



CITY OF OSAGE BEACH
BOARD OF ALDERMEN MEETING

REVISED 04/04/11

1000 City Parkway
Osage Beach, MO 65065
573/302-2000 FAX 573/302-0528
Email: www.osagebeach.org

NOTICE OF OPEN MEETING

TENTATIVE AGENDA
REGULAR MEETING
April 7, 2011 – 6:30 P.M.
CITY HALL

******* Note: Make sure that your cell phone is turned off or on a silent tone only. Please sign the attendance sheet located at the podium if you desire to address the Board.**

CALL TO ORDER
Pledge of Allegiance
Roll Call

MAYOR'S COMMUNICATIONS

CITIZENS' COMMUNICATIONS

- This is a time set aside on the agenda for citizens and visitors to address the Mayor and Board on any topic that is not a public hearing. The Board will not take action on any item not listed on the agenda, but the Mayor and Board welcome and value input and feedback from the public. Speakers will be restricted to three minutes unless otherwise permitted. Minutes may not be donated or transferred from one speaker to another.

APPROVAL OF CONSENT AGENDA

If the Board desires, the consent agenda may be approved by a single motion.

- Minutes of 03/17/11 (Page 01)
- Bills (Page 09)
- Liquor License: (Page 34)
 1. The Hideout Bar and Grill (formerly Stockton's)

UNFINISHED BUSINESS

None

NEW BUSINESS

- A. Certification of Election Results
- B. Oaths of Office
- C. Election of President of the Board of Aldermen
- D. Public Hearing. MoDOT Right of Way Voluntary Annexation. (Page 35)
- E. Bill No. 11-15. Dogwood Animal Shelter Annexation. First and Second Readings (Page 44)
- F. Bill No. 11-16. Regulatory Stop Sign. Fall Street at Sycamore Valley Drive. First and Second Readings (Page 47)
- G. Bill No. 11-17. Electrically Operated Signal at Jeffries Road and Highway 54. First and Second Readings (Page 50)
- H. Bill No. 11-18. Authorize Mayor to Execute Quit Claim Deed for Vacating an Easement First and Second Readings (Page 53)
- I. **Bill 11-19. Tax Increment Financing Agreement. First and Second Readings**
- J. Contract Modification #2. Connection Sewer Project (Page 58)
- K. Authorize the Mayor to Execute Memorandum of Agreement with the Federal Aviation Administration for Land Sites and Easements of Existing Navigational Aid Facilities at Grand Glaize Airport (Page 60)
- L. Bid Award. Pavement Marking (Page 68)
- M. Bid Award. Grinder Pumps (Page 72)

COMMUNICATIONS FROM MEMBERS OF THE BOARD OF ALDERMEN

STAFF COMMUNICATIONS

EXECUTIVE SESSION. Notice is given that the agenda includes a roll call vote to close the meeting as allowed by **RSMo. Section 610.021(1)** Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys, and **RSMo. Section 610.021(2)** Leasing, purchase, or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefore.

ADJOURN

Submission Date: April 5, 2011

Submitted By: City Attorney

Board Meeting Date: April 7, 2011

**City of Osage Beach
BOARD OF ALDERMEN
AGENDA ITEM SUMMARY SHEET**

Description of Item:

Bill No. 11-19 - Approve the Tax Increment Financing Redevelopment Agreement between the City of Osage Beach and Dierbergs Osage Beach, LLC. Previously the Board of Aldermen approved the Amended Dierbergs Osage Beach Tax Increment Financing Plan which was unanimously recommended for approval by the Osage Beach TIF Commission on March 2, 2011. This ordinance adopts a Redevelopment Agreement in accordance with that Plan.

This Agreement will redevelop the vacant High Point Shopping Center. It provides the flexibility for the Developer to proceed with or without the participation of Best Buy as a tenant at the center. Ordinance No. 10.81 approved the initial Redevelopment Plan on December 16, 2010, and required that the Developer enter into a redevelopment agreement with the City within 6 months following the effective date of that ordinance. This redevelopment agreement meets that timing requirement.

In summary, the Agreement provides for a TIF incentive to the developer of \$3 million for the primary Dierbergs store and an additional \$2.1 million for the remaining retail buildings. This Agreement includes two important new provisions that have been negotiated since the March 17th Board meeting. First, reimbursement to Developer from TIF revenues, with interest, lasts 12 years absent an extraordinary delay. If Developer is not fully reimbursed after 12 years, the City will stop making interest payments to Developer on any remaining principal reimbursement amount, and only the remaining principal amount at year 12 will be reimbursed with TIF revenues generated from existing taxes. As a result, the Developer is at risk if the revenue for the project fails to perform adequately to pay off the obligation within the 12 years. This time limit is shorter than the City's TIF Policy preference of 15 years.

Second, the agreement also provides a public participation/profit limit feature that mandates a maximum rate of return for the Developer of nine percent (9%). If the average annual rate of return realized by Developer for the Project exceeds nine percent (9%), the principal amount of TIF reimbursement will be reduced so that Developer's return is a maximum of nine percent over the life of the TIF Plan.

Names of Persons, Businesses, Organizations affected by this action:

Citizens, other local taxing districts, developer/applicant

Why is Board Action Required?

Action is required to approve the Tax Increment Financing Redevelopment Agreement between the City of Osage Beach and Dierbergs Osage Beach LLC.

Type of Action Requested (Ordinance, Resolution, Motion):

Request First and Second Readings of Bill No. 11-19.

Are there any deadlines associated with this action?

This agreement must be completed within six months of the adoption of the initial redevelopment plan in December. This ordinance meets that requirement.

Comments and Recommendation of Department:

The city attorney recommends first and second reading approval of Bill No. 11-19 to adopt the Tax Increment Financing Redevelopment Agreement between the City of Osage Beach and Dierbergs Osage Beach LLC.

City Administrator Comments and Recommendation:

Concur with the recommendation of the City Attorney.

AN ORDINANCE APPROVING THE TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF OSAGE BEACH, MISSOURI, AND DIERBERGS OSAGE BEACH, LLC, FOR THE AMENDED DIERBERGS OSAGE BEACH TAX INCREMENT FINANCING REDEVELOPMENT PLAN AND PROJECT.

WHEREAS, 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**”), Dierbergs Osage Beach, LLC (“**Developer**”), submitted a proposal for approval of the Amended Dierbergs Osage Beach Tax Increment Financing Redevelopment Plan and Project, (“**Original Redevelopment Plan**”) on September 29, 2010, requesting that the City of Osage Beach, Missouri (“**City**”) establish a tax increment financing district on approximately 14.45 acres of property generally located West of Highway 54 and South of Old Highway 27 in Osage Beach, Missouri (the “**Redevelopment Area**”), in one redevelopment project area with boundaries coterminous with the Redevelopment Area (the “**Redevelopment Project**”); and

WHEREAS, pursuant to the provisions of the Act, the Osage Beach 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 Original Redevelopment Plan to the Board of Aldermen of the City of Osage Beach, Missouri (“**Board**”); and

WHEREAS, on December 1, 2010, after due notice in accordance with the Act, the TIF Commission held a public hearing and thereafter voted 11-0 to recommend approval of the Original Redevelopment Plan, the designation of the Redevelopment Area, approval of the Redevelopment Project, the approval of tax increment financing for the Redevelopment Area, the designation of Developer as the developer of record for the Redevelopment Project; and

WHEREAS, on December 16, 2010, the Board of Aldermen adopted Ordinance No. 10.81, which made certain factual findings, approved the Original Redevelopment Plan and Redevelopment Project, designated the Redevelopment Area and the Redevelopment Project Area, initiated tax increment financing in the Redevelopment Project Area, and designated the Developer as the developer of record for the Original Redevelopment Plan and the Redevelopment Project; and

WHEREAS, on February 1, 2011, the Amended Dierbergs Osage Beach Tax Increment Financing Redevelopment Plan and Project (the “**Amended Redevelopment Plan**”) was filed with the City Clerk; and

WHEREAS, on March 2, 2011, after due notice in accordance with the Act, the TIF Commission held a public hearing and thereafter voted 11-0 to recommend approval of the Amended Redevelopment Plan and recommend that the City enter into an agreement with Developer to implement the Amended Redevelopment Plan; and

WHEREAS, on March 17, 2011, at a regularly scheduled meeting, after the posting of proper notice of the consideration of this issue, and the holding of a public hearing on the Amended Redevelopment Plan, the Board considered the Amended Redevelopment Plan, the recommendation of the TIF Commission, the recommendations of City staff, and considered the public objections, protests, comments, and other evidence, and thereafter approved the Amended Redevelopment Plan and ratified and approved Developer as the developer of record for the Amended Redevelopment Plan through the adoption of Ordinance No. 11.13 (the “**Amended Redevelopment Plan Ordinance**”); and

WHEREAS, the Amended Redevelopment Plan Ordinance was conditioned upon the Developer entering into a tax increment financing redevelopment agreement between the City and Developer for the Amended Redevelopment Plan, upon terms acceptable to the City, to carry out the goals and objectives of the Redevelopment Plan (the “**Redevelopment Agreement**”); and

WHEREAS, pursuant to the provisions of the TIF Act and the Amended Redevelopment Plan Ordinance, the City is authorized to enter into the attached Redevelopment Agreement; and

WHEREAS, the Board of Aldermen hereby determines that the terms of the Redevelopment Agreement, attached as Exhibit A hereto and incorporated herein by reference, are acceptable and that the execution, delivery and performance by the City and the Developer of their respective obligations under the Redevelopment Agreement are 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 TIF Act and the Amended Redevelopment Plan.

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

SECTION 1. The Board of Aldermen finds and determines that it is necessary and desirable to enter into the Redevelopment Agreement with Dierbergs Osage Beach, LLC, as “Developer” of the Redevelopment Area, in order to implement the Amended Redevelopment Plan and to enable the Developer to carry out its proposal for development of the Project.

SECTION 2. The Board of Aldermen hereby approves, and the Mayor of the City is hereby authorized and directed to execute, on behalf of the City, the Redevelopment Agreement by and between the City and the Developer in substantially the same form as attached hereto as Exhibit A, and the City Clerk is hereby authorized and directed to attest to the Redevelopment Agreement and to affix the seal of the City thereto. The Redevelopment Agreement shall be in substantially the form attached, with such changes therein as shall be approved by said Mayor executing the same and as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized.

SECTION 3. The Mayor of the City or her designated representative is hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor or her designated representative.

SECTION 4. The Mayor or her designated representative, with the advice and concurrence of the City Attorney or special legal counsel, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor or her designated representative.

SECTION 5. It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full

force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

SECTION 6. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

READ FIRST TIME: _____ READ SECOND TIME: _____

PASSED AND APPROVED THIS 7th DAY OF APRIL 2011.

I hereby certify that the above Ordinance No. 11.19 was duly passed on April 7, 2011 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes _____ Nays _____

Abstaining _____ Absent _____

This Ordinance is hereby transmitted to the Mayor for her signature.

Date

Diann Warner, City Clerk

Approved as to form:

Edward B. Rucker,
City Attorney

I hereby APPROVE Ordinance 11.19.

Penny Lyons, Mayor

Date

ATTEST:

Diann Warner, City Clerk

EXHIBIT A

TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT

TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT

Between the

CITY OF OSAGE BEACH, MISSOURI

and

DIERBERGS OSAGE BEACH, LLC

dated as of ____, 2011

THE DIERBERGS OSAGE BEACH REDEVELOPMENT AREA

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TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT

THIS TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT (the “**Agreement**”) is made and entered into as of the _____ day of ___, 2011, by and between the CITY OF OSAGE BEACH, MISSOURI, a fourth class city and political subdivision of the State of Missouri (the “**City**”), and DIERBERGS OSAGE BEACH, LLC, a Missouri limited liability company (the “**Developer**”) (the City and the Developer being sometimes collectively referred to herein as the “**Parties**”, and individually as a “**Party**”, as the context so requires). (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed in Section 1.2 of this Agreement.)

RECITALS

The Osage Beach Board of Aldermen created the Tax Increment Financing Commission of the City of Osage Beach, Missouri by approval of mayoral appointments of members of the TIF Commission and empowered the TIF Commission to exercise those powers and fulfill such duties as are required or authorized for the TIF Commission under the TIF Act. The various Taxing Districts within the Redevelopment Area have appointed members to the TIF Commission in accordance with Section 99.820 of the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended (the “**TIF Act**”).

1. On September 29, 2010, the Developer submitted an application for a proposed tax increment financing plan (the “**Redevelopment Plan**”) for the redevelopment of an area that is approximately 14.47 acres in the City of Osage Beach, Missouri, and is generally located on the northeast side of Highway 54 between Links Road and Old Missouri Route 16 (the “**Redevelopment Area**”). The Redevelopment Area will be developed as one redevelopment project (the “**Project**”) to be built in one redevelopment project area (the “**Redevelopment Project Area**”).

2. On October 14, 2010 the City published a request for proposals soliciting proposals for the redevelopment of the Redevelopment Area and made such requests for proposals available for potential developers of the Redevelopment Area.

3. On December 1, 2010, the TIF Commission, after giving all notices required by the TIF Act, opened a public hearing at which all interested parties had the opportunity to be heard and at which the TIF Commission heard and considered all protests and objections concerning the Redevelopment Plan, the Redevelopment Area and the approval of the Project. The hearing was concluded on the same day, and the TIF Commission unanimously adopted a resolution recommending that the Board of Aldermen approve the Redevelopment Plan, Project and Redevelopment Area.

4. 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. 10.81 on December 16, 2010 (the “**Redevelopment Plan Ordinance**”), designating the Redevelopment Area as a blighted area, approving the Redevelopment Plan, designating the Redevelopment Area as a “redevelopment area” as provided in the TIF Act, appointing the Developer as the developer for the Redevelopment Plan, designating and approving the Redevelopment Project Area and the Redevelopment Area, initiating tax increment financing within the Redevelopment Project Area, and establishing the Dierbergs Osage Beach Special Allocation Fund.

5. On March 2, 2011, the TIF Commission, after giving all notices required by the TIF Act, opened a public hearing at which all interested parties had the opportunity to be heard and at which the TIF Commission heard and considered all protests and objections concerning amendments to the Redevelopment Plan which would allow for alternative redevelopment options. The hearing was

concluded on the same day, and the TIF Commission adopted a resolution to recommend that the Board of Aldermen approve the Redevelopment Plan, Project and Redevelopment Area.

6. After due consideration of the TIF Commission's recommendations and making required findings under the TIF Act, the Board of Aldermen adopted Ordinance No. 11.13 on March 17, 2011 which approved amendments to the Redevelopment Plan and Project.

7. On April __, 2011, the Board adopted Ordinance No. __, approving this Agreement and authorizing the City to execute and enter into this Agreement.

8. The Board of Aldermen concluded that the redevelopment of the Redevelopment Area as provided for in the Redevelopment Plan will further the growth of the City, facilitate the redevelopment of the entire Redevelopment Area, improve the environment of the City, increase the assessed valuation of the real estate situated within the City, increase the sales tax revenues realized by the City, foster increased economic activity within the City, increase employment opportunities within the City, enable the City to direct the development of the Redevelopment Area, and otherwise be in the best interests of the City by furthering the health, safety, and welfare of its residents and taxpayers.

9. Pursuant to the provisions of the TIF Act and the Redevelopment Plan Ordinance, the City is authorized to enter into this Agreement, to pay Reimbursable Project Costs and issue Obligations as evidence of the City's obligation to pay certain Redevelopment Project Costs incurred in furtherance of the Redevelopment Plan and the Project, and to pledge TIF Revenues to the payment of Reimbursable Project Costs or the repayment of Obligations.

AGREEMENT

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

ARTICLE I. RECITALS, EXHIBITS AND DEFINITIONS

Section 1.1. 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 provisions of 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 the Funding Agreement (as defined in Section 1.2 of this Agreement) or any other documents related to the Redevelopment Plan previously prepared or executed, the provisions of this Agreement shall control.

Section 1.2. Definitions. Words and terms not defined elsewhere in this Agreement shall, except as the context otherwise requires, have the following meanings:

"Administrative Costs" means all documented costs and expenses incurred by the City for planning, legal, financial, administrative and other costs associated with the review, consideration, approval and implementation of the Redevelopment Plan, this Agreement and the Project, including all consultants engaged by the City. Costs and expenses incurred for City staff time shall be documented in a summary statement not to exceed \$5,000, but detailed hourly billing records shall not be required for such

work. City shall provide itemized detail and hourly billing records for annual Administrative Costs in excess of \$5,000.

“Adult Entertainment Establishment” means any of the establishments businesses, buildings, structures, or facilities defined in Chapter 405 of the City Code of Ordinances, which meet the definitions for Adult Entertainment Facility, Bathhouse, Modeling Studio or Adult Bookstore.

“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 G** hereto furnished by the Developer to the City evidencing Reimbursable Project Costs incurred by the Developer.

“Best Efforts” means actual, reasonable, good faith attempts to accomplish or achieve the required obligation which shall be documented by the party taking such action, and proof of such documentation may be requested in writing by the other party to verify that such actual, reasonable, good faith attempts occurred. The failure to provide such documentation upon written request within a reasonable period of time after receipt of such written request, not to exceed twenty (20) business days, shall be deemed noncompliance with such obligation and a breach of this Agreement.

“Board of Aldermen” means the Board of Aldermen of the City of Osage Beach, Missouri.

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

“Bond Proceeds” means the gross cash proceeds from the sale of Bonds before payment of Financing Costs, together with any interest earned thereon.

“Bonds” means any tax increment revenue bonds issued by the City or another governmental entity in accordance with the TIF Act and this Agreement.

“Building Permit” means a permit for the construction of a structure as set forth in the City Code of Ordinances, but shall not include a permit required for demolition under the City Code of Ordinances.

“Certificate of Substantial Completion” means a certificate in substantially the form attached as **Exhibit F** hereto furnished by the Developer pursuant to Section 6.4 upon the substantial completion of a phase of the Project.

“City” means the City of Osage Beach, Missouri.

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

“City Attorney” means the then current attorney appointed by the City as the City Attorney.

“City Engineer” means a person or firm engaged by the City to perform engineering services, or a person that may be hired and appointed by the City as the City Engineer.

“City Planning Commission” means the Planning Commission of the City.

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

“Construction Commencement Date” shall be the date on which Developer submits or causes to be submitted the first application for any Building Permit within the Redevelopment Area.

“Construction Completion Date” shall have the meaning set forth in Section 6.1.

“Construction Inspector” means a City 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 Work, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with this Agreement.

“Cooperation Agreement” means a contract among the City, Developer and TDD to implement the TDD, in accordance with the terms of this Agreement.

“County” means Camden County, Missouri.

“County Assessor” means the County Assessor of Camden County, Missouri.

“County Collector” means the County Collector of Camden County, Missouri.

“Debt Service” means the amount required for the payment of principal of and interest on Obligations as they come due, for the payment of mandatory or optional redemption payments, and for payments to reserve funds required by the terms of Obligations.

“Developer” means Dierbergs Osage Beach, LLC, or its successors or assigns in interest as approved by the City.

“Developer Phase 1 Private Improvements” means the first phase of improvements, excluding the Public Improvements, constructed by the Developer for the Project in accordance with the Redevelopment Plan, including a grocery store of approximately 77,500 square feet and additional commercial retail shops, stores, services and restaurants of approximately 4,200 square feet, along with buildings, landscaping, parking spaces, internal vehicle and pedestrian roads and paths (if not paid for with TDD Sales Tax Revenues), signage and other private improvements that will serve such improvements in accordance with Governmental Approvals.

“Developer Phase 2 Private Improvements” means the second phase of improvements, excluding the Public Improvements, constructed by the Developer for the Project in accordance with the Redevelopment Plan, including approximately 45,500 to 61,100 square feet of commercial retail shops, stores, services and restaurants, along with buildings, landscaping, parking spaces, internal vehicle and

pedestrian roads and paths (if not paid for with TDD Sales Tax Revenues), signage and other private improvements that will serve such improvements in accordance with Governmental Approvals.

“Developer Private Improvements” means the land acquisition, Developer Phase 1 Private Improvements and the Developer Phase 2 Private Improvements.

“Economic Activity Taxes Account” means the separate segregated account within the Special Allocation Fund into which fifty percent (50%) of Economic Activity Taxes are to be deposited.

“Economic Activity Taxes” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act.

“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, any tenant “black out” dates which are included in the initial tenant lease and affect the store opening date, civil disorder, war, 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, unavailability of labor, adverse weather conditions 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 Developer Private Improvements in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder. Developer agrees to commence construction of the Project by initiating the remaining demolition within forty-five (45) days after the later of (i) the Effective Date of this Agreement or (ii) the procurement of all Permitted Subsequent Approvals.

“Financing Costs” means all costs reasonably incurred by the City in furtherance of the issuance of Obligations including but not limited to reasonable financing loan origination fees and expenses (with loan origination fees and expenses not to exceed 2% of the principal amount of the loan) and interest payable to banks, similar financing institutions or other entities that loan money, the City’s attorneys (including City Attorney, special TIF counsel and Bond Counsel), the City’s administrative fees and expenses (including Planning Consultants), underwriters’ discounts and fees, trustee fees, the costs of printing any Obligations and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any Obligations, all accrued and anticipated interest on the Obligations and/or Private Loans, provided, however, that any interest in excess of 6.5% per annum or the maximum rate allowed by law on any Private Loan shall not constitute Financing Costs.

“Financing Documents” means the financing agreements, disbursement agreements and all other agreements and certificates executed in connection with the issuance of Obligations.

“Funding Agreement” means the Preliminary Funding Agreement executed by the City and Dierbergs Osage Beach, LLC, or its successors or assigns, dated October 7, 2010, for the payment of City costs and expenses associated with considering and approving the Redevelopment Plan and drafting and negotiating this Agreement and all related work.

“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 Project and consistent with the Redevelopment Plan, the Site Plan and this Agreement.

“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.

“Indenture” means one or more trust indentures in the form and substance mutually agreed to by the Parties, relating to the issuance by the City of the Obligations.

“Insurance Consultant” means an insurance advisor, broker, or consultant selected by the Developer subject to the reasonable approval of the City.

“Lender” means the holder or holders of any mortgage or deed of trust encumbering Developer’s interest in all or a portion of the Redevelopment Area.

“Material Default” means a default in a material obligation following written notice of such default which shall include a detailed explanation of why the party sending such notice considers such default to be material.

“MHTC” means the Missouri Highways and Transportation Commission.

“MoDOT” means the Missouri Department of Transportation.

“Obligations” means the Special Allocation Fund Notes, Bonds, or other obligations, singly or in series, issued by the City or any third party at the direction of the City pursuant to the TIF Act or the TDD Act and in accordance with this Agreement and the Cooperation Agreement.

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

“Note Ordinance” means the Ordinance(s) necessary to authorize the Special Allocation Fund Notes, the Indenture, and all related Ordinances, resolutions and proceedings.

“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 and those approvals relating to the formation and implementation of the TDD.

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

“Planning Consultant” means a person or company selected by and engaged by the City to provide professional advice regarding the issuance of Obligations and related financial matters as described in this Agreement.

“Private Loans” means loans or indebtedness incurred by the Developer or any other private entity or individual to pay for Reimbursable Project Costs incurred or estimated to be incurred, to carry out the Redevelopment Project, to finance the creation of such Private Loans, to establish reserves, to fund or secure such Private Loans, to finance interest costs associated with such Private Loans, or to refund or refinance any such outstanding Private Loans.

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

“Project” means the Public Improvements and the Developer Private Improvements described in the Redevelopment Plan and this Agreement to be constructed by or on behalf of the Developer in the Redevelopment Area pursuant to this Agreement.

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

“Project Ordinance” means the Ordinance designated as Bill No. 10-81 that approves the Redevelopment Project and activates the collection of TIF Revenues in the Redevelopment Project Area.

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

“Public Improvements” means that portion of the Work which consists of improvements in public rights-of-way which will be dedicated to, owned and maintained by a public entity, including the City or the TDD.

“Redevelopment Area” means the area legally described in **Exhibit B** and designated as the Redevelopment Area by the Redevelopment Plan Ordinance.

“Redevelopment Plan” means the plan entitled *“The Amended Dierbergs Osage Beach Tax Increment Financing (TIF) Redevelopment Plan and Project,”* 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. 10.81, adopted by the Board of Aldermen on December 16, 2010, which approved the Redevelopment Plan and took other actions related to the Redevelopment Plan, along with Ordinance No. 11.13, approved by the Board of Aldermen on March 17, 2011, which approved the amended Redevelopment Plan.

“Redevelopment Project” means the improvements within an area designated as a tax increment financing project under the TIF Act pursuant to an Ordinance.

“Redevelopment Project Area” means the area selected for a Redevelopment Project.

“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;
- (3) Property assembly costs, including, but not limited to, acquisition of land and other property, real or personal, or rights or interests therein, demolition of buildings, and the clearing and grading of land;
- (4) Costs of rehabilitation, reconstruction, repair or remodeling of existing buildings and fixtures;

- (5) Costs of construction of public works or Public Improvements;
- (6) Costs of Developer Private Improvements;
- (7) Financing Costs, including, but not limited to, all necessary and incidental expenses related to the issuance of any Obligations, and which may include payment of interest on any Obligations issued pursuant to the TIF Act accruing during the estimated period of construction of the Project for which such Obligations are issued and for not more than twenty-four months thereafter, and including reasonable reserves related thereto;
- (8) All or a portion of a Taxing District's capital costs resulting from the Project necessarily incurred or to be incurred in furtherance of the objectives of the Redevelopment Plan and the Project, to the extent the City by written agreement accepts and approves such costs;
- (9) 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;
- (10) Payments in Lieu of Taxes; and
- (11) Administrative Costs.

“Reimbursable Project Costs” means those costs which are incurred by the City or the Developer, before or after the date of this Agreement, including Financing Costs, Administrative Costs and the costs set forth in the Project Budget which is attached as **Exhibit C**, as a result of preparing, reviewing and adopting the Redevelopment Plan and the Project, designation of the Redevelopment Area, planning, financing, acquiring and constructing the Project and any other Work authorized by the Redevelopment Plan, the oversight of the construction of the Project, the implementation of the Redevelopment Plan, and the management of the Special Allocation Fund, and which are at all times consistent with the TIF Act or any judicial interpretation of the TIF Act and which may be authorized for reimbursement in accordance with this Agreement.

“Reimbursable Costs for Phase 1” means \$3,000,000, plus all Financing Costs and Administrative Costs associated with the Developer Private Improvements.

“Reimbursable Costs for Phase 2” means \$2,100,000, plus all Financing Costs and Administrative Costs associated with the Developer Private Improvements.

“Reimbursable Project Costs Cap” means \$5,100,000, which is the combined total principal amount of the Reimbursable Costs for Phase 1 and the Reimbursable Costs for Phase 2, plus all actual Financing Costs and Administrative Costs. Costs incurred by Developer pursuant to Section 9.6 shall not be subject to the Reimbursable Project Costs Cap.

“RSMo” means the Revised Statutes of Missouri, as amended.

“Site Plan” means the final site plan for the Redevelopment Area submitted by the Developer to the City and approved by the City pursuant to applicable City ordinances, regulations and City code provisions, and as amended from time to time by the City.

“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.

“Special Allocation Fund Notes” means tax increment revenue notes (including any tax increment revenue notes issued in substitution or replacement of tax increment revenue notes, including any subordinated notes) issued by the City pursuant to and subject to this Agreement and the Note Ordinance, to evidence the City’s limited obligation to repay Reimbursable Project Costs incurred by the Developer in accordance with the TIF Act and this Agreement.

“Surplus PILOTs” means 50% 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 Section 5.6 of this Agreement.

“Surplus PILOTs Account” means the separated segregated account of the Special Allocation Fund into which the Surplus PILOTs are 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.

“TDD” means a transportation development district formed in accordance with the TDD Act which has boundaries coterminous with the Redevelopment Area.

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

“TDD Sales Tax” means the sales tax imposed by the TDD in accordance with the TDD Act.

“TDD Sales Tax Revenues” means the gross revenues generated by operation of the TDD Sales Tax.

“Tenant” shall mean all lessees, purchasers and transferees of Property in the Redevelopment Area.

“TIF Act” means the Real Property Tax Increment Allocation Redevelopment Act, Section 99.800 *et seq.*, of the Revised Statutes of Missouri, as amended.

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

“TIF Revenues” means Payments In Lieu of Taxes and fifty percent (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 Area immediately after tax increment financing for the Redevelopment Area has been approved by the Redevelopment Plan Ordinance.

“Trustee” means the banking or trust entity named as trustee in connection with the issuance of Obligations. All references to a Trustee in this Agreement, including reporting requirements to or from a Trustee, are only applicable if a Trustee is actually used in connection with the issuance of Obligations.

“Work” means all work necessary to prepare the Property and to construct the Project, including: (1) construction of the Public Improvements and the Developer Private Improvements; (2) demolition and

removal of all existing buildings and improvements located on the Property and clearing and grading of the Property; and (3) all other work described in the Redevelopment Plan or reasonably necessary to effectuate the intent of this Agreement.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. 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 constitutional and lawful right, power and authority, under current applicable law, to execute, deliver and perform the terms and obligations of this Agreement, and all of the foregoing have 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 issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement. The City represents that litigation against the City with respect to the Redevelopment Plan has been threatened, but on the Effective Date of this Agreement the City has not been served with a summons in connection with such threatened litigation.

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.

F. Construction Permits. The City reasonably believes that all permits and licenses necessary to construct the Public Improvements and the Developer Private Improvements can be obtained.

Section 2.2. 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 actual 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 issuance and 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 the 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 other than Permitted Subsequent Approvals.

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. Approvals. Except for Permitted Subsequent Approvals, the Developer has received and is in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business as heretofore conducted by it and to own or lease and operate its properties as now owned or leased by it. Except for Permitted Subsequent Approvals, the Developer has obtained all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to acquire, construct, equip, operate and maintain the Developer Private Improvements. The Developer reasonably believes that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will be obtained in due course.

H. Construction Permits. Except for Permitted Subsequent Approvals, all governmental permits and licenses required by applicable law to construct, occupy and operate the Developer Private Improvements have been issued and are in full force and effect or, if the present stage of development does not allow such issuance, the Developer reasonably believes, after due inquiry of the appropriate governmental officials, that such permits and licenses will be issued in a timely manner in order to permit the Developer Private Improvements to be constructed.

I. Compliance with Laws. The Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

J. 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.

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

Section 2.3. Developer Deliverables after the Effective Date of this Agreement. Within 30 days after the Effective Date of this Agreement, Developer shall furnish the City with the following, to the extent not already provided to the City:

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

B. a certificate of good standing of the Developer in the State of Missouri; and

C. a certified copy of the Operating Agreement of the Developer.

No payments from TIF Revenues shall be made to Developer until the requirements of this Section have been satisfied.

Section 2.4. Developer to Advance Costs. The Developer agrees to advance all Redevelopment Project Costs as necessary to acquire the Property and to complete the Work, all subject to the Developer's right to terminate this Agreement as set forth in Section 8.6.

Section 2.5. Funding of Administrative Costs.

A. Termination of Funding Agreement. Pursuant to a Funding Agreement between the City and the Developer, Developer has previously advanced 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. 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 paragraph B of this Section 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, the Project and this Agreement. Upon execution of this Agreement, the City shall deposit such 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 \$15,000, 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 any funds remaining from the Funding Agreement, is \$15,000.

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 and no less often than quarterly. 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 \$15,000 prior to the Construction Commencement Date and at \$15,000 on and after the Construction Commencement Date. This arrangement shall continue until there are sufficient funds in the Special Allocation Fund to implement paragraph D of this Section.

D. Future Administrative Costs on a Pay As You Go Basis. When sufficient funds are available in the Special Allocation Fund, the City may withdraw from the Special Allocation Fund to pay Administrative Costs an amount not to exceed \$20,000 in any year during the first two years of the Redevelopment Project, and thereafter \$10,000 in any 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.

E. Future Administrative Costs if Bonds are Issued. If Bonds are issued and the Bond proceeds are made available, the Developer shall have no further obligation to pay Administrative Costs and they shall be paid solely from the proceeds of the Bonds, or from the Special Allocation Fund in accordance with this Agreement.

Section 2.6. Developer's Ownership of the Redevelopment Area. At the time that this Agreement is executed, Developer represents that it has all of the Property in the Redevelopment Area under contract to purchase from the legal owner of the Property. The Parties agree that condemnation is not needed to acquire any portion of the Property.

Section 2.7. Developer Designation and Development Rights. The City hereby selects the Developer to perform or otherwise cause the performance of the Work in accordance with the Redevelopment Plan and this Agreement. For the purpose of implementing the Redevelopment Plan and this Agreement, the City hereby grants to the Developer exclusive redevelopment rights over the Redevelopment Area, subject to and in accordance with the terms and conditions of this Agreement.

ARTICLE III. REIMBURSEMENT OF DEVELOPER COSTS

Section 3.1. City's Obligation to Reimburse Developer and Limitation on Reimbursement to Developer –\$5,100,000

A. The City shall reimburse the Developer for all verified Reimbursable Project Costs not to exceed the Reimbursable Project Costs Cap under the conditions and restrictions set forth in this Agreement and subject to Developer's right of substitution amongst categories of costs set forth in Section 3.2 below. The City shall reimburse the Developer up to the Reimbursable Costs for Phase 1 for verified Reimbursable Project Costs incurred in connection with the Developer Phase 1 Private Improvements, and up to the Reimbursable Costs for Phase 2 for verified Reimbursable Project Costs incurred in connection with the Developer Phase 2 Private Improvements. Subject to the terms of the Note Ordinance and this Agreement, the City agrees to issue one or more series of Obligations to the Developer or a designated private purchaser to evidence the City's obligation to reimburse the Developer for verified Reimbursable Project Costs, in amounts not to exceed the respective maximum amounts for each of the Reimbursable Costs for Phase 1 and Reimbursable Costs for Phase 2. The City shall have no

obligation to reimburse Developer until funds are available in the Special Allocation Fund or until Obligations have been issued for such purpose. In connection with the site preparation, development and construction of the Redevelopment Project Area, the Developer shall submit an Application for Reimbursable Project Costs in substantial compliance with **Exhibit G** for the Reimbursable Project Costs associated with construction in the Redevelopment Project Area. The City will not issue Obligations to reimburse the Developer for any cost that is not a “redevelopment project cost” under Section 99.805(15) of the TIF Act.

B. The City shall make reimbursement payments from the Special Allocation Fund in the order of priority set forth in Section 5.9, or from Bond Proceeds, as appropriate, and interest shall accrue at the rate of 6.5% per annum for all costs approved in a Certificate of Reimbursable Project Costs from the day that the City approves such certificate (except as otherwise provided in Section 5.4.A) in accordance with Section 3.2 until such expenses are paid.

Section 3.2. 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 G**. No person other than Developer may submit an Application for Reimbursable Project Costs, and any claims by contractors, engineers, professionals or other service providers who have performed work or provided goods or services to Developer in furtherance of the Redevelopment Plan which are Reimbursable Project Costs must receive payment from Developer before such amounts may be submitted to the City for reimbursement in accordance with this Section, unless Developer expressly requests and authorizes payment directly to a contractor or service provider as a Reimbursable Project Cost. 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. The Parties agree that the individual items which are scheduled to be reimbursed according to the Project Budget (the “**Reimbursable Line Items**”), to the extent actually incurred by Developer for the 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. The City acknowledges that such costs are estimates prepared by Developer based on the knowledge of the Project at the time the Redevelopment Plan Ordinance was adopted and the actual costs of items for implementing the Project may vary depending on market factors and conditions, although the City’s obligation to reimburse Developer shall not exceed the Reimbursable Project Costs Cap plus Financing Costs, Administrative Costs and costs set forth in Section 9.6.

B. Except for Land Acquisition, the Developer shall not be limited to the total amount of reimbursement shown for any such category on **Exhibit C** as Reimbursable Line Items, but shall be entitled to reimbursement for Reimbursable Project Costs from any of the categories set forth therein, without regard to the maximum amounts shown for each such category, up to the Reimbursable Project Costs Cap. Reimbursement for Land Acquisition shall be limited to the amount set forth in the second table in **Exhibit C**. The parties agree that each of the categories of costs on **Exhibit C** qualify for reimbursement under the TIF Act, and that costs properly incurred by the Developer within each such category will constitute Reimbursable Redevelopment Project Costs. In no event will the City’s total obligation for reimbursement exceed the total Reimbursable Project Costs Cap plus Financing Costs, Administrative Costs and costs set forth in Section 9.6 of this Agreement.

C. The Developer may submit an Application for Reimbursable Project Costs to the City Administrator 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 Redevelopment Project Cost is not a

“redevelopment project cost” under Section 99.805(15) of the TIF Act, 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. If the City does not reject the Application, identify ineligible costs or request additional information from Developer within the 30-day response period, such Application will be deemed approved by the City.

Section 3.3. Limitation on Source of Funds for City’s Obligation to Reimburse. Notwithstanding any other term or provision of this Agreement, Obligations issued by the City for Reimbursable Project Costs are payable only from the Special Allocation Fund and Bond or Note Proceeds 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 or to repay or prepay Obligations.

ARTICLE IV. PERFORMANCE STANDARDS FOR REIMBURSEMENT

Section 4.1. Construction Performance.

Special Allocation Fund Notes associated with the Developer Phase 2 Private Improvements, which may include costs incurred to construct any of the Developer Private Improvements and acquire the Property, up to the maximum amount of the Reimbursable Costs for Phase 2, shall be issued by the City when Letters of Intent from tenants have been executed for not less than 35,500 square feet of retail space and construction of the building foundations have commenced for the Developer Phase 2 Private Improvements.

Section 4.2. Completion Performance.

A. The City shall be entitled to withhold endorsement or issuance of the final 10% of Construction Advances or Additional Special Allocation Fund Notes, or such lesser amount as approved in writing by the City, that relate to any Reimbursable Project Costs for Phase 1 until a Certificate of Substantial Completion has been approved by the City for the Developer Phase 1 Private Improvements.

B. The City shall be entitled to cancel and void any and all of the \$3,000,000 Special Allocation Fund Notes attributable to the Developer Phase 1 Private Improvements if Developer has not completed such improvements and opened the Dierbergs grocery store as set forth on the Project Schedule, all subject to Excusable Delay.

C. The City shall be entitled to cancel and void any and all of the \$2,100,000 Special Allocation Fund Notes attributable to the Developer Phase 2 Private Improvements if Developer has not completed such improvements and submitted its Certificate of Substantial Completion for such improvements as set forth on the Project Schedule, all subject to Excusable Delay.

Section 4.3. Revenue Performance.

A. Notwithstanding that the Redevelopment Plan provided for the full twenty-three (23) year term as set forth in the TIF Act, Developer and City agree that the final maturity dates of all Special Allocation Fund Notes shall be limited as follows:

1. All available TIF Revenues, in accordance with the priority of disbursements from the Special Allocation Fund as set forth in Section 5.10, will be used to repay the outstanding Special Allocation Fund Notes for a maximum period of twelve (12) years from the date that the Dierbergs store is opened for business (the “**Notes Amortization Period**”) (subject to extension as provided in paragraph A.2 and B of this Section). Payments on the Special Allocation Fund Notes shall be made in accordance with Section 5.10 and the trust indenture for the Special Allocation Fund Notes.

2. If each series of the Special Allocation Fund Notes has not been fully repaid within the Notes Amortization Period (subject to extension as provided in this paragraph and paragraph B of this Section), interest on the outstanding Special Allocation Fund Notes will cease to be paid from the TIF Revenues associated with all taxing districts except the TDD (the “**Non-TDD TIF Revenue**”). Thereafter, the Non-TDD TIF Revenue will be used to repay only the outstanding principal amount of the outstanding Special Allocation Fund Notes, and the TDD Sales Tax Revenues captured by the TIF Plan (the “**TDD EATs**”) will continue to be used to pay interest on the outstanding principal amount of the Special Allocation Fund Notes. At Developer’s election, at the conclusion of the initial Notes Amortization Period, all or a designated portion of the TDD EATs may also be used to repay principal on the Outstanding Special Allocation Fund Notes. The payments from such sources shall continue until the principal amount of the outstanding Special Allocation Fund Notes has been fully repaid from the Non-TDD TIF Revenues.

B. If any retail business that exceeds 10,000 square feet in gross floor area, or if any nationally-affiliated chain restaurant, closes and ceases to operate within the Redevelopment Project Area for any reason beyond the control of Developer, the Notes Amortization Period will be extended for a period of time such that the total amount of TIF Revenues lost due to the closing of the store has been generated by the stores which are then open and operating within the Redevelopment Project Area at the end of the original Notes Amortization Period. The amount of time added to the Notes Amortization Period will be calculated by the Trustee. The amount of TIF Revenue lost as a result of such store closure will be calculated by multiplying (i) the number of months that the store is closed by (ii) the average monthly Economic Activity Taxes generated by such store during the twelve-month period prior to closing. Written notice of the time period added to the Notes Amortization Period in accordance with this paragraph will be provided to the Parties in accordance with the trust indenture for the Special Allocation Fund Notes. The maximum amount of time that may be added to the Notes Amortization Period under this paragraph is two (2) years.

Section 4.4. Employment Performance. Developer shall use its Best Efforts to comply with the following:

A. Upon the issuance of a Certificate of Substantial Completion, Dierbergs Markets, Inc. (“**Dierbergs Markets**”), intends to maintain a minimum of 80 full-time equivalent employees within the Dierbergs store and proposed tenants within the Redevelopment Project Area are expected to maintain 110 full-time equivalent employees in the other stores within Redevelopment Project Area for a total of 190 full-time equivalent employees (“**Minimum Employment Level**”). For purposes of achieving the Minimum Employment Level, the number of full-time equivalent employees of any given year within the Dierbergs Markets store and within the remaining tenant stores will be calculated by dividing the total number of hours worked by all employees located within the Dierbergs Markets store and within the remaining tenant stores, from January 1 through December 31 (“**Complete Year**”), by 1820 hours (52 weeks multiplied by 35 hours). The Developer, upon the request of the City and based upon the

calculation described in the preceding sentence, at any time after the Annual Affidavit (as defined below) is submitted to the City, shall use its Best Efforts to cause Dierbergs Markets and the remaining tenants to certify to the City the number of employees maintained by Dierbergs Markets and the remaining tenants, respectively, in any previous Complete Year.

B. Based upon the total number of full time equivalent employees located within the Redevelopment Project Area during each full calendar year, or partial year in the year during which this Agreement is terminated, the parties hereto anticipate that Dierbergs Markets and the remaining tenants will maintain the Minimum Employment Level. On or before March 31st of each year, commencing during the first full calendar year after the Certificate of Substantial Completion is issued, and by March 31st of each year thereafter during the effective period of this Agreement (or within 30 days following the termination of this Agreement), the Developer will cause Dierbergs Markets to provide affidavits to the City and use its Best Efforts to negotiate with the remaining tenants to have a lease provision to provide affidavits to the City, in the form attached hereto as **Exhibit M** ("**Annual Affidavit**") setting forth the aggregate full-time equivalent employees which are employed in the applicable store in the Redevelopment Project Area during the previous year.

Section 4.5. Public Participation.

The purpose of affording public assistance to the Project is to accomplish the stated public purposes and not to subsidize an otherwise economically viable development project. While it has been determined by the Board of Aldermen that the Project would not be undertaken but for the public assistance being provided, the Parties recognize that the ongoing profitability of the Project to Developer is based upon projections that may or may not be fulfilled. During consideration of the Redevelopment Plan, Developer used the method of calculation set forth in **Exhibit J** (the "**Annual Rate of Return Calculation**") to calculate the projected annual cash return on Developer's investment in the Project. In order to ensure that the public assistance being provided does not subsidize an unreasonable level of earnings for Developer with respect to the Project, the Parties agree that a reasonable level of return for the Project, using Developer's Annual Rate of Return Calculation, is an annual rate of return of nine percent (9%) (the "**Maximum Annual Rate of Return**").

A. Annual Report. No later than March 31st of each year after the first series of Special Allocation Fund Notes has been issued, Developer shall deliver notice to the City when the Annual Rate of Return Calculation has been completed. Developer shall either make the Annual Rate of Return Calculation available at Developer's office for review by the City or send the Annual Rate of Return Calculation to the City's designated third party consultant. The Annual Rate of Return Calculation shall be accompanied by such supporting data and information as necessary for the City to verify the accuracy of the calculation. The City may request such additional data and documentation as deemed necessary to verify the accuracy of Developer's annual calculation. Prior to the conclusion of the Notes Amortization Period, or prior to the last payment on the principal amount of the outstanding Special Allocation Fund Notes if such payment occurs earlier than the conclusion of the Notes Amortization Period, the City will calculate the average annual rate of return realized by Developer for the Project based on the annual calculations delivered by Developer. At such time, if the average annual rate of return realized by Developer for the Project exceeds the Maximum Annual Rate of Return, the outstanding principal amount of the Special Allocation Fund Notes shall be reduced by an amount that has the effect of limiting Developer's average annual cash return to the Maximum Annual Rate of Return.

B. Audit Right. Upon ten (10) days prior written notice, City may cause an audit, at City's sole cost and expense, of Developer's calculation required pursuant to this Section 4.5. If, as a result of any such audit, City believes that the Special Allocation Fund Notes should be reduced in accordance with Section 4.5, then the City shall inform Developer of its position in writing along with providing

reasonable details and the material basis for City's position. Developer and City shall meet and discuss their conflicting positions (the "**Audit Meeting**"). If after the Audit Meeting, City and Developer are not in agreement, then Developer may request an audit by an independent firm or consultant. If such independent audit indicates that the Maximum Annual Rate of Return has been exceeded, then the requirements of this Section shall be satisfied. In the event that an independent audit is performed at Developer's request in accordance with the preceding sentence, the actual audit costs incurred by the prevailing Party (as determined by the final independent audit) shall be paid by the non-prevailing Party, up to a maximum of \$1000.

C. Confidentiality. The City shall maintain the confidentiality of the annual calculations prepared by Developer and delivered to the City in accordance with this Section using a method selected by the City, which may include the use of outside consultants to perform the review required by this Section, review of annual calculations and relevant Developer records at the Developer's place of business, or treating Developer calculations as confidential information under Section 32.057, RSMo, to the extent that the City determines such treatment is allowed by law. The City may engage consultants to perform the tasks required to implement this Section. To maintain confidentiality in the event that a request is made by a third party for the release of information contained in or related to an annual calculation required by this Section, the only information that will be released by the City to such person will be a statement that (a) the Maximum Annual Rate of Return was/was not exceeded, as applicable, and (b) if applicable at the end of the amortization period, the principal amount of the Special Allocation Fund Notes has been reduced in accordance with this Redevelopment Agreement.

ARTICLE V. TAX INCREMENT FINANCING

Section 5.1. Redevelopment Area and Project. The Redevelopment Area is legally described in **Exhibit B**. The Redevelopment Area will be developed in one (1) Redevelopment Project Area with two (2) phases. The City has initiated tax increment financing by Ordinance for the Redevelopment Project. Subject to the terms and conditions of the Redevelopment Plan and this Agreement, the Developer shall construct or cause to be constructed the Developer Private Improvements and the Public Improvements.

Section 5.2. Project Budget. The Project shall be constructed in accordance with the Project Budget, which costs are estimates based on the knowledge of the Project on the date of the Redevelopment Plan Ordinance, and the actual costs of items for implementing the Project may vary depending on market factors and conditions.

Section 5.3. Removal of Blight in the Redevelopment Area. The Redevelopment Area 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. By construction of the Redevelopment Project, the Developer shall clear 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 5.4. Special Allocation Fund Notes. At the request of Developer and subject to the terms of this Section regarding the maximum amount of the Special Allocation Fund Notes associated with each of the respective Reimbursable Costs for Phase 1 and the Reimbursable Costs for Phase 2, the City agrees to issue one or more series of Special Allocation Fund Notes, which shall be in substantially

the form as approved by the Note Ordinance, to reimburse the Developer for Reimbursable Project Costs up to the Reimbursable Project Costs Cap.

A. Terms of the Special Allocation Fund Notes.

1. The Special Allocation Fund Notes issued with respect to advances by the Developer to pay Reimbursable Project Costs, advances from a private loan, or the purchase of the Special Allocation Fund Notes from a private party shall bear interest at a rate of 6.5% per annum.

2. All Special Allocation Fund Notes shall have a stated maturity that is not greater than 23 years from the date the applicable Redevelopment Plan Ordinance was approved. Interest accrued but not paid shall not be compounded. The outstanding principal amount of any Special Allocation Fund Notes shall be paid as set forth in Section 5.10.

B. Conditions Precedent to Issuance of Special Allocation Fund Notes. No Special Allocation Fund Notes shall be issued until such time as the City has received from the Developer an Application for Reimbursable Project Costs in substantially the form attached as **Exhibit G** hereto. Special Allocation Fund Notes associated with the Developer Phase 1 Private Improvements, up to the maximum amount of the Reimbursable Costs for Phase 1, shall be issued by the City after the City has received from the Developer an Application for Reimbursable Project Costs associated with costs incurred for land acquisition and the Developer Phase 1 Private Improvements. Special Allocation Fund Notes associated with the Developer Phase 2 Private Improvements, up to the maximum amount of the Reimbursable Costs for Phase 2, shall be issued by the City after (1) the City has received from the Developer an Application for Reimbursable Project Costs associated with costs incurred for land acquisition and the Developer Private Improvements and (2) Letters of Intent from tenants have been executed have been executed for not less than 35,500 square feet of retail space and construction of the building foundations have commenced for the Developer Phase 2 Private Improvements.

C. Procedures for Issuance of Special Allocation Fund Notes. The initial principal amount of each series of Special Allocation Fund Notes shall be not less than **\$500,000**. Within **10** days after acceptance by the City of an Application for Reimbursable Project Costs (or **30** days in the case of the first Application for Reimbursable Project Costs), the City shall issue, subject to the limitations of **Article 3** and this Section, endorsements to the Special Allocation Fund Notes evidencing additional advances for the reimbursement of Reimbursable Project Costs ("**Construction Advances**"). In lieu of endorsements to the TIF Note, the City agrees at Developer's request to issue additional Special Allocation Fund Notes in denominations of **\$100,000** or more to evidence the City's obligation to pay such additional advances of Reimbursable Project Costs ("**Additional Special Allocation Fund Notes**"). Notwithstanding anything contained in this Agreement to the contrary, upon the acceptance by the City of an Application for Reimbursable Project Costs and the issuance by the City of Construction Advances or Additional Special Allocation Fund Notes as provided in this paragraph C, the Developer shall be deemed to have advanced funds necessary to purchase such Special Allocation Fund Notes and the City shall be deemed to have deposited such funds in a project fund to be established pursuant to the Note Ordinance and shall be deemed to have reimbursed the Developer in full for such costs from the amounts deemed to be on deposit in said project fund from time to time.

D. Issuance of Taxable Special Allocation Fund Notes. Notwithstanding any provision of this Agreement to the contrary, the City may elect to issue all or any portion of the Special Allocation Fund Notes at a taxable rate or at a tax-exempt rate, as applicable, in accordance with the opinion of the Bond Counsel.

E. Optional Redemption. The Special Allocation Fund Notes are subject to optional redemption by the City in whole at any time or in part on any Interest Payment Date (as defined in the Indenture) at a redemption price of 100% of the principal amount of the Special Allocation Fund Notes to be redeemed, plus accrued interest thereon to the date fixed for redemption, as provided in the Indenture.

F. Special Mandatory Redemption. The Special Allocation Fund Notes shall be subject to special mandatory redemption by the City on any Interest Payment Date (as defined in the Indenture), at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount (subject to the Indenture) equal to the amount which, 20 days prior to each Interest Payment Date, is on deposit in the Debt Service Fund (as defined in the Indenture) and which will not be required for the payment of interest on such Interest Payment Date.

Section 5.5. Bonds.

A. Issuance of Obligations. The City may, in its sole discretion, issue Bonds at any time in an amount sufficient to pay or reimburse all of the Reimbursable Project Costs that have been certified by the City plus the difference between such amount and the Reimbursable Project Costs Cap, up to the Reimbursable Project Costs Cap, plus Financing Costs, provided that the market condition for such Bonds are such that the payment terms of the Bonds are sufficiently favorable that reasonably prudent city financial officers would undertake the issuance of such Bonds. Developer may request the issuance of Bonds, but such Bonds shall be issued at the sole discretion of the City. If Bonds are issued after Special Allocation Fund Notes have been issued, the Bonds shall fully redeem all outstanding Special Allocation Fund Notes, unless otherwise agreed by Developer.

B. Cooperation in the Issuance of Obligations.

1. If the City elects to issue Bonds, Developer covenants to cooperate and take all reasonable actions necessary to assist the City and its Bond Counsel, underwriters and financial advisors in the preparation of the Financing Documents, offering statements, private placement memorandums or other disclosure documents and all other documents necessary to market, sell and issue Obligations, including (i) disclosure of Tenants of the Property and the non-financial terms of the leases between the Developer and such Tenants and (ii) providing sufficiently detailed estimates of Reimbursable Project Costs so as to enable Bond Counsel to render its opinion as to the tax-exemption of Obligations. The Developer will not be required to disclose to the general public or any investor the rent payable under any such lease or any proprietary or confidential financial information pertaining to the Developer, its Tenants or the leases with its Tenants, but upon the execution of a confidentiality agreement acceptable to the Developer, the Developer will provide such information to the City's financial advisors, underwriters and their counsel to enable such parties to satisfy their due diligence obligations.

2. The Developer further agrees, in connection with the City's issuance of Bonds, (i) to provide a closing certificate in similar form attached as **Exhibit H** hereto (which shall include a certification regarding the accuracy of the information relating to the Developer and the Project), (ii) to cause its counsel to provide a legal opinion in similar form attached as **Exhibit H** hereto and (iii) to provide the following information to enable the underwriter of the Obligations to comply with Rule 15c2-12 of the Securities and Exchange Commission: all retail and commercial Tenants of the Project, the square footage occupied by each such Tenant, the purpose for which space is used by each retail Tenant, and the term of each commercial and retail lease. Developer shall provide information on an ongoing basis so that the City can comply with its continuing disclosure obligations, as requested by the City. The obligations under this Section shall be a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

C. City to Select Bond Counsel, Financial Advisor and Underwriter; Term. The City shall have the right to select the designated Bond Counsel, financial advisor and underwriter (and such additional consultants as the City deems necessary for the issuance of the Obligations). The final maturity of Obligations shall not exceed the maximum term permissible under the TIF Act.

Section 5.6. 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 an Ordinance for the Redevelopment Project Area, the Property is subject to assessment for annual Payments in Lieu of Taxes. Payments in Lieu of Taxes shall be due November 30 of each year in which said amount is required to be paid and will be considered delinquent if not paid by December 31 of each such year. 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 a Redevelopment Area.

B. Enforcement of Payments. Failure to pay Payments in Lieu of Taxes as to any 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 or of the principal of and interest on any outstanding Obligations secured by such payments, 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 on the Property shall not be formally or informally protested or contested if such assessments are equal to or less than 110% of the projected assessed values as set forth in the Redevelopment Plan or the Cost Benefit Analysis submitted in support of the Redevelopment Plan (the “**Projected Assessed Value**”) for any calendar year during the effective period of this Agreement. In the event that any tax assessment is greater than 110% of the Projected Assessed 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 110% of the Projected Assessed 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 on the property in accordance with Section 7.6.

D. Release of Liens. Notwithstanding anything to the contrary herein, the lien on Property within the Redevelopment Area shall be deemed (1) released as to any public street or other public way included within any plat proposed by the Developer, effective upon the passage of an Ordinance by the City approving the same, and (2) subordinated to the lot lines, utility easements and other similar matters established by any such plat (but not to any private access or parking rights granted or created by any such plat), effective upon the passage of 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. Limitation on use of Payments in Lieu of Taxes. No more than fifty percent (50%) of the Payments in Lieu of Taxes shall be used to pay Reimbursable Project Costs or to repay Obligations. In accordance with the Redevelopment Plan, the remaining fifty percent (50%) of the Payments in Lieu of Taxes collected shall be declared as Surplus PILOTs by the City, as approved in the Redevelopment Plan. 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 to the appropriate Taxing Districts affected by the Redevelopment Project. Such declaration of surplus Payments in Lieu of Taxes 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 Payments in Lieu of Taxes distributed to the appropriate Taxing Districts. Such declaration of surplus Payments in Lieu of Taxes shall continue at a level of fifty percent (50%) throughout the entire term of the TIF Plan and this Agreement.

F. Disbursements of Surplus PILOTs. The Parties acknowledge and agree that the Camden County Collector or his/her designee, on behalf of the City, will be the party to disburse Surplus PILOTs to the appropriate Taxing Districts affected by the Redevelopment Plan and this Agreement. The City will use Best Efforts to enter into an agreement in substantially the form of **Exhibit I** to memorialize the agreement with the Camden County Collector to disburse Surplus PILOTs to the appropriate Taxing Districts on behalf of the City in accordance with this Section.

G. Certification of Base for Payments in Lieu of Taxes. Within ninety (90) days after 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 valuation of the taxable real property within the Redevelopment Area based upon the most equalized assessed valuation of each taxable lot, block, tract, or parcel of real property within the Redevelopment Area.

Section 5.7. 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 (50) percent of the total additional revenue from taxes which are imposed by the City or other Taxing Districts, and which are generated by economic activities within the Redevelopment Area which are in excess of the amount of such taxes generated by economic activities within the Redevelopment Area for the calendar year ending December 31, 2009, while tax increment financing remains in effect, but excluding taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 RSMo, licenses, fees or special assessments and personal property taxes, other than payments in lieu of taxes and any penalty and interest thereon, or taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo, shall be allocated to, and paid by the collecting officer to the designated financial officer of the City, who shall deposit such funds in a separate segregated account within the Special Allocation Fund for the purpose of paying Redevelopment Project Costs and Obligations incurred in the payment thereof.

B. Accounting. The City shall deposit the payments of Economic Activity Taxes received from the respective Taxing Districts in the Economic Activity Taxes Account in 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.

1. The Developer, its successors and assigns shall use Best Efforts to impose a requirement on all Tenants to provide to the City documentation of Missouri Sales Tax receipts and filings for each business in the Redevelopment Area, indicating the type and amount of the

Economic Activity Taxes paid by each such business located within the Redevelopment Area. The Developer hereby agrees, to the extent practicable, that each such lease shall provide that the City is an intended third party beneficiary of such provisions and the City has a separate and independent right to enforce such documentation provisions directly against any such Tenant. This obligation shall be a covenant running with the land and shall be enforceable against the Developer, to the extent Developer continues to own Property within the Redevelopment Area, and against any purchaser, lessee or other transferee or possessor as if such purchaser, lessee or other transferee or possessor were originally a party to and bound by this Agreement and shall only terminate upon the passage of an Ordinance terminating the Redevelopment Plan pursuant to the terms contained herein.

2. The City and the Developer agree to cooperate and take all reasonable actions necessary to cause the TIF Revenues 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. Developer shall annually provide records on utility taxes to allow the City annually appropriate utility taxes, and the City shall have no obligation to annually appropriate utility taxes unless such records are provided by Developer.

D. Certification of Base for Economic Activity Taxes. Within ninety (90) days after adoption of the Project Ordinance, the City shall use Best Efforts to provide to the Developer a certification of 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 Area for the preceding calendar year, but excluding those personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, taxes levied for the purpose of public transportation, or licenses, fees or special assessments identified as excluded in Section 99.845.3 of the TIF Act.

Section 5.8. Obligation to Report Maximum Sales Tax Revenue. To the fullest extent permitted by law, the Developer shall use all reasonable efforts to cause any Tenant to designate sales subject to sales taxes pursuant to Chapter 144, RSMo to be reported as originating from the Redevelopment Area. So long as any TIF Obligation is outstanding, the Developer shall cause such obligation to be a covenant running with the land and shall be enforceable as if such Tenant, were originally a party to and bound by this Agreement.

Section 5.9. Special Allocation Fund. The City has established and shall 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) Economic Activity Taxes shall be deposited into the Economic Activity Taxes Account within the Special Allocation Fund; (3) and such further accounts or sub-accounts as are required by this Agreement, the Indenture, or as the City's financial advisor and Trustee may deem appropriate in connection with the administration of the Special Allocation Fund. Subject to the requirements of the TIF Act and, with respect to Economic Activity Taxes, subject to annual appropriation by the Board of Aldermen, the City will promptly upon receipt thereof deposit or be deemed to deposit all Payments in Lieu of Taxes into the PILOT Account and all Economic Activity Taxes into the Economic Activity Taxes Account.

Section 5.10. Disbursements From Special Allocation Fund. All disbursements from the Special Allocation Fund will be paid in such priority as the City shall determine from the separate segregated accounts maintained within the Special Allocation Fund for Payments in Lieu of Taxes and Economic Activity Taxes. The City hereby agrees for the term of this Agreement to apply available TIF Revenues in the following manner and order of preference:

A. *IF ONLY SPECIAL ALLOCATION FUND NOTES ARE OUTSTANDING:*

1. An amount equal to 50% of the actual Payments in Lieu of Taxes generated within the Redevelopment Area and actually received or deemed to be received into the PILOTS Account of the Special Allocation Fund shall be declared as Surplus PILOTS and shall be distributed in the manner set forth in Section 5.6 of this Agreement;

2. Payment of arbitrage rebate, if any, owed with respect to the Special Allocation Fund Notes under Section 148 of the Internal Revenue Code of 1986, as amended, including any costs of calculating arbitrage rebate;

3. Payment of fees and expenses owing to the Trustee for the Special Allocation Fund Notes, upon delivery to the City of an invoice for such amount;

4. Payment of Administrative Costs incurred by the City pursuant to Section 2.5 of this Agreement;

5. Reimbursement to any district providing emergency services within the Redevelopment Area, to the extent required by Section 99.848 of the TIF Act or, in lieu thereof, such amount (if any) as may be set forth in a cooperative agreement between the City and any such district, subject to the Developer's approval;

6. Payment of interest becoming due on all outstanding Special Allocation Fund Notes on each interest payment date;

7. Payment of the outstanding principal amount when due (at maturity, upon redemption or otherwise) of the Special Allocation Fund Notes issued in connection with the Developer Phase 1 Private Improvements;

8. Payment of the outstanding principal amount when due (at maturity, upon redemption or otherwise) of the Special Allocation Fund Notes issued in connection with the Developer Phase 2 Private Improvements.

B. *IF ONLY BONDS ARE OUTSTANDING:* Moneys shall be applied in the manner specified in the ordinance or trust indenture relating to the issuance of the Bonds.

Section 5.11. Full Assessment.

A. Redevelopment Area. After all Reimbursable Project Costs have been paid and all outstanding Obligations have been paid in full, but not later than twenty-three (23) years from the adoption of the Redevelopment Plan Ordinance, all property in the Redevelopment Area shall be subject to assessments and payment of all ad valorem taxes, including, but not limited to, City, State, and County taxes, based on the full true value of the real property and the standard assessment ratio then in use for similar property by the County Assessor, and the Redevelopment 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 portions of this Agreement relating only to the TIF Act, the Redevelopment Plan Ordinance and the Redevelopment Plan.

B. Completion of Redevelopment Plan. Upon the payment of all Reimbursable Project Costs and all outstanding Obligations and the distribution of any excess moneys 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, and the Redevelopment Area shall be free from the conditions, restrictions and provisions of the TIF Act, of any rules or regulations adopted pursuant thereto, of the Redevelopment Plan Ordinance, of the Redevelopment Plan and this Agreement.

ARTICLE VI. DEMOLITION, CONSTRUCTION AND OPERATION OF THE PROJECT

Section 6.1. Project Schedule, Demolition, Design and Construction.

A. Schedule and Plan of Financing.

1. Absent an event of Excusable Delay, the Developer shall commence and complete the Demolition and the Developer Private Improvements, the Public Improvements and each of its obligations under this Agreement with respect to the acquisition, construction and completion of the Project in accordance with the Project Schedule attached as **Exhibit D**. All costs of the Project shall be financed by Developer from private loans, cash equity supplied by Developer or proceeds of the Special Allocation Fund Notes.

2. Subject to Excusable Delay and Permitted Subsequent Approvals, the “**Construction Completion Date**” shall occur in accordance with the Project Schedule set forth in **Exhibit D**. Subject to Excusable Delay and Permitted Subsequent Approvals, on the Construction Completion Date, Certificates of Substantial Completion for stores comprising not less than 127,000 square feet of gross leasable retail area shall have been submitted by Developer to the City.

3. Developer may submit a written request to the City for an extension of the Construction Completion Date. The City shall have sole, complete and unilateral discretion to grant or not grant such request for an extension.

B. Construction Plan Approval. The Developer shall submit to the City the Construction Plans for the Project after approval of the Site Plan by the City. Construction Plans may be submitted in phases or stages. The Construction Plans shall incorporate the Design Standards as described in paragraph C of this Section. The Construction Plans shall be prepared and sealed by a professional engineer or architect licensed to practice in the State of Missouri and the Construction Plans and all construction practices and procedures with respect to the Project shall be in conformity with all applicable state and local laws, ordinances and regulations, including, but not limited to, any performance, labor and material payment bonds required for the Project, subject to delay or adjustment as necessary to meet Tenant requirements. The Developer shall submit Construction Plans for approval by the City Engineer in sufficient time so as to allow for review of the plans in accordance with applicable City ordinances and procedures and in accordance with the Project Schedule attached as **Exhibit D**. 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. Design. The Developer shall comply with and follow the design criteria relating to exterior improvements substantially as set forth in **Exhibit E** (the “**Design Standards**”), which regulate the exterior finishes, site appearance and signage allowed for Tenants as part of all zoning and subdivision approvals in order to create an integrated, unified design for the Project.

D. Demolition and Maintenance after Demolition. Demolition of the remaining improvements in the Redevelopment Area shall occur in strict compliance with the Project Schedule.

E. Construction. In accordance with the Project Schedule attached as **Exhibit D**, and absent an event of Excusable Delay, the Developer shall commence the construction of the Project in a good and workmanlike manner in accordance with the terms of this Agreement. Absent an event of Excusable Delay, the Developer shall cause the Project to be completed in accordance with the Project Schedule set forth in **Exhibit D**. Upon reasonable advance notice, the Developer and its project team shall meet with the City to review and discuss the design and construction of the Project in order to enable the City to monitor the status of construction and to determine that the Project is being performed and completed in accordance with this Agreement.

F. Periodic Review and Reports. At the reasonable request of the City, the Developer agrees to provide to the City a report regarding the status of the Project, which shall include, at a minimum the following information, as applicable: lease negotiations, financing commitments, construction schedule, occupancy of the Project and configuration of the Project.

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

H. Construction Contracts and Insurance. The Developer may enter into one or more construction contracts to complete the Work. Prior to the commencement of construction of the Work, the Developer shall obtain or shall require that any such contractor obtains workers' compensation, comprehensive public liability and builder's risk insurance coverage in amounts required by the City and as provided in Section 7.3 and shall deliver evidence of such insurance to the City. The Developer shall require that the insurance required hereunder is maintained by any such contractor for the duration of the construction of the Work.

I. Prevailing Wages. The Developer shall comply with all laws regarding the payment of prevailing wages to contractors or subcontractors of the Developer, as applicable. Developer shall indemnify the City for any damage resulting to it from failure of either the Developer or any contractor or subcontractor to pay prevailing wages pursuant to applicable laws.

J. Competitive Bids and Other Construction Requirements. The Developer shall comply with all applicable State and local laws relating to the construction of the Project, including but not limited to all applicable laws relating to competitive bidding. The Redevelopment Plan submitted in response to the City's request for proposals is deemed to satisfy all competitive bidding requirements established by the City pursuant to the TIF Act.

K. Cooperation on Third Party Approvals. Developer shall obtain all approvals required by the MHTC or MoDOT and any other entities or governmental departments specified by MHTC or MoDOT, for all necessary public road improvements in MoDOT rights-of-way. The City agrees to cooperate in good faith to facilitate approval by MHTC and MoDOT and other third parties in the design, construction and approval of the Public Improvements.

L. 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 City ordinances and law of the State of Missouri.

Section 6.2. Land Uses and Land Use Restrictions. In addition to the land use restrictions that are established pursuant to the City's zoning and subdivision regulations, unless approved in writing by the City prior to the execution of a lease or prior to the sale of land in the Redevelopment Area, the

types of land uses set forth in the attached **Exhibit K** shall not occur as a primary use of any structure on the Property in the Redevelopment Area.

Section 6.3. Covenants, Conditions and Restrictions. Any Covenants, Conditions and Restrictions ("CC&Rs") shall be in compliance with the land use restrictions as set forth in Section 6.2 and the Design Standards set forth in Section 6.1.C. A copy of the CC&Rs shall be provided to the City not less than thirty (30) days prior to the date of recording with the Camden County Recorder of Deeds.

Section 6.4. Certificate of Substantial Completion. Promptly after substantial completion of each of (1) the Developer Phase 1 Private Improvements, and related Public Improvements, and (2) the Developer Phase 2 Private Improvements in accordance with the provisions of this Agreement, the Developer may submit a Certificate of Substantial Completion to the City for such phase. Substantial completion shall mean that Developer has completed the Developer Phase 1 Private Improvements and related Public Improvements or the Developer Phase 2 Private Improvements, as applicable, for which Certificates of Substantial Completion have been submitted to the City for the applicable portion of the Redevelopment Project Area, measured by the total gross floor area of all retail stores constructed for the applicable phase. The Certificates of Substantial Completion shall be in substantially the form attached as **Exhibit F**. 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 Redevelopment 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 Camden County Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to construct the applicable phase of the Project.

Section 6.5. Relocation within the City. No Tenant may be relocated from other space located within the City limits of the City unless the sales tax base for such Tenant is transferred as provided under the TIF Act. 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 the same store, office or business, or the same chain or name-brand of store (either corporate or franchise), within the City within three hundred sixty-five (365) days after such store is opened in the Redevelopment Area.

Example of (b): Two "Brand Name" pharmacy stores exist in the City, both located outside the Redevelopment Area. A "Brand Name" pharmacy store opens in the Redevelopment Area. Within three hundred sixty-five (365) days after the opening of such "Brand Name" store in the Redevelopment Area, one of the two pre-existing "Brand Name" stores closes in the City. This will be treated as a "relocation" pursuant to this Section.

Section 6.6. Compliance with Laws and Requirements. The Project shall be designed, constructed, equipped and completed in accordance with all Applicable Law and Requirements of all federal, state and local jurisdictions. 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 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 Commission and shall initiate said action by motion of the Board of Aldermen.

Section 6.7. Utilities and Fees. The City hereby agrees that the Developer shall have the right, subject to compliance with applicable City Ordinances, regulations and City code provisions, to connect any and all on-site water lines, sanitary and storm sewer lines and electric lines constructed in the Redevelopment Area to City utility lines existing at or near the perimeter of the Redevelopment Area. The City agrees that the Developer shall be obligated to pay, in connection with the development of the Redevelopment Area, those normal water, sanitary and storm sewer, Building Permit, engineering, inspection, and other fees which are of general applicability for the intended uses of the Property.

Section 6.8. Assistance to Developer. The City agrees to provide the Developer with assistance with respect to obtaining Building Permits from the City, and any permits or approvals required from any governmental agency, whenever reasonably requested to do so; provided, however, that all requests for assistance are in compliance with the City Ordinances, the Construction Plans, the Site Plan, all applicable City rules, regulations, codes and procedures, and this Agreement. The City agrees to use its Best Efforts to assist Developer to obtain the necessary permits and approvals from MoDOT to allow ingress and egress to the Project from state rights-of-way.

Section 6.9. Lease of Property. As restricted by this Agreement, including the Tenant restrictions in Section 6.9, the Developer may lease Property within the Redevelopment Area. 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 Attorney, and shall have such lease signed by the lessee indicating acknowledgment and agreement to the following provision:

Economic Activity Taxes: Tenant acknowledges that the Leased Premises are a part of a Tax Increment Financing district (“TIF District”) created by Osage Beach, 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 Landlord or the City, Tenant shall forward to the City or Landlord 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 them. 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. Failure of the Developer to require that such restrictions be placed in any such lease shall in no way modify, lessen or diminish the obligations and restrictions set forth herein relating to the Redevelopment Area or the Project and the City’s rights of enforcement and remedies under this Agreement and the TIF Act.

Section 6.10. Transportation Development District. The City acknowledges that Developer may seek to form a TDD in accordance with the TDD Act. In the event that Developer seeks to for the TDD, the Parties agree that the following provisions shall apply to the formation and operation of the TDD:

A. Formation of the TDD shall be initiated by Developer filing a petition in accordance with the TDD Act, and the City shall be named as a respondent in the court action. The City and Developer agree to jointly cooperate with and participate in the formation process. The City’s and the Developer’s participation shall include, but is not limited to, the following:

1. include language in contracts for sale of real estate inside the TDD boundaries which requires prospective purchasers to sign petitions and cooperate in the TDD formation and operation, as applicable;

2. prepare such petitions, pleadings, exhibits and other documents as necessary for formation and operation of the TDD;

3. use good faith efforts to cause persons, as mutually agreed upon by the Parties, to serve on the board of directors for the TDD;

4. Developer shall construct or cause to be constructed those transportation improvements that qualify for reimbursement in accordance with the TDD Act and this Agreement, including compliance with all competitive bidding, prevailing wage and other construction requirements;

5. use good faith efforts to cause lessees and purchasers of property within the boundaries of the TDD to cooperate in the timely and full payment of all applicable sales taxes, and any other fees or assessments that may be imposed or charged by the TDD;

6. cooperate and take all reasonable actions necessary to assist the City and its counsel, lenders and financial advisors in the disclosure and preparation of offering statements, private placement memorandums, loan documents and all other documents necessary to utilize a retail sales tax imposed by the TDD in connection with Obligations; and

7. take such other reasonable action as mutually agreed upon by the Parties to facilitate the formation, operation and good standing of the TDD.

B. Operation of the TDD. The Developer and City agree that they shall enter into a Cooperation Agreement with the TDD which will include the following provisions and obligations:

1. The TDD shall impose the TDD Sales Tax at a rate of 1%;

2. The TDD will covenant to request an annual appropriation by its Board of Directors to direct the balance of the TDD Sales Tax Revenue for application to the repayment of Obligations, to the extent Obligations are issued to fund the TDD Projects;

3. The TDD shall be used to pay for the public improvements as authorized by the TDD Act and as described in the Cooperation Agreement. Developer may be reimbursed from TDD revenues for verified Reimbursable Project Costs in the maximum amount of **\$3,500,000**, plus any interest and Financing Costs as provided in this Agreement and in the Cooperative Agreement;

4. The TDD Revenues may annually pay for routine administrative services such as accounting and legal costs;

5. The TDD Revenues may not be used to pay for any other types of services to the Redevelopment Area until the TIF Plan is terminated in accordance with this Agreement. After the Redevelopment Plan has been terminated, the TDD may remain in existence, at the discretion of the Developer, and continue to fund eligible services; and

6. For so long as the TDD is in existence, two (2) of the members of the Board of Directors shall be City officials or City employees, and the remaining three (3) Board members

may be persons designated by and representing Developer. The TDD bylaws shall provide that, in the event that a City official or employee sitting on the Board of Directors ceases to hold his or her position with the City, such director shall be deemed automatically resigned from the Board of Directors without further action of that director.

ARTICLE VII. GENERAL COVENANTS

Section 7.1. 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 and undertaking in implementation of the Redevelopment Plan 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 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 which is not based in whole or in part upon 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 timely to 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 to offset against amounts of Reimbursable Redevelopment Costs payable to the 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..

E. Indemnification provided by Developer to any City Indemnified Party resulting from Developer's implementation of the Redevelopment Project or this Agreement and which are not caused by the negligence or willful misconduct of Developer or employees, agents, independent contractors and consultants shall be treated as Developer Reimbursable Project Costs that will be in addition to the Reimbursable Project Costs Cap.

Section 7.2. Indemnification of the Developer.

A. To the extent permitted by law, the City agrees to indemnify and hold the Developer, its employees, agents and independent contractors and consultants (collectively, the "**Developer's 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 the City's power and authority to undertake and approve the Redevelopment Plan and this Agreement, except that this indemnification shall not apply to any Action to the extent that it relates to the procedures used by the City to introduce and adopt the Redevelopment Plan Ordinance.

B. In the event any Action is begun or made as a result of which the City may become obligated to one or more of the Developer's Indemnified Parties hereunder, any one of the Developer's Indemnified Parties shall give prompt notice to the City of the occurrence of such event. After receipt of such notice, the City may elect to defend, contest or otherwise protect the Developer's Indemnified Parties against any such Action, at the cost and expense of the City, utilizing counsel subject to the reasonable approval of Developer. The Developer's Indemnified Parties shall assist, at City's sole discretion, in the defense thereof. In the event that the City shall fail timely to defend, contest or otherwise protect any of the Developer's Indemnified Parties against such Action, the Developer's Indemnified Parties shall have the right to do so, and, if such defense is undertaken by the Developer's Indemnified Parties after notice to the City asserting the City's failure to timely defend, contest or otherwise protect against such Action, the cost of such defense shall be at the expense of the City.

C. Any one of the Developer's Indemnified Parties shall submit to the City any settlement proposal that the Developer's Indemnified Parties shall receive which may only be accepted with the approval of the City. The City 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 City expressly assumes in writing as part of such settlement. Neither the City nor the Developer's 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.

Section 7.3. Insurance.

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

B. As used in this Section, "**Replacement Value**" means an amount sufficient to prevent the application of any co-insurance contribution on any loss but in no event less than **100%** of the actual replacement cost of the improvements in the Project, including additional administrative or managerial costs that may be incurred to effect the repairs or reconstruction, but excluding costs of excavation, foundation and footings. Replacement Value shall be determined at least every year after the completion

date of the Project by an appraisal, a report from an Insurance Consultant, or if the policy is on a blanket form, such other means as is reasonably acceptable to the Insurance Consultant. If an appraisal or report is conducted, a copy of such appraisal or report shall be furnished to the Trustee, if any, and the City.

C. While any Obligations are outstanding, the Developer shall keep the Project continuously insured with property insurance for full Replacement Value, with such deductible provisions as are customary in connection with the operation of facilities of the type and size comparable to the Project.

D. The City does not represent in any way that the insurance specified herein, whether in scope, overall coverage or limits of coverage, is sufficient to protect the business or interests of the Developer.

E. All such policies, or a certificate or certificates of the insurers that such insurance is in full force and effect, shall be provided to the City and the Trustee and, prior to expiration of any such policy, the Developer shall furnish the City and the Trustee with satisfactory evidence that such policy has been renewed or replaced or is no longer required by this Agreement; provided, however, the insurance so required may be provided by blanket policies now or hereafter maintained by the Developer if the Developer provides the City and the Trustee with a certificate from an Insurance Consultant to the effect that such coverage is substantially the same as that provided by individual policies. All policies evidencing such insurance required to be obtained under the terms of this Agreement shall provide for thirty (30) days prior written notice to the Developer, the Trustee and the City of any cancellation (other than for nonpayment of premium), reduction in amount or material change in coverage.

F. In the event the Developer shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement, the Trustee shall promptly notify the City of such event and the City or the Trustee may (but shall be under no obligation to) contract for the required policies of insurance and pay the premiums on the same; and the Developer agrees to reimburse the City or the Trustee to the extent of the amounts so advanced, with interest thereon at the Default Rate. Notwithstanding the foregoing, if the City shall advance to the Trustee the amounts necessary to contract for such insurance the Trustee shall promptly cause such insurance to be maintained or restored.

G. All policies of insurance required by this Section shall become utilized as required by this Agreement.

Section 7.4. Obligation to Restore.

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

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

C. Enforcement. The restrictions set forth in this Section are for the benefit of the City and may be enforced by the City by a suit for specific performance or for damages, or both.

Section 7.5. Notice of Restoration after Casualty. The Developer hereby agrees that if any portion of the Developer Private Improvements shall be damaged or destroyed, in whole or in part, by fire or other casualty (whether or not covered by insurance), or by any taking in condemnation proceedings or the exercise of any right of eminent domain, the Developer shall, within one-hundred eighty (180) days, provide notice to the City to explain whether Developer will restore, replace or rebuild the same, or cause the same to be restored, replaced or rebuilt to the value, quality and condition it was in immediately prior to such fire or other casualty or taking, along with a description of any alterations or changes planned by Developer.

Section 7.6. Assignment of Developer's Obligations.

A. This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

B. The Developer shall not assign any of its rights hereunder nor shall it permit any of its officers, directors or shareholders to assign or to dispose of any interest in the Developer without the prior written consent of the City.

C. Notwithstanding the foregoing, the Developer may, upon written notice to the City and without obtaining the consent of the City, delegate or assign to a Lender the right to receive payments from TIF Revenues or the proceeds of Obligations for Reimbursable Project Costs, and the City shall accept the exercise of such right by a Lender or its designee with the same force and effect as if exercised by Developer.

D. Notwithstanding the foregoing, the Developer may, upon written notice to the City and without obtaining the consent of the City, assign all of its rights hereunder to an entity created specifically for the purpose of owning, developing and operating the Redevelopment Project and in which the Developer or its shareholders own or control, for the duration of the Redevelopment Plan and this Agreement, not less than fifty-one percent (51%) of the total ownership interests (“Assignee”). Provided, however, such assignment shall not be effective unless such assignment is accompanied by:

1. A binding commitment from a Lender or other financial institution to provide Assignee with the financing necessary to assemble the Property and construct the Redevelopment Project;

2. A fully executed agreement between the Developer and the Assignee, acceptable in form and substance to the City prior to such execution, pursuant to which Assignee assumes all of the Developer's obligations hereunder; and

3. All of the documents required by Section 2.3 with respect to Assignee.

E. Notwithstanding any other provision in this Section to the contrary, the City hereby approves the right of the Developer to encumber or collaterally assign its interest in this Agreement, the Property or any portion thereof to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Redevelopment Project Costs, provided that the loan documents contain language approved by the City Attorney or the City's special legal counsel which

1. provides that no costs will be incurred by the City to assist or deal with any matters related to implementation of the Redevelopment Plan or this Agreement upon foreclosure of the Property, or any portion thereof, by the Lender, and that the Lender will fund all such costs incurred by the City in such matters, and

2. the Developer's status as the developer of record under the Redevelopment Plan and this Agreement shall terminate upon foreclosure by the Lender, the City may designate a new Developer of record under the Redevelopment Plan and this Agreement, and until such designation has occurred the City shall not certify for reimbursement any additional Reimbursable Project Costs, including any pending requests for certification submitted by any party which have not yet been acted upon by the City.

Any encumbrance or collateral assignment for the benefit of any Lender may include the right of the holder of any such encumbrance or collateral assignment to transfer such interest by foreclosure or transfer in lieu of foreclosure, provided that the rights of Developer as the original Developer have been terminated as set forth in this paragraph and the original Developer under this Agreement has no outstanding claims against the City. Developer shall timely pay all outstanding loans associated with financing for the Project and shall not allow any fee simple interest in the Property to transfer to a Lender or third party pursuant to a mortgage or collateral assignment as authorized by this Section.

Section 7.7. Sale of Property in the Redevelopment Area.

A. City approval of transferees. No sale, transfer or other conveyance of any fee interest in the Property in the Redevelopment Area may be made without the prior written consent of the City, which shall not be unreasonably withheld. This restriction shall not apply to easements granted on the Property and leases of the Property.

B. Transferee Agreement. 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, 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 L**. Within **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 L**. 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.

C. 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 three (23) 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, which approval shall not be unreasonably withheld, 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 7.8. 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 7.9. 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 7.10. 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.

ARTICLE VIII. DEFAULTS AND REMEDIES

Section 8.1. Developer Event of Default. Subject to Section 8.5, a “**Developer Event of Default**” means 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.

Section 8.2. City Event of Default. Subject to Section 8.5, 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 8.3. 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 terminate and remove the Developer as the developer of record under the Redevelopment Plan Ordinance and the Redevelopment Plan and/or 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. Provided, however, that the Parties agree that certain obligations of the Developer are dependent on the willingness of retailers to locate within the Redevelopment Area.

B. Upon termination of this Agreement as provided in this Section, the City shall have no obligation to (i) reimburse the Developer for any amounts advanced under this Agreement or costs otherwise incurred or paid by Developer or (ii) make any payments with respect to Obligations held by the Developer or any assignee of the Developer, and such Obligations shall be deemed null, void and cancelled. Notwithstanding anything to the contrary herein, the Special Allocation Fund Notes attributable to the Developer Phase 1 Private Improvements shall not be cancelled and shall remain outstanding and payable by the City on and after the date that the Dierbergs grocery store opens for business, and the Special Allocation Fund Notes attributable to the Developer Phase 2 Private Improvements shall not be cancelled and shall remain outstanding and payable by the City on and after the date of the Certificate of Substantial Completion is issued for the Phase 2 Private Improvements.

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 8.4. 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.

B. If the Developer 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 Developer, then and in every case the Developer and the City 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 Developer shall continue as though no such proceeding had been instituted.

C. 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.

D. 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 8.5. Excusable Delay. 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.

Section 8.6. Termination by Developer. Developer may, by written notice to the City, terminate Developer's obligations hereunder with respect to the Project upon the occurrence of any of the following within the following time periods:

A. At any time, the Developer may, by giving written notice to the City, terminate this Agreement and the Developer's obligations hereunder if the Developer determines, in its sole discretion, that the Redevelopment Project is no longer economically feasible.

B. At any time prior to the commencement of construction, if the Developer is unable to secure, to its sole satisfaction, any Governmental Approvals with respect to all or any portion of the Project as the Developer deems necessary.

C. At any time prior to the delivery of the Certificate of Substantial Completion, if the Developer determines, in its sole discretion, that the Developer is unable or will be unable to secure leases or other necessary agreements, in form and content satisfactory to the Developer, in its sole discretion, with satisfactory tenants or users of the Project.

D. At any time, litigation or any other proceeding is filed or initiated challenging the validity of or seeking to overturn the approval of the Redevelopment Plan, the Redevelopment Project, the Obligations, the Project Ordinance, the Redevelopment Plan Ordinance or this Agreement.

Notwithstanding any termination by the Developer, such termination shall not affect the City's obligation to reimburse the Developer for or to pay the principal amount of any Reimbursable Project Costs certified by the City prior to the date of the Developer's termination notice, to the extent that revenues are then available in the Special Allocation Fund on the date of such termination and are available for disbursement in accordance with this Agreement for such reimbursement, but such termination shall immediately terminate the City's obligation to pay any interest, as set forth in this Agreement, on Reimbursable Project Costs that have previously been certified by the City. In no event will the City be obligated to reimburse Developer from any source of funds other than revenues available in the Special Allocation Fund or Bond Proceeds. If the termination pursuant to this Section 8.6 occurs prior to the submission of the Certificate of Substantial Completion applicable to the Developer Phase I Private Improvements, the City may immediately repeal the Project Ordinance and terminate the collection of TIF Revenues in the Redevelopment Project Area and all TIF Special Allocation Fund Notes shall be deemed voided and cancelled. If the termination occurs after the submission of the Certificate of Substantial Completion, the City shall be obligated to issue additional Special Allocation Fund Notes for qualified costs and all Obligations shall remain valid and outstanding.

ARTICLE IX. GENERAL PROVISIONS

Section 9.1. Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect so long as tax increment allocation financing shall apply to any portion of the Redevelopment Project and at the dissolution of the Redevelopment Area this Agreement shall terminate and become null and void.

Section 9.2. Conflict of Interest. No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interests or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

Section 9.3. 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 Developer Private Improvements.

Section 9.4. Inspections and Audits. Developer shall, upon reasonable advance notice, allow the City and the City's agents (including the City Engineer) access to the Project from time to time for reasonable inspection of the Project, including the Public Improvements and Developer Private Improvements. 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 Reimbursable Project Costs.

Section 9.5. 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 9.6. Actions Contesting the Redevelopment Plan. 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 the Redevelopment Area, the Project, a Redevelopment Project, the Redevelopment Plan, the Redevelopment Plan Ordinance and the findings therein, the Project Ordinance, the Obligations, or the Ordinance approving this Agreement, the Developer may, at its option, assume the defense of such claim or action with counsel of the Developer's choosing and pay the costs and attorney's fees of such counsel, but the Developer may not settle or compromise any claim or action for which the Developer has assumed the defense without the prior approval of the City. If the City does not approve a settlement or compromise which the Developer would agree to, the Developer shall not be responsible for any costs or expenses incurred thereafter in the defense of such claim or action. The Parties expressly agree that so long as no conflicts of interest exist between them with regard to the handling of such litigation, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding; provided, the Developer and its counsel shall consult with the City throughout the course of any such action and the Developer shall pay all reasonable and necessary costs incurred by the City in connection with such action. All 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 or from the proceeds of Obligations, and such reimbursable litigation costs shall be in addition to the Reimbursable Project Costs set forth in the Project Budget.

Section 9.7. 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 9.8. No Other Agreement. The Parties agree that, as required by the TIF Act, the 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. The Parties further agree that the Plan will be implemented as agreed in this Agreement. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of Redevelopment Project Costs, Reimbursable Project Costs, Financing Costs, payments from the Special Allocation Fund, and all other methods of implementing this Plan. The Parties further agree that this

Agreement contains provisions that are in greater detail than as set forth in this 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 Preliminary Funding Agreement, the Redevelopment Plan Ordinance, the Construction Plans, the Site Plan, the Redevelopment Plan or any other document pertaining to the Project, this Agreement shall control.

Section 9.9. 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 9.10. Missouri Law. This Agreement shall be construed in accordance with the laws of the State of Missouri.

Section 9.11. Notices. All notices and requests required pursuant to this Agreement shall be sent as follows:

To the City:

City Administrator
City of Osage Beach
Osage Beach City Hall
1000 City Parkway
Osage Beach, MO 65065
With a copy to:

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

And a copy to:

City Attorney
City of Osage Beach
Osage Beach City Hall
1000 City Parkway
Osage Beach, MO 65065

To the Developer:

Dierbergs Osage Beach, LLC
16690 Swingley Ridge Road
Chesterfield, MO 63017
Attn: Jerry Ebest

With a copy to:

Beverly Marcin
Lewis, Rice & Fingersh, L.C.
600 Washington Ave., Suite 2500
St. Louis, MO 63101

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 9.12. 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 9.13. Recordation of Agreement. The Parties agree to execute and deliver the original of this Agreement in proper form for recording and/or indexing in the appropriate land or governmental records. This Agreement shall be recorded by the Developer, and proof of recording shall be provided to the City.

Section 9.14. 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 9.15. 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 9.16. Preserving the Tax-Exempt Status of Obligations. The City may irrevocably waive any requirement of this Agreement that imposes requirements on the Developer, any Tenant or any taxpayer, related to the payment, collection, administration or guaranty of Economic Activity Taxes or Payments in Lieu of Taxes, to the extent the City determines in its sole discretion that the waiver is necessary or appropriate in order to facilitate the tax-exempt financing. The City shall evidence such waiver by providing to the Developer written notice specifically listing any requirements waived by the City and this Agreement shall be deemed to have been amended to delete the waived provisions as provided therein.

[Remainder of this page intentionally left 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 OSAGE BEACH, MISSOURI

By: _____
Penny Lyons, Mayor

(SEAL)

ATTEST:

Diann Warner, City Clerk

Notary for City of Osage Beach

STATE OF MISSOURI)
) ss.
COUNTY OF CAMDEN)

BE IT REMEMBERED, that on this ____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Penny Lyons, Mayor of the City of Osage Beach, Missouri, a city duly incorporated and existing under and by virtue of the laws 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.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

DIERBERGS OSAGE BEACH, LLC

By: _____

Name: _____

Title: _____

Notary for Dierbergs Osage Beach, LLC

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of Dierbergs Osage Beach, 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 Dierbergs Osage Beach, LLC, and such person duly acknowledged the execution of the same to be the free act and deed of Dierbergs Osage Beach, LLC.

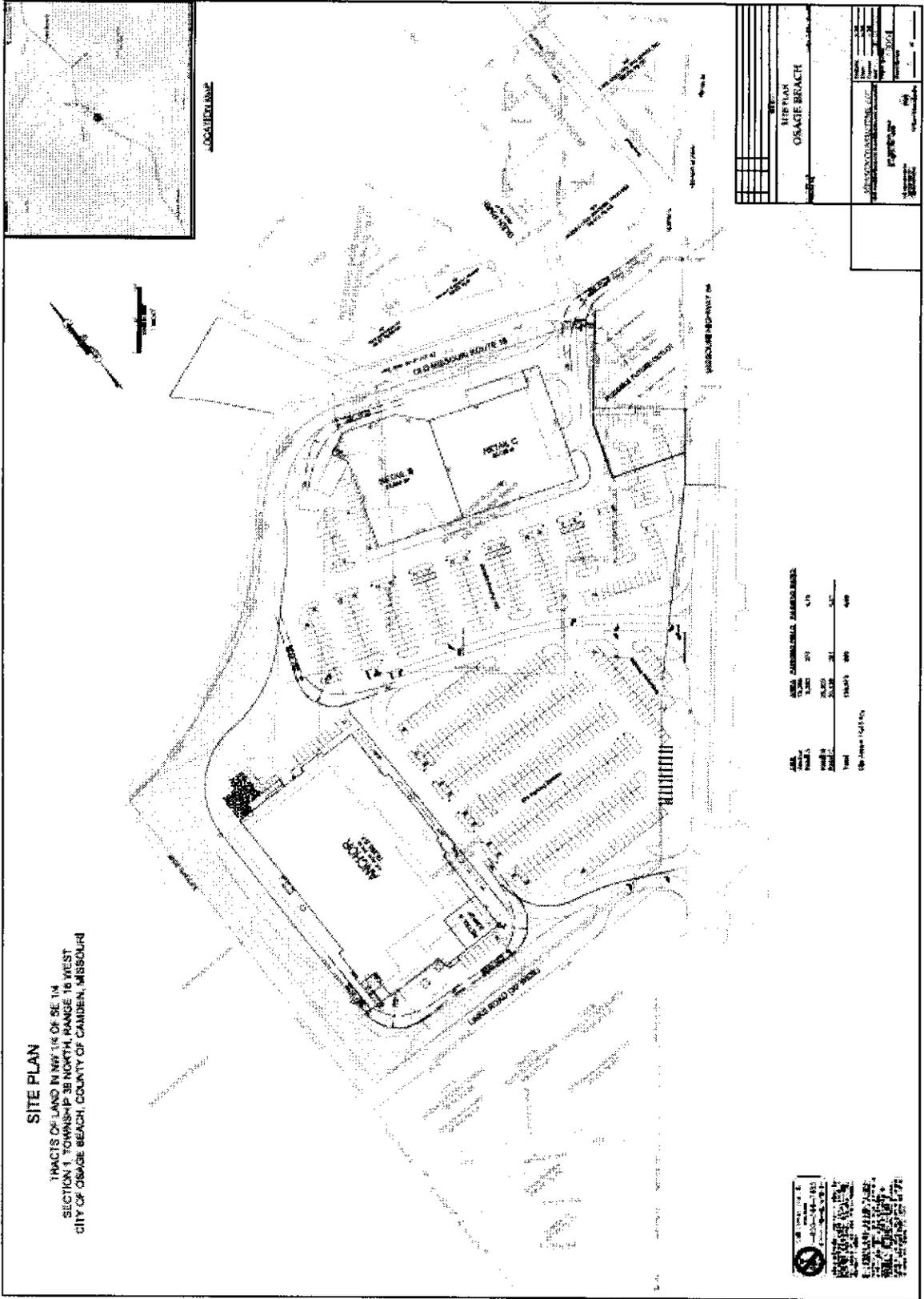
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

EXHIBIT A - SITE MAP



SITE PLAN

TRACTS 05, LAND IN PART OF SEC. 14,
SECTION 4, TOWNSHIP 28 NORTH, RANGE 18 WEST,
CITY OF OSAGE BEACH, COUNTY OF CAMDEN, MISSOURI

| AREA | AREA | ADJACENT | ADJACENT |
|------|------|----------|----------|
| NO. | NO. | NO. | NO. |
| 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 |
| 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 |
| 29 | 30 | 31 | 32 |
| 33 | 34 | 35 | 36 |
| 37 | 38 | 39 | 40 |
| 41 | 42 | 43 | 44 |
| 45 | 46 | 47 | 48 |
| 49 | 50 | 51 | 52 |
| 53 | 54 | 55 | 56 |
| 57 | 58 | 59 | 60 |
| 61 | 62 | 63 | 64 |
| 65 | 66 | 67 | 68 |
| 69 | 70 | 71 | 72 |
| 73 | 74 | 75 | 76 |
| 77 | 78 | 79 | 80 |
| 81 | 82 | 83 | 84 |
| 85 | 86 | 87 | 88 |
| 89 | 90 | 91 | 92 |
| 93 | 94 | 95 | 96 |
| 97 | 98 | 99 | 100 |

SITE PLAN
OSAGE BRANCH

DATE: _____

PROJECT NO.: _____

SCALE: _____

DESIGNED BY: _____

CHECKED BY: _____

APPROVED BY: _____

DATE: _____

EXHIBIT B

LEGAL DESCRIPTIONS OF REDEVELOPMENT AREA

A tract of land situated in and being a part of the SE $\frac{1}{4}$ of Section 1, T 39 N, R 16 W and being part of tracts of land described by deeds recorded in book 550, page 670 and Book 265, Page 263 of the Records of Camden County, MO and as described by Old Republic National Title Insurance Company File No. 10-10652, 1st Revision 8/26/10 LSB and being more particularly described as follows:

Beginning at the SW Corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 1, T 39 N, R 16 W also being the Southerly Corner of Lot 27 of Stuart's Subdivision as recorded in Plat Book 2, page 57 of the Records of Camden County, MO and also being the Southwesterly Corner of the Hotel Tract as shown by the play of Buena Vista Heights recorded in plat book 2, Page 47 of said Records of Camden County, MO; thence N 01 $\frac{1}{2}$ 06' 04" E along the $\frac{1}{4}$ Section Line, the Easterly Line of said Lot 27 of Stuart's Subdivision and the Easterly Line of Stuart's Drive 276.44 feet; thence leaving said $\frac{1}{4}$ Section Line and said Easterly Lines along the Southerly Line of Old Missouri Route 15 (also known as Lake Road 54-27 and Zebra Road) as described by deed recorded in Book 550, Page 670 of the Records of Camden County, MO and as shown as abandoned Right of Way by plat by LS1670 recorded in Plat Book 25, Page 9 of said Records of Camden County, MO along the following courses: thence N 83 $\frac{1}{2}$ 21' 28" E, 46.49 feet; thence along a curve to the left 114.49 feet, the radius being 412.04 feet and the long chord being N 75 $\frac{1}{2}$ 28' 58" E, 114.12 feet; thence N 67 $\frac{1}{2}$ 26' 16" E, 104.87 feet; thence along a curve to the left 179.81 feet, then radius being 412.16 feet and the long chord being N 54 $\frac{1}{2}$ 56' 26" E, 178.39 feet; thence N 42 $\frac{1}{2}$ 26' 28" E, 71.82 feet; thence along a curve to the right 198.54 feet, the radius being 169.80 feet and the long chord being N 75 $\frac{1}{2}$ 56' 28" E, 187.42 feet; thence S 70 $\frac{1}{2}$ 33' 53" E, 342.20 feet; thence along a curve to the left 76.45 feet, the radius being 422.68 feet and the long chord being S 75 $\frac{1}{2}$ 44' 46" E, 76.34 feet; thence leaving said Southerly Line S 39 $\frac{1}{2}$ 27' 02" W along the Westerly line of a tract of land described by deed recorded in Book 527, page 359 of said records of Camden County, MO 146.72 feet; thence leaving said Westerly Line S 50 $\frac{1}{2}$ 37' 26" E along the Southerly Line of a tract of land described by said deed recorded in Book 527, Page 359, 140.11 feet; thence leaving said Southerly Line S 39 $\frac{1}{2}$ 26' 19" W along the Westerly Right of Way line of U.S. Route 54, 115.17 feet to a point 45.00 feet right of the Westerly Centerline Station 104+00.00 of said U.S. Route 54; thence continuing along said Right of Way Line S 45 $\frac{1}{2}$ 13' 56" W, 300.97 feet to a point 75.00 feet right of or Westerly of Centerline Station 107+00.00 of said U.S. Route 54; thence continuing along said Right of Way Line S 39 $\frac{1}{2}$ 32' 03" W, 290.33 feet; thence leaving said Right of Way Line N 89 $\frac{1}{2}$ 13' 06" W along the Northerly Line of Links Road as shown by the plat of Tuttle's Acreages as recorded in Plat Book 2, Page 46 of said Records of Camden County, MO 553.93 feet; thence leaving said Northerly Line N 01 $\frac{1}{2}$ 37' 15" E along the Easterly Line of said Links Road 300.12 feet; thence leaving said Easterly Right of Way Line N 89 $\frac{1}{2}$ 24' 16" W along the Northerly Right of Way Line of said Links Road 29.80 feet to the point of beginning

Containing 630472.78 Square Feet of 14.47 Acres. Subject to all easements and restrictions of record.

EXHIBIT C

PROJECT BUDGET

**ESTIMATED REDEVELOPMENT PROJECT COSTS
DIERBERGS OSAGE BEACH REDEVELOPMENT PROJECT
OSAGE BEACH, MISSOURI**

| Redevelopment Project Cost Items | |
|---|----------------------|
| Building Construction | |
| Demolition | \$ 440,948 |
| Off-site roadwork (performed and paid for by others) | \$ 800,000 |
| Site Development | \$ 3,189,052 |
| New Construction | \$ 19,510,400 |
| Land Acquisition & Relocation | |
| Acquisition | \$ 6,200,000 |
| Professional Fees and Development Overhead) (Includes project overhead, architecture, engineering, surveying, legal, planning, consulting, bond issuance costs and financing fees, and builder's risk insurance.) | |
| | \$ 1,735,000 |
| Sales and Marketing Expenses | |
| | \$ 200,000 |
| Financing Costs | |
| | \$ 2,159,000 |
| Total Project Costs | |
| | \$ 34,234,400 |
| Maximum TIF Reimbursement | |
| | \$ 5,100,000 |
| Percentage of Total Project Costs | |
| | 14.90% |

Source: Developer

**TIF REVENUES ONLY (WITHOUT TDD) ELIGIBLE REDEVELOPMENT
PROJECT COSTS
DIERBERGS OSAGE BEACH REDEVELOPMENT PROJECT
OSAGE BEACH, MISSOURI**

| Redevelopment Project Cost Items | |
|---|---------------------|
| Building Construction | |
| Demolition | \$ 403,400 |
| Site Development | \$ 2,538,686 |
| New Construction | |
| Land Acquisition & Relocation | |
| Acquisition | \$ 3,965,419 |
| Professional Fees and Development Overhead) (Includes project overhead, architecture, engineering, surveying, legal, planning, consulting, bond issuance costs and financing fees, and builder's risk insurance.) | |
| | \$ 1,235,000 |
| Sales and Marketing Expenses | |
| | |
| Financing Costs | |
| | \$ 500,000 |
| MAXIMUM TIF REIMBURSEMENT | |
| | \$ 5,100,000 |

EXHIBIT D
PROJECT SCHEDULE

| <u>Action</u> | <u>Date</u> |
|---|---|
| Commence Site Work for Developer Private Improvements | May, 2011 |
| Completion of Site Work for building pad in Phase 1 | November, 2011 |
| Commence construction of hard improvements for Developer Phase 1 Private Improvements | April, 2012 |
| Completion of Developer Phase 1 Private Improvements and opening of Dierbergs Store | Within 24 months of Effective Date of Agreement |
| Completion of Developer Phase II Private Improvements | Within 36 months of Effective Date of Agreement |

Events in this schedule are subject to the issuance of applicable government permits, Permitted Subsequent Approvals and Excusable Delay as set forth in the text of this Agreement.

EXHIBIT E

DESIGN STANDARDS

Developer shall comply or cause compliance with the following design standards and requirements in the construction of the Developer Private Improvements:

1. Significant accent and design features shall be used, together with other focal points for architectural interest such as, but not limited to, towers, canopies, alcoves, entranceways or overhangs.
2. All construction shall be architecturally harmonious with a unified design theme and design treatment.
3. Signage is required to conform to the City's sign regulations established in the Osage Beach Code of Ordinances. A Sign Permit is required and must be obtained prior to sign construction for all signage within the development. A master signage plan shall be provided illustrating the locations, materials, size, and appearance of all free standing signage dedicated to the development. Individual tenants will submit the required materials for their facility at the time they are requesting a permit. These submittals will include the items listed on the Sign Permit Application and any other materials needed by the City Planner, Building Official, or City Engineer to assure conformance with all codes adopted by the City of Osage Beach.
4. All electrical power distribution lines, telephone lines, cable television and other utility lines which are constructed by or at the direction of Developer and installed to serve the Redevelopment Area shall be installed underground. This requirements shall not apply to lines already in service on the Effective Date of this Agreement.
5. All HVAC and mechanical equipment, excluding wall-mounted equipment, shall be screened. Roof and ground equipment and materials shall be screened and made a part of the architecture of the building and are to be painted to match the building or roof color. Wall mounted equipment shall, to the greatest extent possible, be colored and placed as not to detract from the overall aesthetic value of the Project.
6. All landscape features including trees or any other type of vegetation installed by the developer or the tenants of the development shall be maintained in living state for the duration of the development. Non vegetative landscape features shall be regularly and actively maintained to preserve a positive visual appearance.
7. Down spouts shall be integrated in the building design, including color, design and placement.
8. All gas meters shall be screened.

EXHIBIT F

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

**CERTIFICATE OF SUBSTANTIAL COMPLETION
OF
DIERBERGS OSAGE BEACH, LLC**

The undersigned, Dierbergs Osage Beach, LLC (the "Developer"), pursuant to that certain Tax Increment Financing Redevelopment Agreement dated as of ___, 2011, between the City of Osage Beach, Missouri (the "City") and the Developer (the "Agreement"), hereby certifies to the City as follows:

1. That as of _____, 201_, the Developer Phase __ Private Improvements (as such term is defined in the Agreement) have been substantially completed in accordance with the Agreement. All parking areas required by the City Code have been fully constructed.

2. The Developer Phase __ Private Improvements have 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 applicable portions of the 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 Developer Phase __ Private Improvements have 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 Developer Phase __ Private Improvements.

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 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 with the Camden County Recorder of Deeds, shall evidence the satisfaction of the Developer's agreements and covenants to construct the Project.

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

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

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

DIERBERGS OSAGE BEACH, LLC
a Missouri limited liability company

By: _____

Name: _____

Title: _____

ACCEPTED:

CITY OF OSAGE BEACH, MISSOURI

By: _____

Name: _____

Title: _____

(Insert Notary Form(s) and Legal Description)

EXHIBIT G
FORM OF
APPLICATION FOR REIMBURSABLE PROJECT COSTS

APPLICATION FOR REIMBURSABLE PROJECT COSTS

TO: City of Osage Beach, Missouri
Attention: City Administrator

Re: Dierbergs Osage Beach Redevelopment Project Area

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Tax Increment Financing Redevelopment Agreement dated as of ____, 2011 (the "Agreement") between the City of Osage Beach, Missouri (the "City") and Dierbergs Osage Beach, LLC (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on *Schedule I* hereto is a Reimbursable Project Cost and was incurred in connection with the construction of the Project.
2. These Reimbursable Project Costs have been paid by the Developer and are reimbursable under the Redevelopment Plan Ordinance and the Agreement.
3. Each item listed on *Schedule I* has not previously been paid or reimbursed from money derived from the Special Allocation Fund or any money derived from any project fund established pursuant to an Ordinance authorizing the issuance of Obligations, 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 certificate relates have been issued and are in full force and effect.
6. All Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. If any cost item to be reimbursed under this Certificate Application is deemed not to constitute a Redevelopment Project Cost within the meaning of the TIF Act and the Agreement, the Developer shall have the right to substitute other eligible Reimbursable 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 Project is in compliance with the Project Schedule set forth in Exhibit D to the Agreement.

Dated this ____ day of _____, 20____.

DIERBERGS OSAGE BEACH, LLC

a Missouri limited liability company

By: _____

Name: _____

Title: _____

Approved for Payment this ____ day of _____, 201__:

CITY OF OSAGE BEACH, MISSOURI

By: _____

Name: _____

Title: _____

EXHIBIT H

FORM OF DEVELOPER'S CLOSING CERTIFICATE AND LEGAL OPINION

DEVELOPER'S CLOSING CERTIFICATE

Relating to

**City of Osage Beach, Missouri
Tax Increment Financing Revenue Bonds
Series _____**

I, the undersigned, hereby certify that I am a duly authorized officer of Dierbergs Osage Beach, LLC (the "Developer") and as such am familiar with the affairs, books and records of the Developer. In connection with the issuance of the above-described bonds (the "Bonds") by the City of Osage Beach, Missouri (the "City"), I hereby further certify as follows:

1. ORGANIZATION AND AUTHORITY

1.1. Due Organization. The Developer is a limited liability company duly organized and is in good standing under the laws of the State of Missouri and qualified to do business under the laws of the State of Missouri.

1.2. Organizational Documents. The copy of the organizational documents of the Developer contained in the Transcript of Proceedings relating to the authorization of the issuance of the Bonds (the "Transcript") is a true, complete and correct copy of said Organizational Documents, as amended, and said Organizational Documents have not been further amended and are in full force and effect as of the date hereof.

1.3. Incumbency of Officers. The person named below was on the date or dates of the execution of the documents listed in **Section 2.2** below, and is on this date, the duly appointed or elected, qualified and acting managing member of the Developer, holding the office set opposite his name:

Name

Title

2. BOND TRANSCRIPTS AND LEGAL DOCUMENTS

2.1. Transcript of Proceedings. The Transcript furnished to the Original Purchaser of the Bonds and on file in the official records of the City includes a true and correct copy of the proceedings had by the Developer and other records, proceedings and documents relating to the issuance of the Bonds; said Transcript is, to the best of my knowledge, information and belief, full and complete; such proceedings of the Developer shown in said Transcript have not been modified, amended or repealed and are in full force and effect as of the date hereof.

2.2. Execution of Documents. The following document has been executed and delivered in the name and on behalf of the Developer by the person identified in Section 1.3 above, pursuant to and in full compliance with a Resolution adopted by the members of the Developer by consent in lieu of meeting as shown in the Transcript; the copy of said document contained in the Transcript is a true, complete and

correct copy or counterpart of said document as executed and delivered by the Developer; and said document has not been amended, modified or rescinded and is in full force and effect as of the date hereof:

- (a) Tax Increment Financing Agreement dated as of _____, 2010 (the "Redevelopment Agreement"), between the City and the Developer.

2.3. Representations. Each of the representations of the Developer set forth in the Redevelopment Agreement are true and correct in all material respects as of the date hereof, as if made on the date hereof, and all covenants and conditions to be complied with and obligations to be performed by the Developer under the Redevelopment Agreement have been complied with and performed.

2.4. Authorized Developer Representative. The Developer hereby appoints ____ as the Authorized Developer Representative as defined in the Indenture.

2.5. Litigation. There is (i) no litigation, proceeding or investigation pending against the Developer or its affiliates or, to the knowledge of the Developer, threatened which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the documents related to the Bonds, or (B) in any way contest the existence or powers of the Developer or its affiliates regarding the Project, (ii) no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer or its affiliates regarding the Project except litigation, proceedings or investigations in which the probable ultimate recoveries and the estimated costs and expenses of defense, in the opinion of counsel to the Developer, will not have a material adverse effect on the operations or condition, financial or otherwise, of the Developer and its affiliates and would not restrain, enjoin or otherwise adversely affect the payment of Payments in Lieu of Taxes and Economic Activity Tax Revenues (as defined in the Indenture), and (iii) no event of default which 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 breach of or an event of default under the documents related to the Bonds to which it is a party.

2.6. Preliminary Official Statement and Official Statement. The information in the Preliminary Official Statement dated _____, 201__ and in the Official Statement dated _____, 200_ (collectively, the "Official Statement") under the captions "**THE PROJECT**" and "**SUMMARY OF LEASES; OCCUPANTS**" does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

IN WITNESS WHEREOF, the undersigned has caused this Certificate to be executed this _____ day of _____, 20____.

DIERBERGS OSAGE BEACH, LLC
a Missouri limited liability company

By: _____

Name: _____

Title: _____

[FORM OF OPINION OF COUNSEL TO DEVELOPER]

STANDARD OPINION OF COUNSEL TO BE PROVIDED BY DEVELOPER

[Closing Date]

Mayor and Board of Aldermen
Osage Beach, Missouri

[Underwriter]
_____, Missouri

[Bond Trustee], as Trustee
_____, Missouri

Gilmore & Bell, P.C.
Kansas City, Missouri

Re: \$_____ City of Osage Beach, Missouri, Dierbergs Osage Beach Tax Increment
Financing [Refunding] Revenue Bonds (Dierbergs Osage Beach Project), Series 20____

Ladies and Gentlemen:

We have acted as counsel to Dierbergs Osage Beach, LLC (the "Developer"), in connection with the issuance and sale by the City of Osage Beach, Missouri (the "City") of the above-captioned bonds (the "Bonds") pursuant to a Trust Indenture dated as of _____ (the "Indenture"), between the City and [Bond Trustee], as trustee. In our capacity as counsel for the Developer, and in preparation for the delivery of the opinions set forth herein, we have examined the following:

- (a) Articles of Organization of the Developer with all amendments thereto;
- (b) Operating Agreement of the Developer with all amendments thereto;
- (c) Certificate of Good Standing;
- (d) Tax Increment Financing Redevelopment Agreement dated as of _____, 2009 (the "Agreement"), between the City and the Developer; and
- (e) such other corporate and organizational records, certificates and other statements of governmental officials and officers and other representatives of the Developer as we have deemed necessary or appropriate for the purposes of this opinion.

Words and terms used herein have the respective meanings ascribed to them in the Agreement unless some other meaning is plainly indicated.

In rendering the opinions set forth herein, we have assumed, without undertaking to verify the same by independent investigation, (a) as to questions of fact, the accuracy of all representations of the City and the Developer set forth in the Agreement, and all other certifications of officers and representatives of the Developer, the City and others examined by us, (b) the conformity to original documents of all documents submitted to us as copies and the authenticity of such original documents and all documents submitted to us as originals, (c) except with respect to the Developer, the genuineness of all signatures and the due authority of the parties executing such documents, (d) except with respect to the Developer, the execution, delivery and performance of all relevant documents by the parties executing such documents and the due authorization and validity of such documents, and that such parties have the full power, authority and legal right to perform their obligations under such documents, and (e) that all such documents to which the Developer is a party accurately describes and contains the mutual understanding of the parties, that there are no oral or written statements that modify, amend or vary, or purport to modify, amend or vary any of the terms of the agreements or any documents related thereto, and that as to factual matters all representations and warranties made in the agreements and all documents related thereto are correct and accurate.

Our use of the term “to our knowledge” and “to the best of our knowledge” means that, during the course of representation as described herein, no information has come to the attention of the attorneys involved in the transactions described herein which gave such attorneys actual knowledge of the existence of the matter as so qualified.

Based upon the foregoing and upon such other information and documents as we believe necessary to enable us to render this opinion, we are of the opinion that:

1. Based on the Articles of Organization and Certificate of Good Standing, the Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri. The Developer has all requisite power and authority to (a) conduct its business as contemplated by the Agreement, (b) execute and deliver the Agreement, and (c) carry out the terms of the Agreement and to perform its obligations thereunder.

2. The Agreement has been duly authorized, executed and delivered by the Developer.

3. No authorization, consent or approval of any governmental body or agency not already obtained is required in connection with the valid execution and delivery of the Agreement by the Developer or in connection with the performance by the Developer of its obligations under the Agreement.

4. The execution, delivery and performance by the Developer of the Agreement will not violate any provisions of law nor, to the best of our knowledge after inquiry of officers and other representatives of Developer, any applicable judgment, order or regulation of any court or of any public or governmental body, agency or authority and will not conflict with, or result in the breach of any of the provisions of, or constitute a default under its Articles of Organization or Operating Agreement or, to the best of our knowledge after inquiry of officers and other representatives of Developer, of any indenture, mortgage, deed of trust or other agreement or instrument to which the Developer is a party or by which the Developer is bound.

In the course of our representation of the Developer, nothing has come to our attention which causes us to believe that the information contained in the Official Statement dated _____, under the captions “THE REDEVELOPMENT PROJECT” and “SUMMARY OF LEASES;

OCCUPANTS” (with the exception of any financial or statistical data, as to which no view is expressed) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. *[**For purposes of this paragraph, it is assumed that the information under the captions referenced will be similar in scope to the information contained in the Official Statement.**]*

This opinion is limited solely to the matters set forth herein and no other opinion is to be inferred or implied beyond the matters expressly stated herein.

The foregoing opinions are subject to the qualifications stated therein and to the following assumptions, limitations and qualifications:

- (a) These opinions are based upon existing laws, ordinances and regulations in effect as of the date hereof and as they presently apply;
- (b) We have assumed that the Agreement has been duly authorized, executed and delivered by the City to the extent applicable, is within its powers, constitutes its legal, valid and binding obligation and that the City is in compliance with all applicable laws, rules and regulations governing the conduct of its business;
- (c) The undersigned is licensed to practice law in the State of Missouri, and we express no opinion with respect to the applicability of the laws of any jurisdiction other than the State of Missouri or governmental subdivisions thereof, and all federal substantive laws to the extent applicable.

This opinion may not be used or relied upon by or published or communicated to any party other than the addressees hereof for any purpose whatsoever without our prior written approval in each instance.

EXHIBIT I

**FORM OF COOPERATIVE AGREEMENT FOR
DISBURSEMENT OF SURPLUS PAYMENTS IN LIEU OF TAXES**

**COOPERATIVE AGREEMENT FOR DISBURSEMENT OF
SURPLUS PAYMENTS IN LIEU OF TAXES**

THIS COOPERATIVE AGREEMENT FOR DISBURSEMENT OF SURPLUS PAYMENTS IN LIEU OF TAXES (the “**Agreement**”) is made and entered into this _____ day of _____, 2011, by and between the **CITY OF OSAGE BEACH, MISSOURI**, a Missouri fourth class city (the “**City**”), and **CAMDEN COUNTY, MISSOURI**, a Missouri first class county (the “**County**”).

RECITALS

1. The City Board of Aldermen (the “**City Board**”) adopted Ordinance No. ___ on December 16, 2010, pursuant to Sections 99.800 to 99.865, RSMo (the “**TIF Act**”), approving the Dierbergs Osage Beach Tax Increment Financing Plan (the “**TIF Plan**”) and initiating tax increment financing within the Redevelopment Area defined in the TIF Plan. Capitalized terms not defined herein shall have the meanings ascribed to them in the TIF Plan.

2. Pursuant to the TIF Plan, Payments in Lieu of Taxes (“**PILOTs**”) will be collected by the County and remitted to the City for deposit in the Special Allocation Fund.

3. On ___, 2011, the City executed a tax increment financing redevelopment agreement (the “**Redevelopment Agreement**”) to implement the Redevelopment Project described in the TIF Plan. The TIF Plan and the Redevelopment Agreement require that the City declare fifty percent (50%) of the PILOTs collected pursuant to the TIF Plan as surplus in accordance with Section 99.820.1(12), RSMo (“**Surplus PILOTs**”), and distribute the Surplus PILOTs to the appropriate taxing districts (the “**Taxing Districts**”) on a basis that is proportional to the current collections of revenue which each Taxing District receives from real property in the Redevelopment Area.

4. As the County initially collects PILOTs, the City desires for the Surplus PILOTs to be paid directly to the Taxing Districts by the County on behalf of the City, and the County desires to make such payments directly on behalf of the City.

5. The City Board adopted Ordinance No. ___ on ___, 2011, which approved the Redevelopment Agreement to implement the TIF Plan, including this Agreement as an exhibit to the Redevelopment Agreement, and authorized the City to execute and enter into this Agreement.

6. The County has taken those actions necessary to execute and enter into this Agreement.

7. Pursuant to Section 99.820.1(2), RSMo, the City is authorized to make and enter into all contracts necessary or incidental to the implementation and furtherance of tax increment financing plans and projects.

AGREEMENT

NOW, THEREFORE, the City and the County agree as follows:

Section 1: Determination of Surplus PILOTs.

A. Prior to the payment of any Surplus PILOTs, on the 15th day of each month, beginning when PILOTs are first paid in connection with the Project, the County shall provide written notice (“Notice”) to the City and Taxing Districts of the amount of all Surplus PILOTs collected and available to be paid to the Taxing Districts. To the extent the City does object to the amount of Surplus PILOTs, such objection, which may be communicated by letter, facsimile, e-mail communication or any other written method, shall provide reasonable details of the basis of the City’s objection, and any disputes shall be resolved in accordance with paragraph B of this section. To the extent the City does not object, in writing, to the amount of the Surplus PILOTs to be paid to the Taxing Districts identified in the Notice within ten (10) days of the City’s receipt of the Notice (the “Notice Period”), then notwithstanding anything to the contrary herein it shall be deemed that the City has approved the amount of Surplus PILOTs identified in the Notice to be paid to the Taxing Districts and the County shall proceed as provided in Section 2 and 3.

B. To the extent the City and County are unable to resolve their dispute as to the amount of the Surplus PILOTs to be paid to the Taxing Districts within thirty (30) after the Notice Period, the City and County hereby agree to submit such dispute to binding arbitration by a single arbitrator. The arbitrator shall be a person located in Camden County agreed to by the parties. If the parties cannot agree to an arbitrator within forty-five (45) days after the Notice Period, the selection shall be made by the Presiding Judge of the Circuit Court of Camden County, Missouri, on the application of either party. All expenses and fees of the arbitration and the arbitrator shall be assessed by the arbitrator as he or she finds equitable and just based on his or her findings with respect to the dispute arbitrated; provided, however, that each party shall bear the expenses and fees of any attorneys, accountants, expert witnesses or others appearing or submitting any materials on such party’s behalf. Otherwise, the Commercial Arbitration Rules and Regulations of the American Arbitration Association, or any successor body, shall apply.

Section 2: Accounting for Surplus PILOTs.

The County shall create a separate segregated account for the Surplus PILOTs, which account will be deemed a subaccount of the Special Allocation Fund (the “Surplus PILOTs Account”). As PILOTs are collected by the County, the County will deposit the Surplus PILOTs into the Surplus PILOTs Account. For the sole purpose of maintaining the Surplus PILOTs Account, the County Collector shall be deemed the authorized representative of the City Treasurer.

Section 3. Distribution of Surplus PILOTs.

As to amounts approved or deemed to be approved by the City in accordance with Section 1, the County shall distribute such amounts on deposit in the Surplus PILOTs Account (excluding any amount paid under protest until the protest is withdrawn or resolved against the taxpayer and any sum received which is the subject of a suit or other claim communicated to the County which suit or claim challenges the collection of such sum) directly to the Taxing Districts on behalf of the City on a basis that is proportional to the current collections of revenue which each Taxing District receives from real property in the Redevelopment Area. Such distribution will be deemed to have been made by the City from the Special Allocation Fund in accordance with Section 99.820.1(12)(a) of the TIF Act.

Section 4: City Accounting.

The City shall make appropriate notation in the accounting records for the Special Allocation Fund to account for the payment of Surplus PILOTS to the Taxing Districts by the County from the Surplus PILOTS Account.

Section 5: Cooperation.

The City and County will cause appropriate staff to communicate as needed to implement this Agreement, and agree to cooperate and take all actions necessary to carry out the obligations of this Agreement.

Section 6: Taxing Districts are Third Party Beneficiaries.

The City and County and their successors and assigns expressly agree that the Taxing Districts shall be third party beneficiaries with respect to the enforcement and performance of this Agreement.

IN WITNESS WHEREOF, the parties execute this Agreement on the date set forth above.

CITY OF OSAGE BEACH, MISSOURI

By: _____
Penny Lyons, Mayor

ATTEST: _____
Dianne Warner, City Clerk

CAMDEN COUNTY, MISSOURI

By: _____
Carolyn Lorraine, Presiding Commissioner

ATTEST: _____
County Clerk

EXHIBIT J

ANNUAL RATE OF RETURN CALCULATION

Equity Calculations:

| | | |
|-------------------------|-------------------------|----|
| Total Project Cost | | * |
| Less Loan/Cost of Funds | (|) |
| Less TIF | (\$5,100,000.00) | |
| Less TDD | | |
| Developer's Equity | <u>(\$3,500,000.00)</u> | |
| | | ** |

Return on Investment is

| | | |
|--|--|---|
| Annual Cash Flow divided by Developer's Equity | | % |
|--|--|---|

*Including but not limited to the following: ground costs, title, survey, engineering, demolition, site work, retaining walls, paving, lighting, landscaping, buildings, interior finish, equipment, tenant finish allowances, leasing commissions, paid construction interest and points, costs associated with producing the TIF, TDD and municipal approvals, contract administration and developer overhead.

**Developer Equity shall include but not be limited to cash contributions and cash purchases from Osage Beach, LLC, its sister companies and its parent company.

Base Rental Income

Common Area Rental Income*

Less:

Allowance for Vacancy

Allowance for Structural, Roof & Maintenance for Mechanical

Common Area Maintenance Expense

Real Estate Taxes

Insurance

Debt Service/Cost of Funds (Principle & Interest)

Annual Cash Flow

*This includes each Tenant's proportionate share of all expenses to maintain the common area, all real estate taxes and all insurance.

EXHIBIT K

RESTRICTED LAND USES IN THE REDEVELOPMENT AREA

Adult Entertainment Establishment

Automobile / ATV / Boat sales or repair, service or leasing

Bank, except that one bank use not to exceed 3,000 square feet shall be allowed within another building

Bars or tavern as a primary use

Car wash

Cellular or other towers which are not approved by the City (this restriction does not apply to tenants' communication devices)

Church

Day Care

Laundromats

Home Improvement Stores

Hospital

Hotel/Motel

Liquor store as a primary use

Manufacturing or assembly use

Medical Uses, including medical offices and clinics, except that one medical use not to exceed 3,000 square feet shall be allowed within another building

Non-profit institutions, except for permitted Medical Uses as set forth above

Pawn shop

Preschool

Residential Uses

Title loan, check cashing or pay-day loan services

EXHIBIT L

FORM OF TRANSFEREE AGREEMENT

TRANSFEREE AGREEMENT

(Name of Transferee)

This TRANSFEREE AGREEMENT (“**Transferee Agreement**”) is entered into this ____ day of _____, 20____, by and between the CITY OF OSAGE BEACH, MISSOURI (the “**City**”) and _____, a _____ corporation (“**Transferee**”).

RECITALS

A. The property to be purchased by Transferee as legally described in **Exhibit A** attached hereto (the “**Property**”) is part of the Dierbergs Osage Beach Tax Increment Financing Plan (the “**Redevelopment Plan**”) approved by the City pursuant to Ordinance No. ____ adopted by the Board of Aldermen on December 16, 2010 (the “**Redevelopment Plan Ordinance**”).

B. The Property is subject to that certain Tax Increment Financing Redevelopment Agreement between the City and Dierbergs Osage Beach, LLC (the “**Developer**”), dated ____, 2011, and recorded in the Office of the Recorder of Deeds of Camden County, Missouri on ____, 2011, as Document No. ____ (the “**Agreement**”).

C. _____, a _____ corporation, is the successor in interest to Developer with respect to the Property.

D. **Section 6.07** of the Agreement requires as a condition precedent to the transfer of property within the boundaries of the Redevelopment Area (as defined in the Agreement) that the proposed transferee enter into and deliver to the City this Transferee Agreement, obligating the Transferee to comply with the requirements of the Redevelopment Plan and the Agreement relating to the Property.

E. The parties desire to enter into this Transferee Agreement in order to satisfy the condition precedent set forth in **Section 6.07** of the Agreement.

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 Transferee 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 Redevelopment Plan Ordinance, the Project Ordinance, 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. Transferee acknowledges and agrees that its acquisition of the Property and the transfer of the Property to Transferee 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.

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, including sales taxes and TDD Sales Tax, 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 along with a transferee agreement between the buyer and the City in the same form as this Transferee Agreement. 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. 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. City acknowledges that upon the full execution of this Transferee Agreement, the condition precedent set forth in **Section 6.07** of the Agreement with respect to the sale of the Property to Transferee shall be deemed satisfied.

10. With the exception of those continuing obligations imposed upon Developer with respect to the Redevelopment Area as a whole, 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.

11. 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.]

[TRANSFEREE]

By: _____

Name: _____

Title: _____

CITY OF OSAGE BEACH, MISSOURI

ATTEST:

City Clerk

By: _____
City Administrator

APPROVED AS TO FORM:

City Attorney

END OF DOCUMENT

EXHIBIT M

FORM OF ANNUAL AFFIDAVIT FOR REPORTING EMPLOYMENT

ANNUAL AFFIDAVIT

for Year ____ Submitted by _____

State of Missouri)
) ss
County of _____)

I, _____, as _____
(name) (title)

of _____, on my oath do state the following:
(store)

1. This affidavit is supplied to report the actual number of full-time equivalent jobs for the year stated above within the Dierbergs Osage Beach Redevelopment Project Area pursuant to that certain Tax Increment Financing Redevelopment Agreement between Dierbergs Osage Beach, LLC, and the City of Osage Beach, dated ____, 2011 (the "Agreement"). Except as otherwise provided herein, the capitalized terms herein shall have the meanings as provided in the Agreement.

2. Attached hereto is a current and complete list of employees by business within the Redevelopment Project Area for the Dierbergs Osage Beach Redevelopment Plan for the year stated above. The total number of full-time equivalent employees within the Dierbergs Osage Beach Redevelopment Project Area for the calendar year set forth above, as described in Section 4.4 of the Agreement, is _____ employees.

3. The Minimum Annual Employment, as described in Section 4.4 of the Agreement, for the year set forth above within the Redevelopment Project Area was was not met or exceeded.

By: _____

Printed Name: _____

Subscribed and sworn to before me, a notary public, this . day of _____, 20_____.

NOTARY PUBLIC

My Commission Expires:

(Space above reserved for Recorder's use)

Title of Document: Dierbergs Osage Beach Tax Increment Financing
Redevelopment Agreement

Date of Document: ____, 2011

**Grantor and
Mailing Address:** City of Osage Beach, Missouri
Osage Beach City Hall
1000 City Parkway
Osage Beach, MO 65065
Attn: City Administrator

**Grantee and
Mailing Address:** Dierbergs Osage Beach, LLC
16690 Swingley Ridge Road
Chesterfield, MO 63017
Attn: Jerry Ebest

Legal Description: See **Exhibit B** attached hereto

**After Recording,
Return Documents To:** David Bushek, Esq.
Gilmore & Bell, P.C.
2405 Boulevard, Suite 1100
Kansas City, Missouri 64108