



CITY COUNCIL AGENDA SUBMISSION
May 11, 2021

Agenda Item:

Bill #2948 – AN ORDINANCE APPROVING A SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT IN CONNECTION WITH THE GATEWAY I-170 TAX INCREMENT FINANCING (TIF) REDEVELOPMENT PLAN.

First and Second Reading

Description:

The Council is asked to hold a first and second reading on a bill that would approve the second amended and restated Redevelopment Agreement between the City and Keat Olivette Gateway LLC. The Developer sought and received approval by the Olivette TIF Commission for a change to the Redevelopment Plan. The change included adding multi-family residential to the project.

Changes to the Redevelopment Plan necessitated a review and amendments to the agreement between the City and the Developer. The agreement sets out conditions for the receiving TIF Notes, Repayment of the TIF, and other conditions concerning the redevelopment.

The Council is being asked to hold a first and second reading on the Bill.

Recommended Action:

MOTION TO APPROVE AN ORDINANCE APPROVING A SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT IN CONNECTION WITH THE GATEWAY I-170 TAX INCREMENT FINANCING (TIF) REDEVELOPMENT PLAN.

Attachments:

1. Bill #2948
2. Draft Redevelopment Agreement

Submitted by:

Barbara Sondag

City Manager

AN ORDINANCE APPROVING A SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT IN CONNECTION WITH THE GATEWAY I-170 TAX INCREMENT FINANCING (TIF) REDEVELOPMENT PLAN.

WHEREAS, pursuant to (a) Ordinance No. 2605 approved on April 18, 2017, (b) Ordinance No. 2653 approved on February 12, 2019, and (c) Ordinance No. 2720 approved on April 27, 2021, respectively, the City Council approved the Gateway I-170 Tax Increment Financing (TIF) Redevelopment Plan, Amendment #1 to the Gateway I-170 Tax Increment Financing (TIF) Redevelopment Plan, and Amendment #2 to the Gateway I-170 Tax Increment Financing (TIF) Redevelopment Plan (collectively, the “Redevelopment Plan”) pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri; and

WHEREAS, in connection with the Redevelopment Plan, the City and Keat Olivette Gateway, LLC (the “Developer”) are parties to an Amended and Restated Redevelopment Agreement dated as of February 26, 2019 and a First Amendment to Amended and Restated Redevelopment Agreement dated as of September 24, 2019 (collectively, the “First Amended and Restated Redevelopment Agreement”); and

WHEREAS, the City and the Developer desire to amend and restate First Amended and Restated Redevelopment Agreement by entering into a Second Amended and Restated Redevelopment Agreement in substantially the form of **Exhibit A** hereto to, among other things, incorporate the provisions of Amendment #2 to the Gateway I-170 Tax Increment Financing (TIF) Redevelopment Plan;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OLIVETTE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The Mayor is hereby authorized and directed to execute, on behalf of the City, the Second Amended and Restated Redevelopment Agreement between the City and the Developer. The City Clerk is hereby authorized and directed to attest to the Second Amended and Restated Redevelopment Agreement and to affix the seal of the City thereto. The Second Amended and Restated Redevelopment Agreement shall be in substantially the form attached hereto as **Exhibit A**, which Second Amended and Restated Redevelopment Agreement is hereby approved by the City Council, with such changes therein as shall be approved by the officers of the City executing the same.

Section 2. The officers, agents and employees of the City are hereby authorized and directed to execute all documents and take such steps as they deem necessary and advisable in order to carry out and perform the purpose of this Ordinance.

Section 3. The sections of this Ordinance shall be severable. If any section of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections shall remain valid, unless the court finds that: (a) the valid sections are so essential to and inseparably connected with and dependent upon the void section that it cannot be presumed that the City Council has or would have enacted the valid sections without the void one; and

(b) the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 4. This Ordinance shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED THIS 11th DAY OF May, 2021.

(SEAL)

By: _____
Sidney Clark, Mayor

ATTEST:

Denise Mandle, Acting City Clerk

EXHIBIT A

SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT: SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

DATE OF DOCUMENT: _____, 2021

GRANTOR: CITY OF OLIVETTE, MISSOURI

GRANTOR'S MAILING ADDRESS: 1140 Dielman Road
Olivette, Missouri 63132
Attention: City Manager

GRANTEE: KEAT OLIVETTE GATEWAY, LLC

GRANTEE'S MAILING ADDRESS: 9200 Olive Boulevard, Suite 200
Olivette, Missouri 63132
Attention: Greg Yawitz

RETURN DOCUMENTS TO: Gilmore & Bell, P.C.
211 North Broadway, Suite 2000
St. Louis, Missouri 63102
Attention: Shannon W. Creighton, Esq.

LEGAL DESCRIPTION: See **Exhibit A**

SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

between the

CITY OF OLIVETTE, MISSOURI,

and

KEAT OLIVETTE GATEWAY, LLC

dated as of

_____, 2021

GATEWAY I-170 REDEVELOPMENT AREA

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SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

THIS SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (this “*Agreement*”) is made and entered into as of this 11th day of May, 2021, by and between the **CITY OF OLIVETTE, MISSOURI**, an incorporated political subdivision of the State of Missouri (the “*City*”) and **KEAT OLIVETTE GATEWAY, LLC**, a Missouri limited liability company (the “*Developer*”). (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed in **Article I** of this Agreement.)

RECITALS

A. The City Council created the Tax Increment Financing Commission of the City of Olivette, Missouri (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 Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended (the “*TIF Act*”).

B. On October 31, 2015, the City published a Notice of Request for Redevelopment Proposals in *The Countian* concerning the redevelopment of an area located in the southwest quadrant of the I-170 and Olive Boulevard interchange (the “*Study Area*”), and sent a copy of the Request for Redevelopment Proposals to potential developers in accordance with the City’s tax increment financing policies and guidelines set forth in Resolution No. 2015-105.

C. Keat Properties, LLC (the “*Keat*”) timely submitted a proposal to the City (the “*Redevelopment Proposal*”) for the redevelopment of the Study Area. Keat desires to implement the Redevelopment Proposal through its affiliate, Keat Olivette Gateway, LLC (the “*Developer*”).

D. At the request of the City, Development Strategies, Inc., St. Louis, Missouri, prepared the Gateway I-170 Tax Increment Financing (TIF) Redevelopment Plan (the “*Original Redevelopment Plan*”), which provides for the demolition and clearance of the existing structures located within a “Redevelopment Area” consisting of the Study Area and an adjacent stormwater basin, and the development of commercial uses (as more fully described in the Original Redevelopment Plan, the “*Original Redevelopment Project*”).

E. On January 9, 2017, the TIF Commission held 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 Original Redevelopment Plan, the Redevelopment Area and the Original Redevelopment Project.

F. On January 25, 2017, the TIF Commission passed a resolution recommending that the City Council approve the Original Redevelopment Plan, designate the Redevelopment Area as a “redevelopment area” pursuant to the TIF Act, approve the Original Redevelopment Project and adopt tax increment financing within the Redevelopment Area.

G. On April 18, 2017, after due consideration of the TIF Commission’s recommendation and making each of the findings required by Section 99.810 of the TIF Act, the City Council adopted (1) Ordinance No. 2605 approving the Original Redevelopment Plan, designating the Redevelopment Area as a “redevelopment area” pursuant to the TIF Act, approving the Original Redevelopment Project and adopting tax increment financing within the Redevelopment Area and (2) Ordinance No. 2606 authorizing the City to execute and enter into a redevelopment agreement for the implementation of the Original Redevelopment Project (the “*Original Redevelopment Agreement*”).

H. The Original Redevelopment Agreement was executed by the City and the Developer as of June 2, 2017, and was subsequently amended by a First Amendment to Redevelopment Agreement dated as of May 1, 2018 (approved by Ordinance No. 2629 on April 24, 2018) and a Second Amendment to Redevelopment Agreement (approved by Ordinance No. 2648 on December 11, 2018).

I. On January 3, 2019, the TIF Commission held a duly-noticed public hearing regarding Amendment #1 to the Gateway I-170 Tax Increment Financing (TIF) Redevelopment Plan (“*Amendment #1*”), which, among other things, contemplated amending the Original Redevelopment Project to include a second phase consisting of additional office and commercial uses and structured parking.

J. Following completion of the public hearing, the TIF Commission passed a resolution recommending that the City Council approve Amendment #1.

K. On February 12, 2019, after due consideration of the TIF Commission’s recommendation, the City Council adopted (1) Ordinance No. 2653 approving Amendment #1 and (2) Ordinance No. 2654 authorizing the City to execute and enter into an “Amended and Restated Redevelopment Agreement.”

L. The Amended and Restated Redevelopment Agreement was executed by the City and the Developer as of February 26, 2019 and was subsequently amended by a First Amendment to Amended and Restated Redevelopment Agreement dated as of September 26, 2019 (approved by Ordinance No. 2678 on September 24, 2019).

M. On March 29, 2021, the TIF Commission held a duly-noticed public hearing regarding Amendment #2 to the Gateway I-170 Tax Increment Financing (TIF) Redevelopment Plan (“*Amendment #2*”, and, collectively with the Original Redevelopment Plan and Amendment #1, the “*Redevelopment Plan*”), which, among other things contemplates further amending the Original Redevelopment Project to include multi-family residential uses (the Original Redevelopment Project, as amended by Amendment #1 and Amendment #2, being referred to herein as the “*Redevelopment Project*”).

N. Following completion of the public hearing, the TIF Commission passed a resolution recommending that the City Council approve Amendment #2.

O. On April 27, 2021, after due consideration of the TIF Commission’s recommendation, the City Council adopted Ordinance No. 2720 approving Amendment #2 and on May 11, 2021 the City Council adopted Ordinance No. 2721 authorizing the City to execute and enter into this Agreement for the purpose of amending and restating the Amended and Restated Redevelopment Agreement.

P. The City Council hereby determines that the implementation of the Redevelopment Project and the fulfillment generally of this 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 Redevelopment Plan.

Q. Pursuant to provisions of the TIF Act and Ordinance Nos. 2605, 2653, 2720 and 2721, the City is authorized to enter into this Agreement.

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

DEFINITIONS

1.1. Definitions. As used in this Agreement, the following words and terms shall have the following meanings:

“Agreement” means this Second Amended and Restated Redevelopment Agreement, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto. This Agreement amends and restates collectively, in its entirety, the Original Redevelopment Agreement, the First Amendment to Redevelopment Agreement, the Second Amendment to Redevelopment Agreement, the Amended and Restated Redevelopment Agreement and supersedes such agreements in all respects.

“Approved Site Plan” means the site plan or site plans reflecting one or more portions of the Work and the Redevelopment Project approved by all entities required to approve a site plan pursuant to the Municipal Code and **Section 3.7**, as such site plan or site plans may be submitted, approved and amended from time to time in accordance with the Municipal Code and **Section 3.7**.

“Available Revenues” means all money on deposit from time to time (including investment earnings thereon) in (a) the PILOTS Account, (b) subject to annual appropriation, the EATS Account and the District Revenues Account, and (c) all money in any other account of the Special Allocation Fund into which money that has been appropriated to the repayment of the TIF Obligations has been deposited, excluding in each case (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, or (ii) any sum received by the City or the District that is the subject of a suit or other claim communicated to the City or the District which suit or claim challenges the collection of such sum.

“Bond Counsel” means Gilmore & Bell, P.C., St. Louis, Missouri, or an attorney at law or a firm of attorneys selected by the City and approved by the Developer 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 net cash proceeds from the sale of TIF Bonds available for refunding of the TIF Notes (after deposit of funds for Issuance Costs, capitalized interest and debt service reserve), together with any interest earned thereon.

“Certificate of Reimbursable Redevelopment Project Costs” means a document, substantially in the form of **Exhibit D** attached hereto and incorporated herein by reference, delivered by the Developer to the City and which, upon the City’s written acceptance thereof, will evidence Reimbursable Redevelopment Project Costs incurred.

“Certificate of Substantial Completion” means a document, substantially in the form of **Exhibit C** attached hereto and incorporated herein by reference, delivered by the Developer and which, upon the City’s written acceptance thereof, will evidence the Developer’s satisfaction of all obligations and covenants to

perform the Work. The Certificate of Substantial Completion does not constitute a final occupancy certificate, final inspection certificate, or other documentation required by the Municipal Code to occupy the Redevelopment Project or any portion thereof.

“*CID Act*” means the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended.

“*City*” means the City of Olivette, Missouri, a home-rule city and political subdivision of the State of Missouri.

“*City Attorney*” means Paul Martin, P.C. or any other person or law firm appointed as the City Attorney pursuant to the Municipal Code.

“*City Council*” means the City Council of the City.

“*City Manager*” means the person duly appointed as City Manager pursuant to the Municipal Code.

“*Concept Site Plan*” means the site development plan set forth as **Exhibit B**, attached hereto and incorporated herein by reference, depicting the conceptual program for construction of the Work.

“*Construction Inspector*” means such licensed engineer or architect either employed by or retained and designated by the City from time to time, and/or such individuals as may be designated to carry out inspections on behalf of the City’s planning and zoning and public works departments.

“*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 approved by the City in accordance with the Municipal Code and this Agreement.

“*Cost-Benefit Analysis*” means the “Cost-Benefit Analysis Amendment #2 Olivette Gateway TIF Redevelopment Plan” dated March 8, 2021, prepared in association with Amendment #2 to the Redevelopment Plan.

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

“*District*” means the Olivette Gateway Community Improvement District created by Ordinance No. 2703 on June 9, 2020.

“*District Expenses*” shall have the meaning set forth in the District Project Agreement.

“*District Project*” means the improvements as described in the District Project Agreement, which improvements shall, in the opinion of counsel to the District, be qualified expenditures for the District under Missouri law, and for which the District is to reimburse the Developer for the costs thereof, all pursuant to the District Project Agreement.

“*District Project Agreement*” means the District Project Agreement dated as of _____, 2021 among the Developer, the District and the City.

“*District Revenues*” means, subject to Section **3.12(f)**, any and all revenues generated by the District Sales Taxes that are appropriated by the District and deposited into the District Revenues Account, less District Expenses.

“*District Revenues Account*” means an account of the Special Allocation Fund into which District Revenues are deposited from time to time.

“*District Sales Taxes*” means the sales tax or sales taxes to be levied by the District on all retail sales made in the District that are subject to taxation pursuant to the provisions of Sections 144.010 to 144.525 of the Revised Statutes of Missouri, as amended, with such exceptions as are set forth in the CID Act.

“*EATS Account*” means an account of the Special Allocation Fund into which 50% of the Economic Activity Taxes are deposited pursuant to Section 99.845 of the TIF Act.

“*Economic Activity Taxes*” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act, but not including any taxes that are excluded from tax increment financing by Missouri law.

“*Governmental Approvals*” means all plat approvals, re-zoning or other zoning changes, planned unit development approvals, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals, or approvals related to the creation of the District required by the Municipal Code or this Agreement for the implementation of the Redevelopment Project.

“*IDA*” means The Industrial Development Authority of the County of St. Louis, Missouri or another issuer of municipal bonds acceptable to the City and the Developer.

“*Investment Deficit*” means the amount, if any, by which the sum of (a) the Verified Total Project Costs submitted by the Developer and (b) a developer’s fee in the amount of 9% of all non-property acquisition costs included in the Verified Total Project Costs, is less than the amount of \$136,400,000.

“*Issuance Costs*” means all costs reasonably incurred by the City and/or the District in connection with the issuance of the TIF Obligations, including, but not limited to, the fees and expenses of financial advisors and consultants, the City’s attorneys (including the City Attorney, issuer’s counsel, Bond Counsel and disclosure counsel), the District’s attorneys, the City’s underwriter and underwriter’s counsel, the City’s administrative fees and expenses (including fees and costs of planning consultants and/or financial advisors), underwriters’ discounts and fees, initial fees and charges of the trustee, the cost of obtaining CUSIP numbers, the costs of printing any TIF Obligations and any official statements relating thereto, and any amounts paid pursuant to **Section 2.2(c)(2)**.

“*Keat*” means Keat Properties, LLC.

“*Maximum Reimbursement Amount*” means, subject to adjustment as provided herein, \$23,320,000.

“*Municipal Code*” means the Municipal Code of the City of Olivette, Missouri, as may be amended from time to time.

“*Note Ordinance*” means the ordinance of the City authorizing the TIF Notes, any trust indenture relating thereto, and all related ordinances, resolutions and proceedings.

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

“*PILOTS Account*” means an account of the Special Allocation Fund into which Payments in Lieu of Taxes are deposited pursuant to Section 99.845 of the TIF Act.

“*Preliminary Funding Agreement*” means the Preliminary Funding Agreement dated as of April 12, 2016, between the City and Keat, as amended from time to time in accordance with its terms.

“*Prime Rate*” means the prime rate reported in the “Money Rates” column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks. If *The Wall Street Journal* ceases publication of the Prime Rate, then “Prime Rate” shall mean the “prime rate” or “base rate” announced by Bank of America, N.A., or any successor thereto.

“*Project Fund*” means the project fund created in the Note Ordinance.

“*Property*” means all of the real property (including, but not limited to, all options held by third parties, fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) and existing improvements on the property in the Redevelopment Area, other than and excluding any public rights-of-way and easements that the Developer determines in its reasonable judgment are not necessary for the implementation of the Redevelopment Project and the Work.

“*Redevelopment Area*” means the area described in **Exhibit A**, attached hereto and incorporated by reference.

“*Redevelopment Plan*” means the plan entitled the “Gateway I-170 Tax Increment Financing (TIF) Redevelopment Plan,” as approved by the City Council pursuant to the TIF Ordinance, as such plan may from time to time be amended in accordance with the TIF Act.

“*Redevelopment Project*” means the construction of the commercial development described and/or shown in the Redevelopment Plan and the Concept Site Plan.

“*Redevelopment Project Costs*” shall have the meaning assigned to such term in Section 99.805 of the TIF Act.

“*Reimbursable Redevelopment Project Costs*” means those Redevelopment Project Costs that are reimbursable to the Developer under **Article IV**, the Redevelopment Plan and the TIF Act in accordance with this Agreement.

“*Related Party*” means any party related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended, or any party controlled by or under common control with the Developer.

“*Relocation Costs*” means all costs incurred to relocate the occupants of and businesses in the Redevelopment Area in accordance with the Relocation Policy, including, but not limited to, relocation payments to displaced persons or businesses, and all costs of implementing the Relocation Policy including costs of referrals, relocation specialists, planners, attorneys’ fees, brokers’ commissions and staff costs.

“*Relocation Policy*” means the relocation policy of the City set forth in Section 430.340 of the Municipal Code, as may be amended from time to time.

“*Special Allocation Fund*” means the Gateway I-170 Special Allocation Fund authorized by the TIF Ordinance.

“*State*” means the State of Missouri.

“*TIF Act*” means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended.

“*TIF Bonds*” means any tax increment revenue bonds (a) authorized and issued by the City in accordance with the TIF Act or (b) authorized and issued by the IDA in accordance with Chapter 349 of the Revised Statutes of Missouri, as amended.

“*TIF Commission*” means the Tax Increment Financing Commission of the City of Olivette, Missouri.

“*TIF Notes*” means the tax increment revenue notes issued by the City pursuant to and subject to this Agreement and the Note Ordinance in substantially the form as set forth in **Exhibit E**, attached hereto and incorporated herein by reference, to evidence the City’s limited obligation to repay Reimbursable Redevelopment Project Costs incurred by the Developer on behalf of the City in accordance with the TIF Act, the CID Act and this Agreement.

“*TIF Obligations*” means, collectively, the TIF Notes and the TIF Bonds.

“*TIF Ordinance*” means Ordinance No. 2605 adopted by the City Council on April 18, 2017, adopting the Original Redevelopment Plan, designating the Redevelopment Area, approving the Original Redevelopment Project and authorizing tax increment financing within the Redevelopment Area.

“*TIF Revenues*” means, collectively, Payments in Lieu of Taxes and 50% of the Economic Activity Taxes.

“*Trustee*” means the trustee or fiscal agent for any issue of TIF Obligations.

“*Verified Total Project Costs*” means the sum total of all reasonable or necessary costs incurred by the Developer (and a tenant or purchaser of a site within the Redevelopment Area) in connection with, or incidental to, the Redevelopment Project and verified to the City’s satisfaction pursuant to **Section 5.6**; provided, however, that the Developer shall not include developer fees, project management, construction management, property acquisition fees or consultant fees for any service performed by or fee charged by the Developer or a Related Party in the Verified Total Project Costs unless such fees are at or below market rates (as reasonably determined by the City).

“*Work*” means, collectively:

(a) demolition, excavation, mobilization and removal of all existing buildings and improvements located on the Property and clearing, grading and site preparation of the Property;

(b) construction of public improvements on the Property as follows:

- (1) storm and sanitary sewers, stormwater control, detention facilities and other infrastructure improvements required to obtain all necessary approvals and permits,
- (2) construction, reconstruction and/or relocation of utilities, including the burying of utility lines (to the extent permitted by the applicable utility companies), and

- (3) all other water, sewer, street and other infrastructure required to accommodate all of the uses to be developed on the Property; and
- (c) construction of at least 85,000 square feet, in aggregate, of commercial space, including hotel space (or such lesser amount as may be set forth on an Approved Site Plan approved by the City Council);
- (d) construction of at least 150,000 square feet of office or other commercial space and at least 600 structured parking spaces (or such lesser amounts as may be set forth on an Approved Site Plan approved by the City Council); and
- (e) construction of an approximately 160-185 unit residential apartment building (or such smaller apartment building as may be set forth on an Approved Site Plan approved by the City Council).

ARTICLE II

ACCEPTANCE OF PROPOSAL

2.1. Developer Designation. The City hereby selects the Developer to acquire the Property and perform the Work in accordance with the Approved Site Plan, the Redevelopment Plan, this Agreement and all Governmental Approvals. To the extent of any inconsistency among the foregoing, the parties agree that the Work described in the Governmental Approvals shall govern so long as such approvals do not constitute a change to the Redevelopment Plan or Redevelopment Project as would, in the opinion of the City Attorney or special counsel retained by the City, require further hearing pursuant to the TIF Act.

2.2. Developer to Advance Costs. The Developer agrees to advance all Redevelopment Project Costs as necessary to complete the Work, subject to the Developer's right to abandon the Redevelopment Project and terminate this Agreement as set forth in **Section 7.1**. Additionally, and not by way of limitation:

(a) *Advances Under Preliminary Funding Agreement.* Keat, under the Preliminary Funding Agreement, has heretofore advanced, or caused to be advanced, pursuant to the Preliminary Funding Agreement, the aggregate sum of \$105,000 for certain Redevelopment Project Costs comprised of City planning, legal, administrative and other costs associated with the Redevelopment Project, the Redevelopment Plan, the Cost-Benefit Analysis and the negotiation of this Agreement.

(b) *Advances Upon Execution of Agreement.* Upon execution of the Original Redevelopment Agreement, the Developer advanced the sum of \$55,000 to the City for the payment of certain costs related to the approval of the Original Redevelopment Plan and Original Redevelopment Agreement. The Developer agrees to advance sums as may be requested from time to time to pay (1) the City's reasonable planning, legal, financial and other consultants, and (2) administrative costs and expenses that are incurred in connection with the approval of Amendment #1, the negotiation and administration of this Agreement (including, without limitation, the enforcement of any performance bond and the review of Certificates of Reimbursable Redevelopment Project Costs, the Certificates of Substantial Completion, site plans and construction plans), and the creation of the District; provided, however, that administrative costs and expenses shall not include any portion of salary and benefit costs related to City staff. If the amounts initially deposited pursuant to this subsection are insufficient for the purposes described herein, the Developer shall deposit any additional amount requested by the City within ten (10)

days of a written request therefor; provided, however, that (i) the City shall obtain the Developer's approval before entering into any new engagements with any third party and (ii) the City shall provide the Developer with a monthly statement showing each agreement executed, amounts paid pursuant to each agreement, and amounts remaining due with respect to each agreement.

(c) *Advances Upon Issuance of Notes.* Upon the initial issuance of the TIF Notes, the Developer agrees to pay (1) to the City all reasonable fees and expenses incurred by the City relating to such TIF Notes and any other reasonable costs related to the approval of this Agreement to the extent they are not already provided for by subsection (b) above and (2) to the St. Louis Contractor Loan Fund (or other entity providing assistance to minority and women contractors acceptable to the City), the sum of \$50,000.

(d) *District Creation Costs.* The Developer has paid all reasonable costs incurred by the City in connection with the creation of the District to date. The Developer will pay any additional costs incurred by the City with respect to any City actions related to the District (such as amendments to the District Project Agreement, if any); provided, however, that administrative costs and expenses shall not include any portion of salary and benefit costs related to City staff.

(e) *Other Advances.* In addition to any amounts payable under other provisions of this Agreement, if the funds provided pursuant to subsection (b) above have been fully expended, the Developer agrees to pay to the City such amount as may be required from time to time to pay (1) the City's reasonable planning, legal, financial and other consultants, including consultants retained in connection with the reviews described in **Section 4.2(c)**, and (2) reasonable administrative costs and expenses that are incurred in connection with the approval of the Redevelopment Plan, the negotiation and administration of this Agreement, and the creation of the District; provided, however, that administrative costs and expenses shall not include any portion of salary and benefit costs related to City staff. The Developer shall pay such amounts within 30 days following delivery to the Developer of an invoice therefor.

(f) *No Waivers.* Payment of any advance under this Section will not waive any application fee or other cost to the Developer associated with any Governmental Approvals required by the Municipal Code, including but not limited to application fees for zoning changes and costs of traffic studies and landscape review.

(g) *Return of Excess Funds.* Within 30 days after the City's acceptance of the Certificate of Substantial Completion and the approval of the final Certificate of Reimbursable Redevelopment Project Costs, the City shall remit to the Developer any amounts that have been advanced under paragraphs (a), (b), (c) or (d) and that have not been spent for costs incurred by the City pursuant to such paragraphs.

(h) *Advances to be Reimbursable.* To the extent permitted by law, all sums advanced or deemed advanced by the Developer under this Section shall constitute Reimbursable Redevelopment Project Costs to be reimbursed to the Developer from the proceeds of TIF Obligations issued as provided herein or from District revenues as District Expenses.

ARTICLE III

OWNERSHIP OF THE PROPERTY; SCHEDULE; CONSTRUCTION OF REDEVELOPMENT PROJECT; CITY APPROVALS

3.1. Ownership and Acquisition of Property. As of the date of this Agreement, the Developer represents that it owns or controls the Property.

3.2. Relocation Assistance. The Developer shall relocate those occupants or businesses displaced from any portion of the Property in accordance with the Relocation Policy and applicable law, except as may otherwise be agreed in writing by such displaced occupant or business and approved in writing by the Developer, it being understood and agreed that any displaced occupant or business may waive his/her/its rights to statutory and other relocation benefits under the Relocation Policy or otherwise. To the extent any relocation benefits are due under the Relocation Policy or other applicable law, the Developer shall, at the City's direction, pay such relocation benefits directly or reimbursement the City for the City's payment of such relocation benefits.

3.3. Project Construction.

(a) The Developer shall complete the Work (as evidenced by the City's acceptance or deemed acceptance of a Certificate of Substantial Completion for the Work) within thirty six (36) months following the effective date of this Agreement. The provisions of **Section 7.7** do not apply to this requirement.

(b) The Developer and its project teams shall (1) submit monthly written reports to the City Council regarding the status of constructing the Redevelopment Project and leasing the commercial space included therein (provided, the Developer does not have to disclose any tenants or prospective tenants that the Developer, in its sole discretion, determines the disclosure of will harm lease negotiations or other business relationships) and (2) upon reasonable notice, meet with the City Manager and such other City staff and consultants as designated by the City Manager to review and discuss the design and construction of the Work to enable the City to monitor the status of construction and to determine that the Work is being performed and completed in accordance with this Agreement and the Municipal Code.

(c) Construction of the Work shall be pursued in a good and workmanlike manner in accordance with the terms of this Agreement.

3.4. Construction Contracts; Insurance; Minority Contracting.

(a) The Developer may enter into one or more construction contracts to complete the Work. All construction contracts entered into by or on behalf of the Developer state that the contractor has no recourse against the City in connection with the contractor's construction of the applicable portion of the Work.

(b) The Developer shall obtain or shall require any contractor to obtain workers' compensation, commercial public liability and builder's risk insurance coverage in amounts required by the City pursuant to **Section 7.10** and shall deliver evidence of such insurance to the City. The Developer shall require that such insurance be maintained by the contractors for the duration of the construction of the applicable portion of the Work.

(c) The Developer and the Developer's general contractor shall spend no less than fifteen percent (15%) of the total construction dollar value of the Redevelopment Project incurred from and after

the date this Agreement takes effect (the “Effective Date”) with minority and women owned subcontractors and suppliers (the “Contracting Goals”).

(1) The Developer and the Developer’s general contractor shall provide a written report to the City each calendar quarter documenting past (commencing with the Effective Date), pending, and anticipated expenditures, and analyzing progress toward the Contracting Goals.

(2) If the Contracting Goals are not reached by the date of the Developer’s delivery of a Certificate of Substantial Completion, then as the City’s sole and exclusive remedy in connection with such failure, the Developer shall, no later than sixty (60) days after such date, pay to the City the sum of \$100,000.00. The parties acknowledge and agree that (a) damages as a result of failure to meet the Contracting Goals would be difficult or impossible to measure and that the amount payable to the City hereby represents the parties best and reasonable estimate of all damages arising out of or related to such failure, and (b) the City shall use such payment by the Developer to advance the participation of minority and women owned subcontractors as determined by the City Council.

3.5. Competitive Bids; Prevailing Wage; Federal Work Authorization.

(a) The Developer shall comply with all federal, State and local laws relating to the construction of the Redevelopment Project, including, but not limited to, Section 107.170, RSMo., and laws relating to the payment of prevailing wages and competitive bidding, to the extent such laws are applicable to the Redevelopment Project or portions thereof.

(b) The Developer acknowledges that it must comply with Section 285.530, RSMo. regarding enrollment and participation in a federal work authorization program with respect to their respective employees working in connection with the Redevelopment Project. The Developer represents and warrants that it is in compliance with Section 285.530, RSMo. at the time of execution of this Agreement and has provided a sworn affidavit and supporting documentation affirming participation in a qualified work authorization program as evidence thereof.

3.6. Governmental Approvals. The City agrees to cooperate with the Developer and to process and timely consider all complete applications for the Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State.

3.7. Concept Site Plan; Approved Site Plan; Zoning; Lot Consolidation.

(a) *Approval of Concept Site Plan and Approved Site Plan.* The City hereby approves the Concept Site Plan. Such approval does not authorize any construction nor does it exempt the Developer from any zoning or site plan review process required by the Municipal Code. The Parties agree that the Approved Site Plan shall govern the ultimate design and construction of the Redevelopment Project.

(b) *Changes.* During the progress of the Work, the Developer may make changes to the Approved Site Plan as permitted by the Municipal Code.

(c) *Planned Zoning.* The Developer agrees that it will pursue planned development district zoning for the Redevelopment Project and acknowledges that the City may impose certain quality standards for the Redevelopment Project as part of such zoning.

(d) *Lot Consolidation.* The Developer shall file a consolidation plat to replat the Redevelopment Area within 60 days from the execution of this Agreement.

3.8 Construction Plans.

(a) The Construction Plans shall be prepared by one or more professional engineers or architects licensed to practice in the State of Missouri. The Construction Plans and all construction practices and procedures with respect to the Work shall conform with all applicable state and local laws, ordinances and regulations, including, but not limited to, any performance, labor and material payment bonds required for public improvements. The Developer shall submit Construction Plans for approval by the City's Building Commissioner or his designee 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 schedule set forth in **Section 3.3**, subject to **Section 7.7**. The plans shall be in sufficient completeness and detail to show that construction will be in conformance with the Approved Site Plan and this Agreement.

(b) Before commencement of construction or during the progress of the Work, the Developer may make such reasonable changes, including, without limitation, modification of the construction schedule, including dates of commencement and completion, modification of the areas in which the Work is to be performed, relocation, expansion or deletion of items, revisions to the areas and scope of the Work, and any and all such other changes as site conditions or orderly development may dictate or as may be required to meet any reasonable requests of prospective tenants or purchasers of any real property located within the Redevelopment Area or as may be necessary or desirable, in the sole determination of the Developer, to enhance the economic viability of the Redevelopment Project and as may be in furtherance of the general objectives of the Redevelopment Plan; provided that, (1) the Developer shall obtain all necessary approvals and comply with all laws, regulations and ordinances of the City, (2) any changes shall not result in an extension of the time for performance of any obligation under this Agreement, and (3) the Developer shall obtain the City's advance written consent to any change that would, in the opinion of the City Attorney or special counsel retained by the City, result in such a change in the Redevelopment Project as would require compliance with the notice and hearing requirements of Section 99.825 of the TIF Act.

3.9 Special Development Conditions.

(a) The Developer acknowledges that in consideration of the public participation in financing Redevelopment Project Costs, the City expects that the Redevelopment Project will be of a high quality and will include enhanced aesthetic features, including public art and/or water features, facades, landscaping, bicycle parking and pedestrian access.

(b) City staff shall be allowed to participate in any MoDOT negotiations regarding signalization and lane improvements/changes to Olive Boulevard.

(c) The Developer shall ensure that no deliveries occur between the hours of 10 p.m. and 6 a.m. in any area portion of the Redevelopment Area located within 20 feet of a residential lot line.

(d) The Developer shall, prior to completing final design of the Redevelopment Project, meet at least once with the Stoneleigh Towers Neighborhood Association Trustees to discuss the design of the Redevelopment Project.

(e) The Developer will meet regularly with the City Manager throughout the site plan design process to discuss the location of public space, vehicle ingress/egress, dedicated pedestrian movements and crossings, bicycle facilities, public transportation access and other features. The Developer will make a commercially reasonable effort to incorporate the City Manager's suggestions regarding such features into the final site plan submitted to the City for approval as part of the zoning process.

(f) The final site plan submitted to the City for approval as part of the zoning process shall, to the extent reasonably feasible, comply with the development standards contained in Sections 400.2150 and 400.2160 of the Municipal Code for development in the “M-U Gateway I-170/Olive Boulevard Mixed-Use Gateway District.” Notwithstanding the foregoing, the Parties agree that the Approved Site Plan shall govern the ultimate design and construction of the Redevelopment Project.

(g) In addition to the foregoing, the Redevelopment Project shall incorporate the special development conditions set forth in **Exhibit G**, attached hereto and incorporated herein by reference.

3.10. Tenant Selection.

(a) The Developer agrees to use best efforts to secure the highest quality users for the purpose of occupying space within the Redevelopment Area, and to market the space within the Redevelopment Area to those users which, in the reasonable judgment of the Developer, are more likely to result in the Redevelopment Project being viewed as a unique and quality gateway to the City. Accordingly, when selecting between users of equal credit worthiness, equal sales revenue potential and equal lease terms and conditions, the Developer agrees to give greater weight to those users that are more likely, in the reasonable judgment of the Developer, to contribute to the Redevelopment Project’s identity as the gateway to the City (for example, choosing a unique restaurant over a restaurant that already has several locations in the area).

(b) Unless approved in writing by the City, the following types of uses shall not be permitted within the Redevelopment Area: adult entertainment, adult bookstores, liquor stores as a primary use (but not including retail outlets of greater than 10,000 square feet specializing in sales of wine and other spirits), pawn shops, payday loan and similar uses, thrift or secondhand stores, retailers who engage primarily in buy-out or liquidation merchandise, and discount general merchandise (e.g., Family Dollar, Dollar General or Dollar Tree), discount grocery retailers (e.g., Save-A-Lot, Aldi or Ruler) or budget/economy hotels (e.g., Super 8, Motel 6, or Red Roof Inn).

(c) Unless approved in writing by the City, the total square footage of non-retail uses (including, without limitation, medical/dental offices, bank branches, title offices and financial advisory firms) located in the “Retail Area” of the Redevelopment Area may not exceed twenty percent (20%) of the total gross leasable square footage of the Retail Area. For purposes of this subsection, “Retail Area” means all ground floor space within commercial buildings in the Redevelopment Area, other than a hotel building (i.e., ground level storefronts).

(d) Unless approved in writing by the City, retail establishments currently located elsewhere in the City may not relocate into the Redevelopment Project (it being understood that if a retail establishment does relocate into the Redevelopment Project, the City may make a finding that such relocation is a direct beneficiary of tax increment financing and adjust the base year level of Economic Activity Taxes as permitted in Section 99.805(4) of the TIF Act).

3.11. Certificate of Substantial Completion.

(a) Upon substantial completion of the Work, the Developer shall furnish a Certificate of Substantial Completion to the City. The Certificate of Substantial Completion shall be in substantially the form of **Exhibit C**, attached hereto and incorporated herein by reference.

(b) The City shall diligently process the submitted Certificate of Substantial Completion, including making such inspections as may be reasonably necessary to verify the accuracy of the project architect’s certifications accompanying the Certificate of Substantial Completion. The City shall accept or reject the Certificate of Substantial Completion, and the accompanying certifications of the project

architect, and shall do so in writing within forty-five (45) days following delivery to the City. If the City fails to approve or reject a Certificate of Substantial Completion in writing within such 45-day period, then the Developer shall notify the City in writing of its failure to take action on the Certificate of Substantial Completion and the City shall have thirty (30) days from receipt of such notice to accept or reject the Certificate of Substantial Completion in writing. If the City has not accepted or rejected the Certificate of Substantial Completion within such 30-day period, the Certificate of Substantial Completion shall be deemed accepted by the City. If the City rejects the Certificate of Substantial Completion and/or accompanying certifications, such rejection shall specify in reasonable detail in what respects the Developer has failed to complete the Work in reasonable accordance with the provisions of this Agreement, or in what respects the Developer is otherwise in default, and what reasonable measures or acts the Developer must take or perform, in the opinion of the City, to obtain such acceptance.

(c) Upon acceptance (or deemed acceptance) of the Certificate of Substantial Completion by the City, the Developer may record the Certificate of Substantial Completion with the St. Louis County Recorder, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to perform the Work in accordance with this Agreement.

3.12. Community Improvement District.

(a) The Developer represents that the District has been created, the District Project Agreement executed and the District Sales Tax imposed, all as contemplated by the Original Redevelopment Agreement.

(b) The Developer shall ensure that the District does not issue any other bonds or notes without the prior written consent of the City, which may be withheld in its sole and absolute discretion. Except as set forth in the District Project Agreement, the District shall not incur any other obligations without the prior written consent of the City in its sole and absolute discretion.

(c) The parties agree that 50% of the District Revenues within the Redevelopment Area will constitute Economic Activity Taxes and will be transferred to or at the direction of the City for deposit into the EATS Account of the Special Allocation Fund pursuant to **Section 6.1** (and the Developer will cause the District to provide the necessary consents thereto required by Section 99.845.3 of the TIF Act). In addition, subject to **Section 3.12(d)**, the Developer will cause the District to transfer all other District Revenues (i.e., the portion not required to be deposited into the Special Allocation Fund by operation of the TIF Act), less District Expenses, to the City or to any Trustee for any TIF Obligations in accordance with **Section 6.2**. Once all TIF Obligations have been repaid, the District may use District Revenues for any purpose permitted by the CID Act and the petition providing for the creation of the District. Notwithstanding the foregoing, the parties agree that District Revenues shall be returned to the District (or, any trust indenture for TIF Obligations (the "Trust Indenture") shall provide, unless otherwise directed by the District, for the return of District Revenues to the District) on an annual basis to the extent such District Revenues are not needed to satisfy the below-defined Annual Revenue Target and Cumulative Redemption Target. For purposes of this subsection, (1) "Annual Revenue Target" means 125% of the projected TIF Revenues and District Revenues captured by the TIF for the applicable year, as shown in the Cost-Benefit Analysis and (2) "Cumulative Redemption Target" means the cumulative principal amount of TIF Obligations projected to be redeemed as of the applicable TIF Obligation payment date shown on a schedule included in the Trust Indenture, which schedule shall be based on the original principal amount of the TIF Obligations, the terms of the TIF Obligations set forth in the Trust Indenture (including, without limitation, interest rate(s), payment dates, application of any debt service reserve fund, etc.) and the projected TIF Revenues and District Revenues set forth in the Cost-Benefit Analysis or subsequent revenue study associated with the issuance of such TIF Obligations. Any District Revenues refunded to the District pursuant to this subsection may be used for any purpose permitted by the CID Act.

(d) Notwithstanding anything contained herein to the contrary but subject to the last sentence of **Section 3.12(c)**, so long as any TIF Obligations are outstanding, (1) at least 50% of District Revenues generated from the property outside of the Redevelopment Area shall be included in the District Revenues transferred to the District Revenues Account or the Trustee pursuant to **Section 6.2** and (2) any other District Revenues generated from such property may be utilized for any purpose permitted by the CID Act and the petition providing for the creation of the District.

ARTICLE IV

REIMBURSEMENT OF DEVELOPER COSTS

4.1. City's Obligation to Reimburse Developer. The City agrees to reimburse the Developer, but solely from the proceeds of the TIF Notes and/or TIF Bonds as provided herein, for verified Reimbursable Redevelopment Project Costs in an amount not to exceed the Maximum Reimbursement Amount (plus Issuance Costs and accrued interest on any TIF Notes), or such lesser amount as provided herein.

4.2. Reimbursements Limited to Reimbursable Redevelopment Project Costs. Reimbursements to the Developer are limited to costs that qualify as "redevelopment project costs" under Section 99.805(15) of the TIF Act, plus Issuance Costs and accrued interest on the TIF Notes. Reimbursable Redevelopment Project Costs incurred by the Developer will be eligible for reimbursement upon compliance with the following procedures:

(a) The Developer may submit to the City, no more frequently than once per month, a Certificate of Reimbursable Redevelopment Project Costs in substantially the form of **Exhibit D**, attached hereto and incorporated herein by reference. Such Certificate shall be accompanied by itemized invoices, receipts or other information that will demonstrate that any cost has been incurred and qualifies for reimbursement pursuant to this Agreement.

(b) The City shall notify the Developer in writing within 30 days after each submission of its approval or disapproval of the costs identified in each Certificate of Reimbursable Redevelopment Project Costs. If the City determines that any cost identified as a Reimbursable Redevelopment Project Cost is not a Reimbursable Redevelopment Project Cost under this Agreement, the City shall so notify the Developer in writing within 30 days after the submission, identifying the ineligible cost and the basis for determining the cost to be ineligible. The Developer shall then have the right to identify and substitute other Redevelopment Project Costs as Reimbursable Redevelopment Project Costs, which shall be included with a supplemental application for payment submitted within 15 days after the City's notification of any ineligible costs. The City shall then review and notify the Developer in writing within 30 days after submission of its approval or disapproval of the costs identified in the supplemental application for payment. If the City fails to approve or disapprove the Certificate of Reimbursable Redevelopment Project Costs within 30 days of submission, the Certificate shall be deemed approved. Notwithstanding anything to the contrary above, (1) the maximum amount of reimbursement shall not exceed the Maximum Reimbursement Amount (plus Issuance Costs) and (2) no reimbursement shall be permitted for any costs related to the vertical construction of buildings.

(c) The Developer shall provide such information, books and records as the City may reasonably request for the City to confirm that any cost submitted qualifies as a Reimbursable Redevelopment Project Cost under this Agreement, has been incurred and paid by the Developer,

and not reimbursed by the District. The City may retain such consultants as it deems necessary in connection with such review, the cost of which shall be paid from the funds deposited pursuant to **Section 2.2(e)**.

4.3. City's Obligations Limited to Special Allocation Fund and Bond Proceeds. Notwithstanding any other term or provision of this Agreement, the TIF Notes issued by the City for Reimbursable Redevelopment Project Costs are payable only from the Special Allocation Fund (subject to annual appropriation with respect to Economic Activity Taxes), from District Revenues (to the extent such District Revenues are appropriated by the District and made available to the City or any Trustee for the TIF Obligations), from Bond Proceeds and from no other source.

ARTICLE V

OBLIGATIONS

5.1. Issuance of TIF Notes. Subject to the limitations contained herein, so long as no default by the Developer has occurred and is continuing hereunder, the City will issue the TIF Notes, in the form substantially similar to **Exhibit E**, attached hereto and incorporated herein by reference, to reimburse the Developer for Reimbursable Redevelopment Project Costs up to the Maximum Reimbursement Amount plus Issuance Costs as provided herein. The City may issue the TIF Notes in either a taxable and/or a tax-exempt series.

(a) *Terms.* The TIF Notes shall bear interest at (a) a fixed rate per annum equal to the lesser of (x) the Prime Rate plus one and one-half percent (1.50%) or (y) 9.00%, if the interest on the TIF Notes (in the opinion of Bond Counsel) is not excluded from gross income for federal income tax purposes (the "*Taxable Rate*"), or (b) a fixed rate equal to the Taxable Rate less 150 basis points if the interest on the TIF Notes (in the opinion of Bond Counsel) is excluded from gross income for federal income tax purposes (the "*Tax-Exempt Rate*"); provided, if (1) the Developer has complied with its obligations under this Agreement, including but not limited to **Section 5.3** and **Section 5.6**, and (2) the City does not, within 12 months following the City's acceptance or deemed acceptance of the Certificate of Substantial Completion, issue TIF Bonds, then commencing on the date that is 12 months following the City's acceptance or deemed acceptance of the Certificate of Substantial Completion, the Taxable Rate and the Tax-Exempt Rate shall each be increased by 2.00% from such date until the date that refunding TIF Bonds are issued in accordance with **Section 5.2**. Notwithstanding any provision herein to the contrary, (i) in no event shall the interest rate on the TIF Notes exceed the maximum rate permitted by law and (ii) the City shall be deemed to have satisfied its obligation to issue TIF Bonds pursuant to **Section 5.2** if the City is unable to issue TIF Bonds in an amount sufficient to refund all of the outstanding TIF Notes, and the City notifies the Developer of the City's agreement to issue refunding TIF Bonds to refund only a portion of the TIF Notes. Unpaid interest on the TIF Notes shall be compounded semi-annually. All TIF Notes shall have a stated maturity equal to the longest period permissible under the TIF Act.

(b) *Conditions Precedent to Issuance of the TIF Notes.* Within 15 business days after (1) completion of the burying of the 34.5Kv power lines that run through the Property and the connection of the power circuit, (2) issuance of building permits for construction of foundations for the multi-family residential building to be constructed as part of the Redevelopment Project, (3) approval by the City of a Certificate of Reimbursable Redevelopment Project Costs pursuant to **Section 4.2**, and (4) approval of the Note Ordinance, the City shall issue the TIF Notes, or endorsements to outstanding TIF Notes, subject to the limitations of **Article IV** and this Section.

Upon the acceptance by the City of a Certificate of Reimbursable Redevelopment Project Costs and the issuance of the TIF Notes as provided herein, the Developer shall be deemed to have advanced funds necessary to purchase such TIF Notes and the City shall be deemed to have deposited such funds in the Project Fund and shall be deemed to have reimbursed the Developer in full for such costs from the amounts deemed to be on deposit in the Project Fund from time to time.

(c) *Holdbacks.* Notwithstanding anything to the contrary contained herein the principal amount of the TIF Notes shall not be endorsed above \$21,000,000 plus Issuance Costs until a Certificate for Substantial Completion for the Work has been accepted or deemed accepted pursuant to **Section 3.11** and the adjustment to the Maximum Reimbursement Amount, if any, is calculated pursuant to **Section 5.6**.

(d) *Abatement of Interest.* In addition to all other remedies available under this Agreement, if the City provides written notice to the Developer of the Developer's failure to comply with **Section 5.3** and such failure is not cured within the 30-day period set forth in **Section 7.6**, then interest shall cease to accrue on all outstanding TIF Notes until the Developer cures the default.

5.2. TIF Bonds.

(a) *When Issued.* The City may issue or cause to be issued TIF Bonds at any time in its sole discretion. The TIF Bonds may be issued in an amount sufficient to refund all or a portion of the outstanding TIF Notes. Alternatively, the Developer may, with the City's consent (not to be unreasonably withheld or delayed), request the IDA to issue TIF Bonds in an amount sufficient to refund all or a portion of the outstanding TIF Notes. Any TIF Notes not refunded by TIF Bonds shall be fully subordinated as to both principal and interest to the TIF Bonds and shall accrue interest at a rate equal to the interest rate applicable to the initial issuance of TIF Notes. At the request of the Developer and prior to the acceptance of the Certificate of Substantial Completion, the City may, in its sole and absolute discretion, issue or cause to be issued TIF Bonds in an amount sufficient to refund all or a portion of the outstanding TIF Notes issued. Subsequent to the acceptance of the Certificate of Substantial Completion, the City shall issue or cause to be issued TIF Bonds in an amount sufficient to refund all or a portion of the outstanding TIF Notes, provided that the market conditions are such that the payment terms of the TIF Bonds are sufficiently favorable that a reasonably prudent financial officer or agent of a similarly situated political subdivision would undertake such a refunding or refinancing of the TIF Notes. The Developer may, from time to time, make a written request of the City for the issuance of the TIF Bonds, provided that the City shall have no obligation to issue the TIF Bonds except in accordance with this Section. Notwithstanding the foregoing, no TIF Bonds shall be issued by the City or the IDA until such time as:

(1) the City has received the consents or evidence that the Developer has used commercially reasonable efforts to obtain the consents required pursuant to **Section 6.1(c)**;

(2) if necessary, the City has obtained an independent revenue study by a consulting firm reasonably acceptable to the underwriter, Bond Counsel and the Developer;

(3) the City has selected Bond Counsel, an underwriter, a financial advisor, the trustee and other consultants as the City deems necessary for the issuance of the TIF Bonds, following reasonable consultation with the Developer as provided by **Section 5.4**, and the City has entered into an agreement with such underwriter for the purchase of the TIF Bonds; and

(4) the parties provide such other certificates, statements, receipts and documents as may be reasonably required by the underwriter, Bond Counsel or the City for issuance and delivery of the TIF Bonds, purchase of such TIF Bonds by the underwriter and issuance and delivery of an

opinion of Bond Counsel to the effect that the TIF Bonds constitute valid and legally binding special, limited obligations of the City.

(b) *Application of TIF Bond Proceeds.* The net proceeds of any TIF Bonds (after the payment of Issuance Costs, capitalized interest, accrued interest and required reserve funds) shall be used to refund the TIF Notes.

5.3. Cooperation in the Issuance of TIF Obligations.

(a) If the City elects to issue TIF Bonds, the Developer covenants to cooperate, and to cause the District to cooperate, and take all reasonable actions necessary to assist the City and its Bond Counsel, underwriters and financial advisors in the preparation of offering statements, private placement memorandum or other disclosure documents and all other documents necessary to market and sell the TIF Obligations, including (1) disclosure of tenants of the Property and the non-financial terms of the leases between the Developer and such tenants, and (2) providing sufficiently detailed estimates of Reimbursable Redevelopment Project Costs so as to enable Bond Counsel to render its opinion as to the tax-exemption of TIF Obligations. The Developer shall, if requested by the City, execute a continuing disclosure agreement or undertaking, whereby the Developer will be required to provide annual updates to certain operating information, including the information regarding tenant leases described above. 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. Such compliance obligation 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.

(b) If the IDA issues the TIF Bonds, the City covenants to cooperate and take all actions reasonably necessary to assist the IDA in the issuance of the TIF Bonds. The maturity date of any TIF Bonds issued by the IDA may be later than April 18, 2040 (i.e., 23 years from the adoption of the TIF Ordinance), however, the City's obligation to contribute TIF Revenues to the repayment of such TIF Bonds issued by the IDA shall terminate no later than April 18, 2040. Any such TIF Bonds outstanding after such date shall be payable from District Revenues only. The location of the Redevelopment Project within the incorporated limits of the City is hereby approved in accordance with Section 349.010(4) of the Revised Statutes of Missouri, as amended.

(c) Notwithstanding anything to the contrary contained herein, the City and the Developer acknowledge and agree that, if recommended by Bond Counsel, TIF Obligations may be issued in separate series payable from separate portions of the Available Revenues (for example, Bond Counsel may recommend a separate series of TIF Obligations payable only from District Revenues).

5.4. City to Select Bond Counsel, Underwriter and Consultants; Term and Interest Rate.

The City shall select, in its sole discretion, following consultation with the Developer, Bond Counsel, underwriters, financial advisors, the trustee and consultants as the City deems necessary for the issuance of the TIF Bonds. The final maturity of the TIF Bonds shall not exceed the maximum term permissible under Missouri law (provided, however, that if the IDA issues TIF Bonds, the final maturity of such TIF Bonds may be later than what would be permitted if the City issued the TIF Bonds, but the City's obligation to pay TIF Revenues to the IDA to secure the TIF Bonds will not extend beyond the maximum term permitted by the TIF Act). The TIF Bonds shall bear interest at such rates, shall be subject to redemption and shall have such terms as the City, following consultation with the Developer, underwriters, financial advisors and consultants, shall reasonably determine in conformance with the terms of this Agreement.

5.5. No Other Obligations or Uses of Available Revenues. So long as the Developer holds any of the TIF Notes initially issued hereunder, the City shall not issue any other indebtedness or obligations secured by Available Revenues deposited into the account of the Special Allocation Fund from which such TIF Notes are secured (other than TIF Obligations to refund and refinance, and redeem and pay in full, such TIF Notes), and the City shall not use or apply any Available Revenues to pay any Redevelopment Project Costs other than the Reimbursable Redevelopment Project Costs. Following the redemption and payment in full of the TIF Notes, the City may utilize any excess Available Revenues that are not needed to pay the TIF Bonds or other outstanding TIF Obligations to pay any other authorized Redevelopment Project Costs.

5.6. Public Participation and Investment Deficit.

(a) The Developer's current estimated cost of the Redevelopment Project is set forth as **Exhibit H**, attached hereto and incorporated herein by reference. Prior to the issuance of the TIF Notes, the Developer shall furnish to the City a statement of Verified Total Project Costs, which shall be in substantially the same format as the budget set forth as **Exhibit H**, attached hereto and incorporated herein by reference. The Developer shall also furnish reasonable back-up documentation supporting such costs sufficient to satisfy the City as to the accuracy of such statement. Notwithstanding anything to the contrary contained herein, the submitted budget may include (1) costs incurred by third-party tenants or purchasers of sites within the Redevelopment Area (for example, if the Developer sells a pad site to a third-party who constructs a restaurant on the site, the Developer may include the third-party's cost of constructing the restaurant in the budget) and (2) costs of capital contributions and improvement allowances paid to third-party tenants or purchasers of sites within the Redevelopment Area, in addition to other costs directly incurred by the Developer. With respect to the costs of buildings or improvements constructed by third-parties, the City agrees that a report prepared by a professional engineer estimating the cost of constructing the applicable buildings or improvements shall constitute reasonable back-up documentation of such costs.

(b) Following the City's determination that the statement of Verified Total Project Costs is accurate, the City shall determine if an Investment Deficit exists. If an Investment Deficit exists, then, notwithstanding anything to the contrary contained herein, the Maximum Reimbursement Amount shall be reduced by \$0.25 for each \$1.00 of Investment Deficit.

(c) Notwithstanding subsections (a) and (b), the Developer may, within 12 months from the initial submission of a statement of Verified Total Project Costs, submit additional statements of Verified Project Costs. Upon any such additional submission, the City shall (1) recalculate the Investment Deficit as provided in subsection (b) using the total of the new and all previously submitted Verified Project Cost statements, (2) recalculate the adjustment in the Maximum Reimbursement Amount as provided in subsection (b), (3) notify the Developer of the newly-adjusted Maximum Reimbursement Amount, and (4) upon approval of applicable Certificates of Reimbursable Redevelopment Project Costs, endorse the TIF Notes up to the newly-adjusted Maximum Reimbursement Amount.

ARTICLE VI

**SPECIAL ALLOCATION FUND;
COLLECTION AND USE OF TIF REVENUES**

6.1. Special Allocation Fund. The City agrees to cause its Finance Director or other financial officer to maintain the Special Allocation Fund, including within such fund a "*PILOTS Account*," an "*EATS Account*," and a "*District Revenues Account*." Subject to the requirements of the TIF Act and, with respect to Economic Activity Taxes and District Revenues, subject to annual appropriation by the City Council

and/or the District, as applicable, the City will, promptly upon receipt thereof, deposit all Payments in Lieu of Taxes into the PILOTS Account, all Economic Activity Taxes that constitute TIF Revenues into the EATS Account, and all District Revenues (that are received by the City and are not TIF Revenues) into the District Revenues Account.

(a) *Certificate of Total Initial Equalized Assessed Value.* The City shall provide to the Developer, within 30 days after the City's receipt thereof, the St. Louis County Assessor's calculation of the total initial assessed value of all taxable property within the Redevelopment Area, determined pursuant to Section 99.855.1 of the TIF Act.

(b) *Certificate of Initial Economic Activity Tax Revenues.* The City shall provide to the Developer and shall file with St. Louis County, within 30 days after the City's receipt thereof, a certification of the total additional revenues from Economic Activity Taxes that are eligible pursuant to the TIF Act or other Missouri law for deposit into the Special Allocation Fund and that were imposed by the City or other taxing districts for economic activities within the Redevelopment Area in the calendar year prior to the adoption of tax increment financing for such area.

(c) *Consent to Release of Sales Tax Information.* If there are six or fewer tenants generating sales taxes, the Developer shall cause each tenant within the Redevelopment Area to deliver a consent to disclose sales tax information allowing the City to make public sales tax information for the purposes of complying with reporting requirements contained in the TIF Act and making certain disclosures associated with any public offering of TIF Bonds. Receipt of such consent shall be a prerequisite to the issuance of the TIF Notes or TIF Bonds.

6.2. Transfer of District Revenues. The Developer shall cause the District, subject to annual appropriation by its board of directors and in accordance with the District Project Agreement, to transfer all District Revenues to the City or to a Trustee for any TIF Obligations for deposit in the District Revenues Account of the Special Allocation Fund or with the Trustee. If District Revenues are paid to the City, the Finance Director or other financial officer of the City shall maintain separate subaccounts for the District and shall divide the District Revenues into the appropriate subaccounts. The monies on deposit in any District Revenues Account shall be pledged to the payment of the principal of and interest on any outstanding TIF Obligations, subject to applicable law.

6.3. Application of Available Revenues.

(a) The City hereby agrees to apply the Available Revenues semi-annually to the payment of the TIF Notes as provided herein. Unless otherwise specified below, such money shall be applied to such payment (either by the Finance Director or other financial officer or, at the option of the City, by the Trustee on behalf of the City) first from the EATS Account, then from the District Revenues Account, and then from the PILOTS Account, as follows:

(1) Declare as surplus pursuant to the TIF Act, the amounts described in subsection (f) below and **Section 6.4(b)** and **(c)**;

(2) Pay arbitrage rebate, if any, owed with respect to the TIF Obligations under Section 148 of the Internal Revenue Code of 1986, as amended, including any costs of calculating arbitrage rebate;

(3) Pay fees and expenses owing to the Trustee for the TIF Obligations, upon delivery to the City of an invoice for such amount;

(4) Pay to the City as compensation for the administration of the Redevelopment Plan and this Agreement (including to reimburse the City for costs incurred by third parties in connection with such administration), the sum of \$7,500 per calendar year (for calendar year 2018), increased annually by three percent;

(5) Pay the extraordinary fees and expenses incurred by the City relating to the Redevelopment Plan, this Agreement and all TIF Notes, including but not limited to (i) any litigation costs not paid by the Developer pursuant to **Section 7.18**, (ii) the costs of responding to any audit, questionnaire or other request for information from the Internal Revenue Service regarding any TIF Obligations and (iii) the cost of the financial analysis described in subsection (f) below;

(6) Pay scheduled principal of, premium, if any, and interest becoming due (by reason of maturity or mandatory sinking fund redemption) on the TIF Obligations on each interest payment date;

(7) Replenish any deficiency in any debt service reserve fund; and

(8) Redeem TIF Obligations using all remaining Available Revenues.

(b) If TIF Bonds are issued, Available Revenues will be applied in the manner described in the trust indenture for the TIF Bonds. The City and the Developer agree that Available Revenues may, if recommended by Bond Counsel, be bifurcated so that portions of the Available Revenues are used to pay separate series of TIF Obligations (for example, Bond Counsel may recommend a series of TIF Obligations payable only from District Revenues).

(c) If the moneys available in the Special Allocation Fund are insufficient to reimburse the City as provided in (a)(4) or (a)(5) above on any interest payment date, then the unpaid portion shall be carried forward to the next interest payment date, with interest thereon at the Prime Rate.

(d) The City agrees to direct the officer of the City charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the City Council for each fiscal year that the TIF Obligations are outstanding a request to appropriate all moneys in the EATS Account and the District Revenues Account in the manner provided by this Section.

(e) Notwithstanding anything to the contrary contained herein, the ratio of District Revenues to all Available Revenues applied pursuant to (a) above shall not exceed the ratio of Reimbursable Redevelopment Project Costs eligible for reimbursement under the CID Act, if applicable, to all Reimbursable Redevelopment Project Costs.

(f) Following acceptance or deemed acceptance of the Certificate of Substantial Completion pursuant to **Section 3.11** for the Work, the Developer shall notify the City in writing when the Redevelopment Project has first reached 85% occupancy. Upon receipt of such notice, the City shall commission a planning consultant and/or financial consultant to analyze whether the projected stream of Available Revenues to be generated by the Redevelopment Project (based on the then-current tenants of the Redevelopment Project) will be sufficient to amortize the outstanding amount of TIF Obligations (or if TIF Obligations have not yet been issued, the City's estimate of the maximum principal amount of the to-be-issued TIF Obligations) prior to April 18, 2040, assuming a 1.45 debt service coverage ratio. If such amortization is possible, the planning consultant and/or financial consultant will further evaluate the amount of PILOTs that could be declared as surplus pursuant to the TIF Act on an annual basis while still maintaining amortization prior to April 18, 2040 and a 1.45 debt service coverage ratio. The City shall

provide written copies of the analysis to the Developer and the Ladue School District. Once TIF Bonds are issued, the City may, in its sole discretion, declare a portion of the PILOTs as surplus under the TIF Act so long as the remaining projected Available Revenues will, based on the above-described analysis, be sufficient to amortize the outstanding TIF Obligations (or estimated maximum principal amount of to-be-issued TIF Obligations), assuming a 1.45 debt service coverage ratio. The City shall not declare any Available Revenues as surplus pursuant to the TIF Act, except as provided in this subsection and **Section 6.4(b)** and **(c)**.

6.4. Developer Cooperation in Determining Available Revenues.

(a) The Developer (or its successor(s) in interest as an owner or owner(s) of the affected portion(s) of the Property) shall:

(1) require each “seller” (as that term is defined in Section 144.010(10) of the Revised Statutes of Missouri, as amended) located on the Property that has multiple business operations within the City to file a separate Missouri Department of Revenue Form 53-1 for each location in order to separately identify and declare all sales taxes originating within the Redevelopment Area;

(2) supply or cause to be promptly supplied to the City, monthly sales tax information of each “seller” (as that term is defined in Section 144.010(10), RSMo.) in a form substantially similar to the monthly sales tax returns filed with the Missouri Department of Revenue;

(3) make good faith efforts to assist the City in compiling any information that the City must publicly report, including, without limitation, the information required by Section 99.865.1 of the TIF Act; and

(4) include a provision in every new or amended lease, purchase agreement or similar agreement requiring any lessee, purchaser or transferee of real property or other user of real property located within the Redevelopment Area that states:

Economic Activity Taxes: [*Tenant/Purchaser/Transferee*] acknowledges that the Premises are a part of a tax increment financing district (“TIF District”) created by the City of Olivette, Missouri (the “City”) and that certain taxes generated by [*Tenant/Purchaser/Transferee*]’s economic activities, including sales taxes, will be applied toward the costs of improvements for the development that the Premises are part of. Upon the request of [*Landlord/Seller/Transferor*] or the City, [*Tenant/Purchaser/Transferee*] shall forward to the City monthly or quarterly, as applicable, sales tax information in a form substantially similar to the 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/Purchaser/Transferee*]’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/Purchaser/Transferee*] 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.

Alternate language may be used by the Developer if such language is approved by the City Attorney. At the request of the City, the Developer shall provide a certification to the City confirming that a lease, purchase agreement or similar agreement includes the provisions satisfying the Developer’ obligation as set forth above.

(b) Unless the Developer or an occupant of the Property provides utility tax documentation to the City, the Developer hereby waives any claim to utility tax revenues and hereby agrees to bring no suit, claim or other action against the City seeking the deposit of utility tax revenues into the Special Allocation Fund. Any utility tax revenues generated from the Redevelopment Area for which the Developer has not provided documentation to the City are hereby declared to be surplus by the City pursuant to the TIF Act.

(c) The Developer hereby acknowledges and agrees that the City will not be able to determine whether certain use tax revenues (including, without limitation, use tax paid by Amazon.com) are generated within the Redevelopment Area and, therefore, subject to tax increment financing. Accordingly, the Developer hereby waives any claim to use tax revenues that the City cannot readily identify as having been generated in the Redevelopment Area, and hereby agrees to bring no suit, claim or other action against the City seeking deposit of such use tax revenues into the Special Allocation Fund. To the extent any use tax revenues generated in Redevelopment Area qualify as Economic Activity Taxes, such taxes shall be declared as surplus under the TIF Act.

6.5. Obligation to Report TIF Revenues and District Revenues. Any purchaser or transferee of real property located within the Property, and any lessee or other user of real property located within the Property required to pay TIF Revenues and District Revenues, shall use all reasonable efforts to timely furnish to the City such documentation as is required by **Section 6.4**. So long as any TIF Obligations are outstanding, the Developer shall cause such obligation to be a covenant running with the land and shall be enforceable as if such purchaser, transferee, lessee or other user of such real property were originally a party to and bound by this Agreement.

ARTICLE VII

GENERAL PROVISIONS

7.1. Developer's Right of Termination. At any time prior to the delivery of the Certificate of Substantial Completion, the Developer may, by giving written notice to the City, abandon the Work and terminate this Agreement.

7.2. City's Right of Termination. The City may terminate this Agreement at any time prior to the approval or deemed approval of the Certificate of Substantial Completion if the Developer:

(a) defaults in or breaches any material provision of this Agreement and fails to cure such default or breach pursuant to **Section 7.6** (subject to extension in accordance with **Section 7.7** unless expressly stated otherwise herein); or

(b) materially breaches any representation or warranty contained in **Section 8.2**.

7.3. Results of Termination. If this Agreement is terminated pursuant to **Section 7.1** or **Section 7.2**, then:

(a) the City shall have no further obligation to reimburse the Developer for any amounts advanced under this Agreement, or costs otherwise incurred or paid by such Developer; and

(b) the Developer shall have no further obligations to the City, except such obligations that expressly survive termination, as set forth in **Section 7.19**.

7.4. Term of Agreement. This Agreement, and all of the rights and obligations of the parties hereunder, shall terminate and shall become null and void on that date which is the latest of (a) 23 years from the date of adoption of the TIF Ordinance, (b) the payment of all Reimbursable Redevelopment Project Costs and the retirement in full of all TIF Obligations, or (c) the delivery of a written notice by the City (and recordation of a copy of such notice with the St. Louis County Recorder) that this Agreement has been fully terminated pursuant to **Section 7.1** or **7.2**.

7.5. Successors and Assigns; Transfers to Tax-Exempt Organizations.

(a) *Successor and Assigns.*

(1) This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective successors and assigns.

(2) Without limiting the generality of the foregoing, all or any part of the Property or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of the Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after redevelopment of the Redevelopment Project, whereupon the party disposing of its interest in the Property or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although any such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement); provided, except as set forth below, prior to the City's acceptance of a Certificate of Substantial Completion, the Developer may not sell any Property it owns or assign its rights or obligations hereunder without the City's prior written approval.

(3) The Developer may, without the City's prior approval:

(i) assign all of its rights, duties and obligations hereunder to a Related Party if (A) such entity expressly assumes all of the Developer's rights, duties and obligations hereunder, (B) such entity provides evidence as required by **Section 7.10**, (C) the Developer provides at least 15 days' advance written notice of the proposed assignment (and a copy of the proposed assignment agreement) to the City, and (D) the Developer promptly provides a copy of the executed assignment to the City; or

(ii) encumber or collaterally assign its interests in 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 or associated costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment and for the successor to further transfer the property to its successors; or

(iii) lease or sale of portions of the Redevelopment Area to tenants or other end-users in the ordinary course of the Developer's business.

(b) *Tax-Exempt Organizations.* The Developer, without the prior written consent of the City, shall not, until all Reimbursable Redevelopment Project Costs have been paid (including TIF Obligations issued to finance such Reimbursable Redevelopment Project Costs), sell all or any portion of the Property to an organization exempt from payment of ad valorem property taxes, unless such organization agrees to

pay to the City, for deposit into the Special Allocation Fund, payments in lieu of taxes equal to the ad valorem real property taxes that would be due on such portion of the Property, but for the organization's exempt status. Any organization that is or may become exempt from payment of ad valorem property taxes shall, by its purchase of a portion of the Property and for each year that it is exempt from paying ad valorem property taxes on such portion of the Property, agree to pay to the City, for deposit into the Special Allocation Fund, payments in lieu of taxes equal to the ad valorem real property taxes that would be due on such portion of the Property, but for the organization's exempt status. This obligation to make payments in lieu of taxes shall terminate upon the retirement of all TIF Obligations. This requirement shall be a covenant running with the land and shall be enforceable for such period as if such purchaser or other transferee or possessor thereof were originally a party to and bound by this Agreement.

7.6. Remedies. In the case of any default in or breach of any term or condition of this Agreement by either party, the defaulting or breaching party shall, upon written notice from the other party specifying such default or breach, cure or remedy such default or breach within 30 days after receipt of notice (or such longer period as shall be reasonably required to cure such default, provided that the breaching party (a) has commenced such cure within said 30-day period and (b) diligently pursues such cure to completion). If such cure or remedy is not completed or diligently pursued, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching party or to terminate this Agreement (provided, however, that any termination after the issuance of any TIF Obligations shall not affect the validity of the TIF Obligations or the City's obligations to apply Available Revenues in the manner described in **Section 6.3**).

7.7. Extensions of Time for Performance.

(a) Upon satisfaction of the provisions of paragraph (b) of this Section, neither the City nor the Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or casualty; strike; lockout; civil disorder; acts of terrorism; significant escalation of hostilities involving U.S. armed forces; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the Developer to proceed with construction of the applicable portion of the Work, including approval of the Approved Site Plan for the Redevelopment Project (but only if the Developer files all necessary documentation relating thereto in a timely manner considering the dates set forth in **Section 3.3** of this Agreement); shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other causes beyond the reasonable control of the party required to perform, including, but not limited to, any referendum, litigation, court order or judgment resulting from any litigation affecting the validity of the Redevelopment Plan, the Redevelopment Project, the TIF Obligations, this Agreement or any other litigation that adversely affects the development of the Redevelopment Project. Notwithstanding the foregoing, the parties agree that economic conditions, market conditions, financial conditions, lender restrictions, lack of tenant interest, and similar conditions or events do not constitute events of force majeure hereunder. The parties further agree that, to their knowledge, no event of force majeure exists at the time of execution of this Agreement.

(b) No event under (a) shall be deemed to exist (1) as to any matter that could have been avoided by the exercise of due care in accordance with industry standards, (2) as to any matter unreasonably perpetuated by the Developer, and (3)(i) unless the Developer uses good faith efforts to provide the City Manager with a written notice within 20 days of the Developer's knowledge of the commencement of such claimed event specifying the event of force majeure, or (ii) the Developer demonstrates to the City Manager's reasonable satisfaction that the Developer has diligently pursued its obligations under this Agreement, but for reasons beyond the Developer's control, has been unable to complete such obligations

within the time specified in this Agreement. Times for performance shall be extended only for the amount of delay resulting from the event of force majeure.

7.8. Notices. Any notice, demand or other communication required by this Agreement to be given by one party hereto to another shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, delivered personally, or transmitted electronically (and receipt confirmed by telephone or electronic read receipt):

(a) If to the City:

City of Olivette
1140 Dielman Road
Olivette, Missouri 63132
Attention: City Manager
bsondag@olivettemo.com

with copies to:

Paul Martin, P.C.
1406 N. Broadway
St. Louis, Missouri 63102
Attention: Paul Martin, Esq.
paul@paulmartinpc.com

and

Gilmore & Bell, P.C.
One Metropolitan Square
211 N. Broadway, Suite 2000
St. Louis, Missouri 63102
Attention: Shannon W. Creighton, Esq.
screighton@gilmorebell.com

(b) If to the Developer:

Keat Olivette Gateway, LLC
9200 Olive Blvd, Suite 200
Olivette, Missouri 63132
Attention: Greg Yawitz
greg@keatproperties.com

with a copy to:

Realty Law Partners, PC
231 S. Bemiston, Suite 710
St. Louis, Missouri 63105
Attention: William Remis, Esq.
wbr@realtylawpartners.com

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph. A duplicate copy of each notice or other communication given hereunder shall be given to each other party.

7.9. Conflict of Interest. No member of the City Council, the TIF Commission, or any branch of the City's government who has any power of review or approval of any of the Developer's undertakings, or of the City's contracting for goods or services for the Redevelopment Area, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation, partnership or other entity in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City Council the nature of such interest and seek a determination by the City Council with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

7.10. Insurance; Damage or Destruction of Redevelopment Project.

(a) In accordance with **Section 3.4**, the Developer will obtain or cause its contractors to maintain the insurance policies as hereinafter set forth at all times during the process of constructing the Work and continuing so long as any TIF Obligations are outstanding. The Developer shall, from time to time at the request of the City, furnish the City with proof of payment of premiums on:

(1) During the construction of the Work, builder's risk insurance in a commercially reasonable amount;

(2) Commercial liability insurance with coverages of not less than the current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri, as amended (which for calendar year 2021 is equal to \$2,940,868 for all claims arising out of a single accident or occurrence and \$441,130 for any one person in a single accident or incurrence). Further, the policy shall be adjusted upward annually, to remain at all times not less than the inflation-adjusted sovereign immunity limits as published in the Missouri Register on an annual basis by the Department of Insurance pursuant to Section 537.610 of the Revised Statutes of Missouri, as amended; and

(2) Workers' Compensation insurance, with statutorily required coverage.

(b) The policies of insurance required pursuant to clause (2) above shall be in form and content reasonably satisfactory to the City and shall be placed with financially sound and reputable insurers licensed to transact business in the State with a financial strength rating of not less than A- and a financial size category of not less than VIII as designated in the most current available "Best's" insurance reports. The policies of insurance delivered pursuant to clause (2) above shall name the City as an additional insured, shall be primary and non-contributory with respect to any insurance maintained by the City, and shall contain an agreement of the insurer to give not less than ten (10) days advance written notice to the City in the event of cancellation of such policy or change affecting the coverage thereunder. The Developer shall deliver or cause to be delivered to the City evidence, in the form of certificates of insurance, of all insurance to be maintained hereunder. The certificates of insurance shall state that "the City of Olivette is an additional insured on a primary and non-contributory basis."

(c) The Developer shall provide evidence (in form and substance reasonably acceptable to the City Attorney) that the insurance policy referenced in paragraph (a)(2) or another applicable policy includes contractual liability insurance covering the Developer's obligations to indemnify the City, as provided in this Agreement, by an insurance company with a rating by a reputable rating agency indicating excellent or superior financial strength (i.e., an A.M. Best rating of "A-" or better). Simultaneously with the delivery of this Agreement and annually thereafter prior to the acceptance or deemed acceptance of the Certificate of Substantial Completion for a portion of the Work, the Developer shall provide to the City Attorney evidence of continued insurance demonstrating compliance with this subsection. The Developer agrees to provide immediate written notice to the City when the cancellation, termination, expiration or modification of the applicable contractual liability policy occurs.

(d) The Developer hereby agrees that, so long as any TIF Obligations are outstanding, if any portion of the Redevelopment Project is 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 Redevelopment Project may be restored, replaced or rebuilt with such alterations or changes as may be approved in writing by the City, which approval shall not be unreasonably withheld or delayed. If the Redevelopment Project is not restored, replaced or rebuilt as described above, then the outstanding principal balance of the TIF Notes, if any, shall be reduced to an amount that can reasonably be expected to be repaid with the Available Revenues anticipated to be generated by the remaining portions of the Redevelopment Project and any replacement portions of the Redevelopment Project to be constructed (as determined by the City's financial advisor using revenue projections prepared by the City's planning consultant and a debt service coverage ratio of 1.25). The Developer (upon learning of the same) shall give prompt written notice to the City of any damages or destruction to any portion of the Redevelopment Project by fire or other casualty, irrespective of the amount of such damage or destruction, and in such circumstances the Developer shall make the portions of the Redevelopment Area that they control safe and in compliance with all applicable laws as provided herein.

(e) These covenants 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.

7.11. Inspection. The City may conduct such periodic inspections of the Work as may be generally provided in the Municipal Code. In addition, the Developer shall allow other authorized representatives of the City access to the site from time to time upon reasonable advance notice for inspection of the Redevelopment Project. The Developer shall also allow the City and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of their respective portions of the Work as the City determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement. The Developer shall advise each contractor for the Redevelopment Project of the contractor's obligations under the Municipal Code regarding permits and inspections. The provisions of this Section shall terminate upon the approval or deemed approval of the Certificate of Substantial Completion relating to the applicable portion of the Work.

7.12. Choice of Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State for all purposes and intents. Any action arising out of, or concerning, this Agreement shall be brought only in the Circuit Court of St. Louis County, Missouri. All parties to this Agreement consent to the jurisdiction and venue of such court.

7.13. Entire Agreement; Amendment. The parties agree that this Agreement constitutes the entire agreement among the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

7.14. Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

7.15. Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

7.16. Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

7.17. Actions Contesting the Validity and Enforceability of the Redevelopment Plan.

(a) Before the issuance of the TIF Bonds, 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 Redevelopment Project, the Redevelopment Plan, the TIF Notes or this Agreement, the Developer may, at its option, assume the defense of such claim or action with counsel of the Developer's choosing, 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 or any portion of any settlement or compromise in excess of the settlement or compromise the Developer would agree to. 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 their 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 costs of any such defense, whether incurred by the City or the Developer, shall be deemed to be Reimbursable Redevelopment Project Costs and reimbursable from any amounts in the Special Allocation Fund, subject to **Article IV** hereof. The City shall have no obligation to defend the validity or legality of the Redevelopment Area, the Redevelopment Project, the Redevelopment Plan, the TIF Notes or this Agreement if the Developer chooses not to assume the defense of such claim or action as described above.

(b) In addition, if a third party brings an action against the City or the City's officials, agents, employees or representatives with respect to any other matter as to which the Developer is obligated to indemnify pursuant to **Section 7.18(b)**, the Developer may, at its option, assume the defense of such claim or action with counsel of the Developer's choosing, but the Developer may not settle or compromise any claim or action for which the Developer have 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 or any portion of any settlement or compromise in excess of the settlement or compromise the Developer would agree to. 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 their 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.

7.18. Release and Indemnification.

(a) *Releases.* Notwithstanding anything herein to the contrary, the City and its elected officials, officers, agents, servants, employees and independent contractors shall not be liable to the Developer for any damages or losses (including injuries and deaths) (1) resulting from any part of the TIF Act, or any ordinance adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, being declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof, (2) occurring at or about or resulting from the construction of the Work and the maintenance of the Redevelopment Area or (3) resulting from any lawful decision made or position taken by the City relating in any manner whatsoever to this Agreement, the Redevelopment Plan, the Redevelopment Project, the Approved Site Plan, the Work or the Property. The Developer hereby acknowledges and agrees that (i) all covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its elected officials, officers, agents, servants or employees in their individual capacities and (ii) no official, employee or representative of the City shall be personally liable to the Developer.

(b) *Indemnifications.* The Developer covenants and agrees to indemnify, defend and hold harmless the City, its elected officials, officers, agents, servants, employees and independent contractors against any loss or damage to property or any injury to or death of any person:

(1) occurring or resulting from (A) the acquisition of the Property, including, but not limited to, damages related to the abandonment of condemnation proceedings and (B) the construction of the Work, including, but not limited to, the location of hazardous wastes, hazardous materials or other environmental contaminants on the Property and the design and development of the Redevelopment Project;

(3) connected in any way to the negligence or willful misconduct of the Developer, their employees, agents or independent contractors; or

(4) resulting from the lack of compliance by the Developer with any state, federal or local environmental law, regulation or ordinance applicable to the Property.

The indemnification provided under this Section includes all costs of defense, including attorneys' fees, interest fees and other penalties. Notwithstanding anything to the contrary contained herein, the indemnity provided in this Section will not extend to any matters arising out of the negligence or intentional misconduct of the City and its elected officials, officers, agents, servants, employees and independent contractors.

(c) The releases and indemnifications contained in this Section shall survive termination or expiration of this Agreement, but nothing in this Agreement (including **Section 7.19**) shall be construed to require the Developer to indemnify the City, its elected officials, officers, employees, agents and independent contractors for any claims related to actions or events that occur after the termination of this Agreement.

7.19. Survival. Notwithstanding anything to the contrary in this Agreement, the following provisions shall survive the expiration or termination of this Agreement: (a) the Developer's reimbursement obligation in **Section 2.2** with respect to costs incurred by the City prior to termination of this Agreement; (b) the limitation on liability in **Section 7.16**; and (c) the provisions of **Sections 7.17** and **7.18**.

7.20. Maintenance of the Property. The Redevelopment Project shall remain in compliance with all provisions of the Municipal Code relating to maintenance and appearance during the construction of the Redevelopment Project or any portions thereof. 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.

7.21. Enforcement of Agreement. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to obtain an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof.

7.22. Recording of Agreement. The Developer shall cause the obligations arising pursuant to this Agreement to be a covenant running with the land by recording this Agreement or a memorandum of this Agreement in the real estate records of St. Louis County, Missouri. Upon the expiration or termination of this Agreement, the City will, at the expense and request of the Developer, join with the Developer to execute and record a notice of such expiration or termination in the real estate records of St. Louis County.

7.23. No Waiver of Sovereign Immunity. Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's sovereign immunity.

7.24. No Third Party Beneficiaries. This Agreement constitutes a contract solely between the City and the Developer. No third party has any beneficial interest in or derived from this Agreement.

ARTICLE VIII

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES

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

(a) *No Violations.* The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(b) *No Litigation.* To the City's knowledge, no litigation, proceedings or investigations are pending or threatened against the City with respect to the Redevelopment Project or this Agreement. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the City, threatened 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.

(c) *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.

(d) *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.

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

(a) *No Violations.* The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any 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.

(b) *No Litigation.* To the Developer's knowledge (including the knowledge of any member of the Developer executing this Agreement), no litigation, proceedings or investigations are pending or threatened against the Developer (or any member of the Developer) with respect to the Redevelopment Project or against the Redevelopment Project. In addition, to the Developer's knowledge (including the knowledge of any member of the Developer executing this Agreement), no litigation, proceedings or investigations are pending or threatened against the Developer (or any member of 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 (or any member 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 (or any member of the Developer) of, the terms and provisions of this Agreement.

(c) *Governmental or Corporate Consents.* To the Developer's knowledge, 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, except for certain consents required by the current owners of the Property in connection with the sale of the Property and other consents that must be secured subsequent to the execution of this Agreement.

(d) *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 related to the Developer's ability to perform pursuant to this Agreement to which the Developer is a party or by which the Developer is or may be bound.

(e) *Compliance with Laws.* With respect to its ability to perform pursuant to this Agreement, the Developer is, to its knowledge, 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.

(f) *Accuracy of Project Data.* The Developer has provided certain financial and other information regarding the Redevelopment Project (the "**Project Data**") to the City Attorney. The parties agree that project costs, project rents and other financial information included within the Project Data have changed and will further change as the Redevelopment Project evolves from

concept to completion, and such changes may be material. Accordingly, the Developer cannot and will not make any representation that the Project Data previously provided is currently true and accurate. Nevertheless, the Developer represents that (1) the most recently supplied Project Data was, to the Developer's knowledge, developed and provided in good faith and (2) to the Developer's knowledge, the Concept Site Plan set forth as **Exhibit B**, attached hereto and incorporated herein by reference, is a good faith representation of the uses that the Developer will endeavor to locate on the Property and the Project Budget set forth as **Exhibit H**, attached hereto and incorporated herein by reference, is a good faith representation of the Developer's estimate of the anticipated development costs.

8.3. Community Children Service's Fund. The City and the Developer acknowledge that, in compliance with the Missouri General Assembly's intent expressed in Section 67.1776 of the Revised Statutes of Missouri, as amended, tax increment financing within the Redevelopment Area will not capture any of the Community Children's Services Fund sales tax revenues, and none of the parties will institute a claim or challenge under the TIF Act asserting otherwise.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and the City has caused its seal to be affixed thereto, and attested as to the date first above written.

(SEAL)

CITY OF OLIVETTE, MISSOURI

By: _____
Sidney Clark, Mayor

ATTEST:

Denise Mandle, City Clerk

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this ___ day of _____, 2021, before me appeared **SIDNEY CLARK**, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the **CITY OF OLIVETTE, MISSOURI**, an incorporated political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and she acknowledged said instrument to be the free act and deed of said City.

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

Name: _____
Notary Public – State of Missouri
Commissioned in St. Louis County

(SEAL)

My Commission Expires:

KEAT OLIVETTE GATEWAY, LLC,

By: _____
Name: Greg Yawitz
Title: Manager

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this ___ day of _____, 2021, before me appeared **GREG YAWITZ**, to me personally known, who, being by me duly sworn, did say that he is the Manager of **KEAT OLIVETTE GATEWAY, LLC**, a Missouri limited liability company, and that he is authorized to sign the foregoing instrument on behalf of said limited liability company, and acknowledged to me that he executed the within instrument as said limited liability company's free act and deed.

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

Name: _____
Notary Public – State of Missouri
Commissioned in St. Louis County

(SEAL)

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF REDEVELOPMENT AREA

EXHIBIT C

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

Certificate of Substantial Completion

The undersigned, Keat Olivette Gateway, LLC (the “Developer”), pursuant to that certain Second Amended and Restated Redevelopment Agreement dated as of _____, 2021, between the City of Olivette, Missouri (the “City”) and the Developer (the “Agreement”), hereby certifies to the City as follows:

1. As of _____, 20____, the Work (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.

2. The Work has been performed in a workmanlike manner and in accordance with the Construction Plans (as defined in the Agreement).

3. Lien waivers for the Work have been obtained.

4. This Certificate of Substantial Completion is accompanied by one or more architect’s or engineer’s certificate(s) 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), which, when taken together, certify that the Work has been substantially completed in accordance with the Agreement.

5. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Work.

6. The City’s acceptance (below) or the City’s failure to object in writing to this Certificate within 30 days from the receipt of written notice of its failure to approve or provide written objections to this Certificate pursuant to **Section 3.11** of the Agreement (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 St. Louis County Recorder shall evidence the satisfaction of the Developer’s agreements and covenants to perform the Work.

This Certificate shall be recorded in the office of the St. Louis County Recorder. 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 _____, 20__.

KEAT OLIVETTE GATEWAY, LLC,

By: _____
[Name], [Title]

ACCEPTED:

CITY OF OLIVETTE, MISSOURI

By: _____
[Name], [Title]

(Insert Notary Form(s) and Legal Description)

EXHIBIT D

**FORM OF CERTIFICATE OF
REIMBURSABLE REDEVELOPMENT PROJECT COSTS**

Certificate of Reimbursable Redevelopment Project Costs

TO: City of Olivette, Missouri
1140 Dielman Road
Olivette, Missouri 63132
Attention: City Manager

Re: City of Olivette, Missouri, Gateway I-170 Redevelopment Area

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Second Amended and Restated Redevelopment Agreement dated as of _____, 2021 (the “*Agreement*”) between the City of Olivette, Missouri (the “*City*”) and Keat Olivette Gateway, LLC (the “*Developer*”). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1**, attached hereto and incorporated herein by reference, is a Reimbursable Redevelopment Project Cost and was incurred in connection with the construction of the Redevelopment Project.
2. These Reimbursable Redevelopment Project Costs have been paid by the Developer and are reimbursable under the TIF Ordinance and the Agreement and have not been, and will not be, reimbursed by the District.
3. Each item listed on **Schedule 1** has not previously been paid or reimbursed from money derived from the Special Allocation Fund or any money derived from the Project Fund established pursuant to the Note Ordinance, and no part thereof has been included in any other certificate 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 portion of 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 Approved Site Plan and the Agreement.
7. If any cost item to be reimbursed under this Certificate 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 Redevelopment Project Costs for payment hereunder.

8. The Developer believes that all or a portion of the costs to be reimbursed under this Certificate may constitute advances qualified for Tax-Exempt Notes.

Yes: _____ No: _____

9. The Developer is not in material default or breach of any term or condition of the Agreement.

Dated this _____ day of _____, 20__.

KEAT OLIVETTE GATEWAY, LLC,

By: _____
[Name], [Title]

Approved for Payment this _____ day of _____, 20__:

CITY OF OLIVETTE, MISSOURI

By: _____
[Name], [Title]

EXHIBIT E
FORM OF TIF NOTES

***THIS NOTE OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR
NEGOTIATED ONLY AS PROVIDED IN THE HEREIN DESCRIBED INDENTURE.***

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**Registered
No. R-_____**

**Registered
Up to \$_____***
(See **Schedule A** attached)

**CITY OF OLIVETTE, MISSOURI
[TAX-EXEMPT] [TAXABLE] TAX INCREMENT REVENUE NOTE
(GATEWAY I-170 REDEVELOPMENT PROJECT)
SERIES [A/B]**

Interest Rate: _____

Maturity Date: [_____]

REGISTERED OWNER:

PRINCIPAL AMOUNT: **See SCHEDULE A attached hereto.**

The **CITY OF OLIVETTE, MISSOURI**, an incorporated political subdivision duly organized and validly existing under the Constitution and laws of the State of Missouri (the “*City*”), for value received, hereby promises to pay to the registered Owner shown above, or registered assigns, the Principal Amount shown from time to time on **Schedule A** attached hereto on the Maturity Date shown above unless called for redemption prior to the Maturity Date, and to pay interest thereon from the effective date of registration shown from time to time on **Schedule A** attached hereto or from the most recent Interest Payment Date to which interest has been paid or duly provided for (computed on the basis of a 360-day year of twelve 30-day months) at the Interest Rate set forth above (as may be adjusted pursuant to the below-defined Agreement).

Interest shall be payable semiannually on May 1 and November 1 in each year (each, an “*Interest Payment Date*”), beginning on the first Interest Payment Date following the initial transfer of moneys to the Special Allocation Fund. Interest that remains unpaid on any Interest Payment Date shall be compounded on each Interest Payment Date.

Except as otherwise provided herein, the capitalized terms herein shall have the meanings as provided in the Indenture (as hereinafter defined) or the Second Amended and Restated Redevelopment Agreement dated as of _____, 2021 (the “Agreement”), between the City and Keat Olivette Gateway, LLC (the “Developer”).

THE OBLIGATIONS OF THE CITY WITH RESPECT TO THIS NOTE TERMINATE ON THE MATURITY DATE, WHETHER OR NOT THE PRINCIPAL AMOUNT OR INTEREST HEREON HAS BEEN PAID IN FULL. REFERENCE IS MADE TO THE AGREEMENT AND THE INDENTURE FOR A COMPLETE DESCRIPTION OF THE CITY'S OBLIGATIONS HEREUNDER.

The principal of this Note shall be paid at maturity or upon earlier redemption to the Person in whose name this Note is registered on the Register at the maturity or redemption date hereof, upon presentation and surrender of this Note at the principal corporate trust office of [____], St. Louis, Missouri (the "Trustee") or such other office as the Trustee shall designate. The interest payable on this Note on any Interest Payment Date shall be paid to the Person in whose name this Note is registered on the Register at the close of business on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Trustee to the address of such registered Owner shown on the Register or (b) by electronic transfer to such registered owner upon written notice given to the Trustee by such registered Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the name and address of the bank, its ABA routing number, the name and account number to which such registered Owner wishes to have such transfer directed and an acknowledgement that an electronic transfer fee may be applicable. The principal or redemption price of and interest on the TIF Notes shall be payable by check or draft in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

This Note is one of an authorized series of fully-registered notes of the City designated "City of Olivette, Missouri, [Tax-Exempt] [Taxable] Tax Increment Revenue Notes (Gateway I-170 Redevelopment Project), Series [A/B]," which together with other authorized series of fully-registered Notes of the City designated "City of Olivette, Missouri, [Tax-Exempt] [Taxable] Tax Increment Revenue Notes (Gateway I-170 Redevelopment Project), Series [A/B]," aggregate a principal amount of up to \$ _____ (collectively the "TIF Notes"). The TIF Notes are being issued for the purpose of paying a portion of the Redevelopment Project Costs in connection with the Gateway I-170 Tax Increment Financing (TIF) Redevelopment Plan, under the authority of and in full compliance with the City Charter, the Constitution and laws of the State of Missouri, including particularly the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the "Act"), and pursuant to a Trust Indenture dated as of _____, 20__, between the City and the Trustee (said Trust Indenture, as amended and supplemented in accordance with the terms thereof, being herein called the "Indenture").

The TIF Notes constitute special, limited obligations of the City payable as to principal, premium, if any, and interest solely from the Pledged Revenues and other moneys pledged thereto and held by the Trustee pursuant to the Indenture.

"Pledged Revenues" means all Available Revenues and all moneys held in the Revenue Fund and the Debt Service Fund under the Indenture, together with investment earnings thereon.

"Net Proceeds" means (a) all Payments in Lieu of Taxes on deposit in the PILOTS Account of the Special Allocation Fund, and (b) subject to annual appropriation, all Economic Activity Tax Revenues on deposit in the EATS Account and all District Revenues on deposit in the District Revenues Account of the Special Allocation Fund that have been appropriated to the repayment of the TIF Notes, excluding in all cases (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, and (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City that challenges the collection of such sum.

“Payments in Lieu of Taxes” means those payments in lieu of taxes (as defined in Sections 99.805 and 99.845 of the Act) attributable to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Area over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Area, as provided for by Section 99.855 of the Act.

“Economic Activity Tax Revenues” means 50% of the total additional revenues from taxes which are imposed by the City or any other taxing district (as that term is defined in Section 99.805 of the Act) and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year prior to the adoption of tax increment financing within the Redevelopment Area, but excluding therefrom personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments and taxes imposed pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, and any other taxes excluded from tax increment financing by Missouri law.

“District Revenues” means any and all revenues generated by the District Sales Taxes that are appropriated by the District and deposited into the District Revenues Account, less District Expenses.

By purchasing this Note, the Owner hereby agrees that, unless the Developer or an occupant of the Property provides utility tax documentation to the City, the Owner hereby waives any claim to utility tax revenues and agrees to bring no suit, claim or other action against the City seeking the deposit of utility tax revenues into the Special Allocation Fund. Any utility tax revenues generated from the Redevelopment Area for which the Developer or an occupant of the Property does not provide documentation to the City will be declared as surplus by the City pursuant to the TIF Act.

The TIF Notes shall not constitute debts or liabilities of the City, the District, the State of Missouri or any political subdivision thereof within the meaning of any constitutional, statutory or charter debt limitation or restriction. Neither the City, the District, the TIF Commission, the commissioners of said TIF Commission, the officers and employees of the City, the officers and employees of the District nor any person executing the TIF Notes shall be personally liable for such obligations by reason of the issuance thereof.

Net Proceeds shall be applied to the payment of the TIF Notes in the manner prescribed in the Indenture.

The City agrees to direct the officer of the City charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the City Council for each fiscal year that Notes are outstanding a request for an appropriation of all moneys on deposit in the EATS Account and the District Revenues Account of the Special Allocation Fund for application in the manner described above.

NOTWITHSTANDING ANY PROVISION HEREIN OR IN THE TIF NOTES TO THE CONTRARY, (1) THE TIF NOTES ARE SUBJECT TO CANCELLATION AND DISCHARGE BY THE CITY IN PART WITHOUT PAYMENT UNDER THE CONDITIONS DESCRIBED IN SECTIONS 7.3 AND 7.10 OF THE AGREEMENT, WHETHER OR NOT THE PRINCIPAL AMOUNT OR INTEREST THEREON HAS BEEN PAID IN FULL AND (2) THE TIF NOTES ARE SUBJECT TO CANCELLATION AND DISCHARGE BY THE CITY IN WHOLE OR IN PART WITHOUT PENALTY UNDER THE CONDITIONS SET FORTH IN SECTION 5.2 OF THE AGREEMENT.

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

The TIF Notes are subject to special mandatory redemption by the City on any Interest Payment Date, 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, 40 days (10 days if all of the TIF Notes are owned by the Developer) prior to each Interest Payment Date, is on deposit in the Debt Service Fund and which will not be required for the payment of interest on such Interest Payment Date.

All Taxable Notes shall be redeemed prior to the Tax-Exempt Notes.

If any of the TIF Notes are to be called for redemption as aforesaid, notice of redemption, unless waived, is to be given by the Trustee by mailing an official redemption notice by first class mail at least 30 days (5 days if all of the TIF Notes are owned by the Developer) and not more than 60 days prior to the date fixed for redemption to the registered Owner of each Note to be redeemed at the address shown on the Register as of the date of such notice, as more fully described in the Indenture. Notice of redemption having been given as aforesaid, and provided that moneys are on deposit with the Trustee to effect the required redemption, the TIF Notes or portions of TIF Notes so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City defaults in the payment of the redemption price) such TIF Notes or portions of TIF Notes so called for redemption shall cease to bear interest, shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture. Any defect in any notice or the failure of any parties to receive any notice of redemption shall not cause any Note called for redemption to remain Outstanding.

The TIF Notes are issuable in the form of fully-registered TIF Notes in the denomination of \$0.01 or any integral multiple thereof.

This Note may be transferred or exchanged, as provided in the Indenture, only upon the Register, upon surrender of this Note together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or the registered owner's duly authorized agent. THE OWNER HEREOF EXPRESSLY AGREES, BY SUCH OWNER'S ACCEPTANCE HEREOF, THAT THE RIGHT TO TRANSFER, ASSIGN OR NEGOTIATE THIS NOTE SHALL BE LIMITED TO TRANSFER, ASSIGNMENT OR NEGOTIATION TO APPROVED INVESTORS, AS THAT TERM IS DEFINED IN THE INDENTURE. Accordingly, this Note will be transferable only upon prior delivery to the Trustee of a letter in substantially the form attached to the Indenture as **Exhibit B**, signed by the transferee, showing that such transferee is an Approved Investor. After the Trustee receives the foregoing statement, a new Note of the same maturity and in the same principal amount outstanding as the Note which was presented for transfer or exchange shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City and the Trustee may deem and treat the Person in whose name this Note is registered on the Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

This Note shall not be valid or binding on the City or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon has been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the TIF Notes have existed, happened and been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, the **CITY OF OLIVETTE, MISSOURI** has executed this Note by causing it to be signed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and its official seal to be affixed or imprinted hereon, and this Note to be dated as of the effective date of registration as shown on **Schedule A**.

CITY OF OLIVETTE, MISSOURI

By: _____
Mayor

(SEAL)

Attest:

City Clerk

CERTIFICATE OF AUTHENTICATION

This TIF Note is one of the TIF Notes described in the within mentioned Indenture.

Dated: _____, 20__

[TRUSTEE], as Trustee

By: _____

Authorized Signatory

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

(Print or Type Name, Address and Social Security Number
or other Taxpayer Identification Number of Transferee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ agent to transfer the within Note on the books kept by the Trustee for the registration thereof, with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears on the face of the within Note in every particular.

Medallion Signature Guarantee:

SCHEDULE A

CERTIFICATE OF AUTHENTICATION

This Note is one of the TIF Notes described in the within-mentioned Indenture.

<u>Date⁽¹⁾</u>	Additions to Principal <u>Amount</u>	Principal Amount Paid <u>Amount</u>	Outstanding Principal Amount <u>Amount</u>	Authorized Signatory of Trustee <u>Trustee</u>
_____, 20__	\$	\$	\$	_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____
_____, 20__				_____

(1) _____ Date of Acceptance by the City of related Certificate of Reimbursable Redevelopment Project Costs (which constitutes Date of Registration with respect to such portion of the Note) or Interest Payment Date. Advances are limited to one per month.

EXHIBIT F
DISTRICT PROJECT AGREEMENT

EXHIBIT G

SPECIAL DEVELOPMENT CONDITIONS

Subject to any Governmental Approvals providing otherwise, the Redevelopment Project shall be designed, constructed and operated in a manner that incorporates the following:

- The Redevelopment Project shall be equipped with a commercially reasonable security system and footage from the cameras included in the security system shall be retained for at least seven days.
- On-site signs for the Redevelopment Project shall be part of a uniform sign package that is materially consistent with Chapter 415 of the Municipal Code (individual channel letters, uniform font and color, 25% leeway for logos).
- The Redevelopment Project shall be materially consistent with Chapter 428 of the Municipal Code regarding lighting and buffering.
- The Developer acknowledges the City's concern that the walkability and character of the Redevelopment Project can be adversely affected by the number of drive-through facilities or by the location or design of such facilities. The City strongly desires to see no more than one drive-through. However, the City may approve the site plan containing up to two drive-throughs only if the number and design of drive-throughs is consistent with **Section 3.9** of the Agreement and add aesthetic and/or financial value to the Redevelopment Project as a whole. If the Developer believes it necessary or desirable to add a second drive-through, the Developer shall solicit the City Manager's input at the earliest possible time.

EXHIBIT H
PROJECT BUDGET

GATEWAY I-170 REDEVELOPMENT AREA ESTIMATED REDEVELOPMENT PROJECT COSTS¹	
Category	Total
Property Acquisition/Relocation	\$ 13,500,000
Building/Parking Garage Construction	114,900,000
Site Work/Road Improvements	8,000,000
Professional Services	8,000,000
Contingency	7,000,000
TOTAL	\$151,400,000

¹ The above estimate of Redevelopment Project Costs is based on certain assumptions that may not materialize. Accordingly, the cost of actually completing the Redevelopment Project or any aspect thereof may differ from the above estimate.