

**AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO APPROVE THE 110 SMITHVILLE TAX INCREMENT FINANCING PLAN, ESTABLISH THE REDEVELOPMENT AREA, DESIGNATE THE REDEVELOPMENT AREA AS BLIGHTED, MAKING OTHER FINDINGS, DESIGNATING 110 SMITHVILLE, LLC AS THE DEVELOPER OF RECORD AND AUTHORIZING THE CITY TO ENTER INTO A TIF REDEVELOPMENT AGREEMENT BETWEEN THE CITY AND 110 SMITHVILLE, LLC**

**WHEREAS**, City staff has worked with 110 Smithville, LLC, the proposed developer (the "Developer") to prepare the 110 Smithville Tax Increment Financing Plan (the "Redevelopment Plan") pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri (the "TIF Act"), for the redevelopment of the area generally located at the northeast corner of West Main Street and Mill Street, containing approximately 1.59 acres of land (the "Redevelopment Area") that is proposed to be developed into a single redevelopment project described under the Redevelopment Plan (the "Redevelopment Project"); and

**WHEREAS**, pursuant to the provisions of the TIF Act, the Smithville Tax Increment Financing Commission ("TIF Commission") was composed of representatives from the City and from the affected taxing jurisdictions for the purpose of conducting a public hearing and making recommendations with respect to the Redevelopment Plan to the Board of Aldermen of the City of Smithville, Missouri ("Board"); and

**WHEREAS**, in accordance with the written policies and procedures relating to bids and proposals for the implementation of redevelopment projects as adopted by the City, the City published in *The Courier-Tribune* on March 3, 2023 a notice of request for proposals for the implementation of a redevelopment project for the Redevelopment Plan, which provided reasonable opportunity for any person to submit proposals for redevelopment projects in compliance with Section 99.820.1(3) of the Revised Statutes of Missouri; and

**WHEREAS**, the City received no additional proposals in response to the published request for proposals; and

**WHEREAS**, on March 30, 2023, after due notice in accordance with the TIF Act, the TIF Commission opened a public hearing, at which all interested persons and taxing districts affected by the Redevelopment Plan were afforded an opportunity to make comments, file written objections, protests, and be heard orally regarding adoption of the Redevelopment Plan. On that date, the TIF Commission continued the public hearing regarding the Redevelopment Plan; and

**WHEREAS**, on April 24, 2023, the TIF Commission, after due notice in accordance with the TIF Act, having heard and considered the objections, protests, comments, and other

evidence adduced at the public hearing, closed the public hearing and adopted Resolution 2023-01 by a 9-2 vote to recommend approval of the Redevelopment Plan, the designation of the Redevelopment Area, approval of the Redevelopment Project, the approval of tax increment financing for the Redevelopment Project, the designation of Developer as the developer of record for the Redevelopment Plan, and making other recommendations related to approval of the Redevelopment Plan; and

**WHEREAS**, on June 20, 2023 and on August 1, 2023, at regularly scheduled meetings, after the posting of proper notice, the Board considered the Redevelopment Plan, the recommendations of the TIF Commission, the recommendations of City staff, and considered the public objections, protests, comments, and other evidence; and

**WHEREAS**, having heard and considered the objections, protests, comments, and other evidence adduced at the meeting, the evidence and testimony submitted at the TIF Commission public hearing, the recommendations of the TIF Commission, and the recommendations of City staff, the Board desires to approve the Redevelopment Plan, designate the Redevelopment Area, declare the Redevelopment Area a blighted area, designate the Developer as the developer of record for the Redevelopment Plan, approve the Redevelopment Plan and authorize other actions related to the Redevelopment Plan; and

**WHEREAS**, the Board desires to enter into a redevelopment agreement with the Developer to establish the rights, duties and obligations of the City and the Developer, to implement the Redevelopment Plan and establish certain related matters.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI**, as follows:

SECTION 1. The Redevelopment Plan, as revised, a copy of which is on file in the Office of the City Clerk, is hereby approved and adopted. In the event of any conflict or inconsistency between the Redevelopment Plan and this Ordinance, the provisions of this Ordinance shall control.

SECTION 2. The tract of land legally described in **Exhibit A-2** to the Redevelopment Plan is hereby approved by the Board and designated as the Redevelopment Area for the Redevelopment Plan.

SECTION 3. The Board hereby finds that:

A. The Redevelopment Plan sets forth in writing a general description of the program to be undertaken to accomplish its objectives, including the estimated redevelopment project costs, the anticipated sources of funds to pay the costs, evidence of the commitments to finance the project costs, the anticipated type and term of the sources of funds to pay costs, the anticipated

type and terms of the obligations to be issued, the most recent equalized assessed valuation of the property within the Redevelopment Area which is to be subjected to payments in lieu of taxes and economic activity taxes pursuant to Section 99.845, RSMo, an estimate as to the equalized assessed valuation after redevelopment, and the general land uses to apply in the Redevelopment Area;

B. The Redevelopment Area is a blighted area, as such term is defined in Section 99.805(1), RSMo, due to the presence of several blighting factors as set forth in **Exhibit B** to the Redevelopment Plan. In addition to incorporating such blight analysis into this Ordinance by reference, the Board bases its finding of blight on the primary factors discussed in **Exhibit B** to the Redevelopment Plan, that the Redevelopment Area is characterized by unsanitary or unsafe conditions, deterioration of site improvements and conditions which endanger life or property by fire or other causes, and that the area has and will continue to constitute an economic and social liability to the City and a menace to the public health, safety, or welfare of the City in its present condition and use. The Redevelopment Plan is also accompanied by an affidavit, signed by the Developer and set forth in **Exhibit H** to the Redevelopment Plan, attesting to the blighting elements of the Redevelopment Area.

C. The proposed redevelopment satisfies the "but for" test set forth in Section 99.810, RSMo, in that the Redevelopment Area has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing. The Redevelopment Plan is accompanied by an affidavit, signed by the Developer and set forth in **Exhibit H** to the Redevelopment Plan, attesting to this statement;

D. The Redevelopment Plan is in conformance with the Comprehensive Plan for the development of the City as a whole;

E. The Redevelopment Plan contains both estimated dates of completion of the redevelopment project and estimated dates for the retirement of obligations incurred to finance redevelopment project costs, and said dates are not more than twenty (20) years from the adoption of each ordinance approving a Redevelopment Project within the Redevelopment Area;

F. There are no businesses existing in the Redevelopment Area that have been or will be required to relocate in order to implement the Redevelopment Plan. However, in the event relocation of any occupant is necessary, it will be carried out pursuant to the Relocation Assistance Plan attached as **Exhibit L** to the Redevelopment Plan;

G. The Redevelopment Plan is accompanied by a Cost Benefit Analysis and other evidence and documentation from Developer which contains sufficient information to evaluate whether the Redevelopment Plan as proposed is financially feasible, showing the economic impact of the Redevelopment Plan on each taxing district and political subdivision within the Redevelopment Area if the proposed Redevelopment Project is built pursuant to the Redevelopment Plan or is not built, and that the proposed Redevelopment Project is financially feasible, but only with TIF assistance, and the Board finds that the Redevelopment Plan and Redevelopment Project are financially feasible for the Developer only if TIF assistance is provided;

H. The Plan does not include the initial development or redevelopment of any gambling establishment; and

I. The area selected for the Redevelopment Project includes only those parcels of real property and improvements thereon which will be directly and substantially benefited by the Redevelopment Project improvements.

SECTION 4. The applicant, 110 Smithville, LLC, is hereby designated as developer of record for the Redevelopment Plan.

SECTION 5. There is hereby created and ordered to be established within the treasury of the City a separate fund to be known as the "*110 Smithville Special Allocation Fund*" which shall contain separate segregated accounts into which payments in lieu of taxes, economic activity taxes and other revenues shall be deposited, as collected by the City pursuant to the Redevelopment Plan.

SECTION 6. The Tax Increment Financing Redevelopment Agreement, in substantially the form attached hereto as **Exhibit A** (the "Agreement"), is hereby approved and the Mayor, City Administrator and City Clerk are authorized to execute and deliver the Agreement with such changes therein as shall be approved by the officials of the City executing the Agreement, such officials' signatures thereon being conclusive evidence of their approval thereof.

SECTION 7. The Mayor, City Clerk, City staff, and the City's special legal counsel are hereby authorized to take any and all actions as may be deemed necessary or convenient to carry out and comply with the intent of this Ordinance, to create those funds and accounts required by the TIF Act to implement the Redevelopment Plan, and to execute and deliver for and on behalf of the City all certificates, instruments, and agreements or other documents as may be necessary, desirable, convenient, or proper to perform all matters authorized herein.

SECTION 8. It is hereby declared to be the intention of the Board of Aldermen that each part of this Ordinance shall be separate and severable from each and every

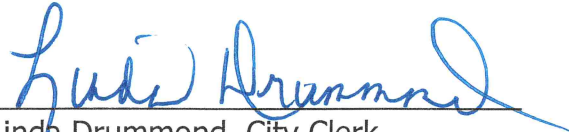
other part. In the event that any part of this Ordinance shall be determined to be unlawful or unconstitutional, the remaining parts shall remain in full force and effect.

SECTION 9. This ordinance shall be in full force and effect from and after the date of its passage and approval.

**PASSED** by the Board of Aldermen of the City of Smithville, Missouri, this 1<sup>st</sup> day of August, 2023.

  
\_\_\_\_\_  
Damien Boley, Mayor

ATTEST:

  
\_\_\_\_\_  
Linda Drummond, City Clerk

First Reading: 06/20/2023

Second Reading: 08/01/2023

**EXHIBIT A**

**Tax Increment Financing Redevelopment Agreement**

**TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT**

**between the**

**CITY OF SMITHVILLE, MISSOURI**

**and**

**110 SMITHVILLE, LLC**

**dated as of August 15, 2023**

# **TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT**

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<b><u>Exhibit F</u></b>	Form of Application for Reimbursable Project Costs
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## TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT

**THIS TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT** (the “**Agreement**”) is made and entered into and dated as of the August 1, 2023, by and between the **CITY OF SMITHVILLE, MISSOURI**, a municipal corporation and fourth-class city of the State of Missouri (the “**City**”), and **110 SMITHVILLE, LLC**, a Missouri limited liability company (the “**Developer**”). (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed in **Section 1.02** of this Agreement.)

### RECITALS

1. The Tax Increment Financing Commission of the City of Smithville, Missouri (the “**TIF Commission**”) was created pursuant to Section 99.820.3, RSMo and empowered to exercise those powers and fulfill such duties as are required or authorized for the TIF Commission under the TIF Act (defined below). The various Taxing Districts within the Redevelopment Area appointed members to the TIF Commission in accordance with Section 99.820.3 of the TIF Act.

2. On March 2, 2023, the City published a request for proposals soliciting proposals for the redevelopment of an area that consists of approximately 1.59 acres within the City, and is generally located between the northeast corner of West Main Street and Mill Street which is the Redevelopment Area (defined below).

4. The Developer submitted a proposed tax increment financing plan (the “**Redevelopment Plan**”) for the Redevelopment Area. The Redevelopment Area will be developed in a single redevelopment project to be built in one redevelopment project area (the “**Redevelopment Project**”).

5. On March 30, 2023, the TIF Commission, after giving all notices required by the TIF Act, opened a public hearing at which interested parties had the opportunity to be heard and at which the TIF Commission heard and considered comments concerning the Redevelopment Plan, the Redevelopment Area and the Redevelopment Project. On that date, the TIF Commission continued the public hearing regarding the Redevelopment Plan.

6. On April 24, 2023, the TIF Commission, after giving all notices required by the TIF Act, concluded the public hearing and made its recommendation to the Board of Aldermen to approve the Redevelopment Plan by adopting Resolution No. 2023-01.

7. After due consideration of the TIF Commission’s recommendations and making each of the findings required by Section 99.810 of the TIF Act, the Board of Aldermen adopted Ordinance No. 3196-23 on August 1, 2023, which approved the Redevelopment Plan, designated the Redevelopment Area as a blighted area, designated the Redevelopment Area as a “redevelopment area” as provided in the TIF Act, appointed the Developer as the developer for the Redevelopment Project, established the Special Allocation Fund, and approved this Agreement and authorized the City to execute and enter into this Agreement (the “**Redevelopment Plan Ordinance**”).

8. The Board of Aldermen adopted Ordinance No. 3196-23 on August 1, 2023 which approved the Redevelopment Project and initiated tax increment financing revenues in the Redevelopment Area (the “**Project Ordinance**”).

9. The Board of Aldermen believes that the redevelopment of the Redevelopment Area as provided for herein, in the Redevelopment Plan Ordinance, and in the Redevelopment Plan, is in the best

interests of the City, and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan and the TIF Act.

10. Pursuant to the provisions of the TIF Act, the Project Ordinance and the Redevelopment Plan Ordinance, the City is authorized to enter into this Agreement and to pay or reimburse project costs incurred in furtherance of the Redevelopment Plan and the Redevelopment Project.

## **AGREEMENT**

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

### **ARTICLE 1: RECITALS, EXHIBITS AND DEFINITIONS**

**Section 1.01. Recitals and Exhibits.** The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section. The provisions of the Redevelopment Plan, the Redevelopment Plan Ordinance and the TIF Act as amended as of and including the date of this Agreement, are hereby incorporated herein by reference and made a part of this Agreement, subject in every case to the specific terms hereof. In the event of any conflict between the provisions of this Agreement and any other documents related to the Redevelopment Plan previously prepared or executed, the provisions of this Agreement shall control.

**Section 1.02. Definitions.** Words and terms not defined elsewhere in this Agreement shall, except as the context otherwise requires, have the following meanings:

**“Action”** shall have the meaning set forth in **Section 6.01.A**.

**“Administrative Costs”** means (1) all costs and expenses reasonably incurred by the City for planning, legal, financial, administrative and other costs associated with the review, consideration, approval, implementation, and administration of the Redevelopment Plan, the Redevelopment Project and this Agreement, and (2) additional costs reasonably incurred by the County Assessor and/or County Collector due to the implementation and administration of the Redevelopment Plan, to the extent certified to and approved by the City.

**“Advanced Funds”** shall have the meaning set forth in **Section 2.05.B**.

**“Advanced Funds Account”** shall have the meaning set forth in **Section 2.05.B**.

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

**“Applicable Law and Requirements”** means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, requirement or decision of or agreement with or by Governmental Authorities.

**“Application for Reimbursable Project Costs”** means a certificate in substantially the form attached as **Exhibit F** hereto furnished by the Developer to the City requesting payment of Reimbursable Project Costs with respect to the Redevelopment Project.

**“Best Efforts”** means actual, reasonable, good faith attempts to accomplish or achieve the required obligation which shall be evidenced 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 twenty (20) Business Days, shall be deemed noncompliance with such obligation and a breach of this Agreement.

**“Business Day”** means a day other than a Saturday, Sunday or holiday on which the City is scheduled in the normal course of its operations to be open to the public for conduct of its operations.

**“Board of Aldermen”** means the Board of Aldermen of the City of Smithville, Missouri.

**“Certificate of Substantial Completion”** means a certificate in substantially the form attached as **Exhibit E** hereto furnished by the Developer and approved by the City pursuant to **Section 5.02** upon the substantial completion of the Redevelopment Project.

**“City”** means the City of Smithville, Missouri, a municipal corporation and fourth-class city situated in Clay County, Missouri.

**“City Administrator”** means the City Administrator of the City, or his/her designee.

**“City Event of Default”** has the meaning set forth in **Section 7.02**.

**“City Finance Director”** means the Finance Director of the City.

**“City Indemnified Parties”** shall have the meaning set forth in **Section 6.01.A**.

**“Collection Authority”** means the TIF Commission, the City, the County Collector, the Missouri Department of Revenue or any other governmental official or body charged with the collection of Payments in Lieu of Taxes or Economic Activity Taxes.

**“Termination Date”** means the day prior to the 20th anniversary of the approval of the Project Ordinance.

**“Construction Inspector”** means a City agent or employee designated by the City to perform inspections.

**“Construction Plans”** means plans, drawings, specifications and related documents, and construction schedules for the construction of the Redevelopment Project, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with this Agreement.

**“County”** means Clay County, Missouri.

**“County Assessor”** means the County Assessor of Clay County, Missouri.

**“County Collector”** means the County Collector of Clay County, Missouri.

**“Developer”** means 110 Smithville, LLC, a Missouri limited liability company, or its permitted successors or assigns in interest.

**“Developer Event of Default”** has the meaning set forth in **Section 7.01**.

**“Economic Activity Taxes”** shall have the meaning assigned to such term in Section 99.805 of the TIF Act or as otherwise provided by law.

**“Economic Activity Taxes Account”** means the separate segregated account within the Special Allocation Fund into which the Economic Activity Taxes are to be deposited.

**“Effective Date”** means the date written in the first paragraph on page 1 of this Agreement.

**“Excusable Delay”** means any delay beyond the reasonable control of the Party affected, caused by damage or destruction by fire or other casualty, strike, shortage of materials, civil disorder, war, outbreak of contagious disease, wrongful failure or refusal of any governmental entity to issue any permits and/or legal authorization necessary for the Developer to proceed with construction of the Work or any portion thereof, adverse market conditions, the Developer’s inability to secure acceptable financing and/or Tenants for the development despite the Developer’s commercially reasonable efforts, unavailability of labor or other labor/contractor disputes outside the reasonable control of the Developer, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, and any other events or conditions, which shall include but not be limited to any litigation interfering with or delaying the construction of all or any portion of the Redevelopment Project in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder. The Parties agree that the market conditions on the Effective Date do not constitute extraordinary market conditions that may cause Excusable Delay of commencement of work on the Redevelopment Project.

**“Funding Agreement”** means the Funding Agreement executed by the City and the Developer dated June 30, 2022, for the payment of City costs associated with the Redevelopment Plan.

**“Governmental Approvals”** means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals required for the implementation of the Redevelopment Project and consistent with the Redevelopment Plan, the Site Plan and this Agreement, as all may be amended from time to time.

**“Governmental Authorities”** means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

**“Ordinance”** means an ordinance adopted by the Board of Aldermen.

**“Party”** or **“Parties”** means the City and/or the Developer.

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

**“Permitted Subsequent Approvals”** means the building permits and other Governmental Approvals customarily obtained prior to construction which have not been obtained or which the City or

other Governmental Authority has not yet determined to grant on the date that this Agreement is executed.

**“PILOT Account”** means the separate segregated account within the Special Allocation Fund into which Payments in Lieu of Taxes are to be deposited.

**“Project”** shall have the same meaning as “Redevelopment Project.”

**“Project Budget”** means the Project Budget set forth in **Exhibit C**.

**“Project Schedule”** means the schedule for design, construction and operation of the Redevelopment Project as set forth in **Exhibit D**.

**“Project Ordinance”** means the Ordinance that approves the Redevelopment Project and activates the collection of TIF Revenues within the Redevelopment Area.

**“Property”** means all of the real property located within the boundaries of the Redevelopment Area as set forth in the Redevelopment Plan.

**“Redevelopment Area”** means the area depicted in **Exhibit A** and designated as the Redevelopment Area by the Redevelopment Plan Ordinance.

**“Redevelopment Plan”** means the plan entitled “*110 Smithville Tax Increment Financing Plan*,” as approved by the Redevelopment Plan Ordinance, as such plan may be amended from time to time by the City in accordance with the TIF Act.

**“Redevelopment Plan Ordinance”** means Ordinance No. 3195-23, adopted by the Board of Aldermen on August 1, 2023, which approved the Redevelopment Plan and took other actions related to the Redevelopment Plan.

**“Redevelopment Project”** and **“Redevelopment Projects”** means, separately or collectively, the Redevelopment Project and any additional contemplated redevelopment projects located within the Redevelopment Area that is in furtherance of the objectives of the Redevelopment Plan and that is approved pursuant to the TIF Act, which will consist of the demolition of a blighted building and the construction of two buildings that include an approximately 85-unit, 4 story apartment complex and approximately 7,800 square feet of retail space on the first floor.

**“Redevelopment Project Area”** means the area selected for the Redevelopment Project. The legal description of each Redevelopment Project Area is set forth in **Exhibit B**.

**“Redevelopment Project Costs”** means the sum total of all reasonable or necessary costs incurred or estimated to be incurred in connection with the Redevelopment Project and any such costs incidental to the Redevelopment Plan or the Redevelopment Project, as applicable. Such costs include, but are not limited to, the following:

- (1) Costs of studies, surveys, plans and specifications;
- (2) Professional service costs, including, but not limited to, architectural, engineering, legal, marketing, financial, planning or special services (except for reasonable administrative costs of the City, such costs shall be allowed only as an initial expense which are included in the costs set forth in the Redevelopment Plan);

(3) Property assembly costs, including, but not limited to, acquisition of land and other property, real or personal, or rights and interests therein, demolition of buildings, and the clearing and grading of land;

(4) Costs of rehabilitation, reconstruction, repair or remodeling of existing buildings and fixtures;

(5) Costs of construction of public works or improvements;

(6) Financing costs;

(7) All or a portion of a Taxing District's capital costs resulting from a Redevelopment Project necessarily incurred or to be incurred in the furtherance of the objectives of the Redevelopment Plan and the Redevelopment Project, to the extent the City by written agreement accepts and approves such costs;

(8) Relocation costs to the extent that the City determines that relocation costs shall be paid or are required to be paid by federal or state law; and

(9) Payments in Lieu of Taxes.

**"Reimbursable Project Costs"** means those Redevelopment Project Costs associated with the Redevelopment Project which may be reimbursed with TIF Revenues, as set forth and identified as "TIF Reimbursable Costs" on **Exhibit C** attached hereto, as well as reimbursable interest under **Section 3.02.B**, Developer payments under the Funding Agreement, and Advanced Funds.

**"Reimbursable Project Costs Cap"** shall have the meaning set forth in **Section 3.01**.

**"Reimbursement Interest Rate"** means the (1) the rate that is equal to the prime rate plus 1.0%, not to exceed 8.25% (as reported as of the Effective Date by the *Wall Street Journal* to and including December 31, 2023, and (2) from each January 1, starting on January 1, 2024, to and including December 31 of each year, the rate that is equal to the prime rate *plus* 1.0% (as reported for such January 1 by the *Wall Street Journal*, or if the *Wall Street Journal* no longer publishes a prime rate at such time, by a publication deemed to be a reasonable successor to the *Wall Street Journal* by the City; provided that if no such rate is reported by such an entity for January 1, the rate used shall be the rate most recently published by such entity), provided that the rate so calculated shall not exceed 8.25%.

**"Related Entity"** shall have the meaning set forth in **Section 6.02.A.1**.

**"RSMo"** means the Revised Statutes of Missouri, as amended.

**"Secured Lender"** shall have the meaning set forth in **Section 6.02.A.2**.

**"Site Plan"** means the final site plan for the Redevelopment Project Area submitted by the Developer to the City and approved by the City pursuant to Applicable Law and Requirements.

**"Special Allocation Fund"** means the fund, including any accounts and subaccounts created therein, into which TIF Revenues are deposited, as required by the TIF Act and this Agreement.

**“Surplus EATs”** means all Economic Activity Taxes declared as surplus in accordance with this Agreement.

**“Surplus EATs Account”** means the separated segregated account of the Special Allocation Fund into which the Surplus EATs are deposited prior to distribution to the Taxing Districts.

**“Surplus PILOTs”** means 30% of the Payments in Lieu of Taxes which are returned to the Taxing Districts that actually levy real property taxes within the Redevelopment Area in accordance with Error! Reference source not found. of this Agreement.

**“Surplus PILOTs Account”** means the separated segregated account of the Special Allocation Fund into which the Surplus PILOTs are deposited by the City and/or deemed deposited by the County prior to distribution to the Taxing Districts.

**“Taxing District”** means any political subdivision of the State of Missouri located wholly or partially within the Redevelopment Area having the power to levy real property taxes and/or economic activity taxes.

**“Tenant”** shall mean all lessees of any portion of the Property.

**“TIF Act”** means the Real Property Tax Increment Allocation Redevelopment Act, Section 99.800 *et seq.*, RSMo.

**“TIF Commission”** means the Tax Increment Financing Commission of the City of Smithville, Missouri, as constituted for review of the Redevelopment Plan.

**“TIF Revenues”** means seventy percent (70%) of Payments In Lieu of Taxes and 50% of Economic Activity Taxes.

**“Total Initial Equalized Assessed Value”** means 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 Property within the Redevelopment Project Area immediately after tax increment financing for the Redevelopment Project Area has been approved by the Project Ordinance.

**“Work”** means all work, including, but not limited to, demolition, site preparation, development, design, engineering and construction, necessary to prepare the Property and to construct the improvements as described in the Redevelopment Plan relating to the Redevelopment Project.

## **ARTICLE 2: REPRESENTATIONS AND WARRANTIES**

**Section 2.01. Representations of the City.** The City makes the following representations and warranties, which are true and correct on the date hereof:

A. Due Authority. The City has full statutory, constitutional and lawful right, power and authority, under current applicable law, to execute, deliver and perform the terms and obligations of this Agreement, and the foregoing has been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, 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 hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. Litigation. To the best of the City's knowledge, there is no litigation or proceeding pending against the City with respect to the Redevelopment Plan or this Agreement. In addition, to the best of the City's knowledge, there is no other litigation or proceeding that is pending against the City seeking to restrain, enjoin or in any way limit the approval or delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

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

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

**Section 2.02. Representations of the Developer.** The Developer makes the following representations and warranties, which are true and correct on the date hereof:

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

B. No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. Litigation. To the best of the Developer's knowledge, there is no litigation, proceeding or investigation pending or threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

D. No Material Change. (1) The Developer 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 (2) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could affect the Developer's ability to perform its obligations pursuant to this Agreement from that shown in any financial information provided by the Developer to the City prior to the execution of this Agreement.

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 Developer of this Agreement.

F. No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

G. Other Disclosures. The information furnished to the City by the Developer in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement of any material fact and do not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

H. Sufficiency of Redevelopment Area. The Developer represents and warrants that the Redevelopment Area is sufficient to construct the Redevelopment Project as contemplated in the Redevelopment Plan and this Agreement.

**Section 2.03. Conditions to Effective Date.** This Agreement shall not become effective until the Developer has furnished the City with:

A. a copy of the Developer's Articles of Organization certified by the Secretary of State of the State of Missouri; and

B. a Certificate of Good Standing of the Developer in the State of Missouri.

**Section 2.04. Developer to Advance Costs.** The Developer agrees to advance, or cause to be advanced, and pay, for all Redevelopment Project Costs as necessary to acquire the Property and to complete the Work, all subject to any Excusable Delay and the Developer's right to terminate this Agreement as set forth in **Section 7.04.**

**Section 2.05. Funding of Administrative Costs.**

A. Termination of Funding Agreement. The Developer has previously advanced, pursuant to a Funding Agreement between the City and the Developer, certain funds for Administrative Costs. Within thirty (30) days after execution of this Agreement, the City shall submit final invoices which will be paid by Developer, along with the payment of any other outstanding invoices, pursuant to the terms of the Funding Agreement. All such payments by Developer are Reimbursable Project Costs and are eligible for reimbursement with TIF Revenues. After final payment of all outstanding invoices is made by Developer under the Funding Agreement, the Funding Agreement shall be terminated, and any funds remaining on deposit with the City pursuant to the Funding Agreement shall be used by the City in accordance with **Section 2.05.B.** hereof and shall be treated as a Reimbursable Project Cost to Developer.

B. Initial Deposit. In addition to the Administrative Costs paid under the Funding Agreement, the City shall also be reimbursed for all Administrative Costs incurred in connection with the Redevelopment Plan, Redevelopment Project, and this Agreement. Upon termination of the Funding Agreement, the City shall deposit the funds remaining on deposit with the City pursuant to the Funding Agreement in a separate, segregated account of the City (the "**Advanced Funds Account**"), and, if such

amount is less than \$12,000, then Developer shall make a payment to the City (all amounts in the Advanced Funds Account are the “**Advanced Funds**”) so that the initial amount on deposit in the Advanced Funds Account, together with funds remaining from the Funding Agreement, is \$12,000. If there are no funds on deposit with the City pursuant to the Funding Agreement on the Effective Date, then the Developer shall advance the sum of \$12,000 to the City as Advanced Funds for deposit in the Advanced Funds Account.

C. Operation of the Advanced Funds Account. The City may invest the Advanced Funds in the same manner as other funds of the City are invested, and interest earnings shall remain in the Advanced Funds Account. All Advanced Funds shall be used to pay Administrative Costs. The City shall submit to the Developer an itemized statement of actual payments made from the Advanced Funds Account for such expenses on a regular periodic basis, but no more often than monthly. The Developer shall advance to the City the amounts set forth on such statements within thirty days after receipt thereof, which shall be deposited in the Advanced Funds Account so that the balance of the Advanced Funds Account remains at \$12,000. This arrangement shall continue until there are sufficient funds in the Special Allocation Fund to implement **Section 2.05.D**.

D. Future Administrative Costs on a Pay As You Go Basis. When sufficient funds are available in the Special Allocation Fund, the City (i) will withdraw from the Special Allocation Fund an annual amount equal to three (3%) of the TIF Revenues, starting in December 2023 and in each succeeding December thereafter for routine annual Administrative Costs, but the amount of Administrative Costs shall not be less than \$3,000, and (ii) may withdraw from the Special Allocation Fund to pay additional actual Administrative Costs on an as-needed basis an additional amount not to exceed \$20,000 in actual costs in any calendar year. After the terms of this paragraph are being implemented, if Administrative Costs in any year exceed the amount available in the Special Allocation Fund during such year, the unpaid portion of such Administrative Costs shall carry over to the next or any subsequent years until paid in full. In the event that the Developer proposes an amendment to the Redevelopment Plan, or proposes significant revisions to this Agreement, which require the City to incur costs and expenses that are in addition to Administrative Costs, the City may require the Developer to execute a separate funding agreement to cover the City’s costs and expenses associated with processing and considering such proposal by the Developer.

**Section 2.06. Developer’s Ownership of the Property.** At the time that this Agreement is executed, Developer represents that it or the City owns the Property. The Parties agree that condemnation is not needed to acquire any portion of the Property. The Developer agrees that it shall work with the City in good faith in any negotiations regarding the sale of the portion of the Property owned by the City.

**Section 2.07. Developer Designation and Development Rights.** The City hereby selects the Developer to perform or otherwise cause the performance of the Work for the Redevelopment Project in accordance with the Redevelopment Plan and this Agreement. For the purpose of implementing the Redevelopment Project and this Agreement, the City hereby grants to the Developer and its successors and assigns (as specified in **Section 6.02**) exclusive redevelopment rights to construct the Redevelopment Project in the Redevelopment Area, subject to and in accordance with the terms and conditions of this Agreement and subject to any rights the City has or retains in regards to the portion of the Property owned by the City.

### **ARTICLE 3: REIMBURSEMENT OF DEVELOPER COSTS**

**Section 3.01. Limitation on Reimbursement to Developer.** Regardless of the total amount of Reimbursable Project Costs requested by Developer or certified by the City in accordance with this

Article, the City's obligation to reimburse Developer from TIF Revenues shall not exceed the Reimbursable Project Costs Cap, except that reimbursement of reimbursable interest under **Section 3.02.B**, Developer payments under the Funding Agreement, and Advanced Funds, shall, notwithstanding anything in this Agreement to the contrary, not count toward the Reimbursable Project Costs Cap. **"Reimbursable Project Costs Cap"** means One Million One Hundred Fifteen Thousand Thirty-One Dollars (\$1,115,031). Regardless of the amount of TIF Revenues in the Special Allocation Fund, the Developer shall be limited to the Reimbursable Project Costs Cap, subject to the provisions provided within this Section.

### **Section 3.02. City's Obligation to Reimburse Developer.**

A. Reimbursement of Project Costs. Subject to the limitations set forth in this Agreement, the City shall reimburse the Developer for all certified Reimbursable Project Costs, subject to the limitations imposed by the Reimbursable Project Costs Cap. The Parties agree that reimbursement will occur on a "pay as you go" basis as revenues are collected in the Special Allocation Fund in accordance with this Agreement. The City shall have no obligation to reimburse Developer until funds are available in the Special Allocation Fund. The City shall have no obligation to reimburse Developer from any funds other than TIF Revenues in the Special Allocation Fund. In connection with the Work associated with the Redevelopment Project, the Developer shall submit an Application for Reimbursable Project Costs in substantial compliance with **Exhibit F** for any Reimbursable Project Costs. The City will not reimburse the Developer for any cost that is not a "redevelopment project cost" under Section 99.805(16) of the TIF Act and which does not fall within the "Est. TIF Reimbursable Costs" column as set forth in the Project Budget attached hereto as **Exhibit C**. The amounts provided as reimbursement for any line-item of costs in the "Est. TIF Reimbursable Costs" column may not exceed the amount for each such line-item set forth in the Project Budget and the amounts listed for each such line-item constitute a cap on each individual expenditure or category of expenditure, and they shall not be moved from one reimbursable line-item or category to another. The City shall make reimbursements in the order of priority set forth in **Section 4.07**. Total reimbursement shall not exceed the Reimbursable Project Costs Cap, plus (i) interest at the Reimbursement Interest Rate in accordance with **Section 3.02.B**, (ii), Developer payments under the Funding Agreement, and (iii) Advanced Funds.

B. Interest on Reimbursable Project Costs. Reimbursable Project Costs which have been certified by the City through an approved Application for Reimbursable Project Costs in accordance with this Agreement shall accrue simple interest at the Reimbursement Interest Rate starting on the day that the City approves such application in accordance with **Section 3.03**, until the principal amount of such certified Reimbursable Project Costs are paid, or until this Agreement is terminated following the Termination Date or is otherwise terminated as provided herein. TIF Revenues distributed to pay Reimbursable Project Costs shall be applied first to accrued and unpaid interest, then to principal. Unpaid interest shall accrue but shall not be compounded.

### **Section 3.03. Reimbursement Process.**

A. All requests for reimbursement of Reimbursable Project Costs shall be made in an Application for Reimbursable Project Costs in substantial compliance with **Exhibit F**. No person other than the Developer may submit an Application for Reimbursable Project Costs, and any invoices, bills or claims by contractors, engineers, professionals or other service providers who have performed work or provided goods or services to the Developer in furtherance of the Redevelopment Plan which are Reimbursable Project Costs must receive payment from the Developer before such amounts may be submitted to the City for reimbursement in accordance with this Section, unless the Developer expressly authorizes in writing payment directly to a contractor or service provider as a Reimbursable Project Cost

and the contractor or service provider submits lien waivers for the Work performed, if applicable to such Work, at the time of such reimbursement request.

The Developer shall, at the City's request, provide itemized invoices, receipts or other information, if any, requested by the City to confirm that any such cost is so incurred and does so qualify as a Reimbursable Project Cost. The Parties agree that the categories of expenses and amounts associated with each category as set forth in the "Est. TIF Reimbursable Costs" column of the Project Budget, to the extent actually incurred by Developer for the Redevelopment Project and certified by the City, up to the total Reimbursable Project Costs Cap, constitute Reimbursable Project Costs which are eligible for reimbursement in accordance with the TIF Act and this Agreement, although the City's obligation to reimburse Developer shall be limited as provided in **paragraph B** of this Section.

B. The Developer may submit an Application for Reimbursable Project Costs to the City Administrator and City Finance Director not more often than once each calendar month. The City shall either accept or reject each Application for Reimbursable Project Costs within thirty (30) days after the submission thereof. If the City determines that any cost identified as a Reimbursable Project Cost is not a "redevelopment project cost" under Section 99.805(16) of the TIF Act or otherwise does not qualify for reimbursement under this Agreement, the City shall so notify the Developer in writing within said 30-day period, identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to identify and substitute other Redevelopment Project Costs as Reimbursable Project Costs with a supplemental application for payment, subject to the limitations of this Agreement. The City may also request such additional information from Developer as may be required to process the requested reimbursement, and the time limits set forth in this paragraph shall be extended by the duration of time necessary for Developer to respond to such request by the City. The City's identification of any ineligible costs shall not delay the City's approval of the remaining costs on the Application for Reimbursable Project Costs that the City determines to be eligible.

**Section 3.04. Limitation on Source of Funds for City's Obligation to Reimburse.** Notwithstanding any other term or provision of this Agreement, Reimbursable Project Costs are payable only from the TIF Revenues in the Special Allocation Fund and from no other source. In no event will the City appropriate funds from the City's general fund or from any fund other than the Special Allocation Fund to pay for Reimbursable Project Costs. The City shall have no obligation to make any payment to the Developer under this Agreement from any source of funds collected or maintained by the City other than TIF Revenues in the Special Allocation Fund.

#### **ARTICLE 4: TAX INCREMENT FINANCING**

**Section 4.01. Redevelopment Project Area and Redevelopment Project.** The Redevelopment Area and Redevelopment Project Area are depicted in **Exhibit A** and legally described in **Exhibit B**. The Redevelopment Area will be developed in a single Redevelopment Project. Subject to the terms and conditions of the Redevelopment Plan and this Agreement, including any Excusable Delays, the Developer shall construct or cause to be constructed the Redevelopment Project. The Redevelopment Project Area and Redevelopment Project shall exist only until such time when (i) all Reimbursable Project Costs have been paid in full, or (ii) all funds in the Special Allocation Fund have been disbursed to the Taxing Districts following the Termination Date, whichever occurs first.

**Section 4.02. Project Budget.** The Redevelopment Project shall be constructed in general accordance with the Project Budget, which contains estimated costs based on the Developer's knowledge of the Redevelopment Project and prevailing costs and expenses on the effective date of the Redevelopment Plan Ordinance.

**Section 4.03. Blighted Area in the Redevelopment Area.** The Redevelopment Area as a whole has been declared by the Board of Aldermen to be a “blighted area,” as that term is defined in the TIF Act, and is detrimental to the public health, safety and welfare because of the several influences that cause the Redevelopment Area to be a blighted area, as set forth in the Redevelopment Plan and the Redevelopment Plan Ordinance. By construction of the Redevelopment Project, the Developer shall eliminate the blighting influences or eliminate the physical blight existing in the Redevelopment Area, or make adequate provisions reasonably satisfactory to the City for the clearance of such blighting influences.

**Section 4.04. Payments in Lieu of Taxes.**

A. Initiation of Payment Obligations. Pursuant to the provisions of the Redevelopment Plan and the TIF Act, including, but not limited to, Section 99.845 thereof, when tax increment financing is established by Ordinance for the Redevelopment Project Area, the Property within the Redevelopment Project Area is subject to assessment for ad valorem taxes and annual Payments in Lieu of Taxes. Payments in Lieu of Taxes shall be due when ad valorem property taxes are due. The obligation to make said Payments in Lieu of Taxes shall be a covenant running with the land and shall create a lien in favor of the City on each such tax parcel as constituted from time to time and shall be enforceable against the Developer and its successors and assigns in ownership of property in the Redevelopment Area.

B. Enforcement of Payments. Failure to pay Payments in Lieu of Taxes as to any portion of the Property in the Redevelopment Area shall entitle any Collection Authority to proceed against such Property in the Redevelopment Area as in other delinquent property tax cases or otherwise as permitted at law or in equity, and 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, including the initiation of appropriate lawsuits for such unpaid taxes; provided, however, that the failure of any Property in the Redevelopment Area to yield sufficient Payments in Lieu of Taxes because the increase in the current equalized assessed value of such Property is or was not as great as expected, shall not by itself constitute a breach or default. The City shall use all reasonable and diligent efforts to notify the County Collector and all other appropriate officials and persons and seek to fully implement the Payments in Lieu of Taxes and reimbursements of Reimbursable Project Costs as provided in this Agreement and in the Redevelopment Plan.

C. Limitation on Protesting Tax Assessments. Developer agrees that annual tax assessments (including Payments in Lieu of Taxes) on the Property shall not be formally or informally protested or contested if such assessments are based on an assessed valuation equal to or less than 110% of the assessed value for the prior year, plus the value of any new construction being assessed for the first time in the then-current year (the “**Agreed-Upon Reasonable Value**”). In the event that any tax assessment is greater than the Agreed-Upon Reasonable Value and the Developer elects to formally or informally protest the tax assessment, Developer shall not protest, contest or seek in any manner to have the assessment reduced to an amount that is less than the Agreed-Upon Reasonable Value. Subdivision of the Property in a manner that produces parcels of a different size or configuration than as set forth in the Redevelopment Plan shall not alter, affect or eliminate the limitation set forth in this paragraph, and this obligation shall be binding on all successors in interest on the Property in accordance with **Section 6.02**, provided that the land value component of the Agreed-Upon Reasonable Value for any subdivision of the Property shall be determined on the basis of square footage and the new construction component of the Agreed-Upon Reasonable Value for any such subdivision of the Property shall include such new construction as is located on such subdivision of the Property.

D. Release of Liens. Notwithstanding anything to the contrary herein, the lien on any portion of the Property within the Redevelopment Area shall be deemed (1) released as to any public street or other public way included within any plat of the Redevelopment Area, and (2) subordinated to the lot lines, utility easements and other similar matters established by any such plat, effective upon the passage of an 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.

E. Surplus PILOTs. No more than seventy percent (70%) of the Payments in Lieu of Taxes shall be used to pay Reimbursable Project Costs. In accordance with the Redevelopment Plan, the remaining thirty percent (30%) of the Payments in Lieu of Taxes collected is hereby declared as surplus by the City, in accordance with the Redevelopment Plan. Such declaration of surplus shall continue at a level of thirty percent (30%) throughout the entire term of the Redevelopment Plan and this Agreement. Any Surplus PILOTs received by the City shall be placed in the Surplus PILOTs Account of the Special Allocation Account and distributed in accordance with this paragraph. The City shall, or, if an agreement between the City and County has been executed for such purpose then the County Collector shall on behalf of the City, pay such Surplus PILOTs to the appropriate Taxing Districts affected by the Redevelopment Project as provided in the TIF Act. Such declaration of Surplus PILOTs may not be modified by any subsequent agreement, contract, indenture, or other legal document and any attempted modification shall be void and have no effect on the amount of Surplus PILOTs distributed to the appropriate Taxing Districts.

F. Certification of Base for Payments in Lieu of Taxes. Within ninety (90) days after the adoption of the Project Ordinance, the City shall use Best Efforts to provide to the Developer a certification of the County Assessor's calculation of the Total Initial Equalized Assessed Value of the taxable real property within the Redevelopment Area based upon the most recent equalized assessed valuation of each taxable lot, block, tract, or parcel of real property within the Redevelopment Area.

#### **Section 4.05. Economic Activity Taxes.**

A. Initiation of Payment Obligations. In addition to the Payments In Lieu of Taxes described above, and pursuant to Section 99.845 of the TIF Act, fifty percent (50%) of the Economic Activity Taxes shall be allocated to, and paid by the collecting officer to the designated financial officer of the City, who shall deposit such funds in Economic Activity Taxes Account within the Special Allocation Fund for the purpose of application pursuant to this Agreement.

B. Accounting. The City shall deposit the payments of Economic Activity Taxes received from the respective Taxing Districts in the Economic Activity Taxes Account of the Special Allocation Fund, to be utilized and expended in accordance with the TIF Act, the Redevelopment Plan and this Agreement.

C. Documentation of Economic Activity Taxes. The City and the Developer agree to cooperate and take all reasonable actions necessary to cause the Economic Activity Taxes to be paid into the Special Allocation Fund, including the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement.

D. Surplus EATs. Any Surplus EATs received by the City shall be placed in the Surplus EATs Account of the Special Allocation Fund and distributed in accordance with this paragraph. The City shall pay such Surplus EATs to the appropriate Taxing Districts affected by the Redevelopment Project as provided in the TIF Act. In lieu of collecting and paying any Surplus EATs to the Taxing Districts, the City may elect not to bill such Taxing Districts for the amount of the Surplus EATs.

E. Certification of Base for Economic Activity Taxes. Within ninety (90) days after adoption of the Project Ordinance, the City shall certify the amount of revenue from taxes, penalties and interest which are imposed by the City and other Taxing Districts and which are generated by economic activities within the Redevelopment Project Area for the preceding calendar year, but excluding those taxes as excluded in the TIF Act or as otherwise provided by law.

**Section 4.06. Special Allocation Fund.** The City shall establish and maintain the Special Allocation Fund which shall contain the following separate segregated accounts: (1) Payments in Lieu of Taxes shall be deposited into the PILOT Account within the Special Allocation Fund; (2) 50% of the Economic Activity Taxes, subject to annual appropriation by the City, shall be deposited into the Economic Activity Taxes Account within the Special Allocation Fund; (3) Surplus PILOTs received by the City shall be deposited in the Surplus PILOTs Account of the Special Allocation Fund; (4) Surplus EATs received by the City shall be deposited in the Surplus EATs Account of the Special Allocation Fund; (5) any other amounts shall be deposited into such other accounts or sub-accounts as are required by this Agreement or as the City or the City's advisors may deem appropriate in connection with the administration of the Special Allocation Fund.

**Section 4.07. Disbursements From Special Allocation Fund.** All disbursements from the PILOT Account and the Economic Activity Taxes Account will be made from such accounts in such order as the City shall determine. Such disbursements shall be paid out of the following purposes in the following order of priority:

1. Payment of Administrative Costs;
2. Payment of any costs of the City incurred pursuant to **Section 8.05** (actions contesting the Redevelopment Plan) that have not previously been reimbursed to the City by the Developer;
3. Payment of the actual amounts incurred by the Developer or reimbursed to the City by the Developer pursuant to **Section 8.05** (actions contesting the Redevelopment Plan);
4. Payment of the accrued interest on the Developer's certified Reimbursable Project Costs;
5. Payment of the Developer's certified Reimbursable Project Costs; and
6. Following the completion of the Redevelopment Project and the payment of all Reimbursable Project Costs, funds remaining in the Special Allocation Fund shall be disbursed by the City Administrator to the appropriate Taxing Districts in accordance with the TIF Act.

**Section 4.08. Full Assessment.**

A. Redevelopment Project Area. After (i) all Reimbursable Project Costs have been paid in full, or (ii) all funds in the Special Allocation Fund have been disbursed to the Taxing Districts following the Termination Date, whichever occurs first, all property in the Redevelopment Area shall be subject to assessments and payment of ad valorem taxes, including, but not limited to City, State and County taxes, based on the true value of the real property and the standard assessment percentage then in use for similar property by the County Assessor, and the Redevelopment Area shall be free from the conditions, restrictions and provisions of (1) the TIF Act; (2) any rules or regulations adopted pursuant to the TIF

Act; (3) the Redevelopment Plan Ordinance; (4) the Redevelopment Plan; and (5) the provisions of this Agreement.

B. Completion of Redevelopment Plan. Upon the payment of all Reimbursable Project Costs, or after all TIF Revenues have been disbursed to the Taxing Districts from the Special Allocation Fund following the Termination Date pursuant to Sections 99.845 and 99.850 of the TIF Act, the City shall adopt an Ordinance dissolving the Special Allocation Fund and terminating the designation of the Redevelopment Area as a “redevelopment area” under the TIF Act. Thereafter, the rates of the Taxing Districts shall be extended and taxes levied, collected and distributed in the manner applicable in the absence of the adoption of tax increment financing.

## **ARTICLE 5: CONSTRUCTION AND OPERATION OF THE PROJECT**

### **Section 5.01. Project Schedule, Design and Construction.**

A. Schedule and Plan of Financing. The Developer shall diligently pursue the commencement and completion of the Redevelopment Project and compliance with each of its obligations under this Agreement with respect to the acquisition, demolition, construction and completion of the Redevelopment Project. The Developer shall obtain, or cause to be obtained, the approval of the Site Plan in accordance with the Project Schedule and Applicable Law and Requirements. All costs of the Redevelopment Project shall be paid or financed by the Developer from private loans or cash equity supplied by the Developer, and the Developer acknowledges that the City does not plan to issue bonds, notes or any other type of “obligations” (as defined in the TIF Act), or participate in the issuance by any third party of any obligations, to fund any of the Redevelopment Project Costs.

B. Construction Plan Approval. The Developer shall submit to the City the Construction Plans for the Redevelopment Project after approval of the Site Plan by the City. Construction Plans may be submitted in phases or stages. The Construction Plans for the Redevelopment Project and all construction practices and procedures with respect to the Redevelopment Project shall be in conformity with all Applicable Law and Requirements, including, but not limited to, any performance bonds, labor and material payment bonds and maintenance bonds required for the Redevelopment Project. The Developer shall submit Construction Plans for approval by the City in sufficient time so as to allow for review of the plans in accordance with Applicable Law and Requirements. The Construction Plans shall be in sufficient completeness and detail to show that construction will be in conformance with the Redevelopment Plan and this Agreement.

C. Construction. In accordance with the Project Schedule attached as **Exhibit D**, and absent an event of Excusable Delay, the Developer shall commence, or cause to be commenced, the construction of the Redevelopment Project in a good and workmanlike manner in accordance with the terms of this Agreement.

D. Continuation and Completion. Subject to Excusable Delay, once the Site Developer has commenced construction of the Redevelopment Project, the Developer shall not permit cessation of work on the Redevelopment Project for a period in excess of twenty (20) consecutive days or fifty (50) days in the aggregate without the prior written consent of the City.

E. Construction Contracts. The Developer, or other at the direction of the Developer, may enter into one or more construction contracts to complete the Work.

F. Governmental Approvals. The City agrees to employ Best Efforts to cooperate with the Developer and to process and timely consider and respond to all applications for the Governmental Approvals as received, all in accordance with the Applicable Law and Requirements.

**Section 5.02. Certificate of Substantial Completion.** Promptly after substantial completion of a Redevelopment Project in accordance with the provisions of this Agreement, the Developer shall submit a Certificate of Substantial Completion to the City for such Redevelopment Project. Substantial completion of the Redevelopment Project shall mean that the Developer has completed the Redevelopment Project, subject to items which are not material to the commencement of the operation and use of the Project. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit E**. The Construction Inspector shall, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the City unless, prior to the end of such 30-day period after delivery, the City furnishes the Developer with specific written objections to the status of the Project, describing such objections and the measures required to correct such objections in reasonable detail. Upon acceptance of the Certificate of Substantial Completion, or upon the lapse of thirty (30) days after delivery thereof without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the Clay County Recorder of Deeds, and the same shall constitute evidence of the satisfaction of all of Developer's agreements and covenants to construct the Redevelopment Project under this Agreement.

**Section 5.03. Loss of Redevelopment Area for Failure to Develop.** Absent an Excusable Delay, in the event that the Developer does not provide a Certificate of Substantial Completion as provided in **Section 5.02** herein within three (3) years from the date of the approval of the Project Ordinance, the Developer shall lose the right to reimbursement from TIF Revenues generated by the Redevelopment Area. In such case, the City shall have the right to commence proceedings under the TIF Act to terminate tax increment financing within the Redevelopment Area. The Developer hereby forfeits any right to challenge such proceedings on any grounds other than providing evidence that the Redevelopment Project is substantially completed as required herein, including any Excusable Delay. The costs of such proceedings incurred by the City shall constitute Administrative Costs under this Agreement. The City may, in its sole discretion, extend the timeframe after receiving written notice by the Developer of an Excusable Delay.

**Section 5.04. Relocation to the Redevelopment Area.**

A. Relocation From Within the City.

1. It is the intention of the parties to this Agreement and the purpose of the Redevelopment Plan that no revenues from any business that relocates from within the City shall accrue to the benefit of the Developer. No Tenant may be relocated from a location within the City to a location within the Redevelopment Area without the prior written approval of the City while this Agreement remains in effect. For purposes of this Section, "relocation" shall mean (a) the relocation of a store, office or business within the City or (b) the location of a store, office or business within the boundaries of the Redevelopment Area and the closing of a similar store, office or business, or the same chain or name-brand of store (either corporate or franchise), within the City within two (2) years after such store is opened in the Redevelopment Area.

2. If, upon approval by the City, a Tenant is relocated from a location within the City to the Redevelopment Area, the sales tax base for such retail establishment shall be transferred to the location of the retail establishment within the Redevelopment Area and shall be treated as sales which occurred in the Redevelopment Area in the year before the year in which the Project Ordinance was approved.

3. If, upon approval by the City, a retail establishment generating Economic Activity Taxes relocates to the Redevelopment Area as contemplated in **subsection A.1.** above, the Economic Activity Taxes generated by such retail establishment are hereby declared as surplus and shall be deposited in the Surplus EATs Account. The City shall, within thirty (30) days following receipt of a request to approve a relocation, provide either approval or rejection of such written request. The request shall be deemed approved by the City if no response is given prior to the end of such 30-day period.

**B. Relocation From Within the County.**

1. Pursuant to Section 99.805(4), if a retail establishment relocates from a location within the County to a location within the Redevelopment Area within one year of the approval of the Project Ordinance, the Economic Activity Taxes generated by such retail establishment shall equal the total additional revenues from the Economic Activity Taxes generated by the retail establishment over the amount of Economic Activity Taxes generated by the retail establishment in the calendar year prior to its relocation.

**Section 5.05. Compliance with Laws and Requirements.** The Redevelopment Project shall be designed, constructed, equipped and completed in accordance with all Applicable Law and Requirements. Notwithstanding any provision, regulation or ordinance to the contrary, the Board of Aldermen reserves the right to review and approve the Site Plan and any modifications to the Site Plan submitted to the City Planning and Zoning Commission for approval. In the event the Board of Aldermen should elect to review and approve a Site Plan modification, it shall do so by giving the Developer written notice of its intent to do so within twenty (20) days after the approval by the City Planning and Zoning Commission and shall initiate said action by motion of the Board of Aldermen.

**Section 5.06. Lease of Property.** Subject to the limitations in **Section 5.08** and herein, the Developer may lease the property. For the commercial/retail portion of the Property, to the extent practicable and using Best Efforts, the Developer, or any third party, shall insert in any such lease the following language, or language that is substantially similar to the following after being approved by the City Administrator, and shall have such lease signed by the lessee indicating acknowledgment and agreement to the following provision:

**Economic Activity Taxes:** Tenant acknowledges that the leased premises are a part of a Tax Increment Financing redevelopment area (“**TIF District**”) created by the City of Smithville, Missouri (the “**City**”) and that certain taxes generated by Tenant’s economic activities, including sales taxes, will be applied toward the costs of improvements for the development. Upon the request of the City, Tenant shall forward to the City copies of Tenant’s State of Missouri sales tax returns filed with the Missouri Department of Revenue for its property located in the TIF District, and, upon request, shall provide such other reports and returns regarding other local taxes generated by Tenant’s economic activities in the TIF District as the City shall require, all in the format prescribed by the City. Sales tax confidentiality shall be protected by the City as required by law. Tenant acknowledges that the City is a third-party beneficiary of the obligations in this Section, and that the City may enforce these obligations in any manner provided by law.

The Developer shall use reasonable efforts to enforce this lease provision. At the request of the City, the Developer shall provide a certification to the City confirming that the lease includes the provisions satisfying the Developer's obligation as set forth in this Section.

#### **Section 5.07. Sale of Property.**

A. Subject to the limitations in **Section 5.08** and herein, the Developer may sell Property within the Redevelopment Area. To the extent practicable and using Best Efforts, the Developer, or any third party, shall insert in any such sale agreement the following language, or language that is substantially similar to the following after being approved by the City Administrator, and shall have such sale agreement signed by the buyer indicating acknowledgment and agreement to the following provision:

**Economic Activity Taxes:** Buyer acknowledges that the property is a part of a tax increment financing redevelopment area ("**TIF District**") created by the City of Smithville, Missouri (the "**City**") and that certain taxes generated by Buyer's economic activities, including sales taxes, will be applied toward the costs of improvements for the development. Upon the request of Seller or the City, Buyer shall forward to the City and Seller copies of Buyer's State of Missouri sales tax returns filed with the Missouri Department of Revenue for its property located in the TIF District, and, upon request, shall provide such other reports and returns regarding other local taxes generated by Buyer's economic activities in the TIF District as the City shall require, all in the format prescribed by the City. Sales tax confidentiality shall be protected by the City as required by law. Buyer acknowledges that the City is a third-party beneficiary of the obligations in this Section, and that the City may enforce these obligations in any manner provided by law.

**PILOTs:** Buyer further acknowledges that the property will be subject to assessment for annual payments in lieu of taxes ("**PILOTs**") when the redevelopment project area is activated by the City of Smithville, Missouri (the "**City**"). PILOTs are due on November 30 of each year and are considered delinquent if not paid by December 31 of each year. The obligation to make said PILOTs shall be a covenant running with the land and shall create a lien in favor of the City on the property and shall be enforceable against Buyer and its successors and assigns in ownership of the property. Buyer acknowledges that in the event of the sale, lease, sublease, assignment, or other voluntary or involuntary disposition of any or all of the property, PILOTs with respect to the property 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 heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable as if such purchaser, tenant, transferee or other possessor thereof were originally a party to and bound by the agreement.

The Developer shall use Best Efforts to enforce this provision. At the request of the City, the Developer shall provide a certification to the City confirming that the sale agreement includes the provisions satisfying the Developer's obligation as set forth in this Section.

B. Restriction on transfer to tax-exempt entities. No sale, transfer or other conveyance of any property in the Redevelopment Area may be made to an entity that may claim exemption, or is exempt, from real property taxes for all or part of the property in the Redevelopment Area (a "**Restricted Entity**") for the earlier of (i) twenty (20) years or (ii) termination of this Agreement (the "**Restricted Period**") without the prior written approval of the City. In the event that Developer seeks to transfer any property in the Redevelopment Area to a Restricted Entity during the Restricted Period, such transfer may only occur upon the prior written approval of the City in its sole discretion, and upon the prior execution of a separate agreement between the purchasing Restricted Entity and the City which provides for the

annual payment of an amount equal to Payments in Lieu of Taxes which otherwise would have been paid in regard to such property by such Restricted Entity for each of the years remaining in the Restricted Period. This requirement shall be a covenant running with the land and shall be enforceable for such period as if such purchaser, transferee or possessor thereof were originally a party to and bound by this Agreement.

**Section 5.08. Restriction on Transfer to Non-Sales Tax Generating Entities.** Unless the City provides written consent in its sole discretion, the Developer shall not sell or lease any of the retail portion of the Property to non-sales tax generating businesses. For purposes of this section, a non-sales tax generating business shall be any business not primarily engaged in retail sales subject to state and local sales and use taxes as the primary operations on the Property.

## **ARTICLE 6: GENERAL COVENANTS**

### **Section 6.01. Indemnification of the City.**

A. Developer agrees to indemnify and hold the City, its employees, agents, independent contractors and consultants (collectively, the “**City Indemnified Parties**”) harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, including court costs and attorneys’ fees, resulting from, arising out of, or in any way connected with:

1. the Developer’s actions, failure to act and undertakings in implementation of the Redevelopment Project and this Agreement;

2. the negligence or willful misconduct of Developer, its employees, agents, independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Redevelopment Project; or

3. any litigation filed against the Developer by any member of the Developer, or any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor.

Developer shall have no obligation to the City Indemnified Parties where the potential liability arises in whole or in part from any negligence or willful misconduct of the City or the City’s breach of this Agreement.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an “**Action**”) is initiated or made as a result of which the Developer may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties shall give prompt notice to the Developer of the occurrence of such event. After receipt of such notice, the Developer may elect to defend, contest or otherwise protect the City Indemnified Parties against any such Action, at the cost and expense of the Developer, utilizing counsel of the Developer’s choice. The City Indemnified Parties shall assist, at Developer’s sole discretion, in the defense thereof. In the event of such defense against any Action by Developer for the City, Developer shall provide to the City regular periodic reports on the status of such Action. In the event that the Developer shall fail to timely defend, contest or otherwise protect any of the City Indemnified Parties against such Action, the City Indemnified Parties shall have the right to do so, and, if such defense is undertaken by the City Indemnified Parties after notice to the Developer asserting the Developer’s failure to timely defend, contest or otherwise protect against such Action, the cost of such defense shall be at the expense of the Developer, including the right of the City to offset against amounts of Reimbursable Project Costs which are payable to Developer.

C. Any one of the City Indemnified Parties shall submit to the Developer any settlement proposal that the City Indemnified Parties shall receive which may only be accepted with the approval of the Developer. The Developer shall be liable for the payment of any amounts paid in settlement of any Action to the extent that and only with respect to any part the Developer expressly assumes in writing as part of such settlement. Neither the Developer nor the City Indemnified Parties will unreasonably withhold its consent to a proposed settlement.

D. The right to indemnification set forth in this Agreement shall survive the termination of this Agreement with respect to liability arising during the term of this Agreement.

## **Section 6.02 Assignment of Developer's Rights and Obligations and Transfer of Property.**

### **A. Related Entities, Collateral Assignment, and Certificate of Substantial Completion.**

1. Related Entities. Nothing in this Section shall prevent the Developer from assigning, without the City's consent, all rights and/or obligations under this Agreement to a Related Entity (as defined below), provided that prior to such assignment Developer furnishes City with the name of any such Related Entity, together with a certification from Developer, and such other proof as City may reasonably request, that such assignee is a Related Entity of Developer. **"Related Entity"** means any entity in which the ownership or membership of such entity is controlled by Developer or the majority owners or members of Developer. For purposes hereof, "control" shall mean the power to direct or cause the direction of the management or policies of such entity.

2. Collateral Assignment. Developer and its successors and assigns shall also have the right, without the City's consent, to collaterally assign to any Secured Lender (as defined below) as collateral any and all of Developer's rights and/or obligations under this Agreement, and such Secured Lender shall have the right to perform any term, covenant, condition or agreement and to remedy, in accordance with the terms of this Agreement, any default by Developer under this Agreement, and City shall accept such performance by any such Secured Lender with the same force and effect as if furnished by Developer. No Secured Lender shall be personally liable or obligated to perform the obligations of Developer under the Agreement unless and until such Secured Lender takes possession of the property as a mortgagee or by a receiver appointed at the request of mortgagee or becomes the owner of the fee estate under this Agreement by foreclosure, or deed in lieu of foreclosure or otherwise. For purposes of this Section, **"Secured Lender"** means a bank, financial institution or other person or entity from which Developer has borrowed funds to finance all or a portion of the Redevelopment Project and in whose favor Developer has agreed to provide a security interest as collateral for such loan.

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

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

B. Transferee Agreement. Any assignee under **subsection A.1** above shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer being assigned by executing a Transferee Agreement that is in substantial compliance, as determined by the City, with the form set forth in **Exhibit G**. Upon execution of a Transferee Agreement between the City and an assignee, the Developer shall be released from its obligations in this Agreement relating to the property transferred to the assignee, or the obligations transferred to the assignee in the event that property is not transferred, in connection with the Transferee Agreement.

C. Lease of Property. Nothing in this section shall apply to Developer's lease of portions of the Property to other persons or entities. This Agreement shall not obligate, provide rights, or otherwise apply to any such lessees, and any such leases shall not relieve Developer of its obligations under this Agreement, including but not limited to its obligations with respect to the leased property.

D. Sale of Property. No sale, transfer or other conveyance of any fee interest in the Property in the Redevelopment Area may be made without the prior written notice of the City. This restriction shall not apply to easements granted on the Property and leases of the Property. The City shall be notified by Developer in writing of the proposed sale of property in the Redevelopment Area prior to the proposed effective date of the sale, along with a copy of the instrument affecting such sale. For each proposed transferee, the Developer's written notice shall be accompanied by an executed Transferee Agreement that is in substantial compliance, as determined by the City, with the form set forth in **Exhibit G**. Within twenty (20) calendar days following receipt of the notice, accompanying documentation and the executed Transferee Agreement, the City shall countersign and accept the Transferee Agreement if such agreement conforms to the requirements of this Agreement and the form set forth in **Exhibit G**. Upon execution of a Transferee Agreement between the City and a transferee, the Developer shall be released from its obligations in this Agreement relating to the transferred property in accordance with the terms of the Transferee Agreement, with the exception of the Developer's obligations with respect to the Redevelopment Project (unless such obligations are assumed by the transferee).

E. Right to Receive TIF Revenues. Only the Developer, or a Related Entity or Secured Party pursuant to **subsection A** hereof, and not any subsequent purchaser or tenant, unless expressly consented to in writing by the City or otherwise made in accordance with the provisions of this Agreement, shall be entitled to receive TIF Revenues.

F. No Assignment if in Default. Notwithstanding anything in this section to the contrary, no assignment or transfer of this Agreement is permitted if the Developer is in default in the performance of any of the material terms, covenants, conditions and agreements of this Agreement.

**Section 6.03. Mutual Assistance.** The City and the Developer 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.

**Section 6.04. Time of Essence.** Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

**Section 6.05. Amendments.** This Agreement may be amended only by the mutual consent of the Parties, by the adoption of an ordinance of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

**Section 6.06. Covenants Running with Land.** With the exception of the obligations with respect to the Redevelopment Project and rights with respect to reimbursement from TIF Revenues (which are reserved to the original Developer and its assignees), the provisions of this Agreement shall be covenants running with the land and shall be enforceable for the term of this Agreement against the current owner or possessor of any portion of the Redevelopment Area as if such owner or possessor thereof were originally a party to and bound by this Agreement.

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

**Section 7.01. Developer Event of Default.** Subject to **Section 7.05**, a “**Developer Event of Default**” means the following:

A. Default in the performance of any obligation or breach of any covenant or agreement of the Developer in this Agreement (other than a covenant or agreement, a default in the performance or breach of which is specifically dealt with elsewhere in this Section), and continuance of such default or breach for a period of thirty (30) days after City has delivered to Developer a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the Developer is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the Developer shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch. During any such cure period which extends beyond 30 days, the Developer shall provide regular written updates to the City regarding its efforts toward, and the status of, remedying such default or breach. The requirements of this paragraph shall apply independently to each party which is an assignee of Developer and the default of any such assignee shall not affect Developer’s rights hereunder in any way.

B. Default in the performance or breach of any other written agreement or understanding entered into between the Developer and the City related to the Redevelopment Plan, Redevelopment Area or Redevelopment Project. In the event that such other agreement or understanding provides the Developer with different or more restrictive covenants, different or additional events of default and/or greater rights and remedies than are provided to the City in this Agreement, such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies shall automatically be deemed to be incorporated into this Agreement and the City shall have the benefits of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies as if specifically set forth herein.

**Section 7.02. City Event of Default.** Subject to **Section 7.05**, a “**City Event of Default**” means default in the performance of any obligation or breach of any other covenant or agreement of the City in this Agreement (other than a covenant or agreement, a default in the performance or breach of which is specifically dealt with elsewhere in this Agreement), and continuance of such default or breach for a period of thirty (30) days after there has been given to the City by the Developer a written notice

specifying such default or breach and requiring it to be remedied; provided, that if such default or breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied and the City is diligently attempting to remedy such default or breach, such default or breach shall not constitute an event of default if the City shall immediately upon receipt of such notice diligently attempt to remedy such default or breach and shall thereafter prosecute and complete the same with due diligence and dispatch.

#### **Section 7.03. Remedies Upon a Developer Event of Default.**

A. Upon the occurrence and continuance of a Developer Event of Default, the City shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The City shall have the right to remove the Developer as the developer of record for the Redevelopment Project under the Redevelopment Plan and terminate this Agreement or terminate the Developer's rights under this Agreement.

2. The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default. Notwithstanding the foregoing, in no event shall damages include consequential/indirect damages.

B. Upon termination of this Agreement for any reason, the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer.

C. If the City has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the City, then and in every case the City and the Developer shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the City shall continue as though no such proceeding had been instituted.

D. The exercise by the City of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the City shall apply to obligations beyond those expressly waived.

E. Any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the City of any specific default by the Developer shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

#### **Section 7.04. Remedies Upon a City Event of Default.**

A. Upon the occurrence and continuance of a City Event of Default, the Developer shall have the following rights and remedies, in addition to any other rights and remedies provided under this Agreement or by law:

1. The Developer shall have the right to terminate the Developer's obligations under this Agreement;

2. The Developer may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the City as set forth in this Agreement, to enforce or preserve any other rights or interests of the Developer under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the Developer resulting from such City Event of Default. Notwithstanding the foregoing, in no event shall damages include consequential/indirect damages.

B. The exercise by the Developer of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the Developer shall apply to obligations beyond those expressly waived.

C. Any delay by the Developer in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this paragraph shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by the Developer of any specific default by the City shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

**Section 7.05. Excusable Delays.** The parties understand and agree that neither the City nor the Developer shall be deemed to be in default of this Agreement because of an Excusable Delay. The additional time given in any circumstance for Excusable Delay shall be that amount of time during which the party claiming Excusable Delay was reasonably prevented from taking action due to such Excusable Delay.

## **ARTICLE 8: GENERAL PROVISIONS**

**Section 8.01. Term.** Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect until such time as all Reimbursable Project Costs, subject to the limitations of the Reimbursable Project Costs Cap, are repaid to Developer. Upon such repayment, this Agreement shall terminate and become null and void.

**Section 8.02. Nondiscrimination.** The Developer agrees that, as an independent covenant running with the land, there shall be no discrimination upon the basis of race, creed, color, national origin, sex, age, marital status, or physical handicap in the sale, lease, rental, occupancy or use of any of the facilities under its control in the Redevelopment Area.

**Section 8.03. Inspections and Audits.** Developer shall, upon reasonable advance notice, allow the City and the City's agents access to the Redevelopment Project from time to time for reasonable inspection of the Redevelopment Project, including the Work. The City shall have the right at its own cost and expense to audit (either through employees of the City or a firm engaged by the City) the books and records of the Developer relating to the payment of such Reimbursable Project Costs.

**Section 8.04. Required Disclosures.** The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

**Section 8.05 Actions Contesting the Redevelopment Plan.**

A. At any time after approval of the Redevelopment Plan Ordinance and during the effective period of this Agreement, if a third party brings an action against the City or the City's officials, agents, employees or representatives contesting the validity or legality of this Agreement, the Redevelopment Area, the Redevelopment Project, the Redevelopment Plan, the Redevelopment Plan Ordinance or the findings therein, the Project Ordinance, or the Ordinance approving this Agreement, the Developer may, at its option, assume the defense of such claim or action with legal counsel selected by the Developer (the "**Litigation Counsel**") and pay the costs and attorney's fees of such counsel. The Developer's choice of Litigation Counsel will be subject to approval by the City, which approval will not be unreasonably withheld. In the event that the Developer shall fail timely to defend, contest or otherwise protect any of the City Indemnified Parties against any litigation, claim or action, the City Indemnified Parties shall have the right to do so, and, if such defense is undertaken by the City Indemnified Parties after notice to the Developer asserting the Developer's failure to timely defend, contest or otherwise protect against the litigation, claim or action, the cost of such defense shall be at the expense of the Developer.

B. Litigation Counsel will coordinate the efforts of the Parties in defense of the litigation, claim or action and provide for the defense of the City Indemnified Parties, including the initial formulation of litigation strategy in consultation with the Developer and the City. The litigation strategy shall be subject to the mutual agreement of Developer and the City. The Developer or Litigation Counsel shall provide to the City regular periodic reports on the status of the litigation, claim or action. Litigation Counsel shall not file any pleadings, briefs and other documents in the litigation, claim or action without approval by the City, which approval will not be unreasonable withheld.

C. The Developer and Litigation Counsel may not settle or compromise any litigation, claim or action for which the Developer has assumed the defense without the prior approval of the City. The Parties expressly agree that so long as no conflicts of interest exist between them with regard to the handling of such litigation, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding relating to the litigation, claim or action; provided, the Developer and Litigation Counsel shall consult with the City throughout the course of any such action. In the event any of the City Indemnified Parties receive a settlement proposal, the proposal shall be immediately provided to Developer.

D. All costs and expenses incurred by the City Indemnified Parties in the assistance in the defense of the litigation, claim or action and in discussion and consideration of any settlement, or in actions required to be taken as a result of the litigation, claim or action such as response to discovery and attendance at depositions, including attorneys' fees, shall be paid by the Developer. All cost of any such defense, whether incurred by the City or the Developer, shall be deemed to be Reimbursable Project Costs and reimbursable from any amounts in the Special Allocation Fund, and such reimbursable litigation costs shall be in addition to the Reimbursable Project Costs set forth in the Project Budget.

E. At any time after approval of the Redevelopment Plan Ordinance and during the effective period of this Agreement, if a third party brings an action against the City, the City's officials, agents, employees or representatives, or the Developer, contesting the validity or legality of this Agreement, the Redevelopment Area, the Redevelopment Project, the Redevelopment Plan, the Redevelopment Plan

Ordinance or the findings therein, the Project Ordinance, or the Ordinance approving this Agreement, the Developer may, with the written consent of the City, which shall not be unreasonably withheld, choose to terminate this Agreement and all rights associated with this Agreement, provided that all costs and expenses incurred by the City Indemnified Parties in the assistance of the defense of the litigation, claim, or action and in discussion and consideration of any settlement, or in actions required to be taken as a result of the litigation, claim or action such as any response to discovery and attendance at depositions, including attorneys' fees and expenses, up until such time as the litigation, claim, or action shall be dropped or dismissed, shall be paid by the Developer. This Section 8.05(E) shall survive the termination of this Agreement.

**Section 8.06. Authorized Parties.**

A. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Administrator and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Administrator may seek the advice, consent or approval of the Board of Aldermen before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section.

B. Any action that is required by this Agreement to be performed by the City within a specified time period shall be extended for such additional reasonable time as may be necessary for the City to act or provide a response, as the case may be, in order to account for holidays, weekends, work stoppages, regular meeting schedules, meeting agendas, agenda management, delays or continuances of meetings and City staff availability. The City shall, within the time period specified in this Agreement, provide notice to Developer of such additional time needed to respond.

**Section 8.07. No Other Agreement.** The Parties agree that, as required by the TIF Act, the Redevelopment Plan contains estimated Redevelopment Project Costs, the anticipated sources of funds to pay for Redevelopment Project Costs, the anticipated type and term of the sources of funds to pay Reimbursable Project Costs, and the general land uses that apply to the Redevelopment Area and the Redevelopment Project Area. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Redevelopment Project, the payment of Redevelopment Project Costs, payments from the Special Allocation Fund, and all other methods of implementing the Redevelopment Plan. The Parties further agree that this Agreement contains provisions that are in greater detail than as set forth in the Redevelopment Plan and that expand upon the estimated and anticipated sources and uses of funds to implement the Redevelopment Plan. Nothing in this Agreement shall be deemed an amendment of the Redevelopment Plan. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties. In the event of a conflict between this Agreement and the Redevelopment Plan Ordinance, the Construction Plans, the Site Plan, the Redevelopment Plan or any other document pertaining to the Redevelopment Project, this Agreement shall control.

**Section 8.08. Severability.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to

that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

**Section 8.09. Missouri Law.** This Agreement shall be construed in accordance with the laws of the State of Missouri.

**Section 8.10. Notices.** All notices and requests required pursuant to this Agreement shall be sent as follows:

To the City:

City of Smithville  
107 W Main Street  
Smithville, Missouri 64089  
Attn: City Administrator

With a copy to:

Gilmore & Bell, P.C.  
2405 Grand Blvd., Suite 1100  
Kansas City, Missouri 64108  
Attn: Megan Miller

To the Developer:

110 Smithville, LLC  
106 W Main Street  
Smithville, Missouri 64089

With a copy to:

Levy Craig  
4520 Main Street, Suite 1600  
Kansas City, Missouri 64111  
Attn: Andrew Lonard

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

**Section 8.11. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

**Section 8.12. Recordation of Memorandum of Agreement.** The Parties agree to execute and deliver a Memorandum of this Agreement in proper form for recording and/or indexing in the appropriate land or governmental records. Such Memorandum shall be recorded by the Developer, and proof of recording shall be provided to the City.

**Section 8.13. Consent or Approval.** Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld or unduly delayed.

**Section 8.14. Tax Implications.** The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

**Section 8.15. Electronic Transaction.** The transactions described herein may be conducted and related documents may be received, delivered or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and

valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 8.16. Relationship.** In the performance of this Agreement, the Developer shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making the Developer a partner, joint venturer with, or agent of, the City. The City and the Developer agree that neither party will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the City and the Developer.

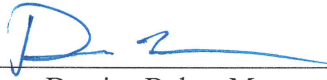
**Section 8.17. Negotiation of Agreement.** The City and Developer are governmental and business entities, respectively, each having been represented and advised by competent counsel, and each has fully participated in the negotiation and drafting of this Agreement and has had ample opportunity to review and comment on all previous drafts. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

**Section 8.18. Employee Verification.** The Developer shall comply with and satisfy the requirements of Section 285.530.2, RSMo., as amended, which requires (1) any business entity receiving tax abatement (i.e., the Developer) to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Developer shall provide such affidavits and documentation to the City Clerk on or before November 15 of each year during the term of this Agreement, beginning November 15, 2023, and also upon execution of this Agreement.

*[Remainder of page left intentionally blank.]*

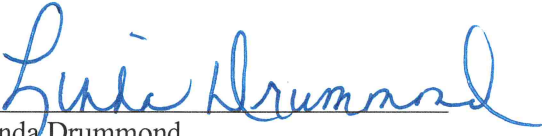
IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF SMITHVILLE, MISSOURI

By:   
Damian Boley, Mayor

[SEAL]

ATTEST:

  
Linda Drummond  
City Clerk

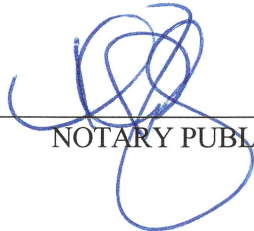
STATE OF MISSOURI    )  
                                  )   SS.  
COUNTY OF CLAY     )

BE IT REMEMBERED, that on this 1st day of August, 2023, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Damian Boley, Mayor of the City of **SMITHVILLE, MISSOURI**, a municipal corporation and fourth-class city of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such person duly acknowledged the execution of the same to be the free act and deed of said City.

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

[SEAL] 

THEA GOMEZ NOTARY PUBLIC - NOTARY SEAL STATE OF MISSOURI MY COMMISSION EXPIRES DECEMBER 15, 2026 PLATTE COUNTY COMMISSION #14123077
--

  
NOTARY PUBLIC

My Commission Expires:

12/15/2026

110 SMITHVILLE, LLC

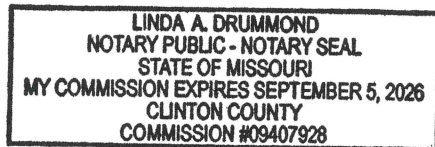
By: [Signature]  
Name: ERIC CRAIG  
Title: owner

STATE OF MISSOURI     )  
                                      ) SS.  
COUNTY OF Clay     )

BE IT REMEMBERED, that on this 15<sup>th</sup> day of August, 2023, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Eric Craig, owner of **110 SMITHVILLE, LLC**, a Missouri limited liability company, who is personally known to me to be the same person who executed the within instrument on behalf of 110 Smithville, LLC, and such person duly acknowledged the execution of the same to be the free act and deed of 110 Smithville, LLC.

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

[SEAL]



[Signature]  
NOTARY PUBLIC

My Commission Expires:

Sept 5, 2026

## MAP OF REDEVELOPMENT AREA & REDEVELOPMENT PROJECT AREA



## **EXHIBIT B**

### **LEGAL DESCRIPTION OF REDEVELOPMENT AREA & REDEVELOPMENT PROJECT AREA**

Smithville Original Town Unrecorded Plat Lots 5, 6, 7 & 8 Block 3  
Smithville Original Town Unrecorded Plat Lot 9 Block 3  
Smithville Original Town Unrecorded Plat W10' Lot 2 & All Lots 3 & 4 Block 3  
Smithville Original Town Unrecorded Plat W1/2 Lot 4 & Lot 5 Block 2  
Smithville Original Town Unrecorded Plat Lot 6 Block 2

**EXHIBIT C**

**PROJECT BUDGET**

Budget Item	Total Costs	Est. TIF Reimbursable Costs	Est. Private Debt & Equity
<b>Land</b>			
Land Purchased From City	\$23,243	\$0	\$23,243
Private Land Purchase	\$285,000	\$154,121	\$130,879
<b>Land Value</b>	<b>\$308,243</b>	<b>\$154,121</b>	<b>\$154,122</b>
<b>Sitework/ Infrastructure</b>			
Demolition	\$480,000	\$480,000	\$0
Utilities	\$150,000	\$150,000	\$0
Asphalt and Landscaping	\$300,000	\$300,000	\$0
<b>Total Sitework</b>	<b>\$930,000</b>	<b>\$930,000</b>	<b>\$0</b>
<b>Hard Costs</b>			
Building Construction	\$11,516,700	\$0	\$11,516,700
Initial Commercial Tenant Improvements	\$273,000	\$30,910	\$242,090
<b>Total Construction Cost</b>	<b>\$11,789,700</b>	<b>\$30,910</b>	<b>\$11,758,790</b>
<b>Soft Costs</b>			
Payoff Existing Debt	\$70,000	\$0	\$70,000
Architecture	\$242,000	\$0	\$242,000
Engineering	\$295,950	\$0	\$295,950
Permitting	\$50,000	\$0	\$50,000
Parkland Dedication Fees	\$0	\$0	\$0
Misc. Pre-Construction Costs (Inspect.)	\$50,000	\$0	\$50,000
Title and Survey	\$50,000	\$0	\$50,000
Legal (Including TIF)	\$125,000	\$0	\$125,000
Loan Origination Fee (Lender)	\$43,752.00	\$0	\$43,752
Loan Advisory Fee (Inc.TIF)	\$124,232.00	\$0	\$124,232
Interest Carry	\$689,092.00	\$0	\$689,092
Construction Period Taxes	\$15,000.00	\$0	\$15,000
Developer Fees	\$589,485.00	\$0	\$589,485
<b>Total Soft Costs</b>	<b>\$2,344,511</b>	<b>\$0</b>	<b>\$2,344,511</b>
Subtotal Project Cost	\$15,372,454	\$1,115,031	\$14,257,423
Contingency: 3%	\$461,174	\$0	\$461,174
<b>Grand Total</b>	<b>\$15,833,628</b>	<b>\$1,115,031</b>	<b>\$14,718,597</b>

## **EXHIBIT D**

### **PROJECT SCHEDULE**

The Developer plans to complete the design, finalize TIF approval, and arrange private financing during 2023.

Construction is anticipated to begin in late 2023 or early 2024 and take approximately 15 months to complete. The Developer would like to obtain a Certificate of Occupancy by the middle of 2025, with full lease-up by the end of summer of 2025.

**EXHIBIT E**  
**CERTIFICATE OF SUBSTANTIAL COMPLETION**  
**OF**  
**110 SMITHVILLE, LLC**

The undersigned, 110 Smithville, LLC (the “**Developer**”), pursuant to that certain Tax Increment Financing Redevelopment Agreement dated as of \_\_\_\_\_, 2023, between the City of Smithville, Missouri (the “**City**”) and the Developer (the “**Agreement**”), hereby certifies to the City as follows:

1. That as of \_\_\_\_\_, 20\_\_\_\_, the Redevelopment Project (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. The Redevelopment Project has been completed in a good and workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement).
3. Lien waivers for the applicable portions of the Redevelopment Project in excess of \$5,000 have been obtained.
4. This Certificate of Substantial Completion is accompanied by the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as **Appendix A** and by this reference incorporated herein, certifying that the Redevelopment Project has been substantially completed in accordance with the Agreement.
5. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Redevelopment Project.
6. The City’s acceptance (below) or the City’s failure to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate of Substantial Completion to the City (which written objection, if any, must be delivered to the Developer prior to the end of such 30-day period), and the recordation of this Certificate of Substantial Completion with the Clay County Recorder of Deeds, shall evidence the satisfaction of all of the Developer’s agreements and covenants to construct the Redevelopment Project under the Agreement.

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

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

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**110 SMITHVILLE, LLC,**  
a Missouri limited liability company

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

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

Title: \_\_\_\_\_

**ACCEPTED:**

**CITY OF SMITHVILLE, MISSOURI**

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

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

Title: \_\_\_\_\_

[Insert Notary Form(s) and Legal Description]

## EXHIBIT F

### APPLICATION FOR REIMBURSABLE PROJECT COSTS

TO: City of Smithville, Missouri  
Attention: City Administrator

Re: 110 Smithville Tax Increment Financing Plan

*Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Tax Increment Financing Redevelopment Agreement dated as of \_\_\_\_\_, 2023 (the “Agreement”) between the City of Smithville, Missouri (the “City”) and 110 Smithville, LLC. (the “Developer”). In connection with said Agreement, the undersigned hereby states and certifies that:*

1. Each item listed on *Schedule 1* hereto is a Reimbursable Project Cost and was incurred in connection with the construction of the Redevelopment Project.
2. These Reimbursable Project Costs have been paid by the Developer and are reimbursable under the Redevelopment Plan and the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the Special Allocation Fund and no part thereof has been included in any other Application previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the Work for which this application relates have been issued and are in full force and effect.
6. All Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. If any cost item to be reimbursed under this application is deemed not to constitute a Redevelopment Project Cost within the meaning of the TIF Act or a Reimbursable Project Cost under the Agreement, the Developer shall have the right to substitute other eligible Reimbursable Project Costs for payment hereunder.
8. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.
9. All of the Developer’s representations set forth in the Agreement remain true and correct as of the date hereof.
10. Construction of the Redevelopment Project is in compliance with the Project Schedule set forth in **Exhibit D** to the Agreement, subject to any amendment or Excusable Delay.

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

**110 SMITHVILLE, LLC,**  
a Missouri limited liability company

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

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

Title:\_\_\_\_\_

Approved for Payment this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_:

**CITY OF SMITHVILLE, MISSOURI**

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

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

Title: \_\_\_\_\_

[illegible]

## EXHIBIT G

### TRANSFEEE AGREEMENT

(Name of Assignee)

This TRANSFEEE AGREEMENT (“**Transferee Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between 110 SMITHVILLE, LLC (the “**Developer**”), \_\_\_\_\_, a \_\_\_\_\_ [limited liability company / corporation] (“**Transferee**”), and the CITY OF SMITHVILLE, MISSOURI (the “**City**”).

#### RECITALS

A. The property to be purchased by Transferee as legally described in **Exhibit A** attached hereto (the “**Property**”) is part of the 110 Smithville Increment Financing Plan (the “**Redevelopment Plan**”) approved by the City pursuant to Ordinance No. \_\_\_\_\_ adopted by the Board of Aldermen on \_\_\_\_\_, 2023 (the “**Redevelopment Plan Ordinance**”).

B. The Property is subject to that certain Tax Increment Financing Redevelopment Agreement between the City and 110 Smithville, LLC (the “**Developer**”), dated \_\_\_\_\_, 2023, a memorandum of which was recorded in the Office of the Recorder of Deeds of Clay County, Missouri on \_\_\_\_\_, 2023, as Document No. \_\_\_\_\_ (the “**Agreement**”).

C. The Transferee is the successor in interest to Developer with respect to the Property.

*Except as otherwise provided herein, the capitalized terms herein shall have the meanings as provided in the Agreement.*

NOW, THEREFORE, for and in consideration of the promises and the covenants entered herein, City and Assignee agree as follows:

1. Transferee has entered into a purchase contract with Developer, pursuant to which Transferee will acquire the Property.

2. Transferee acknowledges that it has been provided with and/or has reviewed true and accurate copies of the Redevelopment Plan, the Agreement and all other documents associated with the Redevelopment Plan that may be necessary for Transferee to make an informed decision regarding purchase of the Property with respect to the matters set forth in those documents and this Transferee Agreement.

3. Developer hereby assigns and Transferee hereby assumes all of Developer’s obligations under the Agreement with respect to the Property, and Transferee also acknowledges and agrees that its acquisition of the Property and the transfer of the Property to Assignee is subject in all respects to the Agreement, the requirements of the Redevelopment Plan, the Redevelopment Plan Ordinance, and the rights of the City pursuant to the Agreement, the TIF Act, and the Redevelopment Plan Ordinance. Transferee is aware of the use restrictions and design standards that are provided for in the Agreement and that the Transferred Property is subject to such restrictions and standards.

4. Transferee acknowledges and agrees that the Property is or will be included in the Redevelopment Area created by the City pursuant to the Redevelopment Plan and that certain taxes generated by Transferee’s economic activities will be applied toward Reimbursable Project Costs after the Redevelopment Project is activated by the City. Transferee shall forward to the City copies of

Transferee's State of Missouri sales tax returns for the Property located in the Redevelopment Area when and as they are filed with the Missouri Department of Revenue, and, upon request, shall provide such other reports and returns regarding other local taxes generated by Transferee's economic activities in the Redevelopment Area and/or as the City shall require, all in the format prescribed by the City. Transferee will set forth the obligation contained in this subparagraph in any further lease or sale contract affecting the Property.

5. Transferee acknowledges that the Property will be subject to assessment for annual Payments in Lieu of Taxes ("PILOTs") when the Redevelopment Area is activated by the City. PILOTs are due on November 30 of each year and are considered delinquent if not paid by December 31 of each year. The obligation to make said PILOTs shall be a covenant running with the land and shall create a lien in favor of the City on the Property and shall be enforceable against Transferee and its successors and assigns in ownership of the Property.

6. Transferee acknowledges that in the event of the sale, lease, sublease, assignment, or other voluntary or involuntary disposition of any or all of the Property, PILOTs with respect to the Property 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 heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land and enforceable as if such purchaser, tenant, transferee or other possessor thereof were originally a party to and bound by the Agreement. Transferee assumes the duty to notify any purchaser, tenant, transferee or other possessor of the property its rights, duties and obligations under the Agreement.

7. Transferee acknowledges that, for any subsequent conveyance, the City must be notified in writing of the proposed sale of the Property prior to the proposed effective date of the sale, which notification shall include a copy of the instrument affecting such sale. Transferee acknowledges that its purchase and any subsequent sale of the Property will be subject to any and all rights of the City or Developer, as are set forth in the Agreement, the Redevelopment Plan, the Redevelopment Plan Ordinance and the TIF Act with respect to such purchaser or transferee of the Property, whether or not specifically enumerated herein.

8. The Redevelopment Plan and the Agreement shall inure to and be binding upon the successors and assigns of Developer, as to the Property, including Transferee, as if they were in every case specifically named and shall be construed as a covenant running with the land and shall be enforceable against purchasers or other transferees as if such purchaser or transferee were originally a party to and bound by this Transferee Agreement.

9. Transferee and the City acknowledge that, upon the full execution of this Transferee Agreement, Developer is hereby released from all its obligations under the Agreement relating to the Property.

10. This Transferee Agreement shall be governed by the laws of the State of Missouri.

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

*[Remainder of page intentionally left blank.]*

**[DEVELOPER]**

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

**[TRANSFeree]**

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

**CITY OF SMITHVILLE, MISSOURI**

ATTEST:

\_\_\_\_\_  
Linda Drummond, City Clerk

By: \_\_\_\_\_  
Damien Boley, Mayor

END OF DOCUMENT