efforts to timely review and approve all plans and issue all permits and other approvals which are required of the Developer, its agents, contractors, subcontractors, tenants or

land purchasers and to assist the Developer in obtaining any permits or approvals required from any other governmental agency when reasonably requested to do so.

10. This Section Intentionally Left Blank.

11. Control of Projects. Developer shall have complete and exclusive control over the construction of those portions of the Redevelopment Project which it owns or controls insofar as the City is concerned, subject, however, to all applicable laws, rules and regulations, including, but not limited to, all ordinances, rules and regulations of the City, such as zoning ordinances, building codes, and property maintenance codes. Developer hereby grants to the City, its agents, and employees the right to enter, at any reasonable time, all improvements under the control of Developer and located in the Redevelopment Project Area, for the purpose of inspecting the Redevelopment Project. The City agrees to provide Developer with 24-hour notice of the City's desire to inspect the Redevelopment Project Area. This notice period does not preclude the City from inspecting the Redevelopment Project in the normal exercise of enforcing the City's ordinance and codes. Developer shall be entitled to accompany City on any of said inspections.

12. Purchaser/Tenant Approvals. Developer shall have complete and exclusive control over sales and/or the leasing of property which it owns within the Redevelopment Project Area, including, without limitation, the fixing of rentals and the selection or rejection of tenants.

The Developer, or any third party, may sell, transfer, convey, lease or otherwise dispose of real property within the boundaries of a Redevelopment Project area subject only to the restrictions contained in this section.

13. Design Criteria and Review Procedures.

(a) The Developer shall comply with and/or follow all controls and design criteria relating to exterior improvements in the Redevelopment Project Area, as shall be, from time to time, established as a part of the Plan and/or as a part of all zoning (including preliminary and final site development plans) and subdivision approvals (hereinafter collectively referred to as "Land Use Approvals"). No construction of any portion of a Redevelopment Project shall be commenced or made unless and until all the construction plans therefor, in the detail herein required, or any changes thereto, shall have been submitted to and approved in writing by the City or the City staff all in accordance with the Plan and Land Use Approvals.

(b) Construction plans for the Redevelopment Project shall conform to the Plan, Land Use Approvals, and this Contract. In order to insure construction will be in accordance with the provisions of this Contract, and in substantial agreement with proposals made by the Developer to the City, the parties agree as follows:

(i) At least forty-five (45) days prior to the commencement of construction of any portion of a Redevelopment Project, or at such time as plans are submitted to the City for site plan review pursuant to applicable zoning regulations, the Developer shall submit detailed plans for such Redevelopment Project to the City for review and approval by the

City which show (aa) the specific size, shape and appearance of any on-site and off-site improvements which are to be constructed by Developer, (bb) the location thereof, and any related parking, on the lot or tract, (cc) detailed building elevations, (dd) detailed and comprehensive landscaping and signage plans, and (ee) such other information relating to such improvements as is reasonably required by the City (the “Final Plans”).

(ii) The City shall either approve or provide in writing the basis of its nonapproval within thirty (30) days of receipt of the Final Plans. City’s approval shall not be withheld so long as the plans: (aa) conform to the provisions of this Contract; (bb) conform to the reasonable standards and criteria as described in the Plan; and (cc) conform to all applicable state and local laws and regulations. If the City fails to act within the thirty (30) day time period set forth herein, the Final Plans shall be deemed approved.

(iii) At least fifteen (15) days prior to commencement of construction, Developer shall submit to the City, for its review any material changes, amendments or modifications (collectively “Changes”) in the Redevelopment Project or the approved Final Plans. The City shall have the right to approve such modified plans prior to the commencement of construction which approval shall not be withheld so long as the plans: (aa) conform to the provisions of this Contract; (bb) conform to the reasonable standards and criteria as described in the Plan; and (cc) conform to all applicable state and local laws and regulations. If the City fails to act within ten (10) days of receipt of said Changes, the Changes shall be deemed approved.

(d) The City shall have the absolute right in its judgment and discretion at any time to approve a variance from conformance to or a waiver of compliance with the approved controls and design criteria relating to exterior improvements, or to eliminate any one or more of such requirements in connection with the approval or disapproval of the above construction plans or changes thereto, subject to all applicable City ordinance provisions.

(e) Neither the City, nor any officer, director, commissioner, member, employee or agent of the same, shall be liable to the Developer for damages, with respect to construction plans or modifications submitted for approval, or for any other action in connection with its or their duties hereunder.

14. Progress Reports.

(a) Upon written request by the City, the Developer will provide an annual progress report at the first regularly-scheduled meeting of the City Council following each annual anniversary of the execution of this Contract.

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

15. Compliance with Laws. At all times during the term of this Contract and until termination of the Plan, but subject to the Developer's rights to contest the same in any manner permitted by law, the Developer, its officers, directors and principals, at its sole cost and expense, shall comply in every respect with all applicable laws, ordinances, rules and regulations of all federal, state, county and municipal governments, agencies, bureaus or instrumentalities thereof now in force or which may be enacted hereafter which pertain to the ownership, occupancy, use and operation of the Redevelopment Project and Redevelopment Project Area.

16. Certificate of Compliance. Upon the completion of a Redevelopment Project, or a portion thereof, the Developer shall submit a report certifying that the Redevelopment Project, or a portion thereof, has been completed in accordance with the Plan and that Developer is in compliance with all other provisions of this Contract. The Developer shall, as part of its report, submit its certificate setting forth the Reimbursable Project Costs incurred which are eligible for reimbursement pursuant to the Plan and this Contract. The City may conduct an investigation, and if the City determines that the portion of the Redevelopment Project for which certification is requested has been completed in accordance with the provisions of the Plan and this Contract, as evidenced by a Certificate of Occupancy where appropriate and other required governmental approvals, and that all of Developer's duties pursuant to this Contract have been performed, then it shall issue a Certificate of Completion and Compliance for the portion of the Redevelopment Project properly completed, and shall certify Redevelopment Project Costs as eligible for reimbursement. If the City determines that the portion of the Redevelopment Project for which certification is requested has not been completed in accordance with the provisions of the Plan or this Contract, or that Redevelopment Project Costs have not been incurred as certified, or that the Developer is not in compliance with the terms of this Contract, then it shall not issue a Certificate of Completion and Compliance for such portion and shall specify in writing within forty-five (45) days of receiving Developer's report, the reason or reasons for withholding its certification. Upon request of the Developer, the City shall hold a hearing at which the Developer may present new and/or additional evidence.

(a) The certification by the City shall be a conclusive determination of the satisfaction and termination of the covenants in this Contract, with respect to the independent obligations of the Developer to complete the portion of the Redevelopment Project for which the certificate is issued within the dates for the beginning and completion thereof, respectively, but subject to **Section 16(c)** hereof, such certification shall not prevent City from action in the event of any subsequent default by Developer in the performance of any of its other obligations under this Contract.

(b) Each such certificate issued by the City shall contain a description of the real property affected thereby and shall be in such form as will enable it to be accepted for recording in the Office of the Recorder of Deeds of Adair County. Developer shall provide the City with the legal description of the portion of the Redevelopment Project for which a Certification of Completion and Compliance is sought.

(c) Developer may independently request a Certificate of Completion and Compliance for all or any portion of a Redevelopment Project. So long as the Developer is not

in default of its obligations under this Contract, and so long as all of the above criteria have been satisfied, such a Certificate of Completion and Compliance shall be issued.

17. Payments in Lieu of Taxes.

(a) Pursuant to the provisions of the Plan and the Act, including, but not limited to, Section 99.845 thereof, when tax increment financing is established by Ordinance for a Redevelopment Project Area, the real property located therein is subject to assessment for annual Payments in Lieu of Taxes. Payments in Lieu of Taxes shall be due November 30th of each year in which said amount is required to be paid and will be considered delinquent if not paid by December 31st of each such year. The obligation to make said Payments in Lieu of Taxes shall be a covenant running with the land and shall create a lien in favor of the City on each such tax parcel as constituted from time to time and shall be enforceable against the Developer and its successors and assigns in ownership of property in the Redevelopment Project Area.

(b) Failure to pay Payments in Lieu of Taxes as to any property in a Redevelopment Project Area shall constitute a default by the owner of such property of the provisions of **Section 28** hereof, and shall entitle the City, the County Collector or any other government official or body charged with the collection of any such sums (any one or more of such persons hereinafter individually or collectively referred to as the "Collection Authority") to proceed against such property and/or the owner thereof in such Redevelopment Project Area as in other delinquent property tax cases or otherwise as permitted at law or in equity, and, if applicable, such failure shall entitle the Collection Authority to seek all other legal and equitable remedies it may have to insure the timely payment of all such sums or of the principal of and interest on any outstanding TIF Obligations secured by such payments; provided, however, that the failure of any property in a Redevelopment Project Area to yield sufficient payments in lieu of taxes because the increase in the current equalized assessed value of such property is or was not as great as expected, shall not by itself constitute a breach or default. Promptly upon the designation and approval of a Redevelopment Project Area by Ordinance of the City, the City shall use all reasonable and diligent efforts to promptly notify the County Collector, the City Director of Finance, the City Treasurer and all other appropriate officials and persons and seek to fully implement the Payments in Lieu of Taxes and reimbursements of Reimbursable Project Costs and Surplus Distribution as provided in this Contract and in the Plan.

(c) Notwithstanding anything to the contrary, herein, the lien on property within a Redevelopment Project Area shall be deemed (i) released as to any public street or other public way included within any plat proposed by the Developer, effective upon the passage of an Ordinance by the City approving the same, and (ii) subordinated to the lot lines, utility easements and other similar matters established by any such plat (but not to any private access or parking rights granted or created by any such plat), effective upon the passage of Ordinance by the City as aforesaid, and to any easement or like interests granted to the City or any public utility for public facilities or utilities or connection thereto.

(d) No more than fifty percent (50%) of the Payments Lieu of Taxes shall be used to pay Reimbursable Project Costs or to repay Obligations. In accordance with the Plan, the

remaining fifty percent (50%) of the Payments in Lieu of Taxes collected shall be declared as a Surplus Distribution by the City, as approved in the Plan. The City shall pay such Surplus Distribution to the appropriate Taxing Districts that generated the Payments in Lieu of Taxes proportional to the current collection of revenue which said Taxing District receives from real property in the Redevelopment Area. The City may enter into an agreement with the County Collector to carry out this Surplus Distribution.

18. Economic Activity Taxes. In addition to the Payments in Lieu of Taxes described above, and pursuant to Section 99.845 of the Act, fifty percent (50%) of the total additional revenue from taxes which are imposed by the City, the County or other Taxing Districts, and which are generated by economic activities within a Redevelopment Project Area over the amount of such taxes generated by economic activities within such Redevelopment Project Area in the calendar year prior to the designation of the Redevelopment Project Area by Ordinance, while tax increment financing remains in effect, but excluding taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 R.S.Mo., licenses, fees or special assessments and personal property taxes, other than payments in lieu of taxes and any penalty and interest thereon, or, effective January 1, 1998, taxes levied pursuant to Section 94.660 R.S.Mo., for the purpose of public transportation, shall be allocated to, and paid by the collecting officer to the City Treasurer or other designated financial officer of the City, who shall deposit such funds in a separate segregated account within the Special Allocation Fund for the purpose of paying Redevelopment Project Costs and Obligations incurred in the payment thereof.

(a) Documentation of Economic Activity Taxes. Developer, its successors and assigns shall provide the City with documentation of sales tax receipts for each business in a Redevelopment Project Area, indicating the type and amount of the Economic Activity Taxes paid by each such business located within such Redevelopment Project Area. Developer shall include provisions as specified in **Section 23** herein in all lease documents with tenants located within a Redevelopment Project Area requiring said sales tax information to be provided to the City. A similar provision shall be included in all sales contracts with purchasers of property located in a Redevelopment Project Area requiring said sales tax information to be provided to the City. Developer shall enforce said provisions to the maximum extent permitted by law, and Developer hereby agrees that each such lease or sales contract shall provide that the City is an intended third party beneficiary of such provisions and has a separate and independent right to enforce such provisions directly against any such tenant or purchaser. Furthermore, Developer for itself, and any purchaser, lessee or other transferee or possessor of the property within a Redevelopment Project Area, shall provide to the City Council a copy of its Missouri sales tax receipts and filings indicating the type and amount of the Economic Activity Taxes paid. This obligation shall be a covenant running with the land and shall be enforceable against the Developer and against any purchaser, lessee or other transferee or possessor as if such purchaser, lessee or other transferee or possessor were originally a party to and bound by this Contract and shall only terminate upon the passage of an Ordinance terminating the Plan pursuant to the terms contained herein.

(b) Presentation to Taxing Districts. The City Council shall deliver by mail or hand delivery its certification of Economic Activity Taxes payable by each Taxing District to the governing body of each such Taxing District with a request that such District shall within thirty (30) days of receiving the certification or within thirty (30) days after receiving any such Economic Activity Tax, whichever is later, appropriate the amount of Economic Activity Taxes actually received and pay the appropriate sum to the City Treasurer.

(c) Deposit of Funds. The City Treasurer shall deposit the payments of Economic Activity Taxes received from the respective Taxing Districts in the Economic Activity Account in the Special Allocation Fund, to be utilized and expended in accordance with the Act, the Plan and this Contract.

(d) Net New Sales Calculation For Intra-City Relocations. The Developer shall not lease or sell any portion of the Redevelopment Project Area to any Relocating Tenant during the term of this Contract without prior approval from the City Council.

19. Special Allocation Fund/City Revenues Fund.

(a) The City Treasurer shall establish and maintain the Special Allocation Fund which shall contain two separate segregated accounts. Payments in Lieu of Taxes shall be deposited into the PILOT Account within the Special Allocation Fund, and Economic Activity Taxes shall be deposited into the Economic Activity Account within the Special Allocation Fund. Payments in Lieu of Taxes less the Surplus Distribution and Economic Activity Taxes so deposited and any interest earned on such deposits will be used for the payment of Reimbursable Project Costs, and for the possible distribution to the Taxing Districts, in the manner set forth in the Plan.

(b) The City Treasurer shall establish and maintain the City Revenues Fund which shall contain a segregated account. City Revenues shall be deposited in the City Revenues Fund. To the extent allowed under applicable law and subject to annual appropriation, City Revenues and any interest earned on such deposits shall be pledged and used for the payment of Reimbursable Project Costs, including Debt Service on Obligations, which are connected to Public Improvements.

20. Disbursements From Special Allocation Fund/and City Revenues Fund.

(a) All disbursements from the Special Allocation Fund will be made out of the two separate segregated accounts maintained within the Special Allocation Fund for Payments in Lieu of Taxes and Economic Activity Taxes. Except as provided in **Section 20(b)**, such disbursements shall be made in the following manner and order of preference:

FIRST,
to pay the Surplus Distribution

SECOND,

to pay any of the City's Direct Administrative Costs not previously paid by the Developer pursuant to **Section 31(a)** of this Contract; provided, however, if Obligations are issued for the payment of Reimbursable Project Costs, said Direct Administrative Costs shall be subordinate to the payment of the original amount of, the interest on, or any premiums, costs and expenses related to the Obligations.

THIRD,

to pay the Developer's Reimbursable Project Costs as they come due.

FOURTH,

to pay any other actual costs and expenses of the City incurred during the duration of the Plan which sums shall be subordinate to the payment of the original amount of, the interest on, or any premiums, costs and expenses related to the Obligations.

FIFTH,

subject to the requirements of the underwriter of the Obligations, after all Reimbursable Project Costs have been paid, then on December 31st of each year until the Plan is terminated, the funds remaining in the PILOT Account and the Economic Activity Account, if any, shall be disbursed to the Taxing Districts in accordance with the Act.

(c) Disbursements from the City Revenues Fund shall be made to repay that portion of the Obligations and/or Private Loans, including any Debt Service thereon, and those Reimbursable Project Costs financed on a pay-as-you-go basis that correspond to the Public Improvements, including design and legal costs related to such Public Improvements.

21. Payment of Project Costs. The City agrees to pay or reimburse Reimbursable Project Costs incurred by the Developer from TIF Revenues less the Surplus Distribution as set forth in this Agreement. The Reimbursable Project Costs are set forth in **Exhibit 5** attached hereto and incorporated herein by reference. The Reimbursable Project Costs which are to be paid or reimbursed to the Developer are the actual costs incurred by the Developer, including Financing Costs, plus **Section 31** Costs and Expenses paid by the Developer. The parties acknowledge and agree the principal amount of Reimbursable Project Costs to be reimbursed to Developer in **Exhibit 5** are estimates which will vary from the actual costs incurred to construct the Redevelopment Projects. Because the Reimbursable Project Costs to be paid or reimbursed to the Developer in **Exhibit 5** are estimates, the actual amount of Reimbursable Project Costs to be reimbursed to the Developer in **Exhibit 5** may vary on account of inflation, changes in commodity prices and other factors and any such variance shall not impact the right of the Developer to receive reimbursement equal to the Developer's actual costs. Notwithstanding, the Phase I Reimbursable Project Costs shall not exceed \$1,545,636. Reimbursable Project Costs shall be paid to the Developer either on an "as collected" basis or by the proceeds of Obligations, in accordance with this Contract. At the request of the Developer, the City will cause disbursements for Reimbursable Project Costs to be made directly to contractors, subcontractors, suppliers and vendors.

a. Reimbursement on an “As Collected” Basis. The City’s obligation to pay or reimburse the Developer for Reimbursable Project Costs, including Financing Costs, shall be conditioned upon the following:

(i) the project costs submitted for reimbursement by the Developer shall qualify as a Reimbursable Project Cost as defined herein and as allowed under the Act. Any project cost submitted for reimbursement shall contain all such detail and back up material as the City deems necessary to determine that the cost was in fact incurred and paid; and

(ii) the Developer shall submit to the City a Certificate endorsed by the Developer certifying that the costs submitted for reimbursement are Reimbursable Project Costs, that the work performed for which reimbursement is sought was performed in conformance with this Contract, and the costs for which reimbursement are sought have not previously been paid or reimbursed and no part thereof has been included in any previous Certificate submitted to the City.

b. Reimbursement with Bond Proceeds. The parties anticipate that Obligations will be issued to provide a source of payment and/or reimbursement for Reimbursable Project Costs. The parties hereby agree that the City shall either issue the Obligations or approve in writing another issuer of the Obligations. All obligations of the Developer under this Contract are contingent upon the issuance of Obligations in an amount and upon such terms as are acceptable to the Developer in the Developer’s sole discretion; provided, however, that if Obligations are not issued but the Developer, in its sole discretion, elects to proceed with developing the Project, or part thereof, then the provisions of this Contract shall control with respect to the Project or the part thereof being developed. If the City issues Obligations to pay for Reimbursable Project Costs, the Developer shall be entitled to payment and/or reimbursement of Reimbursable Project Costs incurred by the Developer.

The City’s obligation to reimburse the Developer for Reimbursable Project Costs incurred shall be conditioned upon the following:

(i) the project costs submitted for reimbursement by the Developer shall qualify as a Reimbursable Project Cost as defined herein. Any project cost submitted for reimbursement shall contain all such detail and back up material as City deems necessary to determine that the cost was in fact incurred and paid; and

(ii) the Developer shall submit to the City a Certificate endorsed by the Developer certifying that the costs submitted for reimbursement are Reimbursable Project Costs, that the work performed for which reimbursement is sought was performed in conformance with this Contract, and the costs for which reimbursement are sought have not previously been paid or reimbursed and no part thereof has been included in any previous Certificate submitted to the City.

Subject to the conditions in **Section 20** and above in this **Section 21**, the City shall seek disbursements from the Special Allocation Fund immediately but not later than thirty (30) days

after the presentation to the City from the Developer of a certificate certifying that the costs submitted for reimbursement or direct payment are Reimbursable Project Costs and that the portion of the Redevelopment Project for which reimbursement is sought has been properly constructed pursuant to the Plan and this Contract. Subject to the conditions above in this **Section 21**, upon the City's receipt of disbursements from the Special Allocation Fund, the City shall immediately and no later than sixty (60) days after receipt of disbursements therefrom, make disbursements to the Developer for Reimbursable Project Costs which have been incurred by the Developer. Should the City not immediately distribute to the Developer funds it has received from the Special Allocation Fund then the City shall invest said funds in full faith and credit obligations of the United States Government, of the State of Missouri, bills notes and bonds of the United States, bonds of the State of Missouri, any bond or other direct obligations guaranteed as to payment of principal and interest by the government of the United States. All interest accruing from the investment of these funds shall be used to further reimburse the Developer for Reimbursable Project Costs which it has incurred. The documents providing for the issuance of Obligations shall provide that any disbursement of funds for the payment or reimbursement of Reimbursable Project Costs receive written approval in accordance with this **Section 21**. In connection with the issuance of Obligations by anyone other than the City, it is anticipated that the City will enter into an agreement with the issuer of the Obligations pledging money in the Special Allocations Fund to such issuer for the payment of Debt Service on the Obligations upon such terms and conditions as are acceptable to the City, the Developer and the issuer and consistent with the terms of this Contract.

22. Sale or Disposition of Project Property.

(a) Purchaser Acknowledgement. If and when Developer seeks to sell any property within a Redevelopment Project Area, on or before the closing of said transfer, the Developer shall require the transferee to deliver to the City, in a form capable of being recorded, a written acknowledgement that the transferee acknowledges, accepts and agrees to comply with the requirements of the Plan and the obligations in this Contract relating to the property being sold, transferred or conveyed. Said acknowledgement shall also contain the name, address, email address, phone and fax numbers of the transferees' designated contact person. Upon recordation by the City of said acknowledgement, the Developer shall be released from its obligations in this Contract relating to said transferred property.

(b) Continuation of Payments in Lieu of Taxes. Subject to the provisions of subsection (a) above, the Developer, or any third party, may sell, transfer, convey or otherwise dispose of real property within the Redevelopment Area. In the event of the sale or other voluntary or involuntary disposition of any or all of the real property of the Developer or any third party in the Redevelopment Area, Payments in Lieu of Taxes with respect to the real property so sold or otherwise disposed of shall continue and shall constitute a lien against the property from which they are derived, and such obligations shall inure to and be binding upon the Developer and its successors and assigns in ownership of said property as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable as if such purchaser, transferee or other possessor thereof were originally a party to and bound by this Contract.

(c) Obligation to Ameliorate Existing Conditions. The Developer’s undertakings pursuant to **Section 8** hereof, unless earlier satisfied and certified pursuant to **Section 16** hereof, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable against purchasers or other transferees as if such purchaser or transferee were originally a party to and bound by this Contract.

(d) Incorporation. The restrictions set forth above in subsections (a) and (b) of this **Section 22** as well as those set forth in **Section 23** and **Section 18(a)**, shall be incorporated into any deed or other instrument conveying an interest in real property, other than a lease agreement, within the Redevelopment Area and shall provide that said obligations or restrictions shall constitute a benefit held by both the Developer and the City. Failure of the Developer to require that such restrictions be placed in any such deed or other instrument shall in no way modify, lessen or diminish the obligations and restrictions set forth herein relating to the Redevelopment Area.

23. Lease of Project Property.

(a) The Developer, or any third party, may lease real property within the Redevelopment Area. The Developer, or any third party, shall utilize best efforts to insert in any such lease the following language and shall have such lease signed by the lessee indicating acknowledgment and agreement to the following provision:

Economic Activity Taxes: Tenant acknowledges that the Leased Premises are a part of a Tax Increment Financing district (“TIF District”) created by Kirksville, Missouri (the “City”) and that certain taxes generated by Tenant’s economic activities, including sales taxes, will be applied toward the costs of infrastructure improvements for the development. Tenant shall forward to the City copies of tenant’s State of Missouri sales tax returns for its property located in the TIF District when and as they are filed with the Missouri Department of Revenue, and, upon request, shall provide such other reports and returns regarding other local taxes generated by tenant’s economic activities in the TIF District and/or the City shall require, all in the format prescribed by them.

24. Full Assessment.

(a) Redevelopment Area. After all Reimbursable Project Costs have been paid, but not later than twenty-three (23) years from the adoption of an Ordinance approving and designating the Redevelopment Project Area, all property in the Redevelopment Project Area shall be subject to assessments and payment of all ad valorem taxes, including, but not limited to, City, State, and County taxes, based on the full true value of the real property and the standard assessment ratio then in use for similar property by the County Assessor, and the Redevelopment Project Area shall be owned and operated by the Developer free from the conditions, restrictions, and provisions of the Act, of any rules or regulations adopted pursuant thereto, of the Ordinance, of the Plan, and of this Contract.

(b) Completion of the Plan. Upon the payment of all Reimbursable Project Costs and the distribution of any excess moneys pursuant to Sections 99.845 and 99.850 of the Act, the City shall adopt an ordinance dissolving the Special Allocation Fund and terminating the designation of the Redevelopment Area as a redevelopment area under the Act. Thereafter the rates of the Taxing Districts shall be extended and taxes levied, collected, and distributed in the manner applicable in the absence of the adoption of tax increment financing, and the Redevelopment Area shall be owned and operated by the Developer free from the conditions, restrictions, and provisions of the Act, of any rules or regulations adopted pursuant thereto, of the Ordinance, of the Plan, and of this Contract.

25. Assignment of Developer's Obligations.

(a) The Developer represents that its undertakings pursuant to this Contract are for the purpose of redevelopment.

(b) Without limiting the rights of the Developer or any third party under **Section 22** hereof, the Developer agrees that this Contract and the rights, duties and obligations hereunder may not and shall not be assigned by the Developer except upon terms and conditions agreeable to the City, said approval not to be unreasonably withheld. Any proposed assignee of this Contract shall have all of the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations of the Developer, and, if the proposed transfer relates to a portion of the Redevelopment Area on which a portion of the Redevelopment Project is underway, such obligations to the extent that they relate to such property.

(c) Notwithstanding anything contained herein to the contrary, an assignment of this Contract or a portion thereof to any tenant pursuant to **Section 12** hereof is hereby approved. In addition, the Developer is hereby authorized, without approval by the City, to assign this Contract to any successor entity of the Developer.

(d) Any authorized transferee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Contract and agree to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of the Redevelopment Area, such obligations, conditions and restrictions to the extent that they relate to such portion). In the event this Contract is assigned in whole or part and assumed as described herein, the Developer, upon providing notice of such assignment to City, shall hereby be released from any further obligations set forth herein accruing after the date of such assignment.

26. Permitted Uses. The Developer shall take such action as is from time to time necessary to permit only such uses within the Redevelopment Area which conform to and are permitted by the Land Use Approvals, by the Plan or by this Contract.

27. Indemnification.

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

(b) In the event any suit, action, investigation, claim or proceeding (collectively, an “Action”) is begun or made as a result of which the Developer may become obligated to one or more of the Indemnified Parties hereunder, the Indemnified Party shall give prompt notice to the Developer of the occurrence of such event, but the failure to notify the Developer will not relieve the Developer of any liability that it may have to an Indemnified Party unless such delay shall adversely affect the ability of the Developer to defend, contest or otherwise protest the Action against the Indemnified Party. After receipt of such notice, the Developer may elect to defend, contest or otherwise protect the Indemnified Party against any such Action, at the cost and expense of the Developer, utilizing counsel of the Developer’s choice. The Indemnified Party shall have the right, but not the obligation, to participate, at the Indemnified Party’s own cost and expense, in the defense thereof by counsel of the Indemnified Party’s choice. In the event that the Developer shall fail timely to defend, contest or otherwise protect an Indemnified Party against such Action, the Indemnified Party shall have the right to do so, and (if such defense is undertaken by the Indemnified Party after notice to the Developer asserting the Developer’s failure to timely defend, contest or otherwise protect against such Action), the Indemnified Party may submit any bills for fees and costs received from its counsel to the Developer for payment and, within five (5) business days after such submission, the Developer shall transfer to the Indemnified Party sufficient funds to pay such bills. The Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

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

(d) The Developer expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Contract imposed upon the Developer in order to induce the City to enter into this Contract. To the fullest extent permitted by law, an Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Contract. If such court action is successful, the

Indemnified Party shall be reimbursed by the Developer for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

(e) The right to indemnification set forth in this Contract shall survive the termination of this Contract.

28. Breach-Compliance.

(a) If the Developer or the City fails to comply with the provisions of this Contract within the time limits and in the manner as set forth in this Contract, except on account of Excusable Delays, and if, within thirty (30) days after notice of such default by the nondefaulting party to the defaulting party, the defaulting party shall not have either cured such default or, if such cure would reasonably take longer than said thirty (30) day period, commenced such cure and be diligently pursuing the same, then such party shall be in default of this Contract.

(b) Upon a default by the Developer under this Contract and the Developer's failure to cure such default within the cure period provided, the City may exercise either or both of the following remedies: (i) refuse to approve any further disbursements to or on behalf of the Developer from the Special Allocation Fund or City Revenues Fund; or (ii) terminate this Agreement. Notwithstanding the above remedies, under no circumstances shall the City refuse to reimburse the Developer for or pay Reimbursable Project Costs incurred by the Developer on or before the date that the City is authorized to exercise such remedies.

(c) Upon a default by the City that is not cured within any cure period provided, the Developer shall be entitled to exercise all rights and remedies available to it at law or in equity, including specific performance.

(d) Any delay by either party in asserting its rights under this paragraph shall not operate as a waiver of such rights or limit them in any way. No waiver in fact made by either party of any specific default by the other party shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

29. Excusable Delays. The parties understand and agree that the Developer shall not be deemed to be in default of this Contract because of delays or temporary inability to commence, complete or proceed in accordance with the Development Schedule, due in whole or in part to causes beyond the reasonable control or without the material fault of the Developer which are caused by the action or failure to act of any governmental body, acts of war or civil insurrection, breach of this Contract by the City or any natural occurrence, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, litigation, tornadoes, or unusually severe weather, delays in the issuance of any governmental permits or approvals which is not the fault of Developer, adverse market conditions, and the Developer's inability to secure acceptable financing, tenants or purchasers for the Redevelopment Projects despite Developer's commercially reasonable efforts (collectively

“Excusable Delays”). With the approval of the City, which approval shall not be unreasonably withheld, delayed or conditioned, the time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any of the foregoing causes. The Developer shall be granted such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays.

30. Relocation Costs. The City shall not be responsible for any relocation activity or the costs thereof that may be required by law to be paid. The Developer shall provide the relocation services and benefits as provided for under the Plan and to hold the City harmless from any claim, cost or expense for said services and benefits made by individuals and entities arising from implementation of the Plan, except that such costs may be deemed by the City to be Redevelopment Project Costs. Notwithstanding, the City may assist in administering relocation activity if requested by the Developer.

31. Administrative Costs and Expenses.

(a) The City may withhold an administrative service fee to cover the administrative services provided by the City during the term of this Contract. The administrative service fee shall be an amount equal to the greater of: (i) \$5,000 or (ii) 1% of the Payments in Lieu of Taxes and Economic Activity Taxes collected each year during the term of this Contract. The administrative service fee shall be paid annually from the Special Allocation Fund and City Revenue Fund.

(b) In addition to the attorneys fees incurred prior to August 1, 2009 in connection with the Redevelopment Plan, the City shall also be reimbursed for all reasonable and documented out-of-pocket expenses directly incurred in connection with the administration of this Contract, including attorneys’ fees, financial advisor fees, postage, copying costs, recording costs and similar expenses; provided, however, that attorneys’ fees incurred on or after August 1, 2009 may not exceed \$2500 in any year during the term of this Contract without the prior written approval of the Developer, except this limitation does not apply to attorneys fees of the City payable from the proceeds of Obligations.

(c) Upon the request of the Developer, and at the sole cost of the Developer, the City shall furnish appropriate documentation of the administrative costs and expenses as referred to in this **Section 31** which are in its possession, and shall allow the Developer or its representatives an opportunity to audit the accounts and records of the City with regard to such administrative costs and expenses, such audit to be at the sole cost and expense of the Developer and conducted at such time as is mutually agreeable to the parties, but in no event more frequently than monthly.

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

To the City:
Mari Macomber

City of Kirksville, Missouri
201 South Franklin Street
Kirksville, Missouri 63501

With a copy to:

Howard Hickman
Farr Hickman & Slavin
101 West Illinois Street
Kirksville, Missouri 63501

To the Developer:

Kirksville Mall, LLC
c/o Art King
One City Please, Suite 280
St. Louis, Missouri 63141

With a copy to:

James Grice, Esq.
Spencer Fane Britt & Browne LLP
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106-2140

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

33. Modification. The terms, conditions, and provisions of this Contract can be neither modified nor eliminated except in writing and by mutual agreement between the City and the Developer. Any modification to this Contract as approved shall be attached hereto and incorporated herein by reference. The Plan may be changed, modified and/or amended in accordance with the Act at the request of the Developer.

34. Effective Date. This Contract shall become effective on the date set forth herein, and shall remain in full force and effect until the completion of the Redevelopment Projects, as described herein, and so long as any Reimbursable Project Costs remain outstanding and unpaid whichever is last to occur.

35. Applicability. This Contract shall apply only to the Redevelopment Project referred to herein.

36. Recording. Upon full execution by the City and the Developer, this Contract or a Memorandum of Contract shall be recorded by the City in the Adair County Office of the Recorder of Deeds.

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

38. Covenant Running With the Land. The provisions of this Contract shall be covenants running with the land and shall remain in effect for the duration of the Plan and any renewal period or periods of the Plan at the end of which time they shall cease. They shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and be enforceable by, the City, its successors and assigns, against the Developer, its successors and assigns, and every successor in interest to the subject real property, or any part of it or any interest in it and any party in possession or occupancy of the real property or any part thereof.

39. Validity and Severability. It is the intention of the parties hereto that the provisions of this Contract shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Contract. Accordingly, if any provision of this Contract shall be deemed invalid or unenforceable in whole or in part, this Contract shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Contract in order to render the same valid and enforceable. All exhibits attached hereto are hereby incorporated into this Contract by reference.

It is understood by the parties that Developer and the City can only be obligated to perform in the manner which the Act permits and that if the Act is judicially interpreted in such a way as to limit the ability of the Developer and City to perform such obligations enumerated herein, the Developer or City, as the case may be, would have no recourse against the Developer or the City.

40. Time and Performance are of the Essence. Time and exact performance are of the essence of this Contract.

[Signature Pages Follow]

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

THE CITY OF KIRKSVILLE, MISSOURI

ATTEST:

City Clerk

By: _____
Mayor _____

KIRKSVILLE MALL, LLC

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
) ss.
COUNTY OF ADAIR)

On this ____ day of _____, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, Mayor of the City of Kirksville, Missouri, a municipality and existing under and by virtue of the laws of the State of Missouri, and _____, City Clerk of the City of Kirksville, Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said municipality, and such person duly acknowledged the execution of the same to be the act and deed of said municipality.

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

NOTARY PUBLIC

My Commission Expires:

[SEAL]

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of Kirksville Mall, LLC, a Missouri limited liability company, who is personally known to me to be the same person who executed the within instrument on behalf of said company, and such person duly acknowledged the execution of the same to be the act and deed of said company.

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

NOTARY PUBLIC

My Commission Expires:

[SEAL]

EXHIBIT 1

LEGAL DESCRIPTION OF REDEVELOPMENT AREA

Commencing at the S.E. corner of the S.E. Quarter of the N.E. Quarter, Section 16, T62N, R15W, Adair County, Missouri and being more particularly described as follows:

Thence South 88 degrees 36 minutes West 660 feet to POINT OF BEGINNING:

Thence North 00 degrees, 32 minutes East 659.82 feet to a point;

Thence South 88 degrees 20 minutes East 330 feet to a point;

Thence North 00 degrees 32 minutes East 630 feet to the South right-of-way line of La Harpe Street.

Thence Easterly along said South right-of-way line of La Harpe Street, South 88 degrees 20 minutes East 30 feet to a point;

Thence leaving said South right-of-line of La Harpe Street, South 00 degrees 32 minutes West, 182 feet to a point:

Thence South 88 degrees 20 minutes East, 269 feet to a point on the West right-of-way line of U.S Highway 63.

Thence Southerly along the said west right-of-way line of U.S. Highway 63 the following courses and distances:

South 00 degrees 32 minutes West, 776 feet to a point

North 89 degrees 28 minutes West , 6 feet to a point

South 00 degrees 32 minutes West, 328.97 feet to a point

Thence leaving said West right-of-way line of U.S. Highway 63, North 88 degrees 35 minutes West 624.98 feet to point of beginning.

EXHIBIT 2
ORDINANCE

See Attached

EXHIBIT 3

REDEVELOPMENT PROJECT

The Redevelopment Project will include private development and construction of related and necessary public infrastructure. The Redevelopment Project will be developed in two phases. The Phase I Redevelopment Project calls for construction and renovation of various commercial uses, including without limitation, office, general commercial, institutional and retail with estimated building area for all such uses of approximately 137,918 square feet of gross leaseable retail area, along with adequate parking, and sidewalks. The Phase II Redevelopment Project and the Special District Project calls for the construction of related necessary public improvements, such as sidewalks, roads, traffic control improvements, and utility infrastructure. The Developer will construct the Phase I Redevelopment Project and the City and/or the Developer will cause the construction of the Phase II Redevelopment Project and Special District Project subject to MoDOT approval.

The total cost of the Redevelopment Project is estimated to be approximately \$7,099,372 not including the Financing Costs. Included in the total cost are Phase I Reimbursable Project Costs funding center infrastructure upgrades, building rehab and associated soft costs estimated to be \$1,545,636, Phase II Reimbursable Project Costs funding the costs of upgrading U.S. Highway 63 adjacent to the Redevelopment Area estimated at \$819,469, Special District Costs funding additional upgrades to U.S. Highway 63 adjacent to the Redevelopment Area estimated at \$918,862 and non-reimbursable costs making up the balance, funding new building construction, additional center infrastructure upgrades, building rehab and associated soft costs all as detailed in Exhibit 5.

EXHIBIT 4
SITE PLAN

See attached

EXHIBIT 5

**ESTIMATED REDEVELOPMENT PROJECT COSTS AND
REIMBURSABLE PROJECT COSTS**

EXHIBIT 6

DEVELOPMENT SCHEDULE

April 30	TIF Commission Hearing
July 20	City Council Hearing on TIF Plan and CID
September 1	Begin Permitting of all Projects
October 1	Begin Construction of Phase I Redevelopment Project
Spring 2010	Begin Construction of Special District Project and Phase II¹

¹ All dates are subject to change based on factors necessary for the successful development of the Project exist outside of the control of the Developers, including without limitation, adverse changes in the market for leasing to retail tenants, the financial, banking or capital markets or the retail leasing and development industry, or delay in obtaining permits from the relevant permitting authority.