

AGREEMENT
BY AND BETWEEN
THE TAX INCREMENT FINANCING COMMISSION
OF KANSAS CITY, MISSOURI
AND
OZ DEVELOPMENT, LLC
FOR THE IMPLEMENTATION
OF CERTAIN IMPROVEMENTS CONTEMPLATED BY
THE OVERLOOK TAX INCREMENT FINANCING PLAN

November __, 2020

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Exhibits

<u>Exhibit A-1:</u>	A copy of Commission Resolution No. 10-__-20
<u>Exhibit A-2:</u>	A copy of Commission Resolution No. 10-__-20
<u>Exhibit B:</u>	A copy of Ordinance No. _____
<u>Exhibit C:</u>	A copy of the Plan
<u>Exhibit D:</u>	Project Improvements Description
<u>Exhibit E:</u>	Redevelopment Project Costs
<u>Exhibit E-1:</u>	Sources of Financing
<u>Exhibit E-2:</u>	Commitments to Finance
<u>Exhibit F:</u>	Interest Policy
<u>Exhibit G:</u>	Certification of Costs and Reimbursement Policy
<u>Exhibit H:</u>	Redevelopment Schedule
<u>Exhibit I:</u>	Annual Assessment Form
<u>Exhibit J:</u>	Certificate of Completion and Compliance Policy
<u>Exhibit K:</u>	Funding Schedule
<u>Exhibit L:</u>	Economic Activity Taxes Collection and Documentation Policy
<u>Exhibit M:</u>	Form Letter of Transferees
<u>Exhibit N:</u>	Workforce Policy
<u>Exhibit O:</u>	Procedures for Payment of Prevailing Wages
<u>Exhibit P:</u>	Environmental Policy
<u>Exhibit Q:</u>	Environmental Disclosures
<u>Exhibit R:</u>	Policy on Disputed Charges
<u>Exhibit S:</u>	Public Participation Worksheet
<u>Exhibit T:</u>	Bond Disbursement Policy

AGREEMENT

THIS AGREEMENT (this “**Agreement**”), dated November __, 2020, by and between the TAX INCREMENT FINANCING COMMISSION OF KANSAS CITY, MISSOURI (the “**Commission**”), and OZ DEVELOPMENT, LLC a Missouri limited liability company (the “**Redeveloper**”), with respect to the following facts and objectives:

A. The Commission was created pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, 1982, as amended (the “**Act**”), and by Ordinance No. 54556 of the City Council of Kansas City, Missouri (the “**City Council**”), adopted on November 24, 1982, as amended by Committee Substitute for Ordinance No. 911076, adopted on August 29, 1991, Ordinance No. 100089, adopted on January 28, 2010, Ordinance No. 130986, adopted on December 19, 2013, and Committee Substitute for Ordinance No. 140823, as amended on June 18, 2015 (collectively, the “**Authorizing Ordinances**”).

B. On October __, 2020, by Resolution No. 10-__-20, attached hereto as **Exhibit A-1**, the Commission, after due notice in accordance with Sections 99.825 and 99.830 of the Act, considered and recommended that the City Council approve (1) the Overlook Tax Increment Financing Plan (the “**Plan**”) (2) the designation of the Redevelopment Area, as described by the Plan and (3) the Redevelopment Project, as described by the Plan, pursuant to the authority granted the Council by the Act (the “**Redevelopment Project**”).

C. On November __, 2020, the City Council, by Ordinance No. ____, attached hereto as **Exhibit B**, approved the Plan and the designation of the Redevelopment Area described by the Plan, pursuant to the authority granted the Council by the Act.

D. Pursuant to the Act, the Enabling Ordinances and Resolution No. 10-__-20, attached hereto as **Exhibit A-2**, the Commission is authorized to enter into this Agreement and to pay Reimbursable Project Costs incurred and certified in connection with the implementation of the Plan.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the Commission and the Redeveloper agree as follows:

1. Items Incorporated, Definitions, and Rules of Interpretation. The representations, covenants and recitations set forth in the foregoing recitals and the following exhibits attached to this Agreement are material to this Agreement and are incorporated into this Agreement.

Exhibit A-1: A copy of Commission Resolution No. 10-__-20

Exhibit A-2: A copy of Commission Resolution No. 10-__-20

Exhibit B: A copy of Ordinance No. ____

Exhibit C: A copy of the Plan

Exhibit D: Project Improvements Description

<u>Exhibit E:</u>	Redevelopment Project Costs
<u>Exhibit E-1:</u>	Sources of Financing
<u>Exhibit E-2:</u>	Commitments to Finance
<u>Exhibit F:</u>	Interest Policy
<u>Exhibit G:</u>	Certification of Costs and Reimbursement Policy
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<u>Exhibit R:</u>	Policy on Disputed Charges
<u>Exhibit S:</u>	Public Participation Worksheet
<u>Exhibit T:</u>	Bond Disbursement Policy

a. Unless otherwise defined in this Agreement, all capitalized words or terms used in this Agreement shall have the following meanings:

(i) Act: The Real Property Tax Increment Allocation Redevelopment Act, Section 99.800, *et seq.*, Revised Statutes of Missouri.

(ii) Additional City EATs: The remaining fifty percent (50%) of the total additional revenue from taxes which are imposed by the City and which are generated by earnings taxes, utility taxes and the capital improvements portion of sales taxes within the Redevelopment Project Area over the amount of such taxes generated by economic activities within the Redevelopment Project Area in the calendar year prior to the adoption of the Ordinance designating the Redevelopment Project Area, while tax increment financing remains in effect,

which are not captured pursuant to the Act, but which may accrue to the City for deposit in its General Fund and may be appropriated by the City to reimburse Reimbursable Project Costs solely incurred in connection with Blight Remediation.

(iii) Additional Tax Revenue. Additional City EATs, the CCED Tax and the PIAC Grant.

(iv) Administrative Costs: All costs and expenses incurred by the Commission for planning, legal, financial, administrative and other costs associated with the review, consideration, approval, implementation and termination of the Redevelopment Plan, this Agreement and the Project, including all consultants engaged by the Commission. Administrative Costs shall include costs and expenses incurred by the Commission for engaging an outside consultant to track, document and certify requests for reimbursement.

(v) Affiliate: Any natural person, partnership, limited liability company, corporation, association, trust or other entity that directly or indirectly controls, is controlled by, or is under common control with the Redeveloper. As used in the definition of Affiliate, “**control**” means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the Redeveloper or its Affiliates, whether through ownership of voting securities, by contract or otherwise.

(vi) Best Efforts: Actual, reasonable, good faith attempts to accomplish or achieve the required obligation which shall be documented by the party taking such action, and proof of such documentation may be requested in writing by the other party to verify that such actual, reasonable, good faith attempts occurred. The failure to provide such documentation upon written request within a reasonable period of time after receipt of such written request, not to exceed ten (10) Business Days, shall be deemed noncompliance with such obligation and a breach of this Agreement.

(vii) Building Permit: A permit for the construction of a structure as set forth in the City Code of Ordinances, but shall not include a permit required for demolition under the City Code of Ordinances.

(viii) Business Day: Any day other than a Saturday, Sunday or legal holiday, as designated by the City.

(ix) Central City Economic Development Sales Tax or CCED Tax. A 1/8 percent economic development sales tax devoted to projects located within the area bounded by 9th Street on the north, Gregory Boulevard on the south, Martin Luther King, Jr. Boulevard (formerly The Paseo) on the west, and Indiana Avenue on the east, which, subject to appropriation, may be deposited, from time to time by the City in the Central City Economic Development Sales Tax Fund to [fund] Redevelopment Project Costs in an amount not in excess of \$5,000,000.

(x) Certificate(s) of Completion and Compliance: The certificate(s) to be issued by the Commission pursuant to **Section 16** of this Agreement.

(xi) Certificate of Occupancy: A permit granted by the City upon the substantial completion of a building or improvement in conformance with the Construction Plans approved by the City in accordance with the City Code.

(xii) Certified Costs: The Reimbursable Project Costs which have been certified by the Commission pursuant to **Section 16**.

(xiii) City: City of Kansas City, Missouri.

(xiv) City Code: The City Code of Ordinances of Kansas City, Missouri.

(xv) City Council: The governing body of the City.

(xvi) City Departments: The City Planning and Development Department, the City Plan Commission and such other departments and commissions of the City required to approve the Construction Plans.

(xvii) City Treasurer: The treasurer of the City.

(xviii) Collection Authority: The City, the County Collector, or any other governmental official or body charged with the collection of Payments in Lieu of Taxes or Economic Activity Taxes.

(xix) Commission: The Tax Increment Financing Commission of Kansas City, Missouri.

(xx) Construction Contractor: Any individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a construction contract with the Redeveloper in connection with the implementation of Project Improvements and Public Improvements contemplated by the Plan and this Agreement, regardless of the number of employees pursuant to City Code of General Ordinances, Chapter 3, Article IV, Division 3, Sections 3-501 through 3-525, (City Construction Employment Program).

(xxi) Construction Commencement Date: The date on which Redeveloper submits or causes to be submitted the first application for any Building Permit within the Redevelopment Area

(xxii) Construction Plans: The plans and specifications for the Project Improvements and Public Improvements submitted by the Redeveloper and approved by the City pursuant to **Section 8** hereof.

(xxiii) County Assessor: The Assessor of Jackson County, Missouri.

(xxiv) County Collector: The Collector of Jackson County, Missouri.

(xxv) Debt Service: The amount required for the payment of Interest and Principal on Obligations and other payments required by the terms and conditions of obligations, including, but not limited to, mandatory or optional redemption payments, payments to reserve funds, arbitrage rebate payments and penalties.

(xxvi) Economic Activity Account: The separate segregated account within the Special Allocation Fund into which Economic Activity Taxes are to be deposited.

(xxvii) Economic Activity Taxes or EATs: Fifty percent (50%) of the total additional revenue from taxes which are imposed by the City and other Taxing Districts, and which are generated by economic activities within each 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 adoption of the Ordinance designating such Redevelopment Project Area, while tax increment financing remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 RSMo., taxes levied for the purpose of public transportation pursuant to Section 94.660 RSMo., taxes imposed on sales pursuant to subsection 2 of section 67.1712 for the purpose of operating and maintaining a metropolitan park and recreation district, licenses, fees or special assessments other than Payments In Lieu of taxes and penalties and interest thereon, any sales tax imposed by a county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants, for the purpose of sports stadium improvement or levied by such county under section 238.410 for the purpose of the county transit authority operating transportation facilities, taxes imposed on sales under and pursuant to section 67.700 or 650.399 for the purpose of emergency communication systems and such other taxes that may be excluded by State law from time to time, shall be allocated to, and paid by the local political subdivision collecting officer to the treasurer or other designated financial officer of the municipality, who shall deposit such funds in a separate segregated account within the special allocation fund; provided, however, if the voters in a Taxing District vote to approve an increase in such Taxing District's sales tax or use tax, other than the renewal of an expiring sales or use tax, any additional revenues generated within an existing Redevelopment Project Area that are directly attributable to the newly voter-approved incremental increase in such taxing district's levy rate shall not be considered "Economic Activity Taxes", without the consent of such Taxing District. If a retail establishment relocates within one (1) year from one facility to another facility within the same county and the governing body of the municipality finds that the relocation is a direct beneficiary of tax increment financing, then for purposes of this definition the economic activity taxes generated by the retail establishment shall equal the total additional revenues from economic activity taxes which are imposed by a municipality or other taxing district over the amount of economic activity taxes

generated by the retail establishment in the calendar year prior to its relocation to such redevelopment project area.

(xxviii) Effective Date: The date described in **Section 7** of this Agreement.

(xxix) Equity Investment: The total accumulated sums reflected as equity on the Redeveloper's financial statements (including, but not limited to its Balance Sheet) submitted in connection with the "Public Participation" provisions of the Redevelopment Agreement as being expended by the Redeveloper or any other non-governmental party that is an Affiliate of the Redeveloper in connection with any and all aspects of the Project Improvements and Public Improvements, including but not limited to any and all costs, including Financing Costs incurred by the Redeveloper, Private loan interest, expenses or investments made by the Redeveloper or any such non-governmental Affiliate prior to or subsequent to the date of this Agreement and incurred by Redeveloper or any such non-governmental party that is an Affiliate of the Redeveloper in connection with the acquisition of any property in the Redevelopment Area, due diligence, leasing, marketing, formation of entities, construction and implementation of the Project Improvements and Public Improvements, including the principal amount of any subordinate Obligations so long as Redeveloper, or its Affiliates, is the owner or guarantor of such subordinate Obligations, commercial financing and any additional capital contributions made by Redeveloper or such non-governmental party that is an Affiliate of the Redeveloper.

(xxx) Financing Costs: Those costs, which are identified by the budget of Redevelopment Project Costs incorporated within the Plan and identified on **Exhibit D-1** to this Agreement, incurred by the Commission, or other issuer approved by the Commission as a result of issuing one or more series of Obligations, or the Redeveloper as a result of obtaining one or more Private Loans to pay all or any portion of Redevelopment Project Costs incurred or estimated to be incurred, including but not limited to interest incurred on Private Loans incurred by the Redeveloper or any Affiliate of the Redeveloper, but subject to the Commission's Interest Policy, attached hereto as **Exhibit E** loan fees, capitalized interest, financial advisor fees, legal fees, broker fees or discounts, original purchaser's discounts, printing and other costs related to such financing.

(xxxi) MBE/WBE Ordinance: Ordinance No. 180535, as further amended, passed on October 25, 2018 by the Council.

(xxxii) Net Cash Flow: Gross proceeds to the Redeveloper and/or its members or Affiliates from all income generated from the operations of the Project Improvements and Public Improvements, including expense reimbursements received from tenants and any proceeds from the leasing of any portion of the Project Improvements and Public Improvements, less (A) the costs to complete the construction and financing of the Project Improvements and Public Improvements and (B) the amount of principal and interest payments of

debt service on private debt obtained by the Redeveloper to finance the Project Improvements and Public Improvements, as determined each calendar year. In the event the Redeveloper sells all or any part of the Project Improvements and Public Improvements or if any or all of the Project Improvements and Public Improvements are condemned, the proceeds from such sale or condemnation award that is received by the Redeveloper that is in excess of any existing debt related to the Project Improvements and Public Improvements shall be considered in determining Net Cash Flow. Additionally, any casualty insurance proceeds (net of premiums and deductibles) which are not applied to the reconstruction of the Project Improvements and Public Improvements shall be considered in determining the Net Cash Flow.

(xxxiii)Obligations: Bonds, loans, debentures, notes, special certificates or other evidences of indebtedness issued in accordance with this Agreement by the Commission, City or any other public body approved by the Commission and that are secured, at least in part, with Economic Activity Taxes, to pay all or any portion of Reimbursable Project Costs incurred, or estimated to be incurred, to finance the cost of issuing such obligations, to establish reserves to refund or secure such Obligations, to finance the Interest costs associated with such Obligations or to refund, redeem or defease outstanding Obligations.

(xxxiv)Ordinance: An ordinance adopted by the City Council.

(xxxv) Payments in Lieu of Taxes or PILOTs: Those estimated revenues from real property taxes generated within each Redevelopment Project Area, which are to be used to reimburse the Redevelopment Project Costs identified by the Plan, which Taxing Districts would have received had the City not adopted tax increment allocation financing, and which result from levies made after the time of the adoption of tax increment allocation financing within each Redevelopment Project Area that is approved by Ordinance (but excluding the blind pension fund tax levied under the authority of Article III, Section 38(b) of the Missouri Constitution and the merchant's and manufacturer's inventory replacement tax levied under the authority of subsection 2 of Section 6 of the Missouri Constitution) and during the time the current equalized value of real property in each such Redevelopment Project Area exceeds the Total Initial Equalized Assessed Value of real property in such Redevelopment Project Area, until the designation is terminated pursuant to the Act, provided however, if the voters in a Taxing District vote to approve an increase in such Taxing District's levy rate for ad valorem tax on real property, any additional revenues generated within each Redevelopment Project Area that are directly attributable to the newly voter-approved incremental increase in such Taxing District's levy rate shall not be considered Payments in Lieu of Taxes without the consent of such Taxing District. Revenues will be considered directly attributable to the newly voter-approved incremental increase to the extent that they are generated from the difference between the Taxing District's actual levy rate currently imposed and the maximum voter-approved levy rate at the time that such Redevelopment Project Area was designated by Ordinance. Payments in Lieu of Taxes which are

due and owing shall constitute a lien against the real estate located within any Redevelopment Project Area from which they are derived, the lien of which may be foreclosed in the same manner as a special assessment lien as provided in Section 88.861 RSMo.

(xxxvi) PIAC Grant. Sales tax approved by the City's Public Improvements Advisory Committee (PIAC) which, subject to appropriation, may be utilized to fund Redevelopment Project Costs in an amount not in excess of \$150,000.

(xxxvii) PILOT Account: The separate segregated account within the Special Allocation Fund into which Payments in Lieu of Taxes are to be deposited.

(xxxviii) Plan: The Overlook Tax Increment Financing Plan, as approved by the Council, pursuant to Ordinance No. _____, and as may be amended from time to time by the Council.

(xxxix) Private Loan: Any indebtedness incurred by the Redeveloper or any Affiliate to pay all or any portion of Redevelopment Project Costs, incurred or estimated to be incurred.

(xl) Project Improvements: The construction of approximately an approximately 60,000 square foot office building and 185 surface parking spaces, along with interior driveways, a health fitness trail and a public plaza, as further described on **Exhibit D**.

(xli) Project Improvements and Public Improvements: Collectively, the Project Improvements and such other public infrastructure improvements, which may consist of signage, signaling, sidewalks, storm drainage facilities, utility relocation, and curbs and such other related public infrastructure improvements that support and enhance the Project Improvements.

(xlii) Real Estate: The real property owned by the Redeveloper, which is located within Redevelopment Project Area.

(xliii) Redevelopment Area: The area legally described on Exhibit 1.A to the Plan and depicted on Exhibit 2 to the Plan.

(xliv) Redevelopment Project: The Redevelopment Project described within Section IV.C of the Plan and on Exhibit 1.B to the Plan, as may be amended from time to time, pursuant to Section 99.825 of the Act.

(xlv) Redevelopment Project Area: The Redevelopment Project Area described on Exhibit 1.B to the Plan, as may be amended from time to time, pursuant to Section 99.825 of the Act.

(xlvii) Redevelopment Project Costs: The sum total of all reasonable or necessary costs incurred or estimated to be incurred, including Financing Costs incurred by the Redeveloper, and any such costs incidental to the Project Improvements and Public Improvements, identified on Exhibit 5 to the Plan.

(xlviii) Reimbursable Project Costs: Those costs which are incurred by the Commission or the Redeveloper, before or after the date of this Agreement, including Financing Costs, Administrative Costs as such costs are set forth on **Exhibit E** (in the estimated total amount of \$11,141,676, which is 48% of the total estimated Redevelopment Project Costs of \$23,283,250, as a result of preparing, reviewing and adopting the Redevelopment Plan and the Redevelopment Project, designation of the Redevelopment Area, planning, financing, acquiring and constructing the Project Improvements and Public Improvements and any other Work authorized by the Redevelopment Plan, the oversight of the construction of the Project Improvements and Public Improvements, the implementation of the Redevelopment Plan, and which are at all times consistent with the Act or any judicial interpretation of the Act and which may be authorized for reimbursement in accordance with this Agreement.

(xlix) Reimbursable Project Costs Cap: The cap of \$11,141,676 of all Reimbursable Project Costs incurred by the Redeveloper that are permitted to be reimbursed in connection with the Project Improvements and Public Improvements and Public Improvements, which is equal to the amount of Reimbursable Project Costs.

(l) Site Plan: The final site plan for the Redevelopment Area submitted by the Redeveloper to the Commission and incorporated as Exhibit 2 to the Plan, as the same may be revised from time to time by Redeveloper with the approval of the City as provided in **Section 8** hereof.

(li) Special Allocation Funds: The funds established in connection with the Redevelopment Project into which, as required by the Act, all Economic Activity Taxes and PILOTs are deposited.

(lii) State: State of Missouri.

(liii) Taxing District: Any political subdivision of the State of Missouri located wholly or partially within any Redevelopment Project Area and having the power to levy taxes.

(liiii) Term: The period during which the parties shall be required to perform under this Agreement, as described in **Section 34**.

(liv) TIF Revenues: Payments In Lieu of Taxes (if any) and Economic Activity Taxes.

(lv) Total Initial Equalized Assessed Value: That amount certified by the County Assessor which equals the most recently ascertained equalized

assessed value of each taxable lot, block, tract, or parcel of real property within any Redevelopment Project Area immediately before tax increment financing has been approved by the City Council by Ordinance.

(lvi) Trustee: The designated trustee administering accounts and funds generated by the proceeds of Obligations and those portions of the Economic Activity Taxes and PILOTs (if any) generated within any Redevelopment Project Area which have been transferred to the Trustee pursuant to an Indenture.

(lvii) Work: All work necessary to implement the Project Improvements and Public Improvements and all other work described in the Redevelopment Plan or reasonably necessary to effectuate the intent of this Agreement

b. Unless the context clearly indicates to the contrary, the following rules of interpretation shall apply to this Agreement:

(i) Unless the context otherwise requires or unless otherwise provided herein, the terms defined in this Agreement, 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 32**.

(ii) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection and exhibit references are to this Agreement, 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.

(iii) 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.

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

2. Mutual Assistance and Conditions. The Commission and Redeveloper agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

3. Representations of the Redeveloper. Redeveloper makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

a. Organization and Authority. The Redeveloper is a limited liability company organized and validly existing under the laws of the State of Missouri. The Redeveloper has all necessary power and authority to deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Redeveloper herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Redeveloper, enforceable in accordance with its terms.

b. No Defaults or Violation of Law. 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 company or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

c. No Litigation. No litigation, proceedings or investigations are pending or, to the knowledge of the Redeveloper (including the knowledge of the officers of the Redeveloper who execute this Agreement), threatened against the Redeveloper. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the Redeveloper (including the knowledge of the respective officers of the Redeveloper who execute this Agreement), threatened against the Redeveloper (or any officer of the Redeveloper) 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 Redeveloper (or any officer of the Redeveloper) to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Redeveloper (or any officer of the Redeveloper) of the terms and provisions of this Agreement.

d. No Material Change. (i) The Redeveloper has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (ii) there has been no material adverse change in the business, financial position, prospects or results of operations of the Redeveloper, which could affect the Redeveloper's ability to perform its obligations pursuant to this Agreement from that shown in the financial information provided by the Redeveloper to the Commission prior to the execution of this Agreement, including the information contained on Exhibits E, E-1 and E-2, attached hereto, except for governmental authorizations and approvals of the type referenced in Section 3.g and Section 3.h.

e. 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, delivery and

performance by the Redeveloper of this Agreement, except for governmental authorizations and approvals of the type referenced in Section 3.g and Section 3.h.

f. No Default. No default or event of default has occurred and is continuing, and to Redeveloper'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 Redeveloper under this Agreement, or any other material agreement or material instrument to which the Redeveloper is a party or by which the Redeveloper is or may be bound.

g. Approvals. The Redeveloper has received and is in good standing with respect to certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business as heretofore conducted by it and to own or lease and operate its properties as now owned or leased by it. The Redeveloper will obtain those certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to acquire, construct, equip, operate and maintain the Project Improvements and Public Improvements. The Redeveloper has no reason to believe that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will not be obtained in due course.

h. Construction Permits. All governmental permits and licenses required by applicable law to construct, occupy and operate within the Redevelopment Area have been issued and are in full force and effect or, if the present stage of development does not allow such issuance, the Redeveloper has no reason to believe, after due inquiry of the appropriate governmental officials, that such permits and licenses will not be issued in a timely manner in order to permit the Project Improvements and Public Improvements to be constructed pursuant to the Construction Plans and Redevelopment Schedule (as hereinafter defined).

i. Compliance with Laws. The Redeveloper is 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.

j. Financial Information. The financial statements of the Redeveloper or its Affiliates that are obligated to guarantee the financing of Redevelopment Project Costs (the "Obligated Affiliates") and that have been furnished to the Commission in connection with the selection of the Redeveloper and the Commission's decision to enter into this Agreement present fairly and accurately in all material respects, the financial position of the Redeveloper and the Obligated Affiliates as of the dates indicated. There has been no material adverse change in the financial position of the Redeveloper and the Obligated Affiliates since the date of such financial information. The Redeveloper understands and agrees that the Commission has relied upon the financial capacity of the Redeveloper and the Obligated Affiliates in its decision to enter into this Agreement.

k. Boycotts. Pursuant to RSMo. §34.600, a public entity shall not enter into a contract to acquire or dispose of services, supplies, information technology, or construction valued at \$100,000, or with a contractor having ten or more employees, unless the contract includes a written certification that the person or company is not currently engaged in, and shall not, for the duration of the contract, engage in a boycott of (i) goods or services from the State of Israel; (ii) companies doing business in, or with, Israel; (iii) companies authorized by, licensed by, or organized under, the laws of the State of Israel; or (iv) persons or entities doing business in the State of Israel. For the purposes of this paragraph, “**boycott**” shall have the meaning set forth in Section RSMo. §34.600.3, which Redeveloper has reviewed. By signing below, Redeveloper represents and warrants that it does not currently, and will not for the duration of this contract, engage in any of the types of boycotts listed above.

4. Survival of Representations. All representations of the Redeveloper contained in this Agreement or in any certificate or other instrument delivered by the Redeveloper pursuant to this Agreement, or in connection with the transactions contemplated thereby, shall, with respect to the Redeveloper and each of the Project Improvements and Public Improvements, survive the execution and delivery thereof, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations for one (1) year following the Commission’s issuance of a Certificate of Completion and Compliance in accordance with **Section 16** for such Project Improvements and Public Improvements.

5. Redeveloper Deliverables after the Effective Date of this Agreement. Within 30 days after the Effective Date of this Agreement, Redeveloper shall furnish the Commission with the following, to the extent not already provided to the Commission:

a. a copy of the Redeveloper’s Articles of Organization certified by the Secretary of State of the State of Missouri;

b. a certificate of good standing of the Redeveloper in the State of Missouri;

c. evidence the Redeveloper is in good standing and is licensed to do business in Missouri; and

d. a certified copy of the Limited Liability Company Agreement of the Redeveloper, which is in full force and effect as of the date hereof,

6. Redevelopment Project Area. Tax increment financing within the Redevelopment Project Area shall be effective upon the passage of an Ordinance designating such Redevelopment Project Area as a redevelopment project area, within the meaning of such by the Act, and authorizing tax increment financing for each such Redevelopment Project Area (the “Effective Date”); provided, however, that such Ordinance may be changed, modified and/or amended only in accordance with the Act by appropriate Ordinance passed by the Council.

7. Developer to Advance Costs. The Redeveloper agrees to advance all Redevelopment Project Costs not otherwise paid by and through the direct payment of funds allocated from TIF Revenue, Additional City EATs, the PIAC Grant and the CCED Tax as necessary to complete the Work in accordance with this Agreement.

8. Project Improvements and Public Improvements. In accordance with the Act and subject to the provisions of the Plan and this Agreement, to ameliorate, eliminate or satisfy those conditions which are the basis for eligibility and designation of the Redevelopment Area as a blighted area, the Redeveloper, in accordance with the terms and conditions of this Agreement, (a) shall make or cause to be made the Project Improvements and Public Improvements within the Redevelopment Area, as more particularly set out on Exhibit D and (b) notwithstanding anything herein to the contrary, the Blight Remediation and Project Improvements and Public Improvements shall be made within the time period prescribed by the Redevelopment Schedule (as hereinafter defined), pursuant to Section 12 hereof, provided however, that in any event, subject to Excusable Delays pursuant to Section 36, the Construction Commencement Date for the Blight Remediation and Project Improvements and Public Improvements shall occur within twelve (12) months from the date of this Agreement.

9. Design Criteria and Review Procedures.

a. Subject to the provisions of this Agreement, the Redeveloper shall construct all Project Improvements and Public Improvements in accordance with the Plan and the Construction Plans submitted by the Redeveloper and approved by the City Departments, with any alterations that may be permitted and/or required in accordance with the City Code.

b. In order to insure that the Project Improvements and Public Improvements and their construction will be in accordance with the provisions of this Agreement and the Construction Plans, and in substantial agreement with proposals made by the Redeveloper to the Commission and the City, the parties agree as follows:

(i) No Project Improvements and Public Improvements, other than site preparation and life safety issues, shall be commenced or made unless and until all the Construction Plans therefor, in the detail herein required, or any changes thereto, (A) shall have been submitted to and approved, in writing, as required by the City Departments and (B) the Commission, or its designated representatives, shall have received such written approval from the City Departments.

(ii) At the request of Redeveloper, the City Departments shall have the absolute right in their judgment and discretion, at any time, to approve a variance from conformance to or a waiver of compliance with the Construction Plans.

(iii) Subsequent to commencement of the Project Improvements and Public Improvements and until the termination of this Agreement, the Redeveloper shall, as part of the reports required by Section 11, describe in such detail as reasonably may be required by the Commission, the progress of the Redeveloper in the implementation of the Project Improvements and Public Improvements and the status of any Redevelopment Project Area thereafter.

(iv) Neither the Commission, nor any officer, director, commissioner, member, employee or agent of the same, shall be liable to the Redeveloper with

respect to Construction Plans or modifications submitted to the City Departments for approval, or for any other action in connection with its or their duties with respect to the Construction Plans. The Redeveloper agrees that it will not bring any action or suit to recover any damages against the Commission or any officer, director, commissioner, member, employee, or agent of any of them arising or in any way connected with the approval of or failure to approve any construction plans or changes submitted by the Redeveloper.

(v) In order to monitor the status of compliance with the Construction Plans, the Commission or the City Departments, or their respective designated representatives, may, upon providing a minimum of two (2) Business Days' notice to the Redeveloper, inspect the Project Improvements and Public Improvements during regular business hours and in such detail as may be reasonably necessary to determine compliance.

10. Plan of Finance and Financing Commitments

a. It is acknowledged that prior to the execution of this Agreement, the Redeveloper submitted (i) the estimated Redevelopment Project Costs, which are reflected on Exhibit 5 to the Plan and as set forth on Exhibit E to this Agreement (ii) the anticipated sources of funds to pay the Redevelopment Project Costs as set forth on Exhibit E-1, attached hereto the Plan, (iii) evidence of commitments to finance the Redevelopment Project Costs as set forth on Exhibit E-2, attached hereto, (iv) the anticipated type and term of the sources of funds to pay Redevelopment Project Costs, and (v) the anticipated type and terms of the Obligations to be issued, as estimated, as set forth on Exhibit 7 to the Plan (all of the foregoing information in (i) through (v) hereinafter, collectively, shall be referred to as the “**Plan Financing**”) and such Plan Financing has not been modified since the approval of the Plan by the City. The Redeveloper shall notify the Commission as soon as reasonably practicable of any material changes in the Plan Financing that occur after the execution of this Agreement.

b. The Redeveloper represents and warrants to the Commission that, to the best of its present knowledge and belief, the Plan Financing submitted by the Redeveloper, if timely implemented and funded, will in all material respects enable the Redeveloper to timely implement the Project Improvements and Public Improvements as required in this Agreement, including the Redevelopment Schedule (as hereinafter defined) incorporated herein, and the information and statements contained therein, taken as a whole, are accurate as of the date hereof, in all material respects and complete for the purposes for which used and made and do not fail to state any material facts necessary in order to make the statements or representations made therein, in light of the circumstances under which they were made, not misleading. The Redeveloper's representation and warranty as set forth herein shall be deemed to be ongoing until termination or expiration of this Agreement.

c. The Redeveloper represents and warrants to the Commission that, to the best of its present knowledge and belief, the Redevelopment Project Costs identified on Exhibit E are costs the Redeveloper or its Affiliates expect to incur in connection with

all development the Redeveloper or its Affiliates intend to undertake in connection with the implementation of the Project Improvements and Public Improvements pursuant to the Plan and this Agreement.

11. Redevelopment Schedule. Subject to the provisions of the Plan and this Agreement (including the timely implementation and funding of the Plan Financing) and Excusable Delays, the Redeveloper, with respect to the completion of the Project Improvements and Public Improvements, shall comply with the Redevelopment Schedule, attached hereto as **Exhibit H** (the “Redevelopment Schedule”).

12. Progress Reports.

a. Prior to May 31st of each year during the Term, beginning on May 31, 2021, and each anniversary thereafter until the termination of this Agreement, the Redeveloper shall report to the Commission the progress of its implementation of the Project Improvements and Public Improvements (if any) as of December 31 of the prior calendar year and the status of the Redevelopment Project, pursuant to the Annual Assessment Form, attached hereto as **Exhibit I**. At the first regularly-scheduled meeting of the Commission following the fifth anniversary of the first submission of the Annual Assessment Form and on each five-year anniversary thereafter, the Redeveloper shall prepare and present to the Commission a detailed report on the progress of implementation of the Project Improvements and Public Improvements. Such report shall include at least the following information and may contain such other information with regard to the Redevelopment Project and Improvements as the Redeveloper wishes to present or the Commission may reasonably require:

(i) status of construction of the Project Improvements and Public Improvements;

(ii) actual assessed value of each property located within the Redevelopment Area before and after completion of the Project Improvements and Public Improvements as compared to Plan estimates;

(iii) actual Payments in Lieu of Taxes and Economic Activity Taxes generated by any Redevelopment Project Area as compared to Plan estimates;

(iv) actual Redevelopment Project Costs incurred and related to the Project Improvements and Public Improvements compared to Plan estimates;

(v) actual start and completion dates of the Project Improvements and Public Improvements compared to the Redevelopment Schedule; and

(vi) estimated start date of the Project Improvements and Public Improvements not yet commenced at date of report.

b. The Redeveloper shall from time to time furnish such other reports on specific matters not addressed by the foregoing as the Commission may reasonably require.

13. Maintenance, Insurance and Repair.

a. Maintenance and Repair. During the term, the Redeveloper or its successors or assigns, at its sole cost and expense, shall cause all of the Real Estate to be maintained, preserved and kept in commercially reasonable repair and working order and condition and in as safe condition as its operations will permit and will make all commercially reasonable and necessary repairs, renewals, replacements and improvements thereof so that its operations and business shall at all times be conducted in an efficient and advantageous manner. The Redeveloper shall incorporate in all transfer documents an obligation to comply with this Section 14 and exert Best Efforts to enforce the provisions of this Section 14 to the maximum extent permitted by law and further provide that the Commission is an intended third-party beneficiary of such provisions and as such, the Commission has a separate and independent right to enforce such provisions directly against any such transferee.

b. Insurance.

(i) Prior to the commencement of construction of any portion of the Work, the Redeveloper shall obtain or shall require that its contractors obtain workers' compensation, comprehensive public liability and builder's risk insurance coverage in amounts customary in the industry for similar type projects. The Redeveloper shall require that such insurance be maintained by any of its contractors for the duration of the construction of such portion of the Work.

(ii) During the term of this Agreement, the Redeveloper shall keep the Project continuously insured with property insurance for full Replacement Value, with such deductible provisions as are customary in connection with the operation of facilities of the type and size comparable to the Project Improvements owned or maintained by the Redeveloper.

(iii) All such policies, or a certificate or certificates of the insurers that such insurance is in full force and effect, shall be provided to the Commission and, prior to expiration of any such policy, the Redeveloper shall furnish the Commission with satisfactory evidence that such policy has been renewed or replaced; provided, however, the insurance so required may be provided by blanket policies now or hereafter maintained by the Redeveloper if the Redeveloper provides the Commission with a certificate from an Insurance Consultant to the effect that such coverage is substantially the same as that provided by individual policies. All policies evidencing such insurance required to be obtained under the terms of this Agreement shall provide for thirty (30) days prior written notice to the Redeveloper and the Commission of any cancellation (other than for nonpayment of premium), reduction in amount or material change in coverage.

(iv) All policies of insurance required by this Section shall become utilized as required by this Agreement.

(v) The Redeveloper hereby agrees that if any portion of the Project Improvements owned by the Redeveloper shall be damaged or destroyed, in whole or in part, by fire or other casualty (whether or not covered by insurance), the Redeveloper shall promptly

restore, replace or rebuild the same, or shall promptly cause the same to be restored, replaced or rebuilt, to as nearly as possible the value, quality and condition it was in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by the Commission, which approval shall not be unreasonably withheld. The Redeveloper agrees that it shall use Best Efforts to include in any documents for Redeveloper private financing a requirement that, in the event insurance covering fire or other casualty results in payment of insurance proceeds to a Lender, the Lender shall be obligated to restore the Project Improvements owned by the Redeveloper in accordance with this Section. The Redeveloper shall give prompt written notice to the Commission of any damages or destruction to any of the Project Improvements owned by it by fire or other casualty, irrespective of the amount of such damage or destruction, but in such circumstances the Redeveloper shall make the property safe and in compliance with all applicable laws as provided herein.

(vi) The Redeveloper further agrees that each contract, lease or sublease relating to the development, ownership or use of any portion of the Project Improvements not owned or controlled by the Redeveloper shall include a provision to the effect that if any portion of the Project Improvements controlled by such owner, lessee or sublessee shall be 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, such owner, lessee or sublessee shall promptly restore, replace or rebuild the same (or shall promptly cause the same to be restored, replaced or rebuilt) to as nearly as possible the value, quality and condition it was in immediately prior to such fire or other casualty or taking, with such alterations or changes as may be approved in writing by the Redeveloper and the Commission, which approval shall not be unreasonably withheld. The Redeveloper agrees to exert Best Efforts to cause each contract, lease or sublease relating to the development, ownership or use of any portion of the Project Improvements to include a requirement that, in the event insurance covering fire or other casualty results in payment of insurance proceeds to a Lender, the Lender shall be obligated to restore the Project Improvements in accordance with this Section. Each owner, lessee or sublessee shall also be required to give prompt written notice to the Redeveloper and the City of any damages or destruction to any of the Project Improvements owned by such person by fire or other casualty, irrespective of the amount of such damage or destruction.

(vii) The restrictions set forth in this Section are for the benefit of the Commission and may be enforced by the Commission by a suit for specific performance or for damages, or both.

14. Control of Project Improvements and Public Improvements. The Redeveloper shall have complete and exclusive control over the construction of the Project Improvements and Public Improvements, which it owns or controls subject, however, to all applicable laws, rules and regulations, including, but not limited to, all ordinances, rules and regulations of the City, such as subdivision regulations, zoning ordinances, building codes and property maintenance codes. As to all parts of the Redevelopment Area then owned by the Redeveloper from time to time, the Redeveloper hereby grants to the Commission, its agents and employees the right to enter at reasonable times for the purpose of inspecting the Project Improvements, subject,

however, to (1) the rights of tenants or purchasers, which are not Affiliates of the Redeveloper and (2) all applicable safety procedures and requirements of Redeveloper or its contractor. The Commission, its agents or employees seeking access to parts of the Redevelopment Area owned by Redeveloper shall provide notice to the Redeveloper of not less than two (2) Business Days prior to entering the Redevelopment Area so that the Redeveloper can coordinate such entry with its project manager. Subject to such restrictions contained herein, the Redeveloper shall have complete and exclusive control over the construction, management, sale and leasing of property owned by it from time to time within the Redevelopment Area, including, without limitation, the selection of purchasers, the price and terms of sale, the fixing of rentals and the selection or rejection of tenants and guests.

15. Compliance with Laws. At all times during the Term and until termination of this Agreement as provided in Section 34, but subject to the Redeveloper's rights to contest the same in any manner permitted by law, the Redeveloper, 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 construction, ownership, occupancy, use and operation of the property within the Redevelopment Area owned by Redeveloper, as well as the hiring of all Redeveloper's employees and independent contractors utilized in connection with the construction of the Project Improvements and Public Improvements. The Redeveloper shall contractually require its independent contractors to comply with this Section 15.

16. Property Taxes. At all times until termination of this Agreement as provided in Section 34, but subject to the Redeveloper's rights to contest the same in any manner permitted by law, the Redeveloper and its Affiliates shall pay, when due, all taxes levied upon any real or personal property owned by the Redeveloper or any of its Affiliates and located in the City. Upon the execution of this Agreement and during the last week of December of each year during the Term, the Redeveloper shall submit an affidavit or certificate to the Commission certifying its compliance and the compliance of its Affiliates with this Section 16.

17. Certificate of Completion and Compliance.

a. Within sixty (60) days after the Project Improvements and Public Improvements, or any portions thereof as may be determined by the Redeveloper, are completed in all material respects, in order to ensure that the Redeveloper has satisfied its obligations under the Plan and this Agreement to implement the Project Improvements and Public Improvements, the Redeveloper shall notify the Commission (the "**Notice of Completion**" or "**Notice of Partial Completion**") in writing:

(i) that construction of the Project Improvements and Public Improvements, or such portions thereof as may be determined by the Redeveloper, have been completed in accordance with the Plan, that a Certificate of Occupancy, where appropriate, has been issued and that the Redeveloper is in compliance with all other provisions of this Agreement as it relates to such Project Improvements and Public Improvements;

(ii) of the actual private equity and debt used by the Redeveloper to complete the Project Improvements and Public Improvements in accordance with the estimated Redevelopment Project Costs, which are reflected on Exhibit 5 to the Plan, or such portion thereof, which may include capitalized interest allocable to each building and the associated infrastructure improvements; and

(iii) that, with respect to such portion of the Project Improvements and Public Improvements, it has complied with and has submitted all documents required by this Agreement, including Commission's Certification of Costs and Reimbursement Policy, attached hereto as Exhibit G, the Commission's Certificate of Completion and Compliance Policy, attached hereto as Exhibit J, the MBE/WBE Ordinance and the Workforce Policy, attached hereto as Exhibit N.

b. The Commission, upon receipt of the Notice of Completion and all such additional documents required by the Certificate of Completion and Compliance Policy, attached hereto as Exhibit J, shall within sixty (60) Business Days, examine and determine:

(i) whether construction of Project Improvements and Public Improvements, or such portion thereof, have been completed in accordance with the provisions of the Plan, the Construction Plans, this Agreement, including, but not limited to, the Commission's Funding Schedule, attached hereto as Exhibit K, the MBE/WBE Ordinance, the Workforce Policy, attached hereto as Exhibit N, and the Procedures for Payment of Prevailing Wages, attached hereto as Exhibit O; and

(ii) whether the Redevelopment Project Costs submitted by the Redeveloper to the Commission and reviewed by an independent cost certifier, who shall be hired at the expense of the Commission, shall be or have been certified pursuant to the Commission's Certification of Costs and Reimbursement Policy.

c. If the Commission determines that (i) construction of the Project Improvements and Public Improvements, or such portion thereof, have been substantially completed in accordance with the provisions of the Plan, the Construction Plans, this Agreement, including, but not limited to, the Funding Schedule, the MBE/WBE Ordinance and the Procedures for Payment of Prevailing Wages; and (ii) all Redevelopment Project Costs related to the Project Improvements and Public Improvements, or such portion thereof, that are eligible for reimbursement have been certified pursuant to the Commission's Certification of Costs and Reimbursement Policy (the "**Certified Costs**"), then the Commission, subject to the conditions of the Certificate of Completion and Compliance Policy, shall, concurrently with such determination, issue a Certificate of Completion and Compliance (the "**Certificate of Completion and Compliance**").

d. If the Commission determines that the Project Improvements and Public Improvements, or any part thereof, have not been completed substantially in accordance with the provisions of this **Section 17** or that the Redevelopment Project Costs have not been certified pursuant to the Certification of Costs and Reimbursement Policy or the Redeveloper has not complied with the Certificate of Completion and Compliance Policy, then the Commission may, in its reasonable discretion: (i) not issue a Certificate of Completion and Compliance with respect to such Project Improvements and Public Improvements; and/or (ii) issue a partial Certificate of Completion and Compliance for that portion of Improvements which the Commission determines are complete; and/or (iii) withhold certification and/or reimbursement of all or a portion of the Reimbursable Project Costs; provided however, that the Commission shall, concurrently with such determination, specify in writing the reason or reasons for not issuing a Certificate of Completion and Compliance and/or withholding its certification of Redevelopment Project Costs. Upon the request of the Redeveloper, the Commission shall hold a hearing at which the Redeveloper may present new and/or additional evidence supporting its request for certification.

e. The issuance of a Certificate of Completion and Compliance by the Commission shall be a conclusive determination of the satisfaction and termination of the covenants in this Agreement with respect to the obligations of the Redeveloper to complete the Project Improvements and Public Improvements, or such portion thereof, within the dates for the beginning and completion thereof as set forth in the Redevelopment Schedule and in accordance with the criteria applicable thereto as herein set forth.

f. Each such Certificate of Completion and Compliance issued by the Commission shall contain a description of the real property affected thereby and shall be in such form as will enable such certificate to be accepted for recording in the Office of the Recorder of Deeds in the county in which such property is located.

18. **Special Allocation Fund.** The Commission or the City, as the case may be, shall establish and maintain a Special Allocation Fund for each Redevelopment Project, each of which shall contain separate segregated accounts. Payments in Lieu of Taxes generated from each Redevelopment Project (if any) shall be deposited into the PILOT Account within the Special Allocation Fund. Economic Activity Taxes shall be deposited into the Economic Activity Account within the Special Allocation Fund. Additional City EATs shall be deposited into the Super-TIF Account within the Special Allocation Fund. The CCED Tax shall be deposited into a CCED Tax Account established within the Special Allocation Fund. The PIAC Grant shall be deposited into the PIAC Account within the Special Allocation Fund.

19. **Payment of Redevelopment Project Costs – “Pay As You Go Basis”.**

a. If the Certified Costs incurred by the Redeveloper are to be financed on a “Pay As You Go Basis”, then as funds (including the Additional Tax Revenue) are available within the Special Allocation Fund in accordance with the Plan and subject to the terms of the Certification of Costs and Reimbursement Policy, the Commission, upon confirmation that the Redeveloper is in compliance with the Funding Agreement,

including, but not limited to, the payment of costs and expenses billed to the Redeveloper within thirty (30) days receipt of the same, shall timely reimburse the Redeveloper its Certified Costs up to the amount of the Reimbursable Project Costs Cap from the following:

- i. collected Payments in Lieu of Taxes which are or shall be deposited in the PILOTS Account within the Special Allocation Fund,
- ii. subject to the City Council's appropriation, collected Economics Activity Taxes which are or shall be deposited in the Economic Activity Account within the Special Allocation Fund,
- iii. subject to the City Council's appropriation, Additional City EATS, which are or shall be deposited in the Super-TIF Account within the Special Allocation Fund, shall reimburse those Certified Costs related to items identified on **Exhibit E** and are reimbursable from the column entitled "Super TIF",
- iv. the CCED Taxes which are or shall be deposited in the CCED Tax Account in the Special Allocation Fund, shall reimburse those Certified Costs related to items identified on **Exhibit E** and are reimbursable from the column entitled "CCED", and
- v. subject to appropriation of the PIAC Grant which is or shall be deposited in the PIAC Account in the Special Allocation Fund, shall reimburse those Certified Costs related to items identified on **Exhibit E** and are reimbursable from the column entitled "PIAC";

provided, however, that notwithstanding anything to the contrary contained herein, the Commission shall have no obligation to reimburse the Redeveloper for any of its Certified Costs unless and until Redeveloper receives a Certificate of Completion and Compliance for the Project Improvements and Public Improvements or a portion thereof and the Redeveloper is in compliance with the Funding Agreement, including the timely payment of all invoices issued thereunder.

b. The Commission acknowledges that the Redeveloper will incur Financing Costs to finance the payment of Reimbursable Project Costs related to the Project Improvements and Public Improvements appearing on **Exhibit D** prior to the time such costs are reimbursed and agrees that such Financing Costs incurred by Redeveloper for such Reimbursable Project Costs shall be reimbursed in accordance with the Commission's Certification of Costs and Reimbursement Policy and Interest Policy. Reimbursable interest associated with such Financing Costs shall be reimbursed to the Redeveloper following the certification of such Financing Costs. The interest rate associated with the Financing Costs shall not exceed the rate as set forth in the Commission's Interest Policy, attached hereto as **Exhibit F**.

20. Payment of Redevelopment Project Costs – Issuance of Obligations. At any time prior to or after the execution of this Agreement, Obligations may be issued by the Commission as provided for in the Act and in one or more separate series for the purpose of financing Certified Costs. The proceeds of the Obligations may also be used to fund capitalized interest accounts, debt service reserve funds and other Financing Costs, as may be required to issue such Obligations. The Commission, or any other issuer approved by the Commission, may issue Obligations in such amount, at such times and upon such terms as determined by the Commission in its sole, but reasonable, discretion in light of all available information provided to it, including a written analysis of revenue projections performed by the Commission's underwriter or financial advisor. The Commission, or any other issuer approved by the Commission, may issue Obligations on terms, conditions and at an interest rate determined by the Commission at the time of issuance. The Commission shall have the right to select the designated bond counsel, financial advisor and Commission underwriter (and such additional consultants as the Commission deems necessary for the issuance of the Obligations). The Commission shall have sole control of the disbursement of the proceeds of the Obligations, subject to the provisions of this Agreement, the Trust Indenture related to such Obligations and the Commission's Bond Disbursement Policy, attached hereto as **Exhibit T**. The Obligations will be issued only after the Commission has evaluated information provided by the Redeveloper, including signed letters of intent, lease commitments or contracts for the development included in the Redevelopment Area, and written analysis of revenue projections performed by the Commission's underwriter or financial advisor, to reach a determination with respect to the sufficiency of projected Economic Activity Taxes to be generated within the Redevelopment Area to pay Debt Service on the Obligations. The Commission may, at the Commission's sole discretion, but subject to the terms of the Trust Indenture related to the Obligations, pay Debt Service on Obligations issued to finance Certified Costs, in whole or in part. The interest rate, term and other conditions of the Obligations shall be determined by the Commission. The Commission's decision to issue Obligations, which shall be at its sole discretion, may be conditioned upon the evidence of a commitment to finance provided by the Redeveloper pursuant to **Exhibit E-2**, demonstrating to the Commission's reasonable satisfaction that the Redeveloper will have sufficient funds available from sources other than Obligations to pay all Redevelopment Project Costs.

21. 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 the Redevelopment Project Area, the real property located therein is subject to assessment for PILOTS. PILOTS shall be due November 30 of each year in which said amount is required to be paid and will be considered delinquent if not paid by December 31 of each such year; if delinquent, such PILOTS shall bear the same penalties as determined by the Commission with regard to administrative fees and costs as set forth in Section 40. The obligation to pay PILOTS shall be a covenant running with the land and shall create a lien in favor of the Commission on each such tax parcel as constituted from time to time that would otherwise be obligated to pay taxes had the City not adopted tax increment allocation financing and shall be enforceable by the Commission against the Redeveloper and its successors and assigns, as the case may be.

b. Failure to pay PILOTS as to any property that would otherwise be obligated to pay taxes had the City not adopted tax increment allocation financing in the Redevelopment Project Area shall constitute a default by the owner of such property of the provisions of this Section 22 hereof, and shall entitle the Commission, 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 all or a portion of such property located within the Redevelopment Project Area and/or the owner thereof as in other delinquent property tax cases or otherwise as permitted at law or in equity, and, if applicable, such failure shall entitle the Collection Authority to seek all other legal and equitable remedies it may have to insure the timely payment of all such sums or of the principal of and interest on any outstanding Obligations (including notes or bonds) secured by such payments; provided, however, that the failure of the Redevelopment Project Area to yield sufficient PILOTS 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. The Commission shall use all reasonable and diligent efforts to 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 PILOTS and reimbursements of Certified Costs as provided in this Agreement and in the Plan.

c. Notwithstanding anything to the contrary, herein, the lien on any property located within the Redevelopment Project Area shall be deemed (i) released as to any public street or other public way included within any plat proposed by the Redeveloper, effective upon the passage of an Ordinance by the City approving the same, and (ii) subordinated to the lot lines, easements and other matters established 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(s) thereto.

22. Reporting of Economic Activity Taxes

a. Pursuant to the provisions of the Plan and the Act, when tax increment financing is established by ordinance for each of any Redevelopment Project Areas, EATs shall be allocated and, when collected, shall be paid by the collecting officer to the City Treasurer for transfer to the Commission for the purpose of reimbursement or payment of Certified Costs. The Redeveloper shall furnish to the Commission such documentation as is required by the Commission's Economic Activity Taxes Collection and Documentation Policy ("**EATs Documentation**"), attached hereto as **Exhibit L**, and shall exert reasonable efforts to contractually require purchasers, lessees or other transferees or possessors of property whose property interest or occupancy arises from a transfer by the Redeveloper and becomes effective subsequent to the execution of this Agreement (the "**Prospective Transferees**"), to comply with such obligation. The Redeveloper shall exert reasonable efforts to enforce such provisions and contractually require that the Commission be a third-party beneficiary to such provision. Such obligations of the Redeveloper and Prospective Transferees 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 shall be enforceable as if such Prospective Transferee thereof was originally a party to and bound by this Agreement.

b. Failure to comply with the Economic Activity Taxes Documentation and Collection Policy with respect to any property located within any Redevelopment Project Area shall constitute a default by the Redeveloper or Prospective Transferee, as the case may be, of the provisions of **Section 22(a)** hereof, and shall entitle the Collection Authority to proceed against the Redeveloper or Prospective Transferee as in other delinquent tax cases or otherwise as permitted at law or in equity, and, if applicable, such failure shall entitle the Collection Authority to seek all other legal and equitable remedies it may have to ensure the timely payment of all such sums of the principal and interest on any outstanding bond secured by such payments; provided, however, that the failure of the Redeveloper or any Prospective Transferee owning property within any Redevelopment Project Area to yield sufficient EATs to pay Certified Costs shall not constitute a breach or default of this Agreement absent an action or omission of the Redeveloper that shall independently constitute a breach or default. The Commission 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 collection of the EATs and reimbursement of Certified Costs as provided in this Agreement and in the Plan.

c. Prior to the issuance of any Certificate of Completion and Compliance for any portion of any Redevelopment Project Area, the Redeveloper shall (i) furnish, or use commercially reasonable efforts to cause all Prospective Transferees owning property within such portion of any Redevelopment Project Area to furnish their business name, address, and federal and state identification numbers, MITS number and location code, if applicable (the “**Business Information**”); (ii) provide a list of all tenants and/or business owners located within such portion of any Redevelopment Project Area (the “**Tenant List**”); and (iii) use commercially reasonable efforts to obtain and deliver to the Commission the Business Information and EATs Documentation of each tenant appearing on the Tenant List, which shall include, but shall not be limited to distributions of a letter to each such tenant appearing on the Tenant List in a form substantially similar to **Exhibit M**, attached hereto.

23. Sale or Disposition of Project Property

a. Continuation of Payments In Lieu of Taxes. Subject to this **Section 23**, the Redeveloper, or any Prospective Transferee, may sell, transfer, convey, lease or otherwise dispose of any of the property located within any Redevelopment Project Area. In the event of the sale, lease or other voluntary or involuntary disposition of any or all of the real property of the Redeveloper or any Prospective Transferee located within any Redevelopment Project Area, PILOTs 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 owners of the property sold or transferred and their heirs, executors, administrators, successors and assigns 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 Agreement.

b. Obligation to Ameliorate Existing Conditions. The Redeveloper's undertakings pursuant to Section 8 hereof, unless earlier satisfied and certified pursuant to Section 17 hereof, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the Redeveloper 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 lessees of all or substantially all of any Redevelopment Project Area as if such purchaser or lessee were originally a party to and bound by this Agreement; provided, however, that the foregoing shall not apply to any party under any sale or lease of a parcel for the construction thereon of improvements to be used by the purchaser or lessee of the parcel or its affiliate (such as a sale, lease or transfer of a particular building area, or a build-to-suit project where a party takes a parcel to prepare and lease it to another party, within any Redevelopment Project Area for the construction and operation thereon) so long as such purchaser or lessee of the parcel or its Affiliate does not seek or receive any Economic Activity Taxes for the cost of such improvements (an "Occupant"); and provided, further, that notwithstanding the foregoing, no Occupant shall be obligated under this Agreement except as an owner of property pursuant to Section 21 hereof or as a Prospective Transferee pursuant to Sections 22, 23 and 26 hereof, if applicable.

c. Incorporation. From and after the effective date of this Agreement, the restrictions set forth above in Section 23 as well as those set forth in Sections 21 and 22 and, to the extent any transferee, purchaser or assign desires to exercise any rights and interests of the Redeveloper under this Agreement, the Redeveloper shall include the restrictions set forth above in Section 23, as well as those set forth in Sections 21 and 22 and Sections 7-17, 24-34, 40-41, and 49, hereof, into any lease, deed or other instrument conveying a controlling interest to a party that is not an Affiliate in the real property located within the Redevelopment Area and shall provide that said obligations or restrictions shall constitute a benefit held by both the Redeveloper and the Commission. Failure of the Redeveloper to require that such restrictions be placed in any such lease, deed or other instrument shall constitute a breach of this Agreement, but in no way modify, lessen or diminish the obligations and restrictions set forth herein relating to the Plan.

d. Notification to Commission of Transfer. From and after the date of this Agreement, the Redeveloper or Prospective Transferee, as the case may be, shall (i) notify the Commission in writing no less than seven (7) days prior to any sale, lease or other disposition of any portions of the Real Estate and (ii) notify Commission's attorney in writing within thirty (30) days after the effective date of such sale, lease or other disposition of the Business Information of such Prospective Transferees.

24. Assignment

a. The Redeveloper represents that its undertakings pursuant to this Agreement are for the purpose of redevelopment and not for speculation.

b. Without limiting the rights of the Redeveloper or any third party under **Section 23** hereof, the Redeveloper agrees that this Agreement and the rights, duties and obligations hereunder may not and shall not be assigned by the Redeveloper without the written consent of the Commission obtained in advance of the assignment, which consent shall be granted in the event that the Commission determines in its reasonable discretion that the proposed assignee has the financial ability to perform the Redeveloper's duties and obligations under this Agreement in relation to the portion of the Project Improvements and Public Improvements to be undertaken by such proposed assignee and the proposed assignee shall agree in writing to perform the Redeveloper's duties and obligations under this Agreement. Any approved assignee shall, by an instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the Commission, assume all of the obligations of the Redeveloper under this Agreement as to all or part of the Project Improvements and Public Improvements and Redevelopment Project Area being assigned and agree to be subject to all the conditions and restrictions to which the Redeveloper 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). If an assignment by Redeveloper occurs, all of the obligations, representations and warranties in this Agreement shall be binding on the assignee as "**Redeveloper**," and Redeveloper or such assignor shall be immediately released and discharged from any and all obligations and liabilities under this Agreement arising after the date of the assignment. Nothing herein shall limit or prohibit Redeveloper from selling a non-controlling participation or interest in Redeveloper to a third party.

c. Collateral Assignment. Notwithstanding the provisions of this **Section 24**, for purposes of securing the Plan Financing contemplated by **Section 10**, Redeveloper may assign or pledge its rights under this Agreement to any lender without the Commission's consent; provided that Redeveloper and such lender enter into a separate collateral assignment contract with the Commission in a form approved by the Commission. Such assignment or pledge shall remain subject to the terms, provisions and conditions of this Agreement and the collateral assignment contract.

25. MBE/WBE Ordinance. In connection with the implementation of the Project Improvements and Public Improvements, the Redeveloper will comply with Ordinance No. 180535, as further amended and as may be amended from time to time (the "**MBE/WBE Ordinance**") and contractually require its contractors and subcontractors to comply with the terms and provisions of the MBE/WBE Ordinance, exert good faith efforts to enforce such provisions to the maximum extent permitted by law and further provide that the Commission shall be a third-party beneficiary with respect to the compliance and enforcement of such provisions. The MBE/WBE Ordinance is intended to remedy past discrimination in contracts entered in with the City and the agencies enabled by the City, including the Commission by (a) establishing affirmative action goals with respect to the aggregate amount of all costs incurred in connection with the implementation of the Project Improvements and Public Improvements, (b) requiring the Redeveloper to exert good faith efforts to meet such goals, (c) requiring the Redeveloper to deliver a professional services utilization plan and construction service utilization plan (the "**Utilization Plans**") to the Human Relations Department of the City for its approval and (d) requiring the Redeveloper to exert good faith efforts, as determined in accordance with

the MBE/WBE Ordinance, to comply with such utilization plan during the implementation of the Project Improvements and Public Improvements. The MBE/WBE Ordinance is intended to provide an equal opportunity for MBE's, WBE's, minorities and women to participate in the development of TIF-assisted redevelopment projects ("**Minority Participants**"). Prior to or simultaneously with the certification and reimbursement of any Redevelopment Costs incurred by the Redeveloper in connection with the Project Improvements and Public Improvements, the Redeveloper shall report to the Commission the progress of the Redeveloper's utilization of Minority Participants in the completion of the implementation of the Project Improvements and Public Improvements and, within sixty (60) days of the completion of the Project Improvements and Public Improvements, the Redeveloper shall provide a final report, which shall describe the utilization of Minority Participants in connection with the completion of the implementation of the Project Improvements and Public Improvements. The Redeveloper will adhere to such reasonable rules, regulations, reporting procedures and forms which the Commission may from time to time promulgate for the purpose of facilitating uniform, orderly and efficient compliance with the MBE/WBE Ordinance and which do not alter the goals established by the City and incorporated within the Utilization Plans. Prior to any costs being incurred with respect to the Project Improvements and Public Improvements, Utilization Plans, for the Project Improvements and Public Improvements will be submitted to and approved by the City, in accordance with the MBE/WBE Ordinance.

26. Permitted Uses.

a. The Redeveloper shall take such action as is from time to time necessary to permit only such uses on property owned or controlled by the Redeveloper within any Redevelopment Project Area which conform to and are permitted by the Plan, and this Agreement.

b. The provisions of this **Section 25** shall be covenants running with the land and shall remain in effect for the duration of the Term. 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 Commission, its successors and assigns, against the Redeveloper and its Prospective Transferees, their 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 (provided, subject to the provisions of **Section 22** hereof, that any such covenants shall be binding on the Redeveloper itself, such successor in interest to the subject property, and every part of the subject real property, and each party in possession or occupancy of the subject real property or any part thereof, only during their period of ownership).

27. Work Force. With respect to the implementation of the Project Improvements and Public Improvements, the Redeveloper shall comply with the Commission's Workforce Policy as amended from time to time and attached hereto as **Exhibit N** (the "**Workforce Policy**") and incorporated herein by this reference, and cause its Construction Contractors and subcontractors to comply with the terms and provisions of the Workforce Policy, exert good faith efforts to enforce such provisions to the maximum extent permitted by law and further provide that the Commission shall be a third party beneficiary with respect to the compliance and enforcement of such provisions. The Workforce Policy supports and implements the City's

Code of General Ordinances, (Chapter 3, Article IV, Division 2, Sections 3-501 through 3-525, which creates a construction employment program (“**City Construction Employment Program**”) that establishes goals for the employment of minority, women and resident workers for certain Construction Contractors engaged by the City, its departments and agencies, including the Commission. The Redeveloper shall comply with the City Construction Employment Program policies to request any necessary adjustment or waiver to the construction employment goals established for the project from the Director of the City’s Human Relations Department; provided however, the use of single-sourced contractors shall in no way limit the Redeveloper’s obligation to comply with the Workforce Policy, the City Construction Employment Program or this **Section 27**.

28. **Payment of Prevailing Wages.** The Redeveloper shall (a) pay and cause all its Construction Contractors and subcontractors to pay prevailing wage rates set forth in the then existing applicable Annual Wage Order as established pursuant to RSMo § 290-210 through § 290-340, inclusive, for any scopes of work related to any portion of the Project Improvements and Public Improvements for which Reimbursable Project Costs are anticipated to be paid or reimbursed pursuant to the terms and conditions of this Agreement, (b) comply with the procedures set forth on **Exhibit Q**, attached hereto, and (c) indemnify, protect, defend and hold the Commission Indemnified Parties (as hereafter defined) harmless from and against any and all third-party 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 if awarded by a court of competent jurisdiction) occurring or allegedly occurring as a result of the Redeveloper’s failure to comply with this **Section 28**.

29. **Environmental Compliance, Indemnification and Insurance**

a. The Redeveloper represents and warrants that:

(i) with respect to real property owned by the Redeveloper and located within the Redevelopment Area and on which the Project Improvements and Public Improvements are made or constructed (“**Real Estate**”), it shall comply with the Commission’s Environmental Policy, attached hereto as **Exhibit P**, and all applicable Environmental Laws;

(ii) to the best of its actual knowledge, it has complied with all applicable Environmental Laws with respect to the Real Estate (including soils, groundwater, surface water, buildings or other structures);

(iii) except as disclosed on **Exhibit Q**, attached hereto, to the best of its actual (as opposed to constructive) knowledge, during the period of its ownership thereof, the Real Estate has not become contaminated with any Hazardous Substances at levels above applicable cleanup standards; and

(iv) based upon a Phase 1 Environmental Report previously provided to the Commission, it has neither received notice and it is not aware that it or any previous owner of the Real Estate is subject to liability for any Hazardous

Substance disposal or contamination on the Real Estate above any de minimis non-reportable levels, nor has it received notice that it or any previous owner of the Real Estate is subject to liability for any release or threat of release of any Hazardous Substance.

b. The Redeveloper hereby agrees to remediate all conditions identified on **Exhibit Q** that relate to property upon which Improvements are to be constructed and are required to be in compliance with all Environmental Laws, including the removal or encapsulation of any lead-based paint, and thereafter submit to the Commission any notice, demand, letter, claim or request for information the Redeveloper receives indicating that it may be in violation of or liable under any Environmental Law with respect to the Real Estate.

c. As used herein, the term “**Environmental Law**” means any applicable federal, state or local law, regulation, order, decree, permit, authorization, opinion, common law relating to: (i) the protection, investigation or restoration of the environment, health, safety, or natural resources, (ii) the handling, use, presence, disposal, release or threatened release of any Hazardous Substance, (iii) noise, odor, wetlands, pollution, or contamination or (iv) standards of conduct concerning protection of human health (including, without limitation, employee health and safety), in each case as amended and as now or hereafter in effect, and the term “**Hazardous Substance**” means any substance that is: (A) oil or other petroleum products, (B) “**hazardous wastes**,” as defined by the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6901 *et seq.*, or similar state or local law, ordinance, regulation or order, (C) “**hazardous substances**,” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9601 *et seq.*, or similar state or local law, ordinance, regulation or order, (D) “**hazardous materials**,” as defined by the Hazardous Materials Transportation Act, as amended (HMTA), 49 U.S.C. § 1802, or similar state or local law, ordinance, regulation or order, (E) radioactive materials subject to the Atomic Energy Act, as amended (AEA), 42 U.S.C. § 2014 *et seq.*, or similar state or local law, ordinance, regulation or order, and (F) any other pollutant, contaminant, chemical, or substance whose presence creates or could create a hazard to health or the environment or a violation of any federal, state or local Environmental Law.

d. The Redeveloper shall fully protect, defend, indemnify, and hold harmless in full the Commission and its officers, directors, agents and employees (collectively, the “**Commission’s Indemnified Parties**”), from and against, and shall reimburse the Commission’s Indemnified Parties for, any and all losses, claims, actions, liabilities, damages, injunctive relief, injuries to persons, property or natural resources, fines, penalties, costs, reasonable expenses (including, without limitation, reasonable attorneys’ fees, consultants’ fees, expenditures, expenses and court costs), causes of action and sums paid in settlement of litigation arising directly or indirectly, in whole or in part, from any violation of any Environmental Law with respect to the Real Estate, as well as any Release, threatened Release, presence, Clean-up, treatment, transport, handling or disposal, of any Hazardous Materials at, on, under, in or from the Real Estate or in the air, land surface, subsurface strata, soil, surface water, groundwater or soil vapor on,

under, in or from all or any part of the Real Estate, or resulting from the migration or the alleged or potential migration of Hazardous Materials from the Real Estate (collectively, “**Environmental Costs**”). Without limiting the foregoing, Environmental Costs shall include (i) all costs of Clean-up, including remediation, testing, monitoring and restoration of any kind, and any disposal of Hazardous Materials, (ii) all costs and liabilities associated with claims for, damages to, and remedial action related to Hazardous Materials on, at, in or from the Real Estate, or impacting natural resources wherever located, (iii) all fines and other penalties associated with claims of noncompliance with any Environmental Laws which are related to Hazardous Materials at the Real Estate.

(i) “**Clean-up**” shall mean removal and/or remediation of, or other response to (including, without limitation, testing, monitoring, sampling or investigating of any kind) any Release of Hazardous Materials or contamination, to the satisfaction of all applicable governmental agencies, in compliance with Environmental Laws and in compliance with good commercial practice.

(ii) “**Release**” shall mean the spilling, leaking, disposing, discharging, emitting, depositing, injecting, leaching, escaping, or any other release or threatened release, however defined, and whether intentional or unintentional, of any Hazardous Material.

30. Indemnification

a. The Redeveloper and any successor or assign which assumes Redeveloper’s obligations under this Agreement (the “**Indemnifying Parties**”) shall indemnify, protect, defend and hold the Commission Indemnified Parties harmless from and against any and all third-party 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 if awarded by a court of competent jurisdiction), to persons or property occurring or allegedly occurring as a result of any acts or omissions of the Indemnifying Parties, their respective 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 Agreement and/or in connection with the ownership, use or occupancy and development or redevelopment of the Project Improvements and Public Improvements.

b. In the event any suit, action, investigation, claim or proceeding (collectively, an “**Action**”) is begun or made as a result of which the Indemnifying Parties may become obligated to one or more of the Commission Indemnified Parties hereunder, the Commission Indemnified Party shall give prompt notice to the Indemnifying Parties of the occurrence of such event, but the failure to notify the Indemnifying Parties will not relieve the Indemnifying Parties of any liability that it may have to a Commission Indemnified Party. After receipt of such notice, the Indemnifying Parties may elect to defend, contest or otherwise protect the Commission Indemnified Party against any such Action, at the cost and expense of the Indemnifying Parties

utilizing counsel of the Indemnifying Parties' choice. The Commission Indemnified Party shall have the right, but not the obligation, to participate, at the Commission Indemnified Party's own cost and expense, in the defense thereof by counsel of the Commission Indemnified Party's choice. In the event that the Indemnifying Parties shall fail timely to defend, contest or otherwise protect Commission Indemnified Party against such Action, the Commission Indemnified Party shall have the right to do so, and (if such defense is undertaken by the Commission Indemnified Party after notice to the Indemnifying Parties asserting the Indemnifying Parties' failure to timely defend, contest or otherwise protect against such Action), the Commission Indemnified Party may submit any bills for reasonable fees and third-party costs received from its counsel to the Indemnifying Parties for payment and, within thirty (30) days after such submission, the Indemnifying Parties shall transfer to the Commission Indemnified Party sufficient funds to pay such bills. The Indemnifying Parties acknowledge that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product.

c. A Commission Indemnified Party shall submit to the Indemnifying Parties any settlement proposal that the Commission Indemnified Party shall receive. The Indemnifying Parties shall be liable for the payment of any amounts paid in settlement of any Action to the extent that the Indemnifying Parties consent to such settlement. Neither the Indemnifying Parties nor the Commission Indemnified Party will unreasonably withhold its consent to a proposed settlement.

d. The Indemnifying Parties expressly confirm and agree that they have provided this indemnification and assume the obligations under this Agreement imposed upon the Indemnifying Parties, in order to induce the Commission to enter into this Agreement. To the fullest extent permitted by law, a Commission 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 Agreement. If such court action is successful, the Commission Indemnified Party shall be reimbursed by the Indemnifying Parties for all fees and expenses (including reasonable attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, settlement or appeal of such action).

e. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement.

31. Events of Default. An "**Event of Default**" shall be deemed to have occurred if:

a. Failure to Implement Project Improvements and Public Improvements. The Redeveloper fails to implement the Project Improvements and Public Improvements in accordance with the terms and conditions of this Agreement, subject to Excusable Delays pursuant to **Section 36**, and such failure continues uncured for thirty (30) days after the Commission has provided notice of such failure, pursuant to **Section 37**; provided, however, that if such failure cannot be cured within thirty (30) days and the Redeveloper is proceeding diligently, as reasonably determined by the Commission, to

cure such failure, then the thirty (30) day cure period will be extended to a reasonable time period to allow for such a cure. Notwithstanding anything herein to the contrary, an Event of Default shall occur after the Commission has provided thirty (30) days' notice to the Redeveloper, pursuant to Section 37, for failure to complete the Project Improvements and Public Improvements in accordance with the Redevelopment Schedule, provided such failure is not the result of an Excusable Delay.

b. Failure to comply with Commission Policies. The Redeveloper breaches or fails to perform or observe any provision contained in the Commission's Policies, attached hereto, as such policies may be adjusted herein, including, but not limited to, the Economic Activity Taxes Collection and Documentation Policy, the MBE/WBE Ordinance, the Workforce Policy, the Procedures for Payment of Prevailing Wages, and the Environmental Policy, and such failure continues uncured for thirty (30) days after the Commission has provided notice of such failure, pursuant to Section 37; provided, however, that if such failure cannot be cured within thirty (30) days and the Redeveloper is proceeding diligently, as reasonably determined by the Commission, to cure such failure, then the applicable thirty (30) day cure period will be extended to a reasonable period of time to allow for such a cure.

c. Representations. Any representation or warranty contained in this Agreement or information required to be furnished to the Commission, including, but not limited to, any modification to Plan Financing described by Section 10, the Progress Reports described by Section 12, or any other writing furnished by the Redeveloper, is false or misleading in any material respect on the date made or furnished; provided, however, that to the extent that any such falsity of a representation or warranty is capable of being corrected, Redeveloper shall not be in default hereunder if Redeveloper shall correct such falsity within thirty (30) days after the Commission has provided notice of such failure, pursuant to Section 37 and such failure shall not have adversely impacted or disadvantaged the Commission; provided, however, that if such falsity is capable of being corrected but cannot be corrected within thirty (30) days and the Redeveloper is proceeding diligently, as reasonably determined by the Commission, to correct such falsity, then the thirty (30) day cure period will be extended to a reasonable time period to allow for such correction, provided such falsity has not adversely impacted or disadvantaged the Commission.

d. Insolvency. The Redeveloper is unable to pay its debts generally as they become due, makes an assignment for the benefit of creditors, or an order, judgment, decree or injunction is entered adjudicating the Redeveloper bankrupt or insolvent or requiring the dissolution or split up of the Redeveloper or preventing the Redeveloper from conducting all or any part of its business; or any order for relief with respect to the Redeveloper is entered under the Federal Bankruptcy Code; or the Redeveloper petitions or applies to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Redeveloper, or of any substantial part of the assets of the Redeveloper, or commences any proceeding relating to the Redeveloper under any bankruptcy reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar laws of any jurisdiction now or hereafter in effect; or any such petition or application is filed, or any such proceeding is commenced, against the Redeveloper and

either the Redeveloper by any act indicates its approval thereof, consent thereto or acquiescence therein or such petition, application or proceeding is not dismissed within sixty (60) days.

e. Failure to Pay Taxes. The Redeveloper, subject to the Redeveloper's right to contest the same in any manner permitted by law, shall fail to pay when due all taxes levied upon any real or personal property owned by the Redeveloper or any of its Affiliates and located in the City.

f. Failure to Maintain the Property. The Redeveloper fails to maintain the Real Estate in accordance with the provisions of **Section 13**; and such failure continues uncured for thirty (30) days after the Commission has provided notice of such failure, pursuant to **Section 37**; provided, however, that if such failure cannot be cured within thirty (30) days and Redeveloper is proceeding diligently, as reasonably determined by the Commission, to cure such failure, then the applicable thirty (30) day cure period will be extended to the time reasonably necessary to cure such failure;

g. Failure to Submit Reports. The Redeveloper fails to submit reports within the specified time periods set forth in this Agreement, including, but the limited to, the Progress Reports described by **Section 12**, the reports required by the MBE/WBE Ordinance, the reports required by the Workforce Policy, the Notice of Completion required by **Section 17** and the annual financial statement required by **Section 49(b)**; and such failure continues uncured for thirty (30) days after the Commission has provided notice of such failure, pursuant to **Section 37**; provided, however, that if such failure cannot be cured within thirty (30) days and the Redeveloper is proceeding diligently, as reasonably determined by the Commission, to cure such failure, then the thirty (30) day cure period will be extended to a reasonable time period to allow for such a cure.

h. Failure to Incorporate Provisions. The Redeveloper fails to comply with **Section 23**, in connection with the sale or transfer of property within the Redevelopment Area.

i. Cross-Defaults; Failure to Observe Other Obligations. There is an “**Event of Default**” that has occurred and is continuing beyond the applicable cure period, or the Redeveloper fails to perform its obligations under any other agreement between or among the Commission and the Redeveloper, including the Funding Agreement. The foregoing shall constitute “**Events of Default**” whatever the reason or cause for any such Event of Default and whether it is voluntary or involuntary or is affected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

32. Consequences of Events of Default

a. If any Event of Default described in **Section 31** has occurred and is continuing beyond the applicable cure period, the Commission, (i) shall have no obligation to certify Redevelopment Project Costs incurred by the Redeveloper or reimburse the Redeveloper for any Certified Costs, (ii) may terminate this Agreement

(iii) apply any deposit or other funds submitted by the Redeveloper to the Commission in payment of the damages suffered by it, (iv) may withhold or apply funds claimed by the Redeveloper from the Special Allocation Fund for reimbursement of Certified Costs incurred in connection with the Plan to such extent as is necessary to protect the Commission from loss or to insure the Project Improvements and Public Improvements are fully and successfully implemented in a timely fashion, or (v) may withhold issuance of a Certificate of Completion and Compliance for all or any portion of the Project Improvements and Public Improvements where a Certificate of Completion and Compliance has not already been issued. If any action is instituted arising from this Agreement, the prevailing party in such action shall be entitled to recover from the other party all costs, fees and expenses, including reasonable attorneys' fees incurred; provided, however, the Commission's obligation to pay any costs, fees or expenses, including reasonable attorneys' fees shall be limited to amounts on deposit, from time to time, in the Special Allocation Fund.

b. The rights and remedies of the parties provided by this Agreement shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same Event of Default. No waiver made by a party shall be effective unless in writing, nor shall it apply to obligations beyond those expressly waived.

c. The Redeveloper (for itself and its successors and assigns, and for all other persons who are or who shall become liable, by express or implied assumption or otherwise, upon or subject to any obligation or burden under this Agreement), waives to the fullest extent permitted by law and equity all claims or defenses otherwise available on the ground of being or having become a surety or guarantor, whether by agreement or operation of law. This waiver includes, but is not limited to, all claims and defenses based upon extensions of time, indulgence or modification of terms of contract.

d. Any delay by the Commission in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this **Section 32** shall not operate as a waiver of such rights or limit them in any way. No waiver in fact made by the Commission of any specific default by the Breaching Party shall be considered or treated as a waiver of the rights of the Commission with respect to any other Events of Default by the Redeveloper, or with respect to the particular default except to the extent specifically waived.

e. **NOTWITHSTANDING ANYTHING HEREIN STATED IN THIS AGREEMENT TO THE CONTRARY, ANY UNRESOLVED DISPUTE WITH RESPECT TO THIS SECTION SHALL BE SUBMITTED TO NON-BINDING ARBITRATION BY A SINGLE ARBITRATOR BEFORE ANY UNRESOLVED DISPUTE SHALL BE SUBMITTED TO A COURT HAVING JURISDICTION OVER SUCH DISPUTE.** The arbitrator shall be a person located in the Kansas City metropolitan area agreed to by the parties. If the parties cannot agree to an arbitrator, the selection shall be made by the Presiding Judge of the Circuit Court of Jackson County, Missouri, on the application of either party. All expenses and fees of the arbitration and the arbitrator shall be assessed by the arbitrator as he or she finds equitable and just based

on his or her findings with respect to the dispute arbitrated; provided, however, that each party shall bear the expenses and fees of any attorneys, accountants, expert witnesses or others appearing or submitting any materials on such party's behalf. Otherwise, the Commercial Arbitration Rules and Regulations of the American Arbitration Association, or any successor body, shall apply. Upon receipt of the finding of the arbitrator, the parties may: (i) agree to enter the finding with an appropriate court as the final determination of the disputed issue, (ii) reach a separate settlement agreement, or (iii) take further action as described below.

Within thirty (30) days of receipt of the decision by the arbitrator, either party may notify the other of an intention to submit the dispute to the court having jurisdiction over the matter. In the event the notifying party does not file a petition with the appropriate court within thirty (30) days after receipt of the arbitrator's decision, the decision by the arbitrator shall be binding and final. If the dispute is timely submitted to a court with jurisdiction over the matter, such dispute shall be heard as a new petition and not as an arbitration appeal. The award of the tribunal shall be final and binding (save for manifest error of law), and judgment shall be entered by a court having jurisdiction thereof. As part of the judgment granted, the substantially prevailing party (as determined by the tribunal's judgment) shall be awarded its reasonable court costs, reasonable attorneys' fees, and other reasonable costs incurred in pursuing the matter before a court.

f. No member, official, representative, agent or employee of the Commission shall be personally liable to Redeveloper or any successor in interest in the event of any default or breach by the Commission for payment of any amount which may become due to Redeveloper or its successor in interest or for the performance of any obligations under the terms of the Agreement. No partner, shareholder, member, officer, director representative, agent or employee of Redeveloper or any of its Affiliates shall be personally liable to the Commission in the event any default or breach by Redeveloper for payment of any amount which may become due to Redeveloper or its successor in interest or for the performance of any obligations under the terms of the Agreement.

33. Modification. The terms, conditions and provisions of this Agreement can be neither modified nor eliminated except by written agreement between the Commission and the Redeveloper. Any such modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

34. Term. This Agreement shall become effective on the date set forth herein, and shall remain in full force and effect until the completion of all Improvements called for in the Plan, as described herein, and so long thereafter (a) as obligations remain outstanding under this Agreement and (b) there are any remaining Certified Costs, which have not been reimbursed to the Redeveloper in accordance with this Agreement from Economic Activity Taxes. Unless terminated pursuant to **Section 32**, at such time as all of the obligations and costs set forth in the preceding sentence have been satisfied and reimbursed, this Agreement shall terminate, provided that in any event, and notwithstanding anything to the contrary, the obligations of the Redeveloper and Commission arising under the terms and conditions of this Agreement, with respect to the Redevelopment Project and the Project Improvements and Public Improvements, including, but not limited to, the reimbursement of Certified Costs, shall cease twenty-three (23)

years after the Effective Date of the latest approved Redevelopment Project by Ordinance by the City, or when all other Reimbursable Project Costs have been repaid, whichever is earlier. Provided the Redeveloper is not in default of its obligations under this Agreement or this Agreement is not otherwise terminated, notwithstanding the foregoing, but only to the extent permitted by applicable law, Economic Activity Taxes that accrued or was generated prior to the expiration of the twenty-three year period, but which was not deposited into the Special Allocation Fund or otherwise made available for reimbursement shall, at the time such Economic Activity Taxes is deposited into the appropriate Special Allocation Fund, be used to reimburse the Redeveloper or the Commission, as the case may be, for any and all Redevelopment Project Costs incurred by the Commission or Certified Costs incurred by the Redeveloper prior to the conclusion of the twenty-three year period.

35. Applicability. This Agreement shall apply only to the Plan, Redevelopment Project, the Redevelopment Project Costs, and the Project Improvements and Public Improvements.

36. Delays. The parties understand and agree that the Redeveloper shall not be deemed to be in default or breach of this Agreement because of delays or temporary inability to proceed due in whole or in part to causes beyond the reasonable control or without the material fault of the Redeveloper (collectively, “**Excusable Delays**”). With the approval of the Commission, the time of performance hereunder shall be extended for the period of any Excusable Delays caused or resulting from any of the foregoing causes, it being understood that the Redeveloper is entitled to such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays.

37. Notice. All notices required by this Agreement shall be in writing and shall be served either personally or by certified mail, or by any other delivery service which obtains a receipt for delivery unless any such notice is required by law and such law provides a different form of delivery or service. Any such notice or demand served personally shall be delivered to the party being served (provided that such notice may be delivered to the receptionist or any other person apparently in charge of such party’s office at its address hereinafter set forth), and shall be deemed complete upon the day of actual or attempted delivery, as shown by an affidavit of the person so delivering such notice. Any notice so served by certified mail shall be deposited in the United States Mail with postage thereon fully prepaid and addressed to the party or parties so to be served at its address hereinafter stated, and service of any such notice by certified mail shall be deemed complete on the date of actual or attempted delivery as shown by the certified mail receipt. Service of any such notice by another delivery service shall be deemed complete upon the date of actual or attempted delivery as shown on the receipt obtained by such delivery service.

Any notice to the Commission shall be addressed to the Secretary of the Commission at:

Tax Increment Financing Commission of Kansas City, Missouri
300 Wyandotte, Suite 400
Kansas City, Missouri 64105
Attn: Executive Director

with a copy to:

Bryan Cave Leighton Paisner LLP
3800 One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105
Attn: Wesley O. Fields, Esq.

Notices to the Redeveloper shall be addressed to:

Oz Development, LLC
4001 Blue Parkway, Suite 301
Kansas City, MO 64130
Attn: Robert Langenkamp

with a copy to:

Hardwick Law Firm, LLC
2405 Grand Boulevard, Suite 800
Kansas City, MO 64108
Attn: Allison Bergman, Esq..

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.

38. Recording. Upon full execution by the Redeveloper and the Commission of this Agreement, a memorandum of this Agreement shall be recorded by the Commission in the Jackson County's Office of the Recorder of Deeds.

39. Headings. The headings or captions of this Agreement are for convenience and reference only, and in no way define, limit or describe the scope or intent of the contract or any provisions hereof.

40. Administrative Fees and Costs.

a. In order to reimburse the Commission for its administrative costs and expenses (including staff time) in connection with administering tax increment financing with respect to the Plan, the Project Improvements and Public Improvements and the performance of its obligations under this Agreement, the Commission and the Redeveloper have entered into the Funding Agreement. Any of the Commission's actual and reasonable costs and expenses which are not covered by the Funding Agreement for the services incidental to the Plan, which shall include, but shall not be limited to the following: professional services, including outsourced services such as financial analysis, construction and/or engineering review, legal services, certification of funds, audits, staff time, notices, mailings and copies shall be paid by the Redeveloper within thirty (30) days of having been billed for same and, to the extent permitted by **Exhibit E**, attached hereto, may be claimed by the Redeveloper as Reimbursable Project Costs. In the event the Redeveloper disputes any such fees or expenses, such disputes shall be resolved in a manner pursuant to the Commission's Policy on Disputed Charges, attached

hereto as **Exhibit R**. If payment of said expenses has not been made in full within thirty (30) days of having been billed, a one and one-half percent (1.5%) fee will be applied to the unpaid balance as a late penalty. A one and one-half percent (1.5%) penalty fee will continue to accumulate monthly thereafter, up to a maximum cumulative penalty of eighteen percent (18%), until payment of all billed expenses and all penalties are paid in full.

b. The Commission shall retain as its administrative fee an amount equal to five percent (5%) of the EATS and PILOTS deposited into the Special Allocation Fund.

41. **Relocation Costs**. The Commission shall not be responsible for any relocation activity or costs thereof that may be required by law to be paid. The Redeveloper shall provide relocation services and benefits as provided for under the Plan and agrees to indemnify and hold the Commission harmless from any claim, cost or expense for said services and benefits made by individuals and entities arising from the implementation of the Plan, except that such costs, which are approved by the City, shall be deemed by the Commission to be Redevelopment Project Costs. Notwithstanding the foregoing, the Commission, in its sole discretion, may assist in administering relocation activity if requested by the Redeveloper.

42. **Validity and Severability**.

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

b. If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder. In the event any provision of this Agreement is capable of more than one interpretation, one which would render the provision invalid and one which would render the provision valid, the provision shall be interpreted so as to render it valid.

43. **Time is of the Essence**. Time and exact performance are of the essence of this Agreement.

44. **Sole Agreement**. This Agreement, including all exhibits, riders or addenda attached hereto, as well as any Funding Agreements and Cooperative Agreements, constitute the sole agreement between the parties and supersedes any prior understandings or written or oral

agreements between the parties with respect to the Plan, including but not limited to that certain Funding Agreement.

45. Acknowledgments. The Redeveloper hereby represents, warrants, acknowledges and admits that (a) it and its officers have been advised by counsel on the negotiation, execution and delivery of this Agreement and any other instrument or document entered into in connection herewith; (b) it and its officers have made an independent decision to enter into this Agreement and such other instruments and documents, without reliance on any representation, warranty, covenant or undertaking by the Commission or its commissioners, members or staff, whether written, oral or implicit, other than as expressly set forth in this Agreement; (c) neither the Commission nor its commissioners, members or staff have made any representation, covenant or undertaking to the Redeveloper or its officers, employees, representatives or agents in connection with the rights and obligations of the Redeveloper pursuant to this Agreement and any such instruments or documents; (d) there are no representations, warranties, covenants, undertakings or agreements by the Commission or its commissioners, members or staff as to this Agreement or such instruments and documents except as expressly set forth herein or therein; (e) no joint venture exists between the Commission and the Redeveloper; (f) without limiting any of the foregoing, neither the Redeveloper nor its officers are relying upon any representation by the Commission or its commissioners, members or staff, and no such representation has been made that the Commission will at the time of a breach or default hereunder waive, negotiate, discuss or refrain from taking any action with respect to such breach or default or any other term of this Agreement or such instruments or documents; and (g) the Commission has relied upon the truthfulness of the foregoing acknowledgments in deciding to execute and deliver this Agreement.

46. Technical Amendments. In the event that there are minor inaccuracies contained herein or any exhibit attached hereto or any other agreement contemplated hereby, or the parties agree that changes are required due to unforeseen events or circumstances, or technical matters arising during the Term, which changes do not alter the substance of this Agreement, the respective presiding officers of the Commission and the officers of the Redeveloper are authorized to approve such changes and are authorized to execute any required instruments and to make and incorporate such amendment or change to this Agreement or any exhibit attached hereto or any other agreement contemplated hereby.

47. Choice of Law. The interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Missouri. Venue for any cause of action arising out of or in connection with this Agreement shall be in Jackson County, Missouri.

48. Multiple Counterparts. This Agreement may be executed in multiple counterpart copies, each of which will be considered an original and all of which shall constitute but one and the same instrument, binding on all parties hereto, even though all the parties are not signatory to the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages which together contain the signatures of all parties hereto shall be deemed for all purposes a fully executed original.

49. Public Participation in Cash Flow.

a. The purpose of affording public assistance to the Plan is to accomplish the stated public purposes and not to subsidize an otherwise economically viable development project. While it has been determined by both the Commission and the City Council that the Project Improvements and Public Improvements would not be undertaken by the parties but for the public assistance being provided, the parties recognize that the ongoing profitability of the Project Improvements and Public Improvements to the Redeveloper is based upon projections that may or may not be fulfilled. Therefore, in order to ensure that the public assistance being provided does not subsidize an unreasonable level of earnings for the Redeveloper, the parties agree that a reasonable level of earnings for construction and completion of all of the Project Improvements and Public Improvements is an annual cash-on-cost cumulative rate of return on the Equity Investment of 9.5%. The parties acknowledge that the return on Equity Investment contemplated herein is intended to evaluate the return on the Redeveloper's real estate investment and not the return of any individual business within the Redevelopment Area. Therefore, if at the end of any calendar year of the Term, after completion of all of the Project Improvements and Public Improvements, the Net Cash Flow exceeds the cash flow necessary to generate said cumulative 9.5% annual return on the Equity Investment for the current and all previous calendar years, a percentage of such excess, calculated by dividing the Redevelopment Project Costs reimbursed to the Redeveloper from PILOTs, EATs and Additional Tax Revenue by the total cost of completing the Project Improvements and Public Improvements (the "**Commission Share**"), shall be contributed to the Commission (the "**Public Participation Amount**"), which shall be used by the Commission for any purpose consistent with the Act; provided, however, the aggregate total amount of the Public Participation Amount contributed to the Commission, if any, under this Agreement shall in no event exceed the cumulative amount of the Reimbursable Project Costs reimbursed to the Redeveloper from PILOTs and EATs under this Agreement (the "**Reimbursed Project Costs**"). The Public Participation Amount, Commission Share, the total cost of completing the Project Improvements and Public Improvements, the Redevelopment Project Costs eligible for reimbursement and the Equity Investment and Private Loans, as certified to by the Commission pursuant to **Section 16** hereof and as estimated in the Plan, shall be submitted in a format as set forth on **Exhibit R**. For purposes of calculation of annual returns, all Redevelopment Project Costs certified by the Commission will be included in calculations for a period beginning upon the adoption of an ordinance approving the Plan and ending twenty-three (23) years after such adoption.

b. Redeveloper shall during the Term submit annually a complete written financial statement to the Commission in a format as set forth on **Exhibit R** showing in reasonable detail the calculation of actual earnings for the Project Improvements and Public Improvements. Such statement shall include all income attributable to all Project Improvements and Public Improvements and shall include only those expenses which are reasonable and necessary to the operation of the Project Improvements and Public Improvements and are directly attributable thereto and shall include no indirect general administrative expenses but shall include developer fees, leasing commissions, and standard property management costs. The parties acknowledge that, for purposes of participation in cash flow, returns are calculated pursuant to the cash flow calculation chart set forth on **Exhibit R**. All such statements shall be certified to by the

Redeveloper's Chief Financial Officer or manager and shall be accompanied by the payment required under this **Section 49**. The Redeveloper shall provide such statements within one hundred twenty (120) days after the end of each calendar year following the execution of this Agreement.

c. In the event of a sale of all or substantially all of the Real Estate during the Term to a third party in a good faith, arms-length transaction (whether by purchase and sale agreement, whether for cash or cash equivalent, joint venture or similar agreement or merger/consolidation of the Redeveloper), or a transfer of all or substantially all of the property through a refinancing of the debt identified by the Plan Financing which causes in excess of fifty percent (50%) of the ownership of Redeveloper to change after the date of this Agreement, the "**Proceeds**" of any of the foregoing shall be distributed as follows:

Step 1 – The Proceeds shall first be used to retire the existing private debt on or relating to the sale or refinance of the Project Improvements and Public Improvements, and to pay or reimburse the Redeveloper for the reasonable and customary out-of-pocket costs, fees and expenses incurred by the Redeveloper in achieving the sale or refinancing.

Step 2 – Any balance of the Proceeds after Step 1 shall be used to make up any then-existing deficit in the Redeveloper's achieving a cumulative annual rate of return on Equity Investment from the Project Improvements and Public Improvements, or a part thereof, for which a Certificate of Completion and Compliance has been issued of at least 9.5% through the date of the sale or refinancing.

Step 3 – Any balance of the Proceeds after Step 2 shall be used to return to the Redeveloper the Equity Investment in the Project Improvements and Public Improvements for which a Certificate of Completion and Compliance has been issued as of the date of the sale or refinancing.

Step 4 – Commission Share of any balance of the Proceeds after Step 2 shall be contributed to the Commission, which shall be used by the Commission for any purpose consistent with the Act.

d. After any sale or refinancing as described herein, the Redeveloper shall re-submit for certification the Equity Investment applicable to the Project Improvements and Public Improvements remaining. The provision of this **Section 49** (*i.e.*, Public Participation in Cash Flow) shall no longer be applicable to such Project Improvements and Public Improvements sold. The Commission agrees to issue an estoppel certificate to such third party so confirming this fact within ten (10) days after such sale.

e. If, as a result of a refinancing, the Redeveloper has, pursuant to Step 2 in subsection c, been paid such amount as is necessary to make up any then-existing deficit in the Redeveloper achieving a cumulative annual rate of return of 9.5% on the Equity Investment and the Redeveloper has fully recovered 100% of its Equity Investment in the Project Improvements and Public Improvements for which a Certificate of Completion

and Compliance has been issued as computed in Step 3, thereafter, on an annual basis, the Commission Share of all Net Cash Flow and the Commission Share of the proceeds of any sale or additional refinancing available after Step 1 shall be contributed to the Commission, which shall be used by the Commission for any purpose consistent with the Act. If, as a result of a refinancing or refinancings, the Redeveloper has, pursuant to Step 2 in subsection c, been paid such amount as is necessary to make up any then-existing deficit in the Redeveloper achieving a cumulative annual rate of return of 9.5% on the Equity Investment and the Redeveloper has recovered part, but not 100%, of its Equity Investment in the Plan for which a Certificate of Completion and Compliance has been issued as computed in Step 3 in subsection c, thereafter, for purposes of computing the Commission's potential share in Net Cash Flow or any sale or refinancing Proceeds, the amount of the Redeveloper's Equity Investment in the Project Improvements and Public Improvements shall be reduced by the amount of such investment that has been returned to the Redeveloper under Step 3.

f. Upon thirty (30) days prior written notice, the Commission may cause an audit of the Redeveloper's statements and calculations referred to herein by the Commission's staff or consultant. If, as a result of any such audit, the Commission believes that the Redeveloper owes the Commission more money than has been remitted by the Redeveloper as heretofore described, then the Commission shall inform the Redeveloper of its position in writing along with providing reasonable details of the Commission's position. Notwithstanding anything herein stated in this Agreement to the contrary, any unresolved dispute with respect to this **Section 49** shall be submitted to binding arbitration by a single arbitrator. The arbitrator shall be a person located in the Kansas City metropolitan area agreed to by the parties. If the parties cannot agree to an arbitrator, the selection shall be made by the Presiding Judge of the Circuit Court of Jackson County, Missouri, on the application of either party. The expenses and fees of the arbitration and arbitrator shall be shared equally by the Redeveloper and by the Commission; provided, however, that each party shall bear the expenses and fees of any attorneys, accountants, expert witnesses or others appearing or submitting any materials on such party's behalf. Otherwise, the Commercial Arbitration Rules and Regulations of the American Arbitration Association, or any successor body, shall apply.

SECTION 31(e) and SECTION 49(f) OF THIS AGREEMENT CONTAIN A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES HERETO.

[The remainder of this page left intentionally blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed pursuant to due authority as of the date first above set forth.

TAX INCREMENT FINANCING COMMISSION
OF KANSAS CITY, MISSOURI

ATTEST:

Heather A. Brown, Secretary

By: _____
Alissia R. Canady, Chair

Approved as to form:

Wesley O. Fields
Counsel to the Commission

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ____ day of _____, 2020, before me, a Notary Public in and for said state, personally appeared Alissia R. Canady, Chair of the Tax Increment Financing Commission of Kansas City, Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said Commission and such person duly acknowledged to me that she executed the same for the purposes therein stated, and that the execution of the same was the free act and deed of said Commission.

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

Notary Public

My Commission Expires:

OZ DEVELOPMENT, LLC, a Missouri limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2020, before me, a Notary Public in and for said state, personally appeared _____, the _____ of Oz Development, LLC, a Missouri limited liability company, personally known by me to be the person who executed the within instrument on behalf of said limited liability company, and acknowledged to me that he/she executed the same for the purposes therein stated.

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

Notary Public

My Commission Expires:

EXHIBIT A-1

A Copy of Commission Resolution No. 10-____-20

EXHIBIT A-2

A Copy of Commission Resolution No. 10-__-20

EXHIBIT B

A Copy of Ordinance No. _____

EXHIBIT C

A Copy of the Plan

A copy of the Overlook Tax Increment Financing Plan and all amendments thereto are on file and may be viewed at the offices of the Tax Increment Financing Commission of Kansas City, Missouri, located at 300 Wyandotte, Suite 400, Kansas City, Missouri 64105.

EXHIBIT D

Project Improvements and Public Improvements Description

Project Improvements consist of the construction of up to 60,000 square feet of new office building and 185 surface parking spaces, along with interior driveways, and potentially a health fitness trail and public plaza areas associated with the building.

The Public Improvements consist of the construction or reconstruction of such other public infrastructure improvements such as signage, signaling, sidewalks, storm drainage facilities, utility relocation and upgrades, structured parking facilities, curbs, and such other related public infrastructure improvements that support and enhance the Project Improvements.

EXHIBIT E

Estimated Redevelopment Project Costs

Project Costs	Sources				
		TIF	CCED	PIAC	Debt/Equity STIF
Land Costs					
Acquisition	\$	650,000	\$	650,000	
Demolition	\$	350,000	\$	350,000	
Holding Costs	\$	30,000			\$ 30,000
Environmental	\$	50,000			\$ 50,000
Pre-Development					
Legal	\$	72,000			\$ 72,000
Civil	\$	125,327			\$ 125,327
Survey	\$	24,000			\$ 24,000
Architectural Design	\$	449,444			\$ 449,444
Platting/Zoning	\$	10,000			\$ 10,000
Entitlements	\$	45,000			\$ 45,000
Arterial Street Impact	\$	28,000			\$ 28,000
Market Study	\$	10,000			\$ 10,000
Traffic Study	\$	13,000			\$ 13,000
Environmental Study	\$	29,150			\$ 29,150
Other	\$	35,000			\$ 35,000
Hard Costs					
Construction Bid	\$	12,685,082	\$1,995,838		\$ 7,693,406 \$2,995,838
Site Prep	\$	5,550,000		\$5,000,000	\$ 550,000
Public Improvements	\$	150,000		\$ 150,000	
Tenant Allowance(s)	\$	1,863,280			\$ 1,863,280
Development Fee	\$	809,934			\$ 809,934
Financing Costs					
Construction Interest	\$	259,303			\$ 259,303
Closing	\$	20,000			\$ 20,000
Reserves	\$	25,000			\$ 25,000
Totals	\$	23,283,520	\$2,995,838	\$5,000,000	\$ 150,000 \$ 12,141,844 \$2,995,838

EXHIBIT E-1

Source of Financing

EATs/PILOTs	\$ 2,995,838
Additional EATs	\$ 2,995,838
Central City Sales Tax	\$ 5,000,000
PIAC Grant	\$ 150,000
Private Debt/Equity	<u>\$12,141,844</u>
Total	\$23,283,520

EXHIBIT E-2

Commitments to Finance

EXHIBIT F

Interest Policy

EXHIBIT G

Certification of Costs and Reimbursement Policy

EXHIBIT H

Redevelopment Schedule

DEVELOPMENT SCHEDULE

EVENT	YEAR OF COMPLETION
Design Completion	2021
City and Agency Approvals	2020
Financing Closing	2021
Begin Construction	2021
Complete Construction	2023

EXHIBIT I

Annual Assessment Form

EXHIBIT J

Certificate of Completion and Compliance Policy

EXHIBIT K
Funding Schedule

EXHIBIT L

Economic Activity Taxes Collection and Documentation Policy

EXHIBIT M

Form Letter of Transferees

EXHIBIT N

Workforce Policy

EXHIBIT O

Procedures for Payment of Prevailing Wages

EXHIBIT P

Environmental Policy

EXHIBIT Q

Environmental Disclosures

EXHIBIT R

Policy on Disputed Charges

EXHIBIT S

Public Participation Worksheet

EXHIBIT T

Bond Disbursement Policy