

**EXHIBIT A**

**FUNDING AGREEMENT**

*[attached]*

## **FUNDING AGREEMENT**

This Funding Agreement (the “Agreement”) is entered into as of \_\_\_\_\_, 2009 (the “Effective Date”) between the City of Kirksville, Missouri (the “City”) and Kirksville Shopping Center, LLC, a Missouri limited liability company (the “Developer”) (individually, a “Party”; collectively, the “Parties”).

### **RECITALS**

A. The City is a public governmental body, duly organized and existing by the authority of Sections \_\_\_\_\_, Revised Statutes of Missouri (“RSMo”), as amended.

B. The Developer has requested that the City consider the approval of the \_\_\_\_\_ Tax Increment Financing Plan in accordance with Sections 99.800 to 99.865, Revised Statutes of Missouri (“RSMo”), as amended (the “Act”), said plan providing for a vested right of reimbursement to Developer for Redevelopment Project Costs (“Plan”) and creation of a special taxing district to include either a Community Improvement District pursuant to RSMo 67.1401, *et seq.*, or a Transportation Development District pursuant to RSMo 238.200, *et seq.*, (Special District”) all in a form to be submitted to the City staff at a future date along with such changes as approved by Developer in its sole discretion, and the redevelopment project area and the redevelopment project (the “Project”) associated with the Plan, in accordance with the Act, and, if approved, implement and administer the Plan, Project and Special District through completion.

C. In order to implement and administer the Plan, Special District and Project, the City must retain administrative and professional staff, outside counsel and consultants, and incur expenses.

### **AGREEMENT**

In consideration of the promises and the mutual covenants and agreements expressed in this Agreement, the Parties agree as follows:

1. City Services. The City shall use its professional staff, retain administrative and professional staff, counsel and consultants, and incur expenses that the City, in its sole discretion, deems necessary to perform services relating to the Plan, Project and Special District (“City Services”), including, but not limited to, the following:

a. Review the Plan drafted by or at the direction of the Developer in accordance with the provisions of the Act;

b. Give all notices, make all publications and hold hearings as required by the Act;

c. Review the blight study for the Plan drafted by or at the direction of the Developer in accordance with the Act;

- d. Review the cost-benefit analysis for the Plan drafted by or at the direction of the Developer in accordance with the Act;
- e. Review the tax-impact analysis for the Plan drafted by or at the direction of the Developer in accordance with the Act;
- f. If the City Council approves the Plan, work with the Developer in preparing and negotiating a redevelopment agreement between the Parties (the “Redevelopment Agreement”) for implementation;
- g. If requested by Developer, obtain and/or assist the Developer in obtaining any necessary financing for the development of the Project;
- h. Review the Special District drafted by or at the direction of the Developer.

2. Developer Services. The Developer shall assist and cooperate with the City in providing the City Services. The Developer shall provide to the City a copy of surveys, planning documents, economic projections, engineering work, environmental studies and other information obtained or to be obtained by the Developer containing information that the City shall reasonably need or would otherwise be required for the consideration of the Plan for approval by the City pursuant to the Act and the Special District for approval by the City (the “Development Information”).

3. Developer Payments.

a. Subject to the Expense Cap, as hereinafter defined, the Developer shall reimburse the City for the fees, out-of-pocket costs, all charges for counsel and consultants and all other expenses incurred by the City in providing the City Services (the “Charges”), Charges incurred prior to the Effective Date (“Prior Charges”) shall be reimbursed solely in accordance with Section 3.b and 3.d of this Agreement and Charges incurred after the Effective Date (“Subsequent Charges”) in accordance with Section 3.e of this Agreement. The City shall not be required to obtain the Developer’s approval for payment of any of the Charges incurred within the Expense Cap.

b. The City acknowledges receipt of Fifteen Thousand Dollars (\$15,000) (the "Deposit") from the Developer, representing the City's TIF Application Fee to be applied to reduce the Prior Charges incurred by the City and authorized for reimbursement hereunder.

c. The City shall submit an itemized statement for actual attorneys' and outside consultants' time and out-of-pocket expenses necessary to perform its obligations hereunder or for any additional obligations or expenditures incurred by the City after the Effective Date. Such statements shall be submitted no more

often than monthly. The Developer shall pay the City the amounts set forth on such statements (the "Additional Funds") within thirty (30) days of receipt thereof. Both parties agree to a pre-authorized expense budget of \$10,000 for Subsequent Charges (the "Expense Cap"). If City determines that the Subsequent Charges shall exceed the Expense Cap, the City shall provide the Developer with at least sixty (60) days advance written notice, prior to incurring any Subsequent Charges in excess of the Expense Cap, and justification for additional expense items and deposits that may be required to obtain the Developer's approval for said additional Subsequent Charges. If Developer determines that it is unwilling to fund amounts in excess of the Expense Cap, it shall so notify City, and City and Developer shall meet and negotiate in good faith to determine if the City's consideration of the Plan can continue without incurring Subsequent Charges in excess of the Expense Cap. If the City determines that it is not reasonably able to complete review and consideration of the Plan without incurring Subsequent Charges in excess of the Expense Cap, it shall notify Developer, and Developer shall either (a) agree to pay such Subsequent Charges in excess of the Expense Cap, or (b) notify City of its election not to pay Subsequent Charges in excess of the Expense Cap, in which case Developer shall have no obligation to pay Subsequent Charges in excess of the Expense Cap, and City shall have no further obligation to complete the review and consideration of the Plan; at City's option, City may treat such election by Developer not to pay Subsequent Charges in excess of the Expense Cap as Developer's election to withdraw its application for consideration of the Plan.

d. Upon approval of the Plan and Special District, the City shall be entitled to reimbursement for any Prior Charges from the revenues generated from the Special District sales tax, or the proceeds of the bonds attributable to the special district sales tax (the "Special District Bonds"). All Prior Charges paid prior to the Effective Date shall be paid from those sources of funding identified in this Section 3.d no later than six months from the date the Special District Bonds are issued.

e. Upon approval of the Plan and Special District, the City shall be entitled to reimbursement for any Subsequent Charges not previously reimbursed by Developer. City shall be entitled to submit outstanding statements for payment from revenues generated from any of the following: (i) the Special District sales tax, (ii) the proceeds of the Special District Bonds, (iii) tax increment financing revenues from the redevelopment area that are collected in the special allocation fund established pursuant to the Plan and the Act, or (iv) the proceeds of any bonds issued pursuant to the Plan (the "TIF Bonds"). All Subsequent Charges incurred after the Effective Date and not previously reimbursed by Developer shall be paid from those sources of funding identified in this Section 3.e no later than six months from the date the TIF Bonds are issued.

f. If the Plan and Special District are not approved by the City Council, the Developer shall have no obligation whatsoever to reimburse the City for any Prior

Charges not already reimbursed or Subsequent Charges in excess of the Expense Cap.

4. Legal Representation. The Developer understands and acknowledges that this arrangement is an accommodation to the Developer in which the City's special legal counsel is not providing legal representation to the Developer and that no attorney-client relationship between the Developer and the City's special legal counsel shall exist by any reason including, but not limited to, the Developer's payment of the City's legal expenses.

5. Subsequent Redevelopers. In the event the City selects another redeveloper pursuant to a request for proposals to carry out the Project, the City shall require the subsequent redeveloper to assume all obligations of the Developer under this Agreement as of the date it is designated as the redeveloper and to reimburse the Developer for its expenditures under this Agreement, which must first be submitted to and approved by the City.

6. Reimbursement of Developer Costs. If the Plan and/or Special District are approved and the Developer is selected to implement the Plan and Project, the Developer shall be entitled to reimbursement from the revenues generated from any of the following: (i) the Special District sales tax, (ii) the proceeds of the Special District Bonds, (iii) the tax increment financing revenues from the redevelopment area that are collected in the special allocation fund established pursuant to the Plan and the Act, or (iv) TIF Bonds for the actual costs considered to be reimbursable projects costs under the Plan, including without limitation any costs of obtaining the Development Information and any costs associated with formation of the Plan and/or Special District. The Developer shall provide invoices for the costs of the Development Information and shall be reimbursed in accordance with the Plan and/or Redevelopment Agreement.

8. Termination.

a. The City may terminate this Agreement in the event the Developer fails to perform any of its obligations under this Agreement, including, but not limited to, the failure to make payments in accordance with Section 3 of this Agreement.

b. The Developer may terminate this Agreement upon thirty days notice in the event one of the following occurs: (1) the Parties are unable to reach agreement on the terms and provisions of the Redevelopment Agreement; (2) the Developer is unable to acquire any property necessary for the Project at a reasonable price or financing for such property after exercising reasonable efforts; (3) the Developer is unable to obtain financing for the Project after exercising reasonable efforts. Notwithstanding the foregoing, the Developer shall remain responsible for any payments due pursuant to Section 3 of this Agreement.

c. This Agreement shall terminate in the event the Redevelopment Agreement is terminated.

7. Notice. Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if it is in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:  
Mari Macomber  
City Manager  
City of Kirksville  
201 South Franklin Street  
Kirksville, Missouri 63501

To the Developer:  
Art King  
Kirksville Shopping Center, LLC  
One City Place  
Suite 280  
St. Louis, Missouri 63141

With a copy to:  
James W. Grice, Esq.  
Spencer Fane Britt & Browne LLP  
1000 Walnut Street  
Suite 1400  
Kansas City, Missouri 64106

Each Party may specify that notice be addressed to any other person or address by giving to the other Party ten (10) days written notice of such change.

8. Miscellaneous.

a. Governing Law, Counterparts. This Agreement shall be governed by Missouri law and may be executed in counterparts.

b. Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforced as if such provision were not contained in this Agreement.

c. No Waiver. Failure of any Party to this Agreement to enforce its rights pursuant to this Agreement shall not be deemed a waiver of any such rights.

d. Successors and Assigns. This Agreement may not be assigned by any Party without the prior written consent of all Parties. No assignment, unless specifically provided for in such consent, shall relieve the assigning Party of any liability pursuant to this Agreement. This Agreement shall be binding upon the Parties and their successors and permitted assigns.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF KIRKSVILLE, MISSOURI

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

Attest:

Approved as to form:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
City Legal Counsel

KIRKSVILLE SHOPPING  
CENTER, L.L.C.

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