

**ORDINANCE #69243**  
**Board Bill No. 117**

An Ordinance affirming adoption of a Development Plan, Development Area, and Development Project under the authority of the Missouri Downtown and Rural Economic Stimulus Act, Sections 99.915 to 99.1060 of the Revised Statutes of Missouri, as Amended (The "Act"); authorizing and directing the execution of a Development Agreement between the City of St. Louis and Ballpark Village Development Corporation in accordance with the Act and said Development Plan; prescribing the form and details of said agreement; making certain findings as required by the Act with respect to said agreement; designating Ballpark Village Development Corporation as developer of the Development Area in Accordance with the Act; making certain findings with respect thereto; authorizing other related actions by City Officials in connection with the Agreement and the development of certain property within the Development Area; and containing a severability clause.

**WHEREAS**, The City of St. Louis, Missouri (the "City"), is a body corporate and a political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri; and

**WHEREAS**, the Missouri Downtown and Rural Economic Stimulus Act, Sections 99.915 to 99.1060 of the Revised Statutes of Missouri, as amended (the "Act"), authorizes cities to undertake development projects in development areas, as defined in the Act; and

**WHEREAS**, the Board of Aldermen of the City created the Downtown Economic Stimulus Authority of The City of St. Louis (the "Authority") pursuant to Ordinance No. 67097; and

**WHEREAS**, the Act authorizes the Authority to hold hearings with respect to proposed development areas, plans and projects and to make recommendations thereon to the Board of Aldermen; and

**WHEREAS**, the Authority has reviewed a plan for development titled "MODESA Development Plan Ballpark Village" originally dated June 18, 2012, as or as may be subsequently amended (the "Development Plan"), for the Development Area, as more fully described in the Development Plan; and

**WHEREAS**, the Development Plan contemplates the remediation of blighting conditions within the Development Area through construction of retail, entertainment, commercial and other development, as well as parking and other infrastructure improvements, as more fully described therein (collectively, the "Development Project"); and

**WHEREAS**, the Authority held a public hearing in conformance with the Act on July 5, 2012, and received comments from all interested persons and taxing districts relative to the Development Plan, the designation of the Development Area and the adoption and approval of the Development Project; and

**WHEREAS**, on July 5, 2012, after due deliberation, the Authority adopted a resolution recommending, among other matters, that the Board of Aldermen designate the Development Area as a "development area" pursuant to the Act, adopt the Development Plan and the Development Project, and adopt development financing within the Development Area; and

**WHEREAS**, pursuant to Ordinance No. \_\_\_\_\_ [Board Bill No. \_\_\_\_], the Board of Aldermen has determined that adoption of the Development Plan and completion of the Development Project is of economic significance to the City, will serve to benefit the general welfare, qualifies for the use of development financing to alleviate the conditions that qualify it as a "development area" as provided in the Act, and further, that development of the Development Area in accordance with the Development Plan is not financially feasible without the adoption of development financing and would not otherwise be completed; and

**WHEREAS**, the Development Area qualifies for the use of development financing to alleviate the conditions that qualify it as a "blighted area" as provided in the Act and as set forth herein; and

**WHEREAS**, it is necessary and desirable and in the best interest of the City to enter into the Development Agreement with Ballpark Village Development Corporation (the "Developer"), in order that Developer may complete the Development Project; and

**WHEREAS**, pursuant to the provisions of the Act, the City is authorized to enter into a Development Agreement with Ballpark Village Development Corporation, as Developer, setting forth the respective rights and obligations of the City and Developer with regard to the development of the Development Area (the "Development Agreement"); and

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

**BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

**SECTION ONE.** The Board of Aldermen hereby ratifies and confirms its approval of the Development Plan, Development Area, and Development Project. The Board of Aldermen further finds and determines that it is necessary and desirable to enter into the Development Agreement with Ballpark Village Development Corporation, as developer of the Development Area, in order to implement the Development Project and to enable the Developer to carry out its proposal for development of the Development Project.

**SECTION TWO.** The Board of Aldermen finds and determines that the assistance of development financing is necessary and desirable in order to implement the Development Project and to enable Ballpark Village Development Corporation, as developer of the Development Area, to carry out its proposal for development of the Development Project.

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

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

**SECTION FIVE.** The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

**SECTION SIX.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**EXHIBIT A**  
**Form of Development Agreement by and between the**  
**City of St. Louis and the Developer**  
**(Attached hereto.)**

**DEVELOPMENT AGREEMENT**  
**Between the**  
**CITY OF ST. LOUIS, MISSOURI,**

**And**

BALLPARK VILLAGE DEVELOPMENT CORPORATION

Dated as of

\_\_\_\_\_, 2012

BALLPARK VILLAGE DEVELOPMENT PROJECT

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### DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date"), by and between the CITY OF ST. LOUIS, MISSOURI (the "City"), a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri, and BALLPARK VILLAGE DEVELOPMENT CORPORATION, (the "Developer"), a corporation duly organized and existing under the laws of the State of Delaware.

### RECITALS

A. Developer is a corporation formed by affiliates of St. Louis Cardinals, LLC (the "Cardinals") and The Cordish Company, a Maryland corporation ("Cordish") for the purpose of owning and developing the Development Area.

B. Pursuant to Ordinance No. 67097, adopted and approved on May 25, 2006, the Board of Aldermen duly formed the Downtown Economic Stimulus Authority of the City of St. Louis (the "Authority"), in accordance with the Missouri Downtown and Rural Economic Stimulus Act, Sections 99.915 through 99.1060 of the Revised Statutes of Missouri, as amended (the "MODESA Act"), and empowered the Authority to transact business and exercise its powers as authorized by the MODESA Act.

C. On \_\_\_\_\_, 2012, Ballpark Village Holding Company, LLC ("BVHC"), an affiliate of Developer, submitted to the Authority a proposal for the redevelopment of the property commonly known as "Ballpark Village," which property is located generally within the boundaries of Walnut Street on the north, Broadway on the east, Clark Avenue on the south, and 8th Street on the west.

D. On \_\_\_\_\_, 2012, following a public hearing in accordance with the MODESA Act, the Authority adopted a resolution approving a Development Plan for the Development Area titled [INSERT DEVELOPMENT PLAN REFERENCE] and the Development Project described in the Development Plan, and recommending that the Board of Aldermen: (1) adopt an ordinance in the form required by the Act (a) approving such Development Plan, (b) approving and designating the Development Area as a "Development Area" and "Development Project Area" as provided in the MODESA Act, (c) approving the Development Project described in the Development Plan, and (d) creating the Ballpark Village Special Allocation Fund; and (2) adopt development financing with respect to the Development Area by passage of an ordinance complying with the terms of Section 99.957 of the MODESA Act.

E. On \_\_\_\_\_, 2012, after due consideration of the Authority's recommendations, the Board of Aldermen adopted Ordinance No. \_\_\_\_ [Board Bill No. \_\_\_\_] approving the development plan submitted by Developer, and approving the Development Project described in such Development Plan.

F. On \_\_\_\_\_, 2012, the Board of Aldermen adopted Ordinance No. \_\_\_\_ [Board Bill No. \_\_\_\_] designating the Developer as developer of the Development Area under the terms and conditions as set forth herein, and authorizing the City to enter into this Agreement with Developer.

G. The Board of Aldermen has heretofore determined that designation of Developer as developer for the Development Area and the fulfillment generally of this Agreement are in the best interests of the City, and the health, safety and welfare of its residents, and in accord with the public purposes specified in the Development Plan. But for the City's commitment to provide the Incentive Amount in accordance with the terms of this Agreement, Developer would be unwilling to undertake the Development Project because of the inherent risks associated therewith.

H. Subject to the terms of this Agreement, Developer intends to develop the Development Area as a mixed-use area with such Development Project to be undertaken in multiple phases, with the first such phase to include at least 100,000 square feet of Leasable Area of Retail/Entertainment/Restaurant Space and at least \$10,700,000 of expenditures for the Infrastructure Element (as hereinafter defined).

J. The Incentive Amount to be provided pursuant to this Agreement shall be contributed to Developer, the TDD and/or the CID, and used by Developer, the TDD and/or the CID respectively to pay for Reimbursable Development Project Costs incurred in accordance with this Agreement in order to cause the Development Project to occur, for the overall economic benefit of the City.

K. Developer will enter into a ground sublease with the TDD (the “TDD Phase I Ground Sublease”, as hereinafter defined) whereby Developer will ground lease to the TDD a portion of the Development Area upon which streets, parking spaces and/or sidewalks will be constructed in accordance with this Agreement. Developer will enter into a ground sublease with the CID (the “CID Ground Sublease”, as hereinafter defined) whereby Developer will ground lease to the CID a portion of the Development Area upon which certain plaza and/or streetscape improvements will be constructed. Both ground subleases will provide that the Developer shall cause the construction of the specified improvements, on behalf of the TDD and CID, respectively, and upon completion, the TDD and CID will own the improvements on their respective leased property.

L. The Issuer, the CID and the TDD will enter into the Cooperation Agreement (as herein defined) whereby the Issuer shall make disbursements of a portion of the Incentive Amount to the Developer, on behalf of the TDD and the CID upon the satisfaction of all conditions to such disbursements set forth in this Agreement.

### AGREEMENT

Now, therefore, in consideration of the premises and 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, DEVELOPER DESIGNATION, AND COSTS/FEES

#### Section 1.1 Definitions.

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

“**Acceptable Financial Institution**” means: (a) (1) a savings bank, a savings and loan association, a bank (national) or trust company, an insurance company, a REMIC, a commercial credit corporation, an investment bank, a hedge fund or private equity fund or an educational institution, (2) a federal, state, municipal, teachers or other public employees’ welfare pension or retirement trust, fund or system, (3) a commercial bank or trust company acting as trustee or fiduciary of various pension funds or tax-exempt funds, or as trustee in connection with the issuance of any bonds or any other debt financing, or a corporation or other entity which is owned wholly by any other Mortgagee or a subtrustee of any such commercial bank or trust company acting as such trustee, or any combination of the foregoing, (4) any other employees, welfare, pension or retirement trust, fund or system having assets of at least \$350,000,000, (5) any real estate investment or mortgage trust having assets of at least \$500,000,000, (6) any corporation, organization or other entity not referred to in the foregoing provisions of this sentence, and which is subject to supervision and regulation by the insurance or banking department of any of the United States, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation of the Federal Savings and Loan Insurance Corporation or by any successor hereafter exercising similar functions having a net worth of at least \$500,000,000 or (7) a Community Development Entity or subsidizing Community Development Entity under the New Market Tax Credit Program; or (b) a Related Entity of an Acceptable Financial Institution; or (c) such other entity or institution as may be approved by the City in the exercise of its reasonable discretion; provided, however, that in no event (absent the approval of the City in its sole discretion) shall this definition include any entity that is an affiliate or Related Entity of Developer or its members unless it is a Community Development Entity or subsidiary Community Development Entity under the New Markets Tax Credit Program that has an investor member that is not an affiliate or Related Entity of Developer.

“**Acceptable Tenants**” means: (a) with respect to the Retail/Entertainment/Restaurant Space within the Development Project, tenants substantially similar in type and quality as those tenants listed on Exhibit E, attached hereto and incorporated herein by this reference or other tenants of substantially similar or better quality that would complement an urban entertainment center type project, such as the Power Plant in Baltimore, Maryland, Power Plant Live in Baltimore, Maryland, Fourth Street Live in Louisville, Kentucky, Bayou Place in Houston, Texas, Seminole Paradise, in Hollywood, Florida, and Philly Live in Philadelphia, Pennsylvania or a “Main Street” type life style center, such as The Avenue at White Marsh, in Baltimore, Maryland (the current tenants of which are listed on Exhibit E); and (b) with respect to the office space, traditional office Users.

“**Acquisition Costs**” means all costs of acquiring a fee simple interest in the Property, including, but not limited to the cost

of land and improvements; brokerage commissions; costs of title commitments, reports or policies; surveys; engineering fees, environmental remediation, soil, hazardous waste and other site and property-related reports and expenses; appraisals; professional fees of any kind or nature, including attorneys' fees, filing fees, recording fees, experts' fees; and all litigation costs, including commissioners' awards, judgments, payments in settlement of litigation, and all associated court costs, fees and expenses.

**“Additional Space”** shall have the meaning given to such term in Section 3.1(e) hereof.

**“Additional Use”** means the development of any portion of the Development Area as a hotel, including any space within a hotel that is operated as a retail business, restaurant, or other commercial or entertainment retail trade, provided that such retail, restaurant, entertainment or commercial space shall not be considered to be “within a hotel” for the purposes of this Agreement (and thus shall be considered to be Retail/Entertainment/Restaurant Space and not Additional Use) if the main and primary customer entrance for such space is independent and from the exterior of the building and not through a hotel. In no event shall banquet, conference, or room service space connected in any way with a hotel constitute Retail/Entertainment/Restaurant Space, but instead shall be considered to be within a hotel for purposes of this Agreement.

**“Additional Use Incentive”** has the meaning given to such term in Section 3.1(c) hereof.

**“Agreement”** means this Development Agreement, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto.

**“Approving Ordinance”** means Ordinance No. \_\_\_\_ [Board Bill No. \_\_\_\_] designating the Development Area, approving the Development Plan, approving the Development Project and adopting development financing.

**“Authority”** means the Downtown Economic Stimulus Authority of the City of St. Louis, Missouri.

**“Authorizing Ordinance”** means Ordinance No. \_\_\_\_ [Board Bill No. \_\_\_\_], approving the selection of the Developer and authorizing the City to enter into this Agreement with Developer.

**“Available Revenues”** means all monies on deposit from time to time (including investment earnings thereon) in the following accounts established pursuant to each applicable Bond Indenture in accordance with Section 6.1 hereof: (a) the PILOT's Account; (b) the TDD Revenues Account, including the Springing TDD Sales Tax Revenues Sub-Account; (c) the CID Revenues Account; (d) subject to annual appropriation, the Dedicated Municipal Revenues Account; (e) subject to annual appropriation, the New State Revenues Account; (f) subject to annual appropriation, the EATS Account, and (g) the TDD Ticket Tax Revenues Account, excluding: (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

**“Board of Aldermen”** means the Board of Aldermen of the City.

**“Board of Estimate and Apportionment”** means the Board of Estimate and Apportionment of the City.

**“Bond Counsel”** means an attorney at law or a firm of attorneys of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on special limited obligations issued by states and their political subdivisions in the State of Missouri, 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, selected by the Issuer of the Bonds and approved by the City to provide advice and counsel and other legal services in connection with the issuance of the Bonds. The parties agree that Gilmore & Bell, P.C., shall initially be the Bond Counsel.

**“Bond Documents”** means with respect to each Development Project Phase, the Bond Indenture and all other documents or instruments evidencing, securing or relating to the Bonds issued with respect to such Development Project Phase.

**“Bond Indenture”** means with respect to each Development Project Phase, the indenture(s) relating to the Bonds issued with respect to such Development Project Phase, to be entered into between the Issuer and the Bond Trustee.

**“Bond Offering”** means (a) with respect to the Initial Development Project Phase, the satisfaction of all conditions to issuance of the Bonds for such Initial Development Project Phase, and (b) with respect to each Subsequent Development Project Phase, the distribution of a Preliminary Offering Statement or Preliminary Private Limited Offering Memorandum to potential

purchasers of the Bonds by the Financing Team.

**“Bond Principal Amount”** means with respect to any Development Project Phase, the principal amount of the Bonds to be issued for such Development Project Phase, which amount shall equal: (i) for the Initial Development Project Phase, the principal amount necessary to cover Issuance Costs thereof and provide an Incentive Amount for the Initial Development Project Phase of \$17,000,000, as provided in Section 3.1(c) hereof; and (ii) for any Subsequent Development Project Phase, the principal amount necessary to cover Issuance Costs thereof, as determined by the Financing Team and reasonably acceptable to the Developer, the Issuer and the City, and produce the amount established as the Incentive Amount for such Subsequent Development Project Phase in Section 3.1(c) hereof.

**“Bond Proceeds”** means with respect to each Development Project Phase, the gross cash proceeds from the sale of Bonds issued for such Development Project Phase, before payment of Issuance Costs, together with any interest earned thereon.

**“Bond Trustee”** means the trustee under the Bond Indenture.

**“Bond Year”** means a one-year period ending annually on a date designated in the Bond Indenture.

**“Bonds”** means the Priority Bonds and the Subordinate Bonds with respect to any Development Project Phase, as applicable.

**“Business Days”** means weekdays Monday through Friday, exclusive of bank holidays in the State of Missouri as established by the Federal Reserve Board and exclusive of holidays established by the City of St. Louis.

**“BVHC”** has the meaning given to such term in the Recitals to this Agreement.

**“Certificate of Commencement of Construction”** means a document substantially in the form of Exhibit F, attached hereto, delivered by Developer to the City and/or its designee in accordance with this Agreement and evidencing the Developer’s substantial satisfaction and compliance with the conditions to commencement of construction of a Development Project Phase as set forth in such Certificate and elsewhere in this Agreement.

**“Certificate of Reimbursable Development Project Costs”** means a document substantially in the form of Exhibit G, attached hereto, provided by the Developer in accordance with this Agreement and the Bond Indenture, evidencing the Developer’s substantial compliance with the conditions to submission of such Certificate as set forth in such Certificate and elsewhere in this Agreement and Reimbursable Development Project Costs incurred by the Developer.

**“Certificate of Substantial Completion”** means a document substantially in the form of Exhibit H, attached hereto, issued by the Developer to the City in accordance with this Agreement and evidencing the Developer’s substantial satisfaction and compliance with the conditions to submission of such Certificate as set forth in such Certificate and elsewhere in this Agreement that the Development Project Phase (or Element thereof for which such Certificate is submitted) has achieved Substantial Completion.

**“CID”** means the Ballpark Village Community Improvement District created by the City and maintained pursuant to the CID Act and Section 2.14 hereof.

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

**“CID Administrative Costs”** means actual, reasonable and necessary overhead expenses of the CID for administration, supervision and inspection incurred in connection with the CID Project and paid initially by the Developer, in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) per year, and subject to reimbursement in accordance with this Agreement and, upon the first deposit of CID Revenues into the Operating Fund, paid by the CID out of the Operating Fund, including without limitation the following: (a) reimbursement of reasonable and necessary expenses incurred by the City pursuant to Section 67.1461.3 of the CID Act to establish the CID and review the CID’s annual budgets and reports (in an amount not to exceed a mutually agreeable percentage of the CID Revenues collected in the applicable year, as provided in the Cooperation Agreement); (b) reimbursement of the petitioners for the actual, reasonable and necessary costs of filing and pursuing the petition to establish the CID and all publication and incidental costs incurred therewith; and (c) reimbursement of the CID’s Board of Directors for actual, reasonable and necessary expenditures in the performance of authorized duties on the behalf of the CID.

“**CID Ground Sublease**” means that certain ground lease to be entered into between Developer and the CID, whereby Developer subleases to the CID a portion of the Property upon which the CID shall cause to be constructed a portion of the Initial Development Project Phase, as described therein.

“**CID Project**” means that portion of a Development Project Phase, the costs of which are eligible for financing or reimbursement by the CID pursuant to the CID Act.

“**CID Revenues**” means revenues of the CID from the CID Sales Tax and the CID Sources, if any (not including the “top-half” portion thereof which is captured as EATs during the MODESA Financing Term), imposed in accordance with the CID Act, less any such revenues transferred to the Operating Fund to pay CID Administrative Costs. CID Revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the CID that is the subject of a suit or other claim communicated to the CID, which suit or claim challenges the collection of such sum.

“**CID Revenues Account**” means, during the MODESA Financing Term, the account to be created pursuant to Section 6.1 of this Agreement, and during the ten years following the MODESA Financing Term, the account to be created pursuant to Section 6.7 of this Agreement into which CID Revenues shall be deposited.

“**CID Sales Tax**” means the community improvement district sales tax levied by the CID in an amount equal to one percent (1%) in accordance with the Section 67.1545 of the CID Act and Section 2.14 and Section 2.17 of this Agreement.

“**CID Sources**” means any and all revenues generated by any one or more of the assessments, taxes, or other funding methods specifically authorized pursuant to the CID Act to provide funds, other than the CID Sales Tax.

“**City**” means the City of St. Louis, Missouri, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri.

“**Closing**” means (a) with respect to the Initial Development Project Phase, the issuance of the Bonds for such Initial Development Project Phase and the private placement thereof to Developer or a Related Entity as provided in Section 3.1 hereof, and (b) with respect to each Subsequent Development Project Phase, the issuance of Bonds, the private placement and/or public sale of such Bonds, and the execution of other documents necessary to effect such issuance and placement/sale, and the execution of other documents necessary to meet the conditions precedent to Closing specified in Section 5.3 and Section 5.4.

“**Closing Date**” means the date a Closing occurs with respect to a Development Project Phase, following satisfaction or waiver of all conditions precedent to such Closing set forth in this Agreement. The Closing Date for any Development Project Phase shall not be later than the applicable deadline provided in Section 5.1(a) hereof, unless extended pursuant to Section 5.1(b) hereof.

“**Commencement of Construction**” means with respect to any Development Project Phase that Developer has submitted to the City or its designee a Certificate of Commencement of Construction for such Development Project Phase which Certificate shall be accompanied by sufficient backup documentation to reasonably satisfy the City that the representations in such Certificate are in fact true and that construction is in fact ready to proceed.

“**Completion Guaranty**” means a completion guaranty in the form attached hereto as Exhibit M; provided, however, in no event will the amount payable under the Completion Guaranty exceed, in the aggregate, the Incentive Amount provided to the Developer. The Developer may satisfy its obligation to provide the Completion Guaranty with respect to any Development Project Phase by delivering multiple Completion Guaranties, each in the form attached hereto as Exhibit M (with any modifications necessary to reflect the multiple guaranties) from separate Guarantors, each of which limits the applicable Guarantor’s obligations to one or more Element(s) of the Development Project Phase, so long as such multiple Completion Guaranties collectively encompass the entire Development Project Phase.

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

“**Construction**” means labor, materials, and essential related services provided by a General Contractor to complete real property improvements, including clearing, dredging, excavating, and grading of land and other activity associated with buildings, structures, and site work.

**“Construction Plans”** means plans, drawings, specifications and related documents, and construction schedules for the construction of a Development Project Phase, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City pursuant to the City standard process for the issuance of building permits.

**“Contractually Pledged City EATs”** means the following revenues of the City generated by economic activities within each Development Phase Area: (a) the general municipal sales tax levied pursuant to Ordinance No. 62884, or any successor thereto, (b) the general municipal sales tax levied pursuant to Ordinance No. 55497, as amended by Ordinance Nos. 57179 and 57979, or any successor thereto, (c) the transportation sales tax levied pursuant to Ordinance No. 56554, or any successor thereto, (d) the capital improvements sales tax levied pursuant to Ordinance No. 62885, or any successor thereto, (e) the Earnings Tax levied pursuant to Ordinance No. 47063, or any successor thereto, (f) the Payroll Expense Tax levied pursuant to Ordinance No. 60737, or any successor thereto, (g) the Parking Gross Receipts Tax, or any successor thereto, (h) the Entertainment License Tax levied pursuant to Ordinance No. 55390, as amended by Ordinances Nos. 55522, 56178, 56912, 62515, and 65669, and (i) the Restaurant Gross Receipts Tax, or any successor thereto, in each case less the costs of collection thereof and excluding (i) any amount paid under protest until such protest is withdrawn or resolved against the taxpayer or (ii) any such amount received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

**“Contractually Pledged City Revenues”** means the following revenues of the City generated within each Development Phase Area and on deposit from time to time in the Contractually Pledged City Revenues Account pursuant to Section 6.7 hereof: (a) during the term of the TDD Garage Ground Sublease, the TDD Garage Payment; (b) during each of the ten (10) years following the termination of the MODESA Financing Term, subject to annual appropriation, fifty percent (50%) of the Contractually Pledged City EATs; and (c) during each of the ten (10) years following the termination of the MODESA Financing Term, the Dedicated Contractually Pledged City EATs, subject to the limitation set forth in Section 6.7 hereof.

**“Contractually Pledged City Revenues Account”** has the meaning given to such term in Section 6.7 hereof, into which certain revenues shall be deposited pursuant to Section 6.7 hereof.

**“Cooperation Agreement”** means that certain Intergovernmental Cooperation Agreement entered into by and among the TDD, the CID, the City and the Issuer pursuant to Section 2.13 and Section 2.16 of this Agreement.

**“Costs of Issuance Account”** means the Costs of Issuance Account created in each applicable Bond Indenture.

**“Debt Service Reserve Account”** means the Debt Service Reserve Account created in each applicable Bond Indenture.

**“Dedicated Contractually Pledged City EATs”** means, subject to annual appropriation, twenty-five percent (25%) of the total Contractually Pledged City EATs.

**“Dedicated Municipal Revenues”** means, subject to annual appropriation, twenty-five percent (25%) of the total Municipal Revenues.

**“Dedicated Municipal Revenues Account”** means the account by that name created in Section 6.1 of this Agreement into which the Dedicated Municipal Revenues shall be deposited.

**“Developer”** means Ballpark Village Development Corporation, a corporation duly organized and existing under the laws of the State of Delaware, and authorized to do business in the State of Missouri, or its permitted successors or assigns in interest.

**“Developer-Controlled Costs”** means the amounts set forth in the following categories of the Project Budget for a Development Project Phase: Acquisition Costs, Developer Overhead/Fees, Contingency and User Improvements.

**“Developer-Funded Tenant Inducements”** means amounts which Developer is required to pay for hard and/or soft costs (excluding any fees paid to Developer or a Related Entity to Developer, The Cordish Company or St. Louis Cardinals, LLC) pursuant to any lease or other contract with a User for improvements made by Developer within a Development Phase Area (“Developer-Funded Tenant Improvements”), which payments are includable as costs identified in the Project Budget for a Development Project Phase, but only to the extent that payments are not reimbursed by Users in any manner other than the payment of rent. In addition, cash payments made to Users by Developer shall be includable as Developer-Funded Tenant Inducements but only to the extent that (a) Developer provides reasonable evidence that such payments have been made by Developer; and (b) any payments made by Developer to any tenant affiliated with Developer in any manner shall be supported by reasonable evidence that

such payments have been used to pay third parties with no affiliation to Developer for hard and/or soft costs (excluding any fees paid to Developer or a Related Entity to Developer, The Cordish Company or St. Louis Cardinals, LLC) for any improvements within the Development Phase Area.

**“Development Area”** means the real property described in Exhibit A, attached hereto and incorporated herein by reference, as such area may be modified pursuant to any amendment to the Development Plan made in accordance with the terms of this Agreement.

**“Development Phase Area”** means with respect to each Development Project Phase, that separate and distinct portion of the Development Area on which such Development Project Phase shall be constructed, as identified in the notice to be provided with respect to such Development Project Phase pursuant to Section 2.4 hereof. Any Development Phase Area may be identified so that such Development Phase Area consists of, includes or excludes air rights over all or any portion of the Development Area, but in no event shall any property be included in more than one Development Phase Area.

**“Development Plan”** means the plan entitled MODESA Development Plan: Ballpark Village, dated June 18, 2012, and approved by the City pursuant to the Approving Ordinance, as may be subsequently amended from time to time.

**“Development Project”** means the development of all or a portion of the Development Area pursuant to the Development Plan, as a mixed-use area in multiple Development Project Phases, as set forth in the Development Plan approved by the Approving Ordinance as may be modified from time to time pursuant to and in accordance with this Agreement.

**“Development Project Phase”** means a portion of the Development Project to be developed within a distinct and defined Development Phase Area, as identified pursuant to Section 2.4 hereof, and including, the Retail Element, the Office Element, the Parking Element, the Infrastructure Element, the Residential Element and any Additional Use of such Development Project Phase, all as set forth in the Development Plan approved by the Approving Ordinance as may be modified from time to time pursuant to and in accordance with this Agreement. The Initial Development Project Phase and any Subsequent Development Project Phase shall each constitute a separate “Development Project Phase” for purposes of this Agreement. In no event shall any Development Project Phase contain less than the Minimum Essential Elements as set forth herein (in the case of the Initial Development Project Phase) or in the State MODESA Agreement (in the case of any Subsequent Development Project Phase). Furthermore, for the purposes of this Agreement, multiple Subsequent Development Project Phases may be combined into one “Development Project Phase” by providing written notice of the same in the notice it provides to the City pursuant to Section 2.4 hereof for initiation of a Development Project Phase.

**“Development Project Costs”** means any reasonable or necessary cost incurred or estimated to be incurred in furtherance of the Development Plan or a Development Project Phase.

**“Disadvantaged Business Enterprise Program”** shall mean the program described in Section Seven of Ordinance 67321 of the City of St. Louis.

**“Draw Schedule”** shall mean the Draw Schedule attached hereto as Exhibit Q and incorporated herein by reference.

**“EATs Account”** means the account to be created pursuant to Section 6.1 of this Agreement into which fifty percent (50%) of the Economic Activity Taxes shall be deposited in accordance with Section 99.957.4 of the MODESA Act.

**“Economic Activity Taxes”** or **“EATs”** shall have the meaning ascribed to such term in Section 99.918(12) of the MODESA Act, excluding such economic activity taxes that are not legally permitted to be deposited into the Special Allocation Fund pursuant to Section 99.957 and Section 99.918(12) of the MODESA Act. Economic Activity Taxes shall also include sales taxes levied by the CID and/or the TDD.

**“Effective Date”** means the date upon which this Agreement has been fully executed by the Developer and the City.

**“Element”** means with respect to any Development Project Phase, any of the Retail Element, the Office Element, the Parking Element, the Infrastructure Element, and the Residential Element, if any, of such Development Project Phase, collectively, the “Elements.”

**“Financing Ordinance”** means such ordinance (or ordinances, if necessary, as determined by Bond Counsel) to be adopted

by the Board of Aldermen, authorizing the issuance of the Bonds with respect to each Development Project Phase, the applicable Bond Indenture, and the pledge of the Available Revenues and Contractually Pledged City Revenues to the payment of such Bonds in accordance with the terms of this Agreement, and all related ordinances, resolutions and proceedings.

**“Financing Team”** means, collectively, the Underwriter (serving in a capacity as underwriter or placement agent consistent with applicable MSRB Regulations) and one or more financial advisors selected by the Issuer of the Bonds and approved by the City (which approval shall include the approval of the Comptroller as required by applicable law) in connection with the issuance of the Bonds.

**“Force Majeure”** means any event described in Section 11.2 hereof.

**“General Contractor”** means any contractor or construction manager engaged by or on behalf of Developer to perform or manage Construction in connection with a Development Project Phase.

**“Governmental Approvals”** means all plat approvals, re-zoning or other zoning changes, site or development plan approvals, conditional use permits, subdivisions or other subdivision approvals, variances, sign approvals, building permits, grading permits, occupancy permits, liquor licenses (to the extent possible), changes to the size of the Development Area or a Development Project Phase made in accordance with this Agreement, street closings, street vacations and dedications, business licenses and/or other similar approvals required for the implementation or operation of the Development Project and consistent with the Development Plan and this Agreement.

**“Guaranteed Maximum Price Contract”** means a contract for Construction entered into with a General Contractor where the scope of the work to be completed by the contractor is defined in drawings and specifications attached to and incorporated into the contract and a time schedule for the performance of the work and the guaranteed maximum price for the performance of such scope of work are set forth in the contract.

**“Guarantor”** means the Person who executes a Completion Guaranty with respect to any Development Project Phase or Element thereof, which Person shall be designated by the Developer with the consent of the City, such consent not to be unreasonably withheld, conditioned or delayed if the proposed guarantor meets the liquid net worth requirements set forth in Section 13 of the Completion Guaranty and is a Related Entity to either Cordish Family I, LLC, an Alaska limited liability company, or Ballpark Village Holding Company Investors, LLC, a Maryland limited liability company (as such limited liability companies are composed as of the date of the Completion Guaranty, as disclosed to the Financing Team).

**“Incentive Amount”** means the monetary obligations of the City as calculated pursuant to Section 3.1(c) hereof.

**“Infrastructure Element”** means the site improvements to be completed as part of a Development Project Phase, including but not limited to utility, street and streetscape improvements; demolition, clearing, and grading; and all other costs necessary to prepare the Development Area for construction of the other Elements in such Development Project Phase.

**“Initial Phase Bond Schedule”** means the schedule attached hereto as Exhibit P and incorporated herein by this reference.

**“Initial Development Project Phase”** means the initial Development Project Phase identified pursuant to Section 2.4 hereof.

**“Initial Development Phase Area”** means with respect to the Initial Development Project Phase, that portion of the Development Area on which the Initial Development Project Phase shall be constructed, as identified in the notice to be provided with respect to Section 2.4 hereof.

**“Issuance Costs”** means the amount of issuance costs actually and reasonably incurred with respect to the issuance of Bonds, including without limitation the reasonable and necessary fees and expenses of financial advisors and consultants, the outside attorneys of the Underwriters, the City, the Comptroller, SLDC and the Authority (including Issuer’s Counsel and Bond Counsel), the City’s reasonable administrative fees and expenses (including fees and costs of its planning consultants, the SLDC and the Authority, and consultants retained by Developer to assist SLDC, the Comptroller and the Authority in fulfilling their responsibilities with respect to the Development Plan), Underwriters’ discounts and fees, trustee’s fees, the costs of printing any Bonds and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any Bonds, provided, that no capitalized interest, debt service reserves, or offering statements are applicable to any Bonds issued with respect to the Initial Development Project Phase.

“**Issuer**” means the Industrial Development Authority of the City of St. Louis, Missouri.

“**Leasable Area**” means the net leasable square footage of space which is designed to be leased or leasable by Users for Users’ dedicated use and upon which basis such User pays rent, and such Leasable Area shall include, to the extent not included in the above, all exterior areas, such as outside seating areas adjacent to indoor Leasable Area and designed to be leased to Users in connection with their operations at the Development Project and for which User pays rent and indoor food court seating areas, if any, serving one or more Users.

“**Maximum Reimbursable Development Project Costs**” means the aggregate maximum amount of Reimbursable Development Project Costs for each Element of the applicable Development Project Phase equal to the Incentive Amount attributable to such Element in accordance with Section 3.1(c) hereof.

“**Minimum Essential Elements**” means (a) with respect to the Initial Development Project Phase, the minimum required Elements of the Initial Development Project Phase, consisting of not less than (1) 100,000 square feet of Leasable Area in the Retail Element; and (2) \$10,700,000 of expenditures for the Infrastructure Element; or (b) with respect to any Subsequent Development Project Phase, the minimum required elements of such Development Project Phase, which minimum required elements for each Subsequent Development Project Phase are set forth on the State MODESA Agreement.

“**MBE/WBE Compliance Officer**” means the City’s Department of MBE/WBE Certification and Compliance.

“**MBE/WBE Subcontractor’s List**” means the form of City of St. Louis MBE/WBE Subcontractor’s List published by the Board of Public Service of the City, such form being attached hereto as Exhibit S and incorporated herein by this reference.

“**MBE/WBE Utilization Statement**” means the form of City of St. Louis MBE/WBE Utilization Statement published by the Board of Public Service of the City, such form being attached hereto as Exhibit T and incorporated herein by this reference.

“**MODESA Act**” means the Missouri Downtown and Rural Economic Stimulus Act, Sections 99.915 through 99.1060 of the Revised Statutes of Missouri, as amended.

“**MODESA Financing Term**” shall mean the twenty-five (25) year period following adoption of the Approving Ordinance.

“**MODESA Local Revenues**” means: (1) Payments in Lieu of Taxes paid to the City Treasurer by the City Collector of Revenue during the term of the Development Plan and the Development Project, as defined in the MODESA Act, and (2) subject to annual appropriation by the Board of Aldermen, fifty percent (50%) of the total Economic Activity Taxes.

“**Mortgage**” means, with respect to the Property (or any portion thereof) and any improvements (or any portion thereof), a mortgage, deed of trust (whether securing a direct obligation or a guaranty of obligations in connection with a loan secured by an indemnity deed of trust or mortgage), deed to secure debt, security deed, indenture, sale-leaseback documents, lease-leaseback documents, or any other instrument securing payment of a debt to a Mortgagee that encumbers Developer’s interest in the Property and/or any improvements (or an interest therein or portion thereof). The term “Mortgage” shall not include a mortgage, deed of trust, deed to secure debt, security deed, indenture, sale-leaseback documents, lease-leaseback documents, fixture filings, or any other instrument securing payment of a debt of a User and/or any or all of its affiliates that encumbers the interests of a User of the Property and/or a Development Project Phase.

“**Mortgagee**” means any Acceptable Financial Institution which is: (a) the holder of, or beneficiary under, a Mortgage, (b) in the case of a sale-leaseback transaction, the owner of the reversionary estate, or (c) otherwise, the person to which all or any part of interest of Developer in the Property (or an interest therein) and/or the improvements (or an interest therein) is transferred as security under a Mortgage.

“**Municipal Revenues**” means all revenue from taxes, penalties and interest which are imposed by the City and are generated by economic activities within each Development Phase Area, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500 of the Revised Statutes of Missouri, as amended, or taxes levied for the purpose of public transportation pursuant to Section 94.660 of the Revised Statutes of Missouri, as amended, licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, in each case less the costs of collection thereof and excluding (i) any amount paid under protest until such protest is withdrawn or resolved against the taxpayer or (ii) any such amount received by the City which is the subject of a suit or other claim

communicated to the City which suit or claim challenges the collection of such sum.

**“New Markets Tax Credits”** means federal new markets tax credits pursuant to Section 45D of the Internal Revenue Code.

**“New State Revenues”** means “other net new revenues,” as such term is defined in Section 99.918(19) of the MODESA Act.

**“New State Revenues Account”** means the account to be created pursuant to Section 6.1 of this Agreement into which New State Revenues shall be deposited.

**“Nondiscrimination Laws”** means all federal, state and local laws, ordinances or regulations governing equal opportunity and nondiscrimination.

**“Office Element”** means the portion of a Development Project Phase to be developed as office space.

**“Operating Fund”** means the Operating Fund(s) anticipated to be established by the TDD and/or the CID for the purpose of paying on-going TDD Administrative Costs and CID Administrative Costs (subject to the limitation on each set forth herein), into which revenues of the TDD and CID shall be deposited in an amount identified in each annual budget approved by the TDD and the CID.

**“Parking Element”** means the portion of any Development Project Phase to be developed as parking.

**“Payments in Lieu of Taxes”** or **“PILOTs”** shall have the meaning ascribed to such term in Section 99.918(21) of the MODESA Act, excluding such payments in lieu of taxes that are not legally permitted to be deposited into the Special Allocation Fund pursuant to Section 99.957 of the MODESA Act.

**“Person”** means any individual, partnership, corporation, limited liability company, trust or other entity.

**“Phase Developer”** has the meaning given to such term in Section 11.1(b) hereof.

**“PILOTs Account”** means the account to be created pursuant to Section 6.1 of this Agreement into which Payments in Lieu of Taxes shall be deposited in accordance with Section 99.957.3 of the MODESA Act.

**“Preliminary Plans”** shall mean, with respect to each Development Project Phase, preliminary architectural plans which plans shall depict the Development Project Phase in reasonably sufficient detail for the City or its designee to determine the amounts of Leasable Area of Retail/Entertainment/Restaurant Space and/or office space, the number and location of structured parking spaces and the number of residential condominium and/or apartment units, if any, and the number of hotel rooms, if any, that are set forth on such Preliminary Plans. Preliminary Plans shall include the size of the footprint and the height of each building and a floor plan for each floor in each building (provided that the same floor plan may be used for multiple floors if Developer intends to construct each such floor in the same configuration and the Preliminary Plans so indicate) but shall exclude elevations. Preliminary Plans shall also include a site plan clearly indicating those portions of the Development Area upon which the Development Project Phase is proposed to be constructed (which Development Phase Area shall be separate and distinct from all other Development Phase Areas), and those portions of the Development Area that are being reserved for Subsequent Development Project Phases and clearly indicating those portions of the Development Area that are proposed for development as streets, sidewalks, other rights-of-way, and open spaces, and which such rights-of-way or other Elements, or portions thereof, if any, are proposed by the Developer for dedication to the City or other public entities. Preliminary Plans shall not include design development drawings or construction drawings, and no further level of detail shall be required in the Preliminary Plans other than as reasonably necessary for the City to reasonably determine the number of square feet of Retail/Entertainment/Restaurant Space and office space, parking spaces and residential condominium or apartment units reflected by the Preliminary Plans, and make such additional determinations as are specified in Section 5.2.

**“Priority Bonds”** means revenue bonds authorized and issued by the Issuer pursuant to and in accordance with Chapter 349 of the Revised Statutes of Missouri, as amended, the MODESA Act, this Agreement and the Financing Ordinance, to evidence the Issuer’s special limited obligation to repay Reimbursable Development Project Costs and/or Independent Costs (as defined in Section 6.7 hereof) incurred by the Developer for each Development Project Phase in accordance with the MODESA Act and/or this

Agreement, as provided in Section 4.3 hereof. Priority Bonds shall have a lien on Available Revenues and Contractually Pledged City Revenues generated within the Development Project Phase for which such Priority Bonds are issued which is superior to that of the Subordinate Bonds, if any, issued with respect to such Development Project Phase, and the Priority Bonds issued with respect to any other Development Project Phase.

**“Project Budget”** shall mean the budget for each Development Project Phase submitted by Developer and approved by the City pursuant to Section 5.2(a) hereof, as such budget may be amended from time to time prior to the issuance of the Bonds with respect to such Development Project Phase in accordance with Section 5.2(b) hereof. The Project Budget shall contain, at a minimum, budgeted costs with respect to each Element for: (i) Construction; (ii) Developer-Funded Tenant Inducements, (iii) Acquisition Costs, including a separate line item for the budgeted cost of acquiring property interests not owned by Developer or a Related Entity, if any; (iv) architecture and engineering fees; (v) permits, fees and taxes; (vi) Developer-Controlled Costs, including separate line items for costs of User Improvements, Developer Overhead/Fees, and Contingency; (vii) financing costs; and (viii) marketing and sales costs. The Project Budget shall also contain projected sources from tenant-backed debt (in an amount equal to the cost of User Improvements), private equity, private debt, and condominium unit sales proceeds, and any sufficient additional detail required to enable the calculations contemplated in this Agreement to be made.

**“Project Fund”** means the Project Fund created in the Bond Indenture.

**“Property”** means all interests in the real property (including without limitation all options held by third parties, fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) and existing improvements in the Development Area as set forth in the Development Plan.

**“Reimbursable Development Project Costs”** means those categories of Development Project Costs which are reimbursable pursuant to the MODESA Act, the TDD Act, and/or the CID Act.

**“Related Entity”** with respect to any Person (the “Specified Person”) means any Person (1) who directly or indirectly controls, or is controlled by, or is under common control with such Specified Person; (2) who directly or indirectly beneficially owns or controls fifty percent (50%) or more of the beneficial ownership (voting stock, general partnership interests, membership interests or otherwise) of such Specified Person; or (3) fifty percent (50%) or more of the beneficial ownership (voting stock, general partnership interests, membership interests or otherwise) of whom is owned, directly or indirectly, by the Specified Person. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, through the ownership of voting securities, partnership interests, membership interests or otherwise.

**“Relocation Plan”** means the relocation policy of the City as adopted for the Development Area in the Development Plan, which relocation policy was adopted by the City on December 20, 1991, pursuant to Ordinance No. 62481, together with the City’s Relocation Policy as set forth in Chapter 11.05 of the Revised Code of the City of St. Louis, and, in the case of any Property acquired via eminent domain, together with any relocation requirements set forth in the Revised Statutes of the State of Missouri related to the exercise of eminent domain or relocation, including but not limited to Chapter 523 thereof.

**“Residential Element”** means the portion of a Development Project Phase to be developed as for-sale or rental residential units.

**“Retail Element”** means the portion of a Development Project Phase to be developed as Retail/Entertainment/Restaurant Space for occupancy by Acceptable Tenants.

**“Retail/Entertainment/Restaurant Space”** means space occupied by businesses engaged in commercial or entertainment retail trade (including restaurants and museums), provided that no Additional Use shall constitute Retail/Entertainment/Restaurant Space.

**“Revenue Fund”** means the Revenue Fund created in the Bond Indenture.

**“SLDC”** means the St. Louis Development Corporation, a non-profit corporation organized and existing under the laws of the State of Missouri.

**“Special Allocation Fund”** means the Ballpark Village Special Allocation Fund, created by the Approving Ordinance in accordance with the MODESA Act, and including the accounts and sub-accounts for the Development Project and each Development

Project Phase into which MODESA Local Revenues, CID Revenues, TDD Revenues, New State Revenues and Dedicated Municipal Revenues are from time to time deposited in accordance with the MODESA Act, the CID Act, the TDD Act and this Agreement.

**“Springing TDD Sales Tax”** means a sales tax imposed by the TDD in the amount of one-half of one percent (1/2%), as provided further in Section 2.18 hereof.

**“Springing TDD Sales Tax Revenues”** shall mean revenues generated by the Springing TDD Sales Tax.

**“Springing TDD Sales Tax Revenues Sub-Account”** means the sub-account to be created as part of the TDD Revenues Account pursuant to Section 6.1 of this Agreement during the MODESA Financing Term and Section 6.7 of this Agreement during the ten years following the MODESA Financing Term, into which Springing TDD Sales Tax Revenues, if any, shall be deposited.

**“State MODESA Agreement”** means a written agreement between the City and the State of Missouri Department of Economic Development, as the same may be amended from time to time, evidencing the State’s approval of the Development Project and setting forth the terms and conditions of the MODESA Act funding. The parties agree that the State MODESA Agreement shall include (a) a description of the Minimum Essential Elements for each potential Subsequent Development Project Phase for purposes of this Agreement and (b) the commitment of New State Revenues from each potential Development Project Phase for repayment of the Bonds. Further, the parties agree that the description(s) and number of potential Development Project Phases to be used in calculating the Incentive Amount pursuant to this Agreement may differ from the description(s) and number of potential Development Project Phases for purposes of establishing the State’s commitment of New State Revenues, and that potential Development Project Phases may be combined into a single Development Project Phase at the Developer’s election.

**“State Development Project Costs”** shall include such costs related to the Development Plan, the Development Project or a Development Project Phase which are expended on public property, buildings, or rights-of-ways for public purposes to provide infrastructure to support for a development project, but such costs shall only be allowed as an initial expense which is included in the costs of a development plan or development project, except in circumstances of plan amendments approved by the Missouri Development Finance Board and the Department of Economic Development. Such infrastructure costs include, but are not limited to, the following:

- (a) Costs of studies, appraisals, surveys, plans, and specifications;
- (b) Professional service costs, including, but not limited to, architectural, engineering, legal, marketing, financial, planning, or special services;
- (c) Property assembly costs, including, but not limited to, acquisition of land and other property, real or personal, or rights or interests therein, demolition of buildings, and the clearing and grading of land;
- (d) Costs of rehabilitation, reconstruction, repair, or remodeling of existing public buildings and fixtures;
- (e) Costs of construction of public works or improvements;
- (f) Financing costs, including, but not limited to, all necessary expenses related to the issuance of obligations issued to finance all or any portion of the infrastructure costs of one or more development projects, and which may include capitalized interest on any such obligations and reasonable reserves related to any such obligations;
- (g) All or a portion of a taxing district’s capital costs resulting from any development project necessarily incurred or to be incurred in furtherance of the objectives of the development plan, to the extent the municipality by written agreement accepts and approves such infrastructure costs;
- (h) Payments to taxing districts on a pro rata basis to partially reimburse taxes diverted by approval of a development project;
- (i) State government costs, including, but not limited to, the reasonable costs incurred by the department of economic development, the department of revenue and the office of administration in evaluating an application for and administering state supplemental downtown development financing for a development project; and
- (j) Endowment of positions at an institution of higher education which has a designation as a Carnegie Research

I University including any campus of such university system, subject to the provisions of section 99.958.

**“Subordinate Bonds”** means, with respect to each Subsequent Development Project Phase only, revenue bonds subordinate to the Priority Bonds authorized and issued by the Issuer pursuant to and in accordance with Chapter 349 of the Missouri Revised Statutes, the MODESA Act, this Agreement and the Financing Ordinance, to evidence the Issuer’s special limited obligation to repay Reimbursable Development Project Costs incurred by the Developer in connection with the Subsequent Development Project Phase to which such Subordinate Bonds apply, and in accordance with the MODESA Act and this Agreement, as provided in Section 4.3(c) hereof.

**“Subsequent Development Project Phase”** means any Development Project Phase identified pursuant to Section 2.4 of this Agreement other than the Initial Development Project Phase.

**“Substantial Completion”** means that all Work to be performed in connection with a Development Project Phase, an Element, or portion thereof for which a Certificate of Substantial Completion is sought, is substantially complete (as set forth in Section 2.10 hereof), as evidenced by an architect’s or owner representative’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), with such Certificate further evidencing that such Development Project Phase or applicable portion thereof is sufficiently complete to be occupied for its intended use, except for any User Improvements. Substantial Completion shall be deemed achieved even though punch list items (such as completion of sidewalks, final asphalt topping and insubstantial construction work) and landscaping of the Work or such portion thereof for which a Certificate of Substantial Completion is sought are substantially, but not fully, completed. Any improvements by a User for its owned, leased and/or licensed premises, whether to be constructed by Developer, such User or a third party, shall not be deemed part of any Work required for the Certificate of Substantial Completion.

**“TDD”** means the Ballpark Village Transportation Development District created and operated pursuant to Section 2.11 of this Agreement.

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

**“TDD Administrative Costs”** means actual, reasonable and necessary expenses of the TDD for administration, supervision and inspection incurred in connection with the Transportation Project and paid initially by the Developer in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) per year, subject to reimbursement in accordance with the Agreement and, upon the first deposit of TDD Revenues into the Operating Fund, paid by the TDD out of the Operating Fund, which expenses include without limitation the following: (a) reimbursement of the board of directors of the TDD for actual, reasonable and necessary expenditures in the performance of duties on behalf of the TDD pursuant to Section 238.222 of the TDD Act; (b) actual, reasonable and necessary expenses incurred in the exercise of the contractual powers of the TDD pursuant to Section 238.250 of the TDD Act; (c) reimbursement of the petitioners and the City for the reasonable and necessary costs of filing and defending the petition to establish the TDD and all publication and incidental costs incurred in obtaining the Court’s certification of the petition pursuant to Section 238.217 of the TDD Act; (d) the cost of insurance obtained by the TDD pursuant to Section 238.255 of the TDD Act; (e) the cost of any audit by the state auditor pursuant to Section 238.272 of the TDD Act; (f) actual, reasonable, and necessary expenses incurred by the TDD in the exercise of the powers granted under Section 238.252 of the TDD Act, including compensation of contractors, suits by or against the TDD, and disbursement of funds for the TDD’s activities; and (g) actual, reasonable and necessary expenses incurred by the TDD in connection with abolishment of the TDD in accordance with Section 238.275 of the TDD Act.

**“TDD Garage Payment”** shall have the meaning set forth in Exhibit L hereto.

**“TDD Garage Ground Sublease”** means that certain ground lease which may be entered into between Developer and the TDD, whereby Developer subleases to the TDD a portion of the Property upon which the TDD shall cause to be constructed a structured parking garage as part of a Subsequent Development Project Phase, as described therein.

**“TDD Phase I Ground Sublease”** means that certain ground lease to be entered into between Developer and the TDD, whereby Developer subleases to the TDD a portion of the Property upon which the TDD shall cause to be constructed a portion of the Initial Development Project Phase, as described therein.

**“TDD Revenues”** means revenues of the TDD from the Springing TDD Sales Tax, if any (not including the “top-half” portion thereof which is captured as EATs during the MODESA Financing Term), and the TDD Ticket Tax, if any, plus any other

tax or assessment imposed in accordance with the TDD Act after deducting the cost of collection of one percent (1%) of the total amount collected, less any such revenues transferred to the Operating Fund to pay TDD Administrative Costs. TDD Revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer or (ii) any sum received by the TDD that is the subject of a suit or other claim communicated to the TDD, which suit or claim challenges the collection of such sum.

**“TDD Revenues Account”** means the account to be created pursuant to Section 6.1 of this Agreement during the MODESA Financing Term and, during the ten years following the MODESA Financing Term, the account to be created pursuant to Section 6.7 of this Agreement, into which TDD Revenues shall be deposited, including the Springing TDD Sales Tax Revenues Sub-Account.

**“TDD Ticket Tax”** shall mean a tax or special assessment which may be imposed by the TDD in accordance with the TDD Act and Section 2.11 and Section 2.17 of this Agreement, in an amount equal to one dollar (\$1) per ticket sold on all tickets sold in one or more of the Development Phase Areas for admission to events held in common areas or entertainment venues within the applicable Development Phase Area, as defined in the Developer’s reasonable discretion, as a special assessment which shall be authorized pursuant to Section 238.230 of the TDD Act.

**“TDD Ticket Tax Revenues”** shall mean revenues generated by the TDD Ticket Tax.

**“TDD Ticket Tax Revenues Account”** means the account to be created pursuant to Section 6.1 of this Agreement, during the MODESA Financing Term, and during the ten years following the MODESA Financing Term, the account to be created pursuant to Section 6.7 of this Agreement into which revenues generated by the TDD Ticket Tax, if any, shall be deposited.

**“Total Cost”** means, with respect to each Development Project Phase, the budgeted cost to complete such Development Project Phase pursuant to the Project Budget for such Development Project Phase.

**“Transportation Project”** means that portion of a Development Project Phase necessary to complete such Development Project Phase, which is eligible to be financed or reimbursed by the TDD pursuant to the TDD Act.

**“Underwriter”** means the underwriter(s) or placement agent(s) appointed by the Issuer in connection with the issuance of any Bonds. The parties agree that Stifel, Nicolaus & Co., Inc. shall initially be the lead Underwriter.

**“User”** means any tenant, licensee or other occupant of a Development Project Phase or any owner of a condominium (either residential or commercial) located in a Development Project Phase.

**“User Improvement Costs”** means the costs of User Improvements, not to exceed the amount set forth for User Improvements in the Project Budget for the Retail Element of any Development Project Phase, and including additional cost options selected by Users, which costs shall be paid by Users and shall not be includable as part of the Construction costs set forth in the Project Budget.

**“User Improvements”** means any tenant improvements, buyer selections or other work done by or on behalf of a User to prepare space in a Development Project Phase for such User’s use or occupancy which are not Developer-Funded Tenant Improvements.

**“Work”** means all work to be performed with respect to the Development Project and each applicable Development Project Phase thereof (as the case may be), necessary to prepare the Development Area (or Development Phase Area within the Development Area) and to construct or cause the construction and Substantial Completion of the Development Project or a Development Project Phase identified by Developer pursuant to Section 2.4 hereof as specifically described in the Development Plan and this Agreement, including, but not limited to: (1) the Transportation Project; (2) the CID Project; (3) demolition and removal of all existing buildings, structures and other improvements within the Development Area or Development Phase Area; (4) site preparation, including clearing and grading of the Development Area or Development Phase Area; (5) construction of the residential and commercial buildings and structures, parking structures, and screening and site landscaping; (6) construction, reconstruction, renovation and/or rehabilitation of related infrastructure and/or improvements, including without limitation surrounding roads, sidewalks, utilities and installation of lighting; (7) environmental remediation; and (8) all other Construction described in the Development Plan and this Agreement, or reasonably necessary to effectuate the intent of this Agreement; provided, however, User Improvements shall not be deemed part of the Work.

**Section 1.2 Developer Designation.**

The City and Developer acknowledge that the Development Area has been determined to be a “blighted area” within the meaning of the MODESA Act. The City hereby selects the Developer to perform or cause the performance of the Work.

**Section 1.3 Developer to Advance Costs.**

The Developer agrees to advance all Development Project Costs as necessary to complete the Work for each Development Project Phase in accordance with the schedule set forth in Section 2.5, subject to Closing having occurred with respect to such Development Project Phase and the City and the Bond Trustee having timely complied with their respective material obligations hereunder and under the Bond Indenture at the time of such advance. Additionally, and not by way of limitation:

(a) the City acknowledges payment by the Developer of a Five Thousand Dollar and no/100 (\$5,000.00) MODESA Application Fee;

(b) the City acknowledges that, prior to the execution of this Agreement, the Developer paid to the City the sum of Seventy Five Thousand Dollars and no/100 (\$75,000.00), which monies the City will pay one half to the Comptroller and one half to the SLDC to reimburse the Comptroller and the SLDC for their reasonable administrative costs in reviewing the Development Plan and the Development Proposal;

(c) the Developer shall, concurrently with the issuance of any series of Bonds and solely from Bond Proceeds, pay to the City a fee equal to 0.2% of the portion of such series of Bonds supported by MODESA Local Revenues and CID Revenues, for the Comptroller’s reasonable administrative costs in connection with the issuance of such Bonds;

(d) the Developer shall, concurrently with the issuance of any series of Bonds and solely from Bond Proceeds, pay to the Issuer at the time of issuance such amount equal to the Issuer’s reasonable Issuance Costs of such Bonds, including a fee consistent with Issuer’s customary fee for such transactions; and

(e) any amounts paid to the City, the Comptroller or the SLDC pursuant to subparts (a) and (b) of this Section 1.3 shall represent Reimbursable Development Project Costs to be reimbursed exclusively from the Bond Proceeds as provided in and subject to the provisions of this Agreement.

**ARTICLE II  
CONSTRUCTION OF DEVELOPMENT PROJECT****Section 2.1 Acquisition of Property.**

Developer represents that, as of the Effective Date, the Developer or a Related Entity is the fee owner of all property listed on Exhibit A attached hereto, except for certain private easements and utility easements. The Developer will negotiate in good faith prior to Closing for the Initial Development Project Phase to acquire any private easements and any utility easements necessary for the completion of the Development Project by purchase.

**Section 2.2 Condemnation.**

With respect to any private easements and any utility easements necessary for the completion of the Development Project and not acquired by negotiated purchase, the Developer shall notify the City, in writing, that the City should initiate eminent domain proceedings to acquire such parcel or parcels of the Property or interest therein at the sole expense of the Developer; provided that the City shall not and will not acquire title to any such property by condemnation or eminent domain (through payment of a commissioners’ award into any court registry or otherwise) unless such property is to be used for a public use, as such term is used in Article XXI of the Charter of the City of St. Louis, and until such time as the Developer provides a written consent to proceed with such proceeding and a written agreement to pay all reasonable costs associated with such acquisition as and when requested by the City in connection with such acquisition, which consent and agreement shall be in form and substance acceptable to the City. The City shall convey legal title to any real property acquired in its name by condemnation following receipt of a written consent to do so concurrently with City’s receipt of Developer’s payment for all reasonable costs associated with such acquisition. Developer shall notify the City to initiate eminent domain proceedings in the manner set forth below.

(a) Prior to requesting the initiation of condemnation proceedings with respect to any parcel of the Property, the Developer shall:

(i) Make a written request for the initiation of condemnation proceedings not later than fifteen (15) days prior thereto. Said request shall include a legal description of the parcel or parcels of Property to be taken by such proceedings, together with all other information reasonably required by the City to proceed.

(ii) Assist the City in satisfying all jurisdictional prerequisites to the initiation of eminent domain proceedings and in complying with all applicable laws, rules and regulations relating to eminent domain proceedings; Developer hereby agrees that it will negotiate in good faith for the purchase of any parcels as to which Developer shall request the initiation of condemnation proceedings in compliance with all applicable laws, rules and regulations.

(iii) With respect to any interest in any parcel or parcels of Property proposed to be acquired by eminent domain, obtain (at the Developer's expense) and deliver to the City a recent appraisal, prepared by an independent, state-licensed or state-certified, third party MAI appraiser reasonably acceptable to the City, and make an offer (as verified by the City) of at least the appraised value to the owner of such interest in any parcel or parcels of Property.

(iv) Make available to the City any documentation relating to Developer's reasonable and good faith efforts to acquire by negotiation the parcel or parcels of Property to be part of the proceeding.

(v) Deliver a form of final offer letter for the City.

(b) With respect to any request for initiation of condemnation proceedings, the City shall approve or reject such request within fifteen (15) days after receiving from the Developer all information required above, provided that the City shall be required to approve any such request only if such information demonstrates to the City's reasonable satisfaction (i) the existence of facts, circumstances or claims with respect to the parcel or parcels that are the subject of such condemnation which, taken individually or in the aggregate, have a material adverse effect on the value of such parcel or parcels, the feasibility of the Work, or, taken as a whole, the viability of the Development Project, and (ii) the Developer made reasonable and good faith efforts to acquire such parcel or parcels by negotiation (equal to at least the appraised value of such property) based upon such facts, circumstances or claims and complied with all applicable laws with respect to such efforts prior to such request to the City. The provisions of this paragraph shall be solely for the benefit of the City and are not intended by the parties to be for the benefit of or enforceable by anyone other than the parties to this Agreement.

(c) The City shall initiate condemnation proceedings (such initiation to constitute the issuance of the first notices required under applicable law) promptly after the request by the Developer and in any event within fifteen (15) days from the date of the City's receipt of the Developer's request, provided that the Developer has provided the City with all of the information, documents and agreements required by Section 2.2(a) of this Agreement. Except as otherwise provided herein, the City shall control all condemnation proceedings, including the selection of attorneys, appraisers and other professionals. The City shall diligently prosecute all such proceedings, provided that the Developer has made payments to the City related to the cost of the proceedings as and when requested by the City. The City agrees to take all necessary or other reasonable action in such proceedings and to execute all pleadings and other documents which may be reasonably necessary and/or required during the prosecution of such proceedings. During the condemnation proceedings, the City agrees to make available for the Developer's inspection copies of all pleadings and other documents filed or prepared in conjunction with the prosecution of the condemnation proceedings, and to consult with the Developer regarding recommendations by counsel to the City as to the fair settlement value of each such case. Advice and consultation between the City and the Developer shall continue throughout such proceedings. The Developer may, upon initiation of the condemnation proceedings, designate in writing to the City an individual who, together with the Developer, is authorized to represent the Developer in consultations with the City and its counsel. The Developer, acting through any such designated representative, shall have the right to inspect and to receive copies of any documentation relating to the efforts to acquire the parcel or parcels of the Property which are part of the proceedings and to make suggestions based upon any appraisals regarding the price or settlement to be paid therefor.

(d) Without limiting the generality of the City's rights in connection with such condemnation proceedings, it is acknowledged that (i) the City may conduct such due diligence as the City deems appropriate, (ii) the City may prepare and direct the filing of motions providing for the inspection of any parcel subject to the condemnation proceedings, (iii) the City may prepare and direct the filing of exceptions to any commissioners' report, and (iv) the City may take such other action and prepare and direct the filing of such other motions and pleadings as the City deems appropriate.

(e) Within ninety (90) days after any commissioners' award, the Developer shall either: (i) at any time prior to the Closing, notify the City that it is terminating this Agreement; or (ii) pay the amount of any commissioners' award issued in conjunction with any such condemnation proceeding either directly to the Clerk of the Circuit Court of the City of St. Louis or to the City for payment of such commissioners' award by the City; or (iii) request that the City terminate any condemnation proceeding to effect a settlement of any such proceeding, in which case this Agreement shall continue and the City and the Developer shall continue to diligently prosecute any other condemnation proceedings pending at such time and shall cooperate to identify alternative means to accomplish the Work without acquiring that portion of the Property that was the subject of the terminated condemnation proceeding. Developer's inability to acquire any property at a price acceptable to Developer shall not relieve Developer of Developer's obligation to complete the Development Project.

(f) From time to time following the initiation of any proceedings for the exercise of the City's power of eminent domain pursuant to Section 2.2 of this Agreement and payment of such commissioners' award by the Developer to the City, but before payment by the City on behalf of the Developer of any commissioners' award and acquisition of legal title to any such parcel or parcels by the City on behalf of the Developer, the Developer shall, within fifteen (15) days following request by the City, provide the City with an irrevocable letter or letters of credit naming the City as beneficiary, or such other bond or collateral as the City may accept in its reasonable discretion, in an amount equal to one hundred twenty-five percent (125%) of the commissioners' awards for all parcels which have been taken by eminent domain for which such commissioners' award is not yet final (a "Pending Award"). The letter or letters of credit or other bond or security instrument shall be in form and substance reasonably acceptable to the City and, once issued for any such Pending Award, shall remain outstanding until such time as each such Pending Award has been liquidated, settled, compromised or otherwise resolved and paid. Developer shall increase the amount of the letter of credit or other bond or security instrument upon request by the City for reasonable cause. Notwithstanding anything to the contrary herein, the Developer covenants that it will indemnify and hold the City harmless in the event that the sum of all jury awards exceeds the sum of all commissioners' awards for all parcels, or interests therein, which have been taken by eminent domain.

(g) If the Developer elects to abandon condemnation proceedings instituted under this Agreement following entry of a commissioners' award and any such condemnation proceeding is abandoned thereafter by the City, the Developer shall indemnify and hold the City harmless of and from any statutory award of interest or any other payment the City is compelled by the Court to pay pursuant to Section 523.045 of the Revised Statutes of Missouri, as amended.

(h) If the Developer has defaulted under this Agreement or under the written agreement required by the first paragraph of this Section 2.2, and Developer has failed to cure such default in accordance with the terms of ARTICLE IX hereof, the City may elect to terminate all pending condemnation proceedings or may elect to continue condemnation proceedings at the City's sole risk and expense, including any resulting commissioners' or jury awards. In either event, the City shall have no obligation to reimburse the Developer for any costs incurred by the Developer in connection with such condemnation, and the City shall be entitled to recover from the Developer all reasonable costs incurred by the City in any condemnation the City undertakes pursuant to this Agreement. If the City elects to continue condemnation proceedings, the City shall have the further right to receive and to utilize at no cost to the City all reports, surveys, appraisals and work product obtained by the Developer or on behalf of the Developer in the acquisition of such real property for which the City proceeds to acquire by condemnation or negotiated purchase.

(i) The Developer shall indemnify and hold the City harmless from and against any and all costs, claims, suits, damages, expenses or liabilities, including court costs and reasonable attorneys' fees, arising out of (1) any eminent domain action filed pursuant to this Agreement, including any action which is abandoned, but excepting therefrom any claim, suit, damage, expense, or liability caused by any intentional or wanton misconduct by the City, or any of its officials, employees, agents or representatives, and any condemnation proceeding continued by the City under Section 2.2(c) of this Agreement; (2) the operation of all or any part of the Property, or the condition of the Property, including without limitation, any environmental cost or liability; and (3) negotiations, inspections, acquisitions, preparations, construction, leasing, operations and other activities of Developer or its agents in connection with or relating to the Work.

(j) The Developer acknowledges, agrees and affirms its obligation to pay any and all reasonable costs and fees, including but not limited to attorneys fees, associated in any way with the proposed condemnation contemplated in this Section 2.2.

(k) The Developer hereby acknowledges, agrees and affirms that the failure to acquire any property by condemnation shall not in any way relieve Developer of its obligation to complete the Development Project as provided herein.

(l) Notwithstanding anything herein to the contrary, the condemnation provided for in this Section 2.2 will be conducted in accordance with Sections 523.001 to 523.286 of the Missouri Statutes.

(m) Notwithstanding anything herein to the contrary, the parties hereto agree that the condemnation provided for in this Section 2.2 shall be carried out in accordance with and limited to that condemnation available under the authority of Article XXI of the City Charter.

**Section 2.3 Relocation.**

The Developer shall identify any Displaced Person (as defined in Ordinance No. 62481 of the City and/or in Chapter 11.05 of the Revised Code of the City of St. Louis, and/or in any applicable state law) that is entitled to relocation payments or relocation assistance under the Relocation Plan or pursuant to any applicable state law. The Developer, under the supervision of the City, shall coordinate such relocation payments and relocation assistance in accordance with the Relocation Plan and in any applicable state law, and 100% of the costs of relocation of any Displaced Person shall be borne by Developer, provided, however, that any such relocation cost shall be a Reimbursable Development Project Cost.

**Section 2.4 Identification of Development Project Phases.**

Developer may elect to initiate any Development Project Phase described in the Development Plan by providing a written notice to the City in the form attached hereto as Exhibit D, which shall identify the Development Phase Area upon which such Development Project Phase is located. Upon the City's approval of the Preliminary Plans and Project Budget submitted by Developer with respect to a proposed Development Project Phase in accordance with Section 5.2 hereof, the project phase described in such Preliminary Plans shall be an approved "Development Project Phase" for purposes of this Agreement.

**Section 2.5 Developer to Construct the Work in Accordance with Schedule for Completion of the Work.**

Subject to (a) Force Majeure as defined in Section 11.2 of this Agreement, (b) the City complying with its obligations hereunder, (c) the Closing occurring hereunder for the applicable Development Project Phase, and (d) with respect to Subsequent Development Project Phases, the disbursement of Bond Proceeds in accordance with the terms hereof, Developer shall cause the Commencement of Construction of the Work for each Development Project Phase within: (x) with respect to the Initial Development Project Phase, one hundred and twenty (120) days following the Closing with respect to such Initial Development Project Phase, and (y) with respect to each Subsequent Development Project Phase, nine (9) months following the Closing with respect to such Subsequent Development Project Phase; provided, however, such deadline shall be extended for any period of time between the date Developer files a request for the building permits necessary to complete construction of the foundation(s) for all of the building(s) to be constructed on at least one (1) city block as part of an Element of such Development Project Phase and the date that the City first provides Developer notice that all of such permits are ready to be issued and picked up if, and only if: (a) Developer has scheduled and conducted a review of the preliminary plans with the City before commencing the preparation of design development or construction documents; (b) Developer, to the best of its knowledge and in good faith, has, no later than two (2) weeks prior to the deadline for Commencement of Construction for such Development Project Phase, submitted one or more application(s) for such permits which it believes in good faith are complete and contain all information and materials required in connection with such application(s) under the City's applicable laws and procedures therefor, and has responded in good faith to any requests for additional information made within such two (2) week period by the applicable City department, and (c) made payment for such permit(s). Such commencement shall be evidenced by Developer's delivery to the City of a Certificate of Commencement of Construction in the form attached hereto as Exhibit F for each Development Project Phase, which Certificate shall evidence that: (i) Developer has secured one or more Guaranteed Maximum Price Contracts with General Contractors of national or regional standing which, taken together, encompass substantially all of the work necessary to complete the Construction of such Development Project Phase, exclusive of Developer-Funded Tenant Inducements and User Improvement Costs; (ii) Developer, to the best of its knowledge and in good faith, has submitted to the appropriate City departments all drawings and other documents necessary for the issuance of the building and other permits necessary for the commencement of construction of such Development Project Phase in accordance with applicable federal, state and local laws and (iii) that the quantities of Leasable Area or other quantifiable elements of the Development Project Phase meet or exceed the Minimum Essential Elements for such Development Project Phase. Subject to Force Majeure as defined in Section 11.2 of this Agreement, the Developer shall cause Substantial Completion of each Development Project Phase to occur within three (3) years following Commencement of Construction of such Development Project Phase. Developer further agrees to use commercially reasonable efforts to cause Substantial Completion of each Development Project Phase to occur within two (2) years after Closing of the Bonds issued with respect to such Development Project Phase. Developer shall submit a Certificate of Substantial Completion as soon as practicable following Substantial Completion of a Development Project Phase, and may submit separate Certificates of Substantial Completion for each Element of such Development Project Phase, but the City's or City designee's acceptance of a Certificate of Substantial Completion with respect to an Element shall not relieve Developer of Developer's responsibility to complete the entire Development Project Phase within three (3) years of Commencement of Construction of such Development Project Phase (subject to Force Majeure), and the City shall not approve the final Certificate of

Substantial Completion for a Development Project Phase until all Elements of the Development Project Phase have achieved Substantial Completion. After the Substantial Completion of a Development Project Phase, Developer shall use due diligence to cause punch list items and landscaping to be completed within a reasonable time. Prior to the Commencement of Construction of the Work with respect to a Development Project Phase, the Developer shall obtain or shall require that any of its contractors obtain workers' compensation, comprehensive public liability and builder's risk insurance coverage in amounts customary in the industry for similar type projects. The Developer shall require that such insurance be maintained by any of its contractors for the duration of the construction of the portion of the Work with respect to such Development Project Phase. To the extent that laws pertaining to prevailing wages and hours apply to any portion of the Work with respect to such Development Project Phase, the Developer agrees to take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws. Notwithstanding the foregoing, the City, through the Board of Estimate and Apportionment, upon the request of Developer for an extension of such period of time that Developer reasonably requires to achieve Commencement of Construction or Substantial Completion of the Development Project Phase, as applicable, shall use its best efforts to cause the extension of any or all of the time frames for Commencement of Construction or Substantial Completion of such Development Project Phase contained herein in the event that Developer, on the date of such request for an extension, has, in the judgment of the Board of Estimate and Apportionment (as determined by the affirmative vote of the majority of such Board), demonstrated diligent progress toward the Commencement of Construction or Substantial Completion of such Development Project Phase, as applicable. Any extension period shall not exceed one (1) year following the applicable deadline for Commencement of Construction or Substantial Completion set forth in this Section 2.5, subject to the provisions of this Agreement concerning Force Majeure. At the request of Developer, any extensions of time granted pursuant hereto shall be in writing and in such form as will enable it to be recorded among the appropriate land records.

#### **Section 2.6 Leasing to Acceptable Tenants.**

Developer shall use good faith efforts to lease all of the Leasable Area in the Retail/Entertainment/Restaurant Space to Acceptable Tenants as defined herein. With respect to each Subsequent Development Project Phase, Developer intends to lease no more than two-thirds of such space to entertainment and restaurant tenants, but Developer's failure to meet such goal shall not constitute a default hereunder. Developer shall not lease any Retail/Entertainment/Restaurant Space to any entity other than an Acceptable Tenant as defined herein. Notwithstanding the foregoing, Developer may lease space to a bank, post office or other entity which does not generate sales taxes, but the area occupied by such entities shall not count as Retail/Entertainment/Restaurant Space for purposes of ascertaining Developer's fulfillment of the Minimum Essential Elements, and no leases with any such entities shall be included in calculating Pre-Leased area for purposes of the Draw Schedule with respect to a Subsequent Development Project Phase. Notwithstanding the foregoing, Developer may also lease space to one or more tax-exempt museums or similar operations that issue tickets and charge for admission, provided, however, that space leased to such entities in excess of fifteen thousand (15,000) square feet in the aggregate shall not count as Retail/Entertainment/Restaurant Space for purposes of ascertaining Developer's fulfillment of the Minimum Essential Elements, and such excess space shall not be included in calculating Pre-Leased area for purposes of the Draw Schedule, unless the City expressly approves such excess space for such purposes in writing. Developer may also lease space to museums or similar operations that issue tickets and charge for admission and that are not tax-exempt, but for any space leased to tax-exempt or non-tax-exempt museums or similar operations, such space in excess of forty thousand (40,000) square feet in the aggregate shall not count as Retail/Entertainment/Restaurant Space for purposes of ascertaining Developer's fulfillment of the Minimum Essential Elements, and such excess space shall not be included in calculating Pre-Leased area for purposes of the Draw Schedule, unless the City expressly approves such excess space for such purposes in writing. Notwithstanding anything to the contrary contained in this Section 2.6, to the extent that a tax-exempt or non-tax exempt museum contains a retail store and/or food and beverage service, the square footage of such retail store and food and beverage service (including support areas) shall not be considered a "museum" for purposes of applying the provisions of this Section 2.6, but instead shall be Leasable Area of Retail/Entertainment/Restaurant Space, unless any sales in such retail store and/or food or beverage service are exempt from retail sales tax, in which case such retail store shall be considered a "museum" for purposes of this Agreement. Following the termination of any initial lease of space in the Development Project in accordance with the terms of this Agreement, Developer shall have the right to lease or sell such space to any User without regard to the terms of this Agreement. Notwithstanding anything in this Section 2.6 to the contrary, Developer may elect to market any portion of the Development Project for lease or for sale as a condominium unit, and the sale of any portion of the Development Project to an Acceptable Tenant shall constitute satisfaction of Developer's obligations under the Draw Schedule with respect to such space. Developer shall use good faith efforts to lease all of the Leasable Area in the Office Element to Acceptable Tenants. Developer hereby represents and warrants that it has entered into binding leases with respect to eighty percent (80%) of the Leasable Area constituting the Minimum Essential Elements of the Initial Development Project Phase.

#### **Section 2.7 Governmental Approvals.**

The City agrees to employ reasonable and good faith efforts to cooperate with the Developer and Users and to process and

timely consider and respond to all applications for the Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State of Missouri. To the extent that Developer requests changes to the Development Plan and such changes are approved by the City pursuant to the terms of this Agreement and such changes are consistent with the requirements of this Agreement, the City shall employ reasonable and good faith efforts to cooperate and assist Developer in causing such changes to the Development Plan to be approved, but City in no way represents that such approvals will be obtained. Additional details as to specific Governmental Approvals requested may be provided by the Developer prior to Closing.

### **Section 2.8 Construction Plans.**

All Construction Plans for a Development Project Phase shall be prepared by one or more professional engineers and/or architects licensed to practice in the State of Missouri as required by applicable state and local laws and the preparation of the Construction Plans and all construction practices and procedures with respect to the Work for a Development Project Phase shall be in conformity with all applicable state and local laws, ordinances and regulations and shall include all of such Development Project Phase, as it may be modified pursuant hereto.

### **Section 2.9 Local and Minority Participation Goals.**

(a) The Developer shall comply with the requirements of the City's DESA Disadvantaged Business Enterprise Program as set forth in Section 7 of Ordinance 67321 of the City of St. Louis.

(b) The Developer intends to use union construction trades in its performance of the Work with respect to the Development Project.

(c) The Developer shall, and shall require in each contract entered into with any General Contractor with respect to any Development Project Phase or any Element thereof, that such Persons shall: (i) not discriminate against any employee or applicant for employment on any basis prohibited by any Nondiscrimination Law, (ii) provide equal opportunity in all employment practices, (iii) comply with all other applicable Nondiscrimination Law and executive orders regarding contracting, hiring and employment and (iv) provide to City such information, reports and other data in Developer's possession as may be reasonably requested by City to permit City to monitor and review compliance with the equal opportunity employment provisions contained in this Section 2.9.

(d) Prior to any disbursement from the Project Fund, Developer shall have presented to City, and the MBE/WBE Compliance Officer shall have approved, an MBE/WBE Utilization Statement, including the reasonable payment provisions of the construction contract, indicating Developer's compliance with the provisions of this Section 2.9 and the requirements incorporated herein.

(e) Developer shall comply with the Equal Opportunity and Nondiscrimination Guidelines attached hereto as Exhibit J.

(f) Developer shall work with the St. Louis Agency for Training and Employment ("SLATE") to establish a recruitment and training program for minority City residents for employment in the operation of each completed Development Project Phase, and shall use good faith efforts to ensure that all business tenants of the Development Project seek referrals from SLATE of minorities for all available job openings. Developer shall establish an Office of Training and Employment with the express purpose of maximizing employment opportunities for City residents, particularly the historically disadvantaged population, which Office shall be coordinated by a senior executive of Developer, who shall establish reasonable goals for City resident and historically disadvantaged participation levels for the workforce in each completed Development Project Phase.

### **Section 2.10 City Review and Approval of Certificates.**

Upon submission by Developer to the City and/or its designee of a Certificate of Commencement of Construction or a Certificate of Substantial Completion with respect to any Development Project Phase or any portion thereof, each of the Mayor or his designee shall, within ten (10) Business Days following delivery of any such Certificate of Commencement of Construction or within thirty (30) days following delivery of any such Certificate of Substantial Completion, carry out such inspections as he or she deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate. Each Certificate shall be deemed accepted by the City and/or its designee unless, within such ten (10) Business Day or thirty (30) day period following delivery of the Certificate, as applicable, the Mayor or his designee furnishes the Developer with specific written objections to the status of the Work for which such Certificate is sought, describing such objections and the measures required to correct such

objections in reasonable detail. In the case where the Mayor or his designee, within such ten (10) Business Day or thirty (30) day period following delivery of the Certificate, as applicable, furnishes the Developer with specific written objections to the status of the Work for which the Certificate is sought, the Developer shall have such amount of time as is reasonably necessary to address such objections and when addressed shall re-submit the Certificate to the Mayor or his designee in accordance with this Section. Upon acceptance of the Certificate by the Mayor or his designee, or upon the lapse of such ten (10) Business Day or thirty (30) day period following delivery of the Certificate, as applicable, to the Mayor or his designee without any written objections thereto, the City and/or its designee and Developer shall execute the Certificate. In the case of a Certificate of Substantial Completion, Developer may record such Certificate with the City's Recorder of Deeds, and the same shall constitute irrefutable evidence that Developer has satisfied all of its obligations and covenants to construct the Development Project Phase, or the Element thereof for which the Certificate of Substantial Completion is sought, in accordance with the Development Plan and this Agreement. If Developer requests the acceptance of the Certificate of Substantial Completion from the City for the Work or any portion thereof under the circumstances that punch list items (such as completion of sidewalks, final asphalt topping and insubstantial construction work) and landscaping are not fully completed, Developer shall be granted such Certificate of Substantial Completion provided that Developer has complied with all other requirements of this Section, provided, however, that the final Certificate of Substantial Completion for a Development Project Phase shall not be approved or deemed approved until the entire Development Project Phase, including all site improvements, is substantially complete.

### **Section 2.11 Transportation Development District.**

The Developer shall petition or shall have petitioned the Circuit Court of the City of St. Louis, Missouri, for the creation of the TDD pursuant to the TDD Act, to be known as the Ballpark Village Transportation Development District. The TDD shall be created solely for the purpose of providing tax revenues in addition to other Available Revenues for funding the costs of a Transportation Project comprising a portion of the Reimbursable Development Project Costs. The TDD shall be created and shall operate in accordance with the following:

- (a) The TDD's boundaries shall consist of the Development Area.
- (b) Developer hereby agrees to take all actions necessary to cause the TDD to impose the Springing TDD Sales Tax if required pursuant to Section 2.18 and the TDD Ticket Tax in accordance with the requirements of Section 2.17 hereof, and the TDD Revenues from such Springing TDD Sales Tax, TDD Ticket Tax, and/or any other tax or assessment authorized under the TDD Act and imposed by the TDD, if any, shall be applied to debt service on the Bonds issued with respect to the Development Project Phase in which such revenues are generated (or any other series of Bonds as provided in Section 4.7, Section 6.5 or Section 6.6 hereof) to fund that portion of the Development Project Costs paid or incurred in connection with the Transportation Project.
- (c) The TDD's board of directors shall consist of seven members; to the extent permitted by law, the Developer agrees that it shall designate one individual designated by the Mayor of the City, and one individual designated by the Comptroller of the City, and one individual designated by the City Parking Commissioner, as the Developer's legally authorized representatives (as such term is used in the TDD Act) for the purpose of each individual holding the office of director on the TDD's board of directors. The Developer agrees, while the Developer or a Related Entity owns the majority of real property within the boundaries of the TDD, to cause such designated individuals to be elected to the TDD's board of directors.
- (d) (i) All Springing TDD Sales Tax Revenues shall be deposited in the Springing TDD Sales Tax Revenues Sub-Account of the Special Allocation Fund, during the MODESA Financing Term, and during the ten years following the MODESA Financing Term, into a sub-account of the same name within the Contractually Pledged City Revenues Account (ii) all TDD Ticket Tax Revenues, if any, shall be deposited in the TDD Ticket Tax Revenues Account of the Special Allocation Fund during the MODESA Financing Term, and during the ten years following the MODESA Financing Term, into a sub-account of the same name within the Contractually Pledged City Revenues Account, and (iii) all other TDD Revenues shall be deposited into the TDD Revenues Account of the Special Allocation Fund during the MODESA Financing Term and during the ten years following the MODESA Financing Term, into a sub-account of the same name within the Contractually Pledged City Revenues Account, and such revenues shall be applied to provide for the payment of principal of and interest on Bonds issued in connection with the Transportation Project.
- (e) The TDD Revenues shall be pledged, subject to annual appropriation, for a minimum period of thirty-five (35) years from the Closing Date of the Bonds issued with respect to the applicable Development Phase Area to pay debt service on that portion of the Bonds issued with respect to the Development Project Phase in which such revenues are generated (or any other series of Bonds as provided in Section 4.7, Section 6.5 or Section 6.6 hereof) that is related to Transportation Project costs; provided that the TDD Ticket Tax and Springing TDD Sales Tax shall terminate following such thirty-five (35) year period unless a subsequent

project has been approved by the City.

(f) The TDD shall keep accurate records of TDD Revenues received and costs incurred, and such records shall be open to inspection by the City at all reasonable times.

(g) The TDD shall maintain its existence until all Bonds have been paid in full, at which time any Springing TDD Sales Tax, if imposed, and the TDD Ticket Tax, if imposed, shall no longer be levied unless a subsequent project has been authorized by the TDD and approved by the City.

(h) The TDD shall not exercise any powers or undertake any action authorized under the TDD Act other than those powers and actions expressly set forth in this Section as reasonably necessary in connection with the completion of any Transportation Project or as otherwise agreed upon by the City and the Developer in writing.

(i) The TDD shall not, without the City's consent, issue any obligations.

(j) The TDD shall enter into the TDD Phase I Ground Sublease with the Developer, and finance, construct and own certain improvements to be constructed as part of the Infrastructure Element for the Initial Development Project Phase and related improvements.

(k) In connection with any Subsequent Development Project Phase that includes a structured parking garage, the TDD shall enter into the TDD Garage Ground Sublease with the Developer, and finance, construct and own such parking garage to be constructed as part of the Parking Element for the applicable Subsequent Development Project Phase and related improvements in accordance with the terms set forth in Exhibit L hereto.

#### **Section 2.12 City and Developer Actions with Respect to the TDD.**

The City and the Developer acknowledge that the City will be the local transportation authority required to approve the Transportation Project in accordance with the TDD Act. The City further acknowledges the general economic benefit and the overall value to the community created by the construction of the Transportation Project. To that end, the City and the Developer agree as follows in connection with the TDD:

(a) The City and Developer shall use their best efforts and cooperate with each other in good faith in all proceedings relating to the creation and certification of the TDD, including the execution of all consents, approvals, authorizations or other documents required to create and certify the TDD or cause the City to be designated as the local transportation authority within the meaning of the TDD Act. The form of the petition for creation of the District shall be subject to approval by the City Counselor's Office, which approval shall not be unreasonably withheld, conditioned or delayed and shall be deemed granted if written approval or denial of the form petition is not received by the Developer within fifteen (15) days from receipt thereof.

(b) The City shall approve the Transportation Project as a "project" in accordance with the provisions of the TDD Act.

(c) The City, may, through the Board of Estimate and Apportionment, appoint at least one advisor to the TDD's board of directors having the authority and rights set forth in Section 238.220.4 of the TDD Act.

(d) The Developer shall not object to the City's designation as a "local transportation authority" within the meaning of Section 238.202 of the TDD Act.

(e) The Developer shall in good faith cooperate and assist in obtaining approval for and levying of the Springing TDD Sales Tax and the TDD Ticket Tax, if any, to be imposed in accordance with this Article II by voting to approve the Springing TDD Sales Tax and the TDD Ticket Tax at an election held in accordance with Section 238.216 of the TDD Act.

(f) The Developer shall use its best efforts (which standard shall not be deemed to require that Developer make any rental or other concessions) to require in each lease or deed with any User of any portion of the Development Project that is Retail/Entertainment/Restaurant Space that any retailer shall add the Springing TDD Sales Tax, if any, to the retailer's sales price, and when so added such Springing TDD Sales Tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price, all as provided for in Section 238.235 of the TDD Act, provided, however, that if Developer uses its best efforts (which standard shall not be deemed to require that Developer make

any rental or other concessions) to require the inclusion of such a provision in any lease or deed with any User, but is unable to do so, Developer may enter into such lease or deed without such provision; and provided, further, that Developer's inability to require the inclusion of such provision does not eliminate tenant's legal obligation to pay the Springing TDD Sales Tax and Developer shall not enter into leases for more than 10% of the Retail/Entertainment/Restaurant Space where such provision is not included in the lease. The Developer shall require in each lease or deed with any User of any portion of the Development Project that operates or may operate an entertainment venue that would be subject to the TDD Ticket Tax, if any, that following notification by the Developer that such retailer is subject to the TDD Ticket Tax, such retailer shall add the TDD Ticket Tax, if any, to the retailer's admission price, and when so added such TDD Ticket Tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price, all as provided for in Section 238.230 of the TDD Act. Developer hereby assigns to the City and the TDD its right to enforce any such provision in any lease. With respect to the TDD Ticket Tax only, if any, Developer shall also require in each lease or deed with any User subject to the TDD Ticket Tax that if such TDD Ticket Tax is found invalid, the lessee agrees to pay to the Developer as additional rent the amount which would otherwise have been paid to the TDD as TDD Ticket Tax Revenues. Developer hereby agrees to pay any and all additional rent paid pursuant to this subsection to the Issuer for Issuer's use in making payments on the Bonds.

(g) The City and the Developer shall waive the right to file suit to set aside the Springing TDD Sales Tax, the TDD Ticket Tax, if any, or otherwise question the validity of the proceedings relating thereto, and Developer shall require in each lease or deed with any User of any portion of the Development Project that operates or may operate an entertainment venue that would be subject to the TDD Ticket Tax, if any, that any such User shall also waive its right to file suit to set aside the TDD Ticket Tax, if any.

(h) Developer shall pay or cause to be paid all costs, including without limitation reasonable costs incurred by the City in connection with the creation of the TDD, which shall constitute Reimbursable Development Project Costs.

#### **Section 2.13 Pledge of TDD Revenues.**

Subject to the limits provided in Section 2.17 of this Agreement and this Section 2.13, the Developer shall cause the TDD to enter into the Cooperation Agreement to appropriate for deposit into the Special Allocation Fund, during the MODESA Financing Term, and during the ten years following the MODESA Financing Term into the Contractually Pledged City Revenues Account to pledge, subject to annual appropriation, all TDD Revenues that are from time to time on deposit in the Special Allocation Fund or the Contractually Pledged City Revenues Account, as applicable, solely to the payment of TDD Administrative Costs and debt service on the portion of the Bonds issued with respect to the Development Project Phase in which such revenues are generated (or any other series of Bonds as provided in Section 4.7, Section 6.5 or Section 6.6 hereof) which are related to the Transportation Project comprising a portion of any Development Project Phase. The TDD's obligations under this Section shall be the exclusive responsibility of the TDD payable solely out of TDD funds and property as provided in the TDD Act and shall not constitute a debt or liability of the State of Missouri or any agency or political subdivision of the State.

#### **Section 2.14 Community Improvement District.**

In response to a petition by the Developer, the City has established a community improvement district pursuant to the CID Act, to be known as the Ballpark Village Community Improvement District. The CID has been created solely for the purpose of providing tax revenues in addition to other Available Revenues for funding Reimbursable Development Project Costs paid or incurred in connection with the CID Project. The CID shall operate in accordance with the following:

- (a) The CID's boundaries shall consist of the Development Area.
- (b) The CID shall be formed as a political subdivision of the State of Missouri.
- (c) The CID shall be hereby authorized to impose the CID Sales Tax and/or the CID Sources, the proceeds of which CID Sources and/or CID Sales Tax, after payment of CID Administrative Costs, shall be pledged, subject to annual appropriation, to pay debt service on that portion of the Bonds related to the CID Project. The CID shall take all actions necessary to impose and obtain voter approval of the CID Sales Tax and CID Sources, as applicable.
- (d) The CID's board of directors shall consist of five members, who shall be appointed by the Mayor of the City with the consent of the Board of Aldermen of the City. Developer agrees that it shall designate one individual designated by the Mayor of the City and one individual designated by the Comptroller of the City as the legally authorized representatives (pursuant to the CID Act) of two separate businesses operating within the District which are Related Entities to Developer, for the purpose of such

individuals serving on the CID's board of directors as representatives of such businesses.

(e) CID Revenues shall be pledged, subject to annual appropriation, for a minimum period of thirty-five (35) years from the Closing Date of the Bonds issued with respect to the applicable Development Phase Area to pay debt service on that portion of the Bonds issued with respect to the Development Project Phase in which such revenues are generated (or any other series of Bonds as provided in Section 4.7) that is related to the costs of the CID Project(s); provided that the CID Sales Tax and CID Sources shall terminate following such thirty-five (35) year period unless a subsequent project has been authorized in accordance with the CID Act and approved by the City.

(f) The CID shall maintain accurate records of revenues received, which records shall be open to inspection by the City at all reasonable times.

(g) The CID shall maintain its existence until all Bonds have been paid in full, at which time the CID Sales Tax and the CID Sources, if any, shall no longer be levied unless a subsequent project has been authorized by the CID and approved by the City.

(h) All CID Revenues shall be deposited into the applicable sub-account for the applicable Development Project Phase of the CID Revenues Account of the Special Allocation Fund during the MODESA Financing Term, and for the ten years following the MODESA Financing Term, into a sub-account by the same name in the Contractually Pledged City Revenues Account, to provide for, subject to annual appropriation, the payment of principal of and interest on Bonds issued with respect to the Development Project Phase in which such revenues are generated (or any other series of Bonds as provided in Section 4.7) that is related to the CID Project(s).

(i) The CID shall not exercise any powers or undertake any action authorized under the CID Act other than those powers and actions expressly set forth in this Section as reasonably necessary in connection with completion of the CID Project comprising a portion of any Development Project Phase or as otherwise agreed upon by the City and the Developer in writing.

(j) The CID shall not, without the City's consent, issue any obligations.

**Section 2.15 City and Developer Actions with Respect to the CID.**

(a) The City acknowledges that the Developer, at its sole cost and expense, intends to advance all costs necessary to design, develop and construct the CID Project comprising a portion of any Development Project Phase, subject to the other terms of this Agreement. The City further acknowledges the general economic benefit and the overall value to the community created by the construction of the CID Project. To that end, the City and the Developer agree as follows in connection with the CID: (i) the City and Developer shall use their best efforts and cooperate with each other in good faith in all proceedings relating to the creation and certification of the CID, including the execution and filing of all petitions, consents, approvals, authorizations or other documents required to create and certify the CID; and (ii) the Developer shall in good faith cooperate and assist in obtaining approval for and levying of the CID Sales Tax contemplated by the Agreement by voting to approve the CID Sales Tax at an election held in accordance with Section 67.1545 of the CID Act, and in obtaining approval for the CID Sources, if any, imposed by the CID.

(b) The Developer shall use its best efforts (which standard shall not be deemed to require that Developer make any rental or other concessions) to require in each lease or deed with any User of any portion of the Development Project that is Retail/Entertainment/Restaurant Space that every retailer shall add the CID Sales Tax to the retailer's sales price and when so added such CID Sales Tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price, all as provided for in Section 67.1545 of the CID Act, provided, however, that if Developer uses its best efforts (which standard shall not be deemed to require that Developer make any rental or other concessions) to require the inclusion of such a provision in any lease or deed with any User, but is unable to do so, Developer may enter into such lease or deed without such provision and provided further that Developer's inability to require the inclusion of such provision does not eliminate such User's obligation to pay the CID Sales Tax, and Developer shall not enter into leases for more than 10% of the Retail/Entertainment/Restaurant Space where such provision is not included in the lease.

(c) The City and the Developer shall waive the right to file suit to set aside the CID Sales Tax and/or the CID Sources, if any, or otherwise question the validity of the proceedings relating thereto.

(d) The City and the Developer shall cooperate to cause the Director of the Department of Revenue for the State of Missouri to administer and collect the CID Sales Tax pursuant to Section 67.1545.4 of the CID Act.

**Section 2.16 Pledge of CID Revenues.**

Subject to the limits provided in Section 2.17 of this Agreement and this Section, the Developer intends to cause the CID to enter into the Cooperation Agreement to appropriate for deposit into the Special Allocation Fund, during the MODESA Financing Term, and for the ten years following the MODESA Financing Term, into the Contractually Pledged City Revenues Account, and to pledge, subject to annual appropriation, all CID Revenues that are from time to time on deposit in the Special Allocation Fund or the Contractually Pledged City Revenues Account, as applicable, solely to the payment of CID Administrative Costs and debt service on the portion of the Bonds issued with respect to the Development Project Phase in which such revenues are generated (or any other series of Bonds as provided in Section 4.7) related to the CID Project comprising a portion of any Development Project Phase. The CID's obligations under this Section shall be the exclusive responsibility of the CID payable solely out of the CID's funds and property as provided in the CID Act and shall not constitute a debt or liability of the State of Missouri or any agency or political subdivision of the State. Neither the CID nor the City shall be obligated to pledge any funds other than those specifically pledged to repayment of the Bonds.

**Section 2.17 Obligation to Create CID and TDD; TDD Ticket Tax.**

Notwithstanding anything contained herein to the contrary, the Developer shall be required to cause the CID to impose the CID Sales Tax totaling 1%, and shall further be required to cause the TDD to impose the Springing TDD Sales Tax as set forth in Section 2.18 hereof. Developer shall cause the TDD to impose a TDD Ticket Tax, as defined herein, prior to Closing with respect to any Development Project Phase, unless Developer provides written notice to the City concurrently with Developer's written notice to proceed with such Development Project Phase pursuant to Section 2.4 hereof that Developer elects not to impose the TDD Ticket Tax. Following the Closing Date for the Initial Development Project Phase and provided that Developer has achieved Substantial Completion or certifies that based on progress to date, it reasonably expects to achieve Substantial Completion of any Development Project Phase(s) for which Bonds have already been issued within two years after the Closing Date for such Development Project Phase, Developer may elect to have the TDD and/or the CID pledge any additional TDD Revenues or CID Revenues to be generated within a separate Development Phase Area for a Subsequent Development Project Phase to pay debt service on the portion of the Bonds related to the CID Project or Transportation Project (as applicable) comprising a portion of such Subsequent Development Project Phase.

**Section 2.18 Springing TDD Sales Tax.**

If for any two (2) consecutive Bond Years following Substantial Completion of the Initial Development Project Phase and prior to the maturity or redemption of all of the Priority Bonds, the aggregate amount of Available Revenues (other than Dedicated Municipal Revenues) and Contractually Pledged City Revenues (other than the Dedicated Contractually Pledged City EATs) available to make scheduled payments on any series of Priority Bonds (exclusive of any redemptions other than redemptions at maturity) are insufficient to achieve a debt service coverage ratio for any such series of Priority Bonds (exclusive of any amounts for redemptions other than redemptions at maturity) of at least 1.1 to 1.0 as reasonably calculated by the applicable member of the Financing Team at the end of each Bond Year, the TDD shall cause the imposition of the Springing TDD Sales Tax to become effective on the first day of the second calendar quarter following receipt of written notice from the applicable member of the Financing Team of the failure to achieve such coverage.

(a) Developer shall have the right, in Developer's reasonable discretion, to the extent permitted by law, to exempt Leasable Areas associated with particular tenants from the Springing TDD Sales Tax by amending the boundaries of the TDD (to the extent allowable by law), and City hereby agrees it will not object to the boundaries of the TDD so amended by Developer pursuant to this Section 2.18(a) so long as in every case except the case of a grocery store with less than 10,000 square feet of Leasable Area, the City or its designee has approved in writing the exclusion of a particular Acceptable Tenant prior to its exclusion.

(b) The Springing TDD Sales Tax will, unless Developer shall otherwise elect, be terminated at any time following achievement of a minimum debt service coverage ratio for each and every series of the Priority Bonds, based on the payment schedule for the Bonds (exclusive of any amounts for redemptions other than redemptions at maturity) when compared with Available Revenues (excluding Dedicated Municipal Revenues and the proceeds of the Springing TDD Sales Tax) and Contractually Pledged City Revenues (other than the Dedicated Contractually Pledged City EATs), of at least 1.1 to 1.0, as reasonably calculated by the Financing Team for two (2) consecutive Bond Years. In the event that the required debt service coverage ratio has been achieved, the TDD shall suspend the imposition of such Springing TDD Sales Tax until such time as the conditions which caused the original imposition of such Springing TDD Sales Tax to become effective under this Section 2.18 re-occur, in which case such Springing TDD Sales Tax shall be reinstated.

**Section 2.19 Costs of City.**

Developer hereby agrees:

(a) upon issuance of the Bonds with respect to any Development Project Phase and initial disbursement of the applicable Bond Proceeds in accordance with Section 4.6, and only if the Bonds are so issued and the Bond Proceeds are so disbursed, the Developer shall reimburse the City, SLDC, the Issuer and the Authority for the reasonable and necessary costs incurred by the City, SLDC, the Issuer and the Authority and not otherwise paid pursuant to Section 1.3 of this Agreement associated with any third party studies or reports and any third party or professional services, including, but not limited to, legal services required in connection with the MODESA Act financing, with any associated documents, and the other transactions contemplated herein, feasibility studies, market studies, appraisals, shift-share analyses, blight studies, the Development Plan, cost-benefit analyses and engineering reports associated with the Development Plan or such Development Project Phase; provided, however, the City, SLDC, the Issuer and the Authority shall obtain the prior written consent of the Developer for any such third party studies or reports (but the consent of the Developer shall not be required for any third party professional services) such consent not to be unreasonably withheld, and each of the City, SLDC, the Issuer and the Authority shall, in consultation with the Developer, use its best efforts to cap the amounts of the fees paid to third parties in connection with such Development Project Phase; and

(b) upon issuance of the Bonds with respect to the Initial Development Project Phase and initial disbursement of the related Bond Proceeds in accordance with Section 4.6, and only if the Bonds are so issued and the Bond Proceeds are so disbursed, Developer shall pay or cause to be paid all out-of-pocket costs reasonably and actually incurred by the City in connection with the creation of the CID and/or the TDD, but Developer shall not be required to pay for any costs of City's staff, including in-house counsel.

Any amounts paid by Developer to the City hereunder shall represent Reimbursable Development Project Costs to be reimbursed exclusively from the proceeds of Bonds as provided in and subject to Article III and Article IV of this Agreement. The parties acknowledge that the aggregate costs incurred as of the date of this Agreement for which Developer is responsible pursuant to this Section 2.19 equal \$ \_\_\_\_\_. The City shall provide Developer with invoices, cancelled checks or other evidence reasonably acceptable to Developer of all costs to be paid by Developer pursuant to this Section 2.19.

**Section 2.20 New Markets Tax Credit Financing.**

(a) The Developer agrees that it shall: (i) cause CDF Development, LLC, an affiliate of Developer, to sub-allocate not less than \$25,000,000 in New Markets Tax Credit authority to a subsidiary that is a "community development entity" (as defined pursuant to Section 45 of the Internal Revenue Code and the regulations promulgated thereunder), and (ii) cause such subsidiary to issue one or more "qualified equity investments" (as defined pursuant to Section 45 of the Internal Revenue Code and the regulations promulgated thereunder) in the amount of not less than \$25,000,000, and use the proceeds of such investment(s) to make one or more "qualified low-income community investments" (as defined pursuant to Section 45 of the Internal Revenue Code and the regulations promulgated thereunder) to Developer or a Related Entity to Developer with respect to the Project.

(b) Notwithstanding any other provision of this Agreement, the City shall have no obligation or duty whatsoever to provide New Markets Tax Credits for the Development Project.

**ARTICLE III  
PROJECT FUNDS****Section 3.1 Agreement to Provide Incentive Amount; Calculation of Incentive Amount.**

(a) Subject to the terms of the Financing Ordinance and this Agreement, the City, in consideration of the overall economic benefit accruing to the City as a result of the Development Project and its respective Development Project Phase(s), agrees to use reasonable and good faith efforts to contribute or cause the contribution of such amounts as are requested by the Developer, the TDD and/or the CID to pay for Reimbursable Development Project Costs incurred by the Developer, the TDD and/or the CID, as applicable, in a total amount not to exceed the Incentive Amount, as hereinafter defined, to be disbursed as set forth herein. Such contributions shall be made in accordance with Section 3.3 hereof.

(b) Subject to the terms of the Financing Ordinance and this Agreement, the City agrees to use reasonable and good faith efforts to cause the Issuer to:

- (i) With respect to the Initial Development Phase, (A) issue Bonds in a maximum principal amount of not to exceed the Bond Principal Amount, (B) cause the private placement of such Bonds to the Developer or a Related Entity as provided herein, (C) to pay all Issuance Costs from Bond Proceeds, and (D) endorse the principal amount of such Bonds from time to time as provided herein (but not to exceed in any event the Bond Principal Amount) to provide reimbursement for Reimbursable Development Project Costs in accordance with the terms of Section 3.6 this Agreement; and
- (ii) With respect to each Subsequent Development Project Phase, issue Bonds in the Bond Principal Amount and cause such Bonds to be privately placed and/or publicly sold, and to use the proceeds of the Bonds to: (A) provide reimbursement for Reimbursable Development Project Costs in accordance with the terms of this Agreement, and (B) pay all Issuance Costs and any other amounts to be paid from Bond Proceeds as the parties mutually agree.
- (c) For purposes of this Agreement, the term “Incentive Amount” shall mean the amount calculated as follows, provided that the Incentive Amount for any Development Project Phase shall be zero unless the approved Preliminary Plans include all of the Minimum Essential Elements (subject to a reduction in Leasable Area pursuant to Section 3.1(d) hereof) for such Development Project Phase:

- (i) with respect to the Initial Development Project Phase, \$17,000,000; or
- (ii) with respect to any Subsequent Development Project Phase, as calculated by the Financing Team based on the approved Preliminary Plans, the sum of: (A) the minimum number of square feet of Leasable Area in the Retail Element of such Development Project Phase, as set forth in the State MODESA Agreement (not to exceed 360,000 square feet of Leasable Area when added to the aggregate number of square feet of Leasable Area in the Retail Element of all previously approved Development Project Phases), multiplied by \$130; plus (B) the minimum number of square feet of Leasable Area in the Office Element of such Subsequent Development Project Phase, as set forth in the State MODESA Agreement (not to exceed 750,000 square feet of Leasable Area when added to the aggregate number of square feet of Leasable Area in the Office Element of all previously approved Development Project Phases), multiplied by \$100; plus (C) if, and only if, the Subsequent Development Project Phase, as described in the State MODESA Agreement, includes a Residential Element with a minimum of at least 100 residential units, an additional amount equal to the sum of: (1) the minimum number of rental residential units multiplied by \$25,000; and (2) the minimum number of for-sale residential units multiplied by \$50,000; provided, however, the Incentive Amount for any Development Project Phase shall not include any amount based on residential units in excess of 250, when added to the aggregate number of residential units in all previously approved Development Project Phases; plus (D) if, and only if, the Subsequent Development Project Phase, as described in the State MODESA Agreement, includes structured parking spaces as part of a Parking Element, an additional amount equal to the number of structured parking spaces multiplied by \$26,167; plus (E) the Additional Use Incentive, if any; plus (F) the amount of expenditures for the Infrastructure Element set forth in the approved Project Budget for such Subsequent Development Project Phases (but not to exceed \$4,400,000 when added to the aggregate amount of expenditures for the Infrastructure Element of all previously approved Subsequent Development Project Phases); provided, however, if the Incentive Amount calculated for any Subsequent Development Project Phase in accordance with this Section 3.1(c)(ii) is not adequately supported by the total Available Revenues (excluding Dedicated Municipal Revenues) and Contractually Pledged City Revenues (excluding the Dedicated Contractually Pledged City EATs) projected to be generated within such Subsequent Development Project Phase and available to pay principal and interest on the Bonds, the Incentive Amount shall be reduced as necessary so that the total Incentive Amount is adequately supported, and any reduction may be, at Developer’s election, attributed to any of the Retail Element, the Office Element or the Residential Element;

With respect to any Subsequent Development Project Phase that includes an Additional Use, the Incentive Amount for such Subsequent Development Project Phase shall include an additional amount (such amount being the “Additional Use Incentive”) equal to the lesser of: (i) the amount the Financing Team reasonably determines will be adequately supported by the total Available Revenues (excluding Dedicated Municipal Revenues) and Contractually Pledged City Revenues (excluding the Dedicated Contractually Pledged City EATs) projected to be generated by the Additional Use within such Subsequent Development Project Phase and available to pay principal and interest on the Bonds as the result of such Additional Use; (ii) the amount of Reimbursable Development Project Costs associated with the Infrastructure Element of the Initial Development Project Phase in excess of \$10,700,000; or (iii) \$7,900,000, less any Additional Use Incentive that was provided for any other Development Project Phase. With respect to any Subsequent Development Project Phase that includes an Additional Use, on or before the deadline for Substantial Completion of the entire Development Project Phase approved for such Development Project Phase Area, Developer shall also submit to the City a certification that such Additional Use has been substantially completed as of the date of such certification in accordance with the approved

Preliminary Plans (the "Certification of Additional Use"). The City shall thereafter have thirty (30) days to verify that the Additional Use actually constructed is within 90% of both (i) the number of rooms and square footage of banquet and conference space, and (ii) the square footage of restaurant and bar space (to the extent included as part of the Additional Use), reflected on the Preliminary Plans. If the City determines that such number of rooms and square footage of space is not within such 90% threshold, it shall notify Developer in writing of such objections, and the Developer shall thereafter have sixty (60) days to correct such deficiency. If, within such sixty (60) day period, Developer has not corrected such deficiency to the approval of the City, such approval not to be unreasonably withheld, then the City shall cause the Bond Trustee to reduce the outstanding debt with respect to the applicable Development Project Phase by an amount equal to the Additional Use Incentive multiplied by the percentage of completion achieved by the Developer with respect to the Additional Use (as determined by the City in the City's reasonable discretion) by: (A) first, applying funds remaining in the Project Fund, up to the Additional Use Incentive for such Development Project Phase to redeem Priority Bonds for such Development Project Phase and pay accrued interest thereon, and (B) second, to the extent the required debt reduction for such Development Project Phase exceeds the amount of funds on deposit in the Project Fund, sending Developer a notice of the amount of such shortfall, upon which notice Developer shall have thirty (30) days to pay by check or wire transfer of readily available funds to the City an amount equal to the difference between the required debt reduction and the amount then on deposit in the Project Fund, to be applied in the same manner set forth in (A) above.

Notwithstanding anything in this Agreement to the contrary, no Incentive Amount shall be available with respect to any Element of a Development Project Phase for which Bonds have not yet been issued: (i) with respect to any Office Element, if the Closing on the Bonds to be issued with respect to such Office Element does not occur on or before the fifth (5th) anniversary of the first occupancy of a tenant in the Office Element of the Initial Development Project Phase; and (ii) with respect to any other Element of a Development Project Phase, if the Closing on the Bonds to be issued with respect to such Development Project Phase does not occur on or before the tenth (10th) anniversary of the execution of this Agreement.

(d) Once Preliminary Plans have been approved by the City with respect to any Development Project Phase, the Developer shall not, absent the City's written approval: (i) materially reduce the Leasable Area, or the number of structured parking spaces or residential units, in any Element of such Development Project Phase, provided that, for the purpose of this subsection, a material reduction shall be, with respect to the Initial Development Project Phase, any reduction in the amount of Leasable Area or expenditures on the Infrastructure Element below the amount required as the Minimum Essential Elements, and with respect to any Subsequent Development Project Phase, any reduction by more than 10% of such Leasable Area or number of parking spaces or residential units; or (ii) change the nature of residential units from for-sale to rental, provided, however, that if such units are marketed, constructed and completed as for-sale condominium units, but remain unsold as of the one-year anniversary of the date of Substantial Completion of such Development Project Phase, such units may be rented or leased for residential purposes in lieu of sale as condominium units. The City agrees to act promptly to consider and either approve or disapprove of such change upon the request of such change from Developer and to cooperate and assist with all requests for changes with respect to any Subsequent Development Project Phase. The City may, in its sole discretion, consent at any time to any other amendment of the Preliminary Plans.

(e) Notwithstanding anything in this Agreement to the contrary, Developer shall have the right to construct more Leasable Area in a Development Phase Area than the Leasable Area identified as part of the Office Element or Retail Element of the Development Project Phase approved for such Development Phase Area, or more residential units in a Development Phase Area than the number of residential units identified as part of the Residential Element of the Development Project Phase approved for such Development Phase Area (collectively, the "Additional Space"). On or before the deadline for Substantial Completion of the Development Project Phase approved for such Development Phase Area, Developer shall submit a certification of the Leasable Area within each of the Retail Element and the Office Element that has been substantially completed as of the date of such certification and the number of residential units in the Residential Element that have been substantially completed as of the date of such certification (the "Certification of Substantially Completed Space"). Upon the City's approval of the Certification of Substantially Completed Space with respect to a Subsequent Development Project Phase (but not the Initial Development Project Phase) and at the written request of the Developer, such approval not to be unreasonably withheld, the City shall: (i) with respect to any Additional Space, cause the Bond Trustee to endorse the Subordinate Bonds issued with respect to such Development Project Phase (or to issue Subordinate Bonds for purchase by the Developer on the terms provided in this Agreement if no Subordinate Bonds were issued with respect to such Development Project Phase) to increase the principal amount of such Subordinate Bonds by an amount equal to the Incentive Amount that would have been available with respect to the Additional Space set forth in the Certification of Substantially Completed Space if such Additional Space had been included in the Development Project Phase prior to issuance of the Bonds (subject to the limitations set forth in Section 3.1(c) hereof with respect to each Element, including the limitations on the maximum square footages or number of units for which subsidy will be provided), or (ii) with respect to any reduction in the Leasable Area for the Retail Element or the Office Element, or any reduction in the number of residential units in the Residential Element, evidenced

by the Certification of Substantially Completed Space, cause the Bond Trustee to reduce the outstanding debt with respect to such Development Project Phase by an amount equal to the reduced Leasable Area or number of residential units, as applicable, multiplied by the amount per square foot or per unit of Incentive Amount for such type of Leasable Area or residential units, as applicable, set forth in this Section (the "Incentive Amount Adjustment"), by: (A) first, applying any funds remaining in the Project Fund for such Development Project Phase to redeem Priority Bonds and pay accrued interest thereon; and (B) second, to the extent the Incentive Amount Adjustment exceeds the amount of funds on deposit in the Project Fund, sending Developer a notice of the amount of such shortfall, upon which notice Developer shall have thirty (30) days to pay by check or wire transfer of readily available funds to the City an amount equal to such shortfall, to be applied in the same manner set forth in (A) above.

### **Section 3.2 Obligations Limited to Reimbursable Development Project Costs.**

Nothing in this Agreement shall obligate the City or Issuer to reimburse Developer or advance any portion of the Incentive Amount to Developer, the TDD or the CID for any cost that does not: (a) in the case of a cost associated with MODESA Local Revenues, qualify as a cost that is reimbursable by MODESA Local Revenues; (b) in the case of a cost associated with New State Revenues, qualify as a State Development Project Cost; (c) in the case of a cost associated with TDD Revenues, qualify as a cost related to a Transportation Project comprising a portion of a Development Project Phase and that is permissible under the TDD statutes; or (d) in the case of a cost associated with CID Revenues, qualify as a cost related to a CID Project comprising a portion of a Development Project Phase and that is permissible under the CID statutes.

### **Section 3.3 Manner in which City Shall Provide Incentive Amount.**

(a) With respect to the Initial Development Project Phase, the City shall provide the Incentive Amount with respect to such Initial Development Project Phase by issuing the Bonds for such Development Project Phase to Developer or a Related Entity in a maximum principal amount of not to exceed the Bond Principal Amount, with the principal amount outstanding thereunder to be endorsed from time to time (up to such maximum principal amount) in accordance with Section 3.6 hereof.

(b) With respect to each Subsequent Development Project Phase, the City shall provide the Incentive Amount for such Subsequent Development Project Phase by using its reasonable and good faith efforts to cause the Issuer to issue the Bonds with respect to such Subsequent Development Project Phase in the Bond Principal Amount as provided and under the conditions specified herein and by using reasonable and good faith efforts to cause the Issuer to contribute the Incentive Amount to Developer, the TDD and the CID in accordance with the terms hereof.

### **Section 3.4 Cost Savings.**

Within one hundred twenty (120) days following the Substantial Completion of a Development Project Phase, Developer shall furnish to the City a statement of Verified Total Project Costs for such Development Project Phase, with reasonable back-up documentation supporting such costs (other than in regards to Developer-Controlled Costs) sufficient to satisfy the City as to the accuracy of such statement. "Verified Total Project Costs" means the sum total of Developer-Controlled Costs for each Development Project Phase in the amounts set forth in the approved Project Budget for such Development Project Phase (excluding any Contingency amount that has not been used to fund third party costs) plus third party costs incurred that are necessary or incidental to such Development Project Phase and are not subject to inclusion in a category of Developer-Controlled Costs, including, but not limited to, Reimbursable Development Project Costs, costs of known Developer-Funded Tenant Inducements (including, in the case of known Developer-Funded Tenant Inducements which have not yet been made, estimates prepared in good faith by Developer), and the cost of all interest accrued with respect to all funds invested in the applicable portion of the Development Project Phase from the date such funds are invested through the date upon which the Verified Total Project Costs statement is submitted to the City, with such interest to be accrued at a rate equal to the actual cost of funds borrowed by Developer from third parties not related in any way to the Developer with respect to the Development Project Phase. If Developer has not borrowed funds from third parties not related in any way to the Developer for the Development Project Phase, then the interest rate hereunder shall be equal to the prime rate of interest published in The Wall Street Journal, or the higher of such rates if more than one rate is published. Verified Total Project Costs shall not include User Improvement Costs.

(b) For purposes of this Section 3.4, the term "Cost Savings" means the amount, if any, by which the Development Project Costs set forth in the Project Budget for the applicable Development Project Phase exceed the Verified Total Project Costs for the applicable Development Project Phase, based on the statement of Verified Total Project Costs submitted by the Developer pursuant to subsection (a) above.

(c) In the event that the Developer achieves Cost Savings, then seventy-five percent (75%) of any such Cost Savings

shall be applied at the election of the Developer, in the Developer's sole and subjective discretion, to (i) redeem the Priority Bonds; or (ii) pay for, or deposit into a reserve account for payment within ten (10) years (or longer for good cause if approved by the City, such approval not to be unreasonably withheld), any costs incurred within the Development Area or adjacent areas that benefit or otherwise enhance the Development Area (excluding operating costs); or (iii) any combination of (i) and (ii).

**Section 3.5 City's Obligations Limited to Special Allocation Fund, Contractually Pledged City Revenues Account and Bond Proceeds.**

Notwithstanding any other term or provision of this Agreement, the Bonds to be issued pursuant to this Agreement shall not be general obligations of the City but shall be special, limited obligations of the Issuer payable only from certain incremental revenues (as specified herein) generated in the Development Area and deposited in the Special Allocation Fund or the Contractually Pledged City Revenues Account, and from Bond Proceeds, if any, and from no other source. Neither the City nor the Issuer has pledged its full faith and credit relative to the Issuer's obligation to issue the Bonds or to pay any Reimbursable Development Project Costs. The Bonds shall be special, limited obligations of the Issuer, and shall not constitute a debt of the City or the Issuer within the meaning of any constitutional or statutory provision. The Dedicated Municipal Revenues generated within any Development Project Phase shall be pledged only as an additional source of payment for the Bonds (i) in the event Available Revenues and Contractually Pledged City Revenues are insufficient in any year to make required debt service payments on the Bonds issued for such Development Project Phase, and (ii) to the extent such Dedicated Municipal Revenues are to be applied to make required debt service payments on any other series of Priority Bonds as provided in Section 6.4 hereof.

**Section 3.6 Bonds for Initial Development Project Phase.**

(a) Notwithstanding any other provision of this Agreement to the contrary, the Developer does hereby agree that Developer or a Related Entity to Developer shall purchase any and all of the Bonds issued with respect to the Initial Development Project Phase as provided in this Section 3.6, which Bonds shall initially be issued in a maximum principal amount not to exceed the Bond Principal Amount. Prior to or contemporaneous with such Bond issuance, the Developer shall provide evidence to the City that it has all financing in place to complete the Initial Development Project Phase. At the Developer's election and in lieu of purchasing such Bonds for cash, the Bond Documents for the Initial Development Project Phase shall be structured so that the Developer shall be deemed to have purchased Bonds from time to time upon each acceptance by the City of a Certificate of Reimbursable Development Project Costs in the amount of Reimbursable Development Project Costs represented on such accepted Certificate, and the Bonds issued to Developer shall be endorsed from time to time upon such acceptance by the City, provided that at no point in time shall the aggregate amount of Bonds outstanding with respect to the Initial Development Project Phase exceed the greater of (i) the Bond Principal Amount or (ii) the amount corresponding to such point in time on the Initial Phase Bond Schedule.

(b) The City may issue, or cause to be issued, Bonds (and may increase the amount of Bonds being issued with respect to a Subsequent Development Project Phase) at any time in an amount sufficient to refund all or a portion of the outstanding Bonds, including, with respect to the Initial Development Project Phase, either on the City's own initiative and in its sole and absolute discretion, or in accordance with the following:

(1) Upon receipt of a written request by Developer and upon the City's Financing Team's recommendation in favor of issuing refunding Bonds and recommendation of the principal amount thereof based on the criteria set forth below, the City shall use its best efforts to cause the Issuer to issue refunding Bonds as described in this Section. The aggregate gross cash proceeds from the sale of the refunding Bonds before payment of Issuance Costs, together with any interest accrued thereon ("Bond Proceeds") of Bonds will be finally determined by the City after receiving the Financing Team's recommendation based on the criteria set forth below. The City shall not be obligated to cause the Issuer to issue such refunding Bonds unless the Financing Team determines that all of the following criteria are satisfied as of the date of issuance of such bonds, unless such criteria are waived by the Financing Team. Developer shall bear any costs and expenses associated with the issuance of refunding Bonds at its request and shall bear its own costs and expenses, including any attorneys' fees and expenses, that it may incur in complying with this Section. Notwithstanding anything in this Section to the contrary, Developer shall also be liable for all costs incurred by the City or the Issuer in the event the Developer has requested the issuance of bonds and the City's underwriter has determined that such bonds cannot be issued at such time.

(2) The Financing Team's recommendation for issuance of refunding Bonds and the principal amount thereof shall be based on the following criteria:

- (A) Review of projections of Available Revenues (excluding Dedicated Municipal Revenues) from the applicable Phase available for debt service as proposed by an independent qualified consultant. Such projections must show that (A) if all such Available Revenues (excluding Dedicated Municipal Revenues) were to be applied to the immediate repayment of the Bonds, the Bonds would reasonably be anticipated to be retired within thirty-two (32) years from the effective date of the Approving Ordinance, and (B) based on a maturity date thirty-two (32) years from the effective date of the Approving Ordinance, such Bonds are reasonably likely to achieve debt service coverage ratio reasonably acceptable to the City's Financing Team;
  - (B) Developer's documentation of Substantial Completion of such Development Project Phase as evidenced in a report to the City prepared by a qualified independent consultant to be paid for by the Developer;
  - (C) The aggregate net projected debt service on such refunding Bonds (taking into account the principal portion of the Bonds that are issued to establish a reserve fund and to pay Issuance Costs, and including any reserve fund earnings) will be lower than the net average annual debt service on the outstanding Bonds; and
  - (D) The refunding Bonds can be sold at an aggregate net interest cost which is less than the aggregate net interest cost of the Bonds to be redeemed.
- (3) Proceeds of any refunding Bonds shall be applied:
- (A) To the payment of costs relating to the issuance of the Bonds;
  - (B) To the payment of outstanding principal of and interest on the Bonds to be refunded;
  - (C) To the payment of capitalized interest on the Bonds; and
  - (D) To the establishment of a debt service reserve fund for the Bonds in a reasonable amount of the principal amount of Bonds to be issued, as to be determined by the Financing Team.

### **Section 3.7 Financing of Subsequent Development Project Phases.**

(a) If, prior to the Closing with respect to any Subsequent Development Project Phase, the Financing Team determines that the Bonds cannot be sold in an amount equal to the Bond Principal Amount for such Subsequent Development Project Phase, in accordance with Section 4.2 hereof, or Section 3.1(c)(ii) hereof requires a reduction of the Incentive Amount because it is not adequately supported by projected Available Revenues and Contractually Pledged City Revenues for such Development Project Phase, then: (a) Developer may value engineer such Subsequent Development Project Phase to reduce Total Costs set forth in the previously approved Project Budget, and submit a revised Project Budget to the City for approval, and notwithstanding the provisions of Section 5.2(b) hereof, the City agrees that it shall not unreasonably withhold its consent to any revision of the Project Budget hereunder so long as the revisions to the Project Budget do not reduce the Available Revenues and Contractually Pledged City Revenues projected to be generated within such Development Project Phase dedicated to servicing the Bonds for such Subsequent Development Project Phase; or (b) Developer may suspend any obligation to proceed with such Subsequent Development Project Phase. Notwithstanding anything herein to the contrary, in no event shall the City have any obligation to provide subsidy for any Subsequent Development Project Phase beyond the amount necessary to support the issuance of Bonds in the Bond Principal Amount for such Subsequent Development Project Phase.

(b) In the event that Available Revenues with respect to the Initial Development Project Phase exist following repayment in full of the Bonds issued with respect to the Initial Development Project Phase (such revenues being the "Excess Phase 1 Revenues"), such Excess Phase 1 Revenues shall be used to repay Bonds issued with respect to any Subsequent Development Project Phase, provided that the principal amount of Bonds that may be serviced by such Excess Phase 1 Revenues shall not exceed the amount of Reimbursable Development Project Costs incurred with respect to such Subsequent Development Project Phase.

**ARTICLE IV  
PUBLIC FINANCING**

**Section 4.1 Cooperation to Obtain MODESA Financing.**

The City hereby agrees that, after the effective date of the Approving Ordinance, as soon as reasonably practical, it shall promptly submit an application to the Missouri Department of Economic Development and to the Missouri Development Finance Board, as appropriate, for state supplemental financing under the MODESA Act (the "MODESA Application") for the entire Development Project. The MODESA Application shall include a request that the State of Missouri delegate authority to the staff of the Missouri Department of Economic Development to determine the appropriate amount of "New State Revenues" that will be applied to each Development Project Phase. Upon approval of the MODESA Application, the City shall enter into a written agreement with the State of Missouri or appropriate agency thereof setting forth the terms and conditions of the MODESA Act funding. The City, with the cooperation of the Developer, shall use its best efforts to fulfill any obligation of the City or any agency thereof to the State of Missouri in connection with the MODESA Act financing, and to enforce the obligations of the State of Missouri or agency thereof under any such agreement and the MODESA Act, including but not limited to the commitment to deposit all New State Revenues into the Special Allocation Fund.

**Section 4.2 Issuance of Bonds.**

(a) Upon satisfaction of the conditions to Closing set forth in ARTICLE V of this Agreement with respect to the Initial Development Project Phase, the City agrees to use reasonable and good faith efforts to cause the Issuer to issue Bonds with respect to such Initial Development Project Phase in accordance with Section 3.6 hereof, and to cause all such Bonds to be privately placed with Developer or a Related Entity. Any Bonds issued with respect to the Initial Development Project Phase shall have an annual interest rate of nine percent (9%) and shall include the additional terms set forth in Sections 4.3(a), 4.3(b) and 4.3(g) as applicable.

(b) Upon satisfaction of the conditions to Closing set forth in ARTICLE V of this Agreement with respect to any Subsequent Development Project Phase, the City agrees to use reasonable and good faith efforts to cause the Issuer to issue the Bonds with respect to such Development Project Phase, which shall include the terms set forth in Section 4.3 hereof, in a principal amount equal to the Bond Principal Amount, and with respect to such Subsequent Development Project Phase, to use reasonable and good faith efforts to cause all such Bonds to be privately placed and/or publicly sold.

(c) Upon satisfaction of the conditions to Closing set forth in ARTICLE V of this Agreement with respect to any Development Project Phase, the City agrees to use reasonable and good faith efforts to cause the terms and provisions of the Bond Indenture and all other Bond Documents (as applicable to such Development Project Phase) to be substantially in accordance with the terms and provisions of this Agreement and the Financing Ordinance and otherwise satisfactory to Developer, City and Issuer in their respective sole and subjective discretion. The City shall neither consent to nor permit any modification to any of the Bond Documents with respect to any Development Project Phase, which modification would have an adverse effect on Developer or Guarantor, without the prior written consent of Developer, such consent not to be unreasonably withheld. The City shall support the inclusion of provision(s) in the Bond Documents that no amendment thereto shall be effective until five (5) business days after the Bond Trustee provides written notice to Developer of the proposed amendment. None of Developer, any Related Entity, or the City shall be required to provide any credit enhancement or guaranty for the Bonds, provided, however, that the Developer shall be required to purchase the Bonds for the Initial Development Project Phase as set forth in Section 3.6 and to provide the Completion Guaranty in accordance with the terms hereof and to make payments pursuant to Section 4.3(g).

**Section 4.3 Terms of Bonds.**

(a) The Bonds shall, subject to the restrictions of all applicable laws, be issued with such reasonable and current market interest rates, in such denominations, with such maturities, and with such other terms as may be mutually agreed to by the parties, as recommended by the Financing Team. The Bonds issued with respect to the Initial Development Project Phase shall have a final stated maturity of no more than thirty-two (32) years after issuance.

(b) The principal amount of the Priority Bonds for each Development Project Phase shall not exceed the amount for which, based upon projections reasonably acceptable to the Financing Team, the projected Available Revenues and Contractually Pledged City Revenues for such Development Project Phase (excluding Dedicated Municipal Revenues and the Dedicated Contractually Pledged City EATs) would provide a 1.25 to 1.00 debt service coverage ratio for the Priority Bonds based on the payment schedule for the Bonds; subject, however, to the provisions of Section 4.3(d) below.

(c) Reserved.

(d) In the event that the Financing Team determines that, if the Bonds are sold in the Bond Principal Amount, the projected debt service coverage ratio for the Priority Bonds would be less than 1.25 to 1.00, then the Financing Team shall restructure the Bonds to reduce the required debt service coverage ratio, but in no event shall the projected debt service coverage ratio of the Priority Bonds be less than 1.20 to 1.00.

(e) Reserved.

(f) Reserved.

(g) It is intended that Substantial Completion of each Development Project Phase will occur no later than 24 months following the Closing Date of the applicable series of Priority Bonds funding such Development Project Phase. With respect to each series of the Priority Bonds for a Subsequent Development Project Phase only, such Bonds shall have a capitalized interest account (the "Capitalized Interest Account") which shall provide for the payment of interest on the outstanding Priority Bonds for a minimum of twenty-four (24) months. City and Developer agree to negotiate in good faith to establish a mutually agreeable procedure to be set forth in the Bond Documents whereby Developer will pay to the Bond Trustee for deposit into a separate account of the Project Fund a specified amount on a monthly basis (the "Monthly Section 4.3(g) Payment") if Substantial Completion of any Development Project Phase does not occur on or before the second anniversary of the Closing Date applicable to such Development Project Phase. The Monthly Section 4.3(g) Payment shall be based on the Leasable Area and other quantifiable measures of each Element of the Development Project Phase that has not achieved Substantial Completion on or before the second anniversary of the Closing Date, and shall be set forth in a specified amount mutually agreeable to each of the Developer, the City and the Financing Team in its sole discretion: (i) for each square foot of Leasable Area in the Retail Element of the Development Project Phase that has not been substantially completed with an Acceptable Tenant operating therein for at least one day (with such Acceptable Tenant having executed a binding agreement for occupancy with a term of at least one (1) year); (ii) for each square foot of Leasable Area in the Office Element of the Development Project Phase that has not been substantially completed with an Acceptable Tenant operating therein for at least one day (with such Acceptable Tenant having executed a binding agreement for occupancy with a term of at least one (1) year); (iii) for each rental unit in the Residential Element of the Development Project Phase that has not been substantially completed; and (iv) for each for-sale unit in the Residential Element of the Development Project Phase that has not been substantially completed. Notwithstanding anything herein to the contrary, Developer's obligation to pay the portion of the Monthly Section 4.3(g) Payment attributable to any Element shall cease upon Substantial Completion of such Element, and in any event, Developer's obligation to make the Monthly Section 4.3(g) Payments shall cease on the seventh anniversary of the Closing Date, provided that the Developer shall still be responsible for making payments required under (g) which were accrued but unpaid as of such seventh anniversary. The Bond Trustee shall apply any amount deposited within the separate account of the Project Fund pursuant to this subsection at the written direction of the Mayor and the Comptroller for payment of principal or interest on the Bonds or any other amounts due to the holders of such Bonds. In no event shall the amount payable under this (g) exceed, in the aggregate, the Incentive Amount provided to the Developer.

#### **Section 4.4 Establishment of Funds.**

The funds and accounts shall be as set forth in the Bond Indenture. The parties agree that, with respect to each fund or account specified or referenced herein, (i) there shall be one such fund or account with respect to the Development Project as a whole, which fund or account shall contain separate sub-funds or sub-accounts for each Development Project Phase, and (ii) whenever this Agreement refers to any fund or account, it is intended that it refers to the sub-fund or sub-account of such fund or account which corresponds to the applicable Development Project Phase.

#### **Section 4.5 Use of Bond Proceeds.**

Upon receipt of any Bond Proceeds from the issuance of Bonds with respect to any Subsequent Development Project Phase only, the Bond Trustee shall deposit (i) into the Debt Service Reserve Account a reasonable portion of the principal amount of such Bonds, if any, as determined by the Financing Team and reasonably acceptable to the Developer and the Issuer; (ii) into the Costs of Issuance Account a reasonable amount as determined by the Financing Team and reasonably acceptable to the Developer, the Issuer and the City to provide for payment of all Issuance Costs for such Bonds; and (iii) the remainder, which amount shall be no greater than the total Maximum Reimbursable Development Project Costs for the Development Project Phase for which such Bonds are being issued at the time of Closing, less anticipated interest earnings on all funds during the time when the project funds are anticipated to be paid for Reimbursable Development Project Costs, into the Project Fund. Funds in the Debt Service Reserve Account shall be applied in accordance with the provisions of each applicable Bond Indenture to pay the principal of and redemption

premium, if any, and interest on the Bonds issued with respect to the Development Project Phase as the same become due and payable on any payment date or at maturity, upon redemption, by acceleration or otherwise, to the extent that Available Revenues and Contractually Pledged City Revenues generated within such Development Project Phase, exclusive of Dedicated Municipal Revenues and the Dedicated Contractually Pledged City EATs, are not sufficient to make such payments. Funds in the Costs of Issuance Account shall be applied in accordance with the provisions of each applicable Bond Indenture to pay Issuance Costs, upon written disbursement requests of the City, the Comptroller, the SLDC, the Authority or the Issuer (or contemporaneous with the issuance of such Bonds). Any funds remaining in the Costs of Issuance Account six (6) months after issuance of the Bonds shall be transferred to pay interest on the applicable Priority Bonds.

**Section 4.6 Disbursement of Amounts from the Project Fund.**

With respect only to Bonds issued for a Subsequent Development Project Phase:

(a) Amounts in the Project Fund shall be allocated to pay the Incentive Amount and advanced periodically in accordance with the provisions of this Agreement, the applicable Bond Indenture and the Draw Schedule, on a cumulative basis, to Developer, the TDD or the CID, as applicable, to pay for Reimbursable Development Project Costs incurred by such Person up to the Maximum Reimbursable Development Project Costs for the particular Element. Each Bond Indenture shall provide that the Bond Trustee shall, subject to the terms of Section 4.6(b), disburse funds from the Project Fund established pursuant to such Bond Indenture upon receipt of a Certificate of Reimbursable Development Project Costs in the form attached hereto as Exhibit G executed by Developer, the TDD or the CID, as applicable, with supporting documentation reasonably and customarily acceptable to the City, evidencing that such Person shall have incurred Development Project Costs as set forth therein, which are eligible for reimbursement pursuant to the MODESA Act, the TDD Act and/or the CID Act, as applicable, but no sooner than at such times as permitted by the Draw Schedule;

(b) Any request to the Bond Trustee for disbursement from the Project Fund shall be in accordance with the Draw Schedule attached as Exhibit Q. In addition to the requirements of Exhibit Q, in connection with any such request to the Bond Trustee for disbursement from the Project Fund, Developer shall provide to the City and its designee and the Bond Trustee: (i) itemized invoices, receipts or other information evidencing such costs, provided that the Developer may satisfy this requirement by providing to the City copies of all documentation otherwise required by Developer's lender(s) in connection with the Work for which such disbursement is requested; (ii) evidence of compliance with any leasing requirements that comprise a part of the Draw Schedule; (iii) a Certificate of Reimbursable Development Project Costs constituting certification by the Developer that such cost is eligible for reimbursement under the MODESA Act, the CID Act, or the TDD Act, as the case may be; and (iv) evidence that the Developer shall advance or shall have previously advanced to the City the full amounts identified in Section 1.3 of this Agreement (unless Developer is protesting such amounts in good faith). Such information shall be provided to the City in a manner which enables the City to determine whether a Reimbursable Development Project Cost is eligible for reimbursement under the MODESA Act, the CID Act, or the TDD Act, as the case may be. Within ten (10) Business Days of the City's and/or its designee's receipt from the Developer of a Certificate of Reimbursable Development Project Costs, the City and/or its designee shall review such Certificate of Reimbursable Development Project Costs. If the City and/or its designee determines that (i) any cost identified as a Reimbursable Development Project Cost on any Certificate of Reimbursable Development Project Costs is not eligible for reimbursement under the MODESA Act, the CID Act or the TDD Act (as applicable); or (ii) the request for reimbursement is not in compliance with the Draw Schedule, the City and/or its designee shall so notify the Developer in writing (with a copy to the Bond Trustee) within the ten (10) Business Day period referenced in this Section 4.6(b), identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon: (A) the Developer shall have the right to identify and substitute other costs as Reimbursable Development Project Costs with a supplemental application for payment and the ten (10) Business Day review and notification period shall begin anew, and (B) the City and/or its designee may instruct the Bond Trustee to withhold the portion of the funds requested by Developer that are in dispute and disburse the remaining funds requested by Developer. In the event any funds are withheld pursuant to the preceding sentence, Developer and the City shall cooperate to expeditiously resolve any such dispute and funds previously withheld shall be disbursed promptly upon resolution of such dispute. If the parties are unable to resolve such dispute within thirty (30) days, the dispute shall be settled in accordance with the arbitration procedures set forth in Section 11.21 hereof, and if Developer prevails in any such arbitration, Developer shall be entitled to interest on the disputed amount from the date of the applicable draw request at the average interest rate of the Bonds. If the City and/or its designee fails to approve or disapprove any Certificate of Reimbursable Development Project Costs within ten (10) Business Days after receipt thereof, the Certificate of Reimbursable Development Project Costs shall be deemed approved and the Bond Trustee shall disburse the amount requested in the Certificate;

(c) The Bond Trustee shall be entitled to rely solely on the information contained in any Certificate of Reimbursable Development Project Costs submitted by the Developer and approved by the City and/or its designee, and any accompanying

certificates, invoices and statements, and shall not be required to make any independent inspection or investigation in connection therewith; and

(d) Subject to the other terms and conditions of this Agreement, including Developer's rights to disbursements from the Project Fund for Reimbursable Development Project Costs incurred within a reasonable period of time after Substantial Completion of a Development Project Phase up to the amount of Maximum Reimbursable Development Project Costs for such Development Project Phase and subject to the Draw Schedule, any funds remaining in the Project Fund after the City's acceptance (or deemed acceptance) of the Certificate of Substantial Completion for a Development Project Phase shall be used for the redemption of the Bonds issued with respect to such Development Project Phase in accordance with the Bond Indenture.

#### **Section 4.7 Application of Available Revenues.**

Except as otherwise provided in Section 6.4 (Dedicated Municipal Revenues), Section 6.5 (Springing TDD Sales Tax Revenues) and Section 6.6 (TDD Ticket Tax Revenues) hereof, the City hereby agrees, during the term of this Agreement, to apply all Available Revenues to the repayment of Bonds issued under this ARTICLE IV, as provided in the Financing Ordinance and this Agreement. Each Bond Indenture shall provide for all Available Revenues generated within a Development Phase Area to be transferred from the City to the Bond Trustee to be deposited into the Revenue Fund established for such Development Project Phase pursuant to such Bond Indenture and applied to the Bonds issued thereunder (and to the payment of principal and interest on other series of Priority Bonds, if any, as provided in subsection (o) below) as follows:

- (a) First, to pay any arbitrage rebate under Section 148 of the Internal Revenue Code;
- (b) Second, to pay the expenses of the Bond Trustee and any consultant retained by the City to monitor the receipt and application of Available Revenues, as set forth in the Bond Indenture;
- (c) Third, to pay reasonable fees and expenses of the Comptroller of the City and SLDC, provided that: (i) with respect to the Bonds issued for the Initial Development Project Phase, the amount of [\$50,000] per year for the calendar year following the Closing Date, and each subsequent year is hereby deemed an acceptable amount, and (ii) with respect to the Bonds issued for any other Development Project Phase, the acceptable amount shall be determined by the parties prior to the Closing Date, based on the relative principal amount of such Bonds, and provided further that 75% of such amount shall be payable to the Comptroller of the City and 25% of such amount shall be payable to SLDC, and further provided that, in the event that the Financing Team determines that it is reasonably necessary to adjust the priority of the payments listed in this subpart (c) in order to sell the Bonds on acceptable terms (except for Bonds issued with respect to the Initial Development Project Phase), the priority of such payments will be adjusted such that the payments to be made pursuant to this subpart (c) shall follow the payments described in subparts (d) and (e) of this Section 4.7;
- (d) Fourth, to pay any interest (net of capitalized interest) on the Priority Bonds, excluding the Ticket Tax Series;
- (e) Fifth, to pay principal due on the Priority Bonds, excluding the Ticket Tax Series, in accordance with the Base Amortization Schedule (as defined below);
- (f) Sixth, to pay any amounts necessary to replenish the Debt Service Reserve Account, if any, maintained for the Priority Bonds;
- (g) Seventh, to pay any interest (net of capitalized interest) on the Ticket Tax Series;
- (h) Eighth, to pay principal due on the Ticket Tax Series in accordance with the Base Amortization Schedule (as defined below);
- (i) Ninth, to pay current and all accrued interest on the Subordinate Bonds, if any, unless otherwise agreed to by Developer;
- (j) Tenth, to redeem the Priority Bonds in accordance with the Cumulative Redemption Schedule (as defined below);
- (k) Eleventh, to repay the City's advances of Dedicated Municipal Revenues;
- (l) Twelfth, to redeem the Subordinate Bonds, if any, based on a Level Cumulative Amortization Schedule (as

defined below), with the date of the first redemption to be determined by mutual agreement of the parties, provided that prior to any such redemption of the Subordinate Bonds, all accrued interest on such Subordinate Bonds shall first be paid if not previously paid under subpart (i) of this section;

- (m) Thirteenth, to redeem the Priority Bonds;
- (n) Fourteenth, to redeem the Subordinate Bonds, if any; and
- (o) Finally, to be transferred to the Revenue Fund established pursuant to the Bond Indenture for any other series of Priority Bonds that are outstanding, in the order each series of Priority Bonds was issued (with refunding bonds deemed issued as of the date of issuance of the initial series of Priority Bonds refunded therewith), to be applied in accordance with such Bond Indenture.

Any Available Revenues generated within the Development Area but outside any Development Phase Area for which Bonds have been issued shall be deemed generated within the Initial Development Phase Area for purposes of this Section 4.7, but only until such time as Bonds are issued for the portion of the Development Area in which such Available Revenues are generated, at which point such Available Revenues shall be deemed generated within such subsequent Development Phase Area.

For purposes of this Section 4.7, the term “Base Amortization Schedule” means a base amortization schedule for the Priority Bonds issued with respect to a Development Project Phase prepared by the Financing Team and approved by Developer prior to Closing for such Development Project Phase; the term “Cumulative Redemption Schedule” means a cumulative redemption schedule for the Priority Bonds issued with respect to a Development Project Phase prepared by the Financing Team and approved by the City and the Developer prior to Closing for such Development Project Phase; and the term “Level Cumulative Amortization Schedule” means a level amortization schedule for the Subordinated Bonds issued with respect to a Development Project Phase, if any, accruing on a cumulative basis, prepared by the Financing Team and approved by City and Developer prior to Closing for such Development Project Phase. Dedicated Municipal Revenues generated within a Development Phase Area shall only be applied after application of (i) all other Available Revenues generated (or deemed to be generated pursuant to Section 4.7) within such Development Phase Area and (ii) any Springing TDD Sales Tax transferred to the Revenue Fund for application pursuant to the applicable Bond Indenture. In no event shall Dedicated Municipal Revenues be used to make payment specified in (e) through (o) above. Dedicated Municipal Revenues not required to make payments specified in (a) through (d) above in any particular Bond Year with respect to any series of Priority Bonds shall be released immediately following the making of all payments due in (a) through (d) above in such particular Bond Year with respect to each series of Priority Bonds, to the City for the City’s use in any lawful manner.

#### **Section 4.8 Cooperation in the Issuance of Bonds.**

Subject to the provisions of Section 11.29 hereof, Developer covenants to cooperate and take all reasonable actions necessary to assist the City, the Issuer 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 Bonds and any refunding bonds payable from Available Revenues and Contractually Pledged City Revenues, including disclosure of Users of any Development Phase Area and the non-financial terms of any leases or letters of intent between Developer and such Users, and provision of information required for the Financing Team to accurately project or cause others to project Available Revenues and Contractually Pledged City Revenues, provided, however, that the terms of any such letters of intent shall be disclosed only by physical inspection or verbally to the Financing Team. Developer will not be required to disclose to the general public or any investor any proprietary or confidential information, including financial information, pertaining to Developer, but upon the applicable parties’ execution of a confidentiality agreement acceptable to Developer, Developer will provide such information to the Issuer’s and the City’s financial advisors, underwriters and their counsel to enable such parties to satisfy their due diligence obligations. Developer shall cooperate reasonably with the Financing Team to provide non-confidential information necessary to prepare an offering statement or memorandum for the Bonds, or as otherwise would be reasonably consistent with Municipal Securities Rulemaking Board rules, guidelines or regulations, or general market conventions.

#### **Section 4.9 No Other Bonds or Uses of Revenues.**

The City hereby represents to the Developer that the City has not issued (and will not issue so long as the Bonds are outstanding) any indebtedness or obligations secured by the Available Revenues or Contractually Pledged City Revenues other than bonds to refund the Bonds or any bonds to refund such refunding bonds other than Bonds necessary to make available to Developer the Incentive Amount as provided in this Agreement. Further, the City shall not use or apply any: (i) CID Revenues to pay any cost, except those incurred by the Developer or the CID in connection with a CID Project; and (ii) TDD Revenues to pay any costs, except

those incurred by the Developer or the TDD in connection with a Transportation Project. Following the redemption and payment in full of the Bonds and subject to the MODESA Act, the City may utilize any excess Available Revenues and Contractually Pledged City Revenues (except for Dedicated Municipal Revenues and the Dedicated Contractually Pledged City EATs) to pay any other authorized "Development Project Costs" (as such term is defined in the MODESA Act). Excess TDD Revenues and CID Revenues following the redemption and payment in full of the Bonds shall be disbursed in accordance with the TDD Act and the CID Act, respectively.

**Section 4.10 Annual Appropriation.**

The City agrees that it will comply with the Charter of The City of St. Louis, Article XVI, Section 3 for each fiscal year that Bonds are outstanding and the City will request an appropriation of all Available Revenues on deposit in the Special Allocation Fund and all Contractually Pledged City Revenues on deposit in the Contractually Pledged City Revenues Account for application to the payment of the principal of (including, but not limited to, payment of a premium, if any) and interest on the Bonds.

**Section 4.11 No Representations Regarding Available Revenues, Contractually Pledged City Revenues, or Sale of Bonds.**

(a) The City hereby acknowledges that the Developer has not guaranteed and is not guarantying or warranting that the Development Project Phase(s) will generate any level of Available Revenues or Contractually Pledged City Revenues, and the City hereby waives, releases and discharges, and shall use reasonable and good faith efforts to cause Issuer, Authority and SLDC to waive, release and discharge Developer, its Related Entities, and their respective affiliates, members, managers, officers, directors, agents and employees from and against any and all claims, costs, demands and liabilities arising from any claimed or alleged guaranty or warranty by the Developer of the Available Revenues or Contractually Pledged City Revenues to be generated by the Development Project Phase(s) or any Element thereof.

(b) Developer hereby acknowledges that the City has not guaranteed and is not guarantying or warranting: (i) that the Development Project Phase(s) will generate any level of Available Revenues or Contractually Pledged City Revenues, or (ii) that any estimate of any Available Revenues, less Dedicated Municipal Revenues, and Contractually Pledged City Revenues, less the Dedicated Contractually Pledged City EATs, will be sufficient to support a Bond issuance in the amounts anticipated by Developer, or (iii) that any amount of Bonds can be sold in accordance with the terms of this Agreement, and Developer hereby waives, releases and discharges and shall use reasonable and good faith efforts to cause its Related Entities to waive, release and discharge City, Issuer, Authority, and SLDC or their instrumentalities, agencies, agents, officers, employees, contractors or subcontractors from and against any and all claims, costs, demands and liabilities arising from any claimed or alleged guaranty or warranty by the City of the Available Revenues or Contractually Pledged City Revenues to be generated by the Development Project Phase(s) or any Element thereof.

**Section 4.12 Utility Tax and Construction Period Revenues.**

Developer shall assist the City in collecting and allocating utility tax revenues that constitute Available Revenues. Developer shall further present to the City and implement a plan for capturing appropriate Economic Activity Taxes in each Development Phase Area during the period prior to Substantial Completion of the applicable Development Project Phase. Notwithstanding the foregoing, such revenues shall not be included in the projections for Available Revenues used to determine the principal amount of the Priority Bonds for any Development Project Phase in accordance with Section 4.3(b) unless Developer and the City agree on the mechanism for collecting such revenues for deposit into the Revenue Fund.

**ARTICLE V  
CLOSING; CONSTRUCTION COMMENCEMENT**

**Section 5.1 Closing Date.**

(a) Provided all conditions to the obligations of the parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective parties will take at the Closing itself) have been satisfied or waived, the Closing contemplated with respect to the Initial Development Project Phase shall take place on the earlier of (1) nine (9) months following execution of the State MODESA Agreement, or (2) September 30, 2013. Provided all conditions to the obligations of the parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective parties will take at the Closing itself) have been satisfied or waived, the Closing contemplated with respect to any Subsequent Development Project Phase identified pursuant to Section 2.4 hereof shall take place on the date that is six (6) months after receipt of the written

notice described in Section 2.4 hereof, or such earlier date as the parties may mutually determine. The parties agree that they will work cooperatively to: (i) cause the Closing contemplated with respect to any Development Project Phase identified pursuant to Section 2.4 hereof to occur within the applicable six (6) month period described in this Section 5.1(a), and (ii) attempt to structure ownership of the Property, particular Elements, or portions thereof or interests therein, in a manner that permits the Incentive Amount allocated to each Element of such Development Project Phase, as determined pursuant to this Agreement, to be fully used in the construction of such Element. The parties shall use good faith efforts to consult regularly with each other prior to each Closing Date and update each other periodically on the progress of the City, Developer and the Financing Team. Developer shall be permitted to communicate directly with the Financing Team regarding the issuance of the Bonds.

(b) With respect to any Subsequent Development Project Phase, if the Closing Date for any Development Project Phase does not occur within the applicable six (6) month period described in Section 5.1(a), the Developer and the City shall each have the right to extend such Closing Date for one (1) or more additional periods of six (6) months each, up to an aggregate additional twelve (12) months, as necessary to allow all conditions precedent hereunder to be satisfied. The Closing Date may be further extended by mutual agreement of the City and Developer.

### **Section 5.2 Approval of Project Budget and Preliminary Plans.**

(a) At least sixty (60) days (or such shorter period as the City may determine) prior to the Bond Offering for any Development Project Phase, Developer shall submit to the City and the Financing Team: (i) Preliminary Plans for such Development Project Phase; (ii) a calculation of the corresponding Incentive Amount for such Development Project Phase, determined in accordance with Section 3.1 hereof; and (iii) a proposed Project Budget for such Development Project Phase. The City shall review the Preliminary Plans and the Project Budget within thirty (30) days after submission thereof and notify the Developer within such thirty (30) day period of any modifications necessary to make the Preliminary Plans and the Project Budget consistent with the requirements of this Section 5.2(a). The City's review and approval of the Preliminary Plans shall be limited to: (i) confirming whether the proposed Development Project Phase contains the Minimum Essential Elements; (ii) verifying the Financing Team's calculation of the Incentive Amount; (iii) confirming the location of the Development Phase Area and that such Development Phase Area is separate and distinct from all other Development Phase Areas; and (iv) determining whether or not the general location and size of the streets designated for public vehicular traffic and proposed for dedication to the City or other public entities are reasonably acceptable to the City and/or its designee. The City's review and approval of the Project Budget shall be limited to determining whether the Project Budget is generally consistent with the size and scope of the Development Project Phase as described in the Preliminary Plans and consistent with the provisions of the State MODESA Agreement relating to such Development Project Phase. Within fifteen (15) days after receipt of any written objections from the City, the Developer shall modify the Preliminary Plans and/or the Project Budget until they are consistent with the requirements of this Section 5.2(a).

(b) Developer shall have the right to modify the approved Project Budget and/or the Preliminary Plans for any Development Project Phase at any time prior to the Closing of the Bonds with respect to such Development Project Phase (i) as provided in Section 3.7 hereof; or (ii) with the prior written consent of the City, such consent not to be unreasonably withheld if the Preliminary Plans and/or Project Budget, as applicable, remain consistent with the terms of Section 5.2(a) hereof.

### **Section 5.3 Conditions Precedent to Obligation of the City.**

This Agreement, and the obligations of the City hereunder with respect to any Development Project Phase, are subject to satisfaction of the following conditions on or before the Closing Date with respect to such Development Project Phase:

(a) the Developer shall have provided Preliminary Plans to the City, and the City has approved such Preliminary Plans in accordance with Section 5.2(a) hereof.

(b) the Developer shall have provided the Project Budget to the City, and the City has approved such Project Budget in accordance with Section 5.2(a) hereof.

(c) the MODESA Application has been approved by the Missouri Development Finance Board and the Missouri Department of Economic Development for a net New State Revenue amount acceptable to the City;

(d) the City or the Authority has negotiated the State MODESA Agreement;

(e) City has determined that the terms and provisions of the State MODESA Agreement are acceptable to City in its sole and subjective discretion;

- (f) the State MODESA Agreement has been fully executed and is in full force and effect;
- (g) the Issuer shall have selected a Bond Trustee reasonably acceptable to the City and Developer, and shall have entered into the Bond Documents in form and substance reasonably acceptable to Issuer, City and Developer and including the terms and conditions set forth in this Agreement;
- (h) the City shall have received a legal opinion from outside counsel to the Developer regarding such matters as City shall reasonably request including the due execution and authorization of this Agreement by the Developer, and the enforceability of this Agreement against the Developer in accordance with its terms;
- (i) verification from Development Strategies, or such other third party consultant mutually agreeable to the City and Developer, that the Bond Principal Amount with respect to the particular Development Project Phase for which Closing is contemplated is supported by the Available Revenues (excluding Dedicated Municipal Revenues) and Contractually Pledged City Revenues (excluding the Dedicated Contractually Pledged City EATs) to be generated by such Development Project Phase;
- (j) the Financing Ordinance has been approved by the City's Board of Aldermen and is effective;
- (k) the City and Financing Team shall have received the Completion Guaranty in the form attached hereto as Exhibit M and shall be reasonably satisfied that it complies with the City's requirements for such Guaranty;
- (l) Developer has produced evidence of its ability to obtain debt and equity financing for the particular Development Project Phase with respect to which such Closing is contemplated;
- (m) the Bonds have been issued or are in the process of being issued in the Bond Principal Amount for the Development Project Phase in accordance with the terms of this Agreement, and (except in the case of the Initial Development Project Phase) all of such Bonds have been or are in the process of being privately placed and/or publicly sold;
- (n) the CID and/or the TDD have been formed and the CID Sales Tax, the Springing TDD Sales Tax and TDD Ticket Tax (if applicable) described in Section 2.17 hereof have been authorized, and the City shall have received an opinion from counsel to the CID and the TDD stating that each has been duly formed and that any taxes and assessments to be imposed thereby shall have been validly imposed;
- (o) reserved;
- (p) reserved; and
- (q) the amendment to the Redevelopment Agreement described in Section 5.5 hereof shall have been fully executed by the parties thereto.

**Section 5.4 Conditions Precedent to Developer's Obligation.**

This Agreement, and the obligations of the Developer hereunder with respect to any Development Project Phase, are subject to satisfaction of the following conditions on or before the Closing Date with respect to such Development Project Phase:

- (a) the MODESA Application has been approved;
- (b) the City or the Authority has negotiated the State MODESA Agreement;
- (c) Developer has determined that the terms and provisions of the State MODESA Agreement are acceptable to Developer in its sole and subjective discretion;
- (d) the State MODESA Agreement has been fully executed and is in full force and effect;
- (e) the Financing Ordinance has been approved by the City's Board of Aldermen and is effective;
- (f) the Issuer shall have selected a Bond Trustee reasonably acceptable to the City and Developer, and shall have entered into the Bond Documents in form and substance acceptable to Issuer, City and Developer in their respective sole and

subjective discretion and including the terms and conditions set forth in this Agreement;

(g) the Bonds have been issued or are in the process of being issued in the Bond Principal Amount for the Development Project Phase in accordance with the terms of this Agreement, and (except with respect to the Initial Development Project Phase) all of such Bonds have been or are in the process of being privately placed and/or publicly sold;

(h) the City shall have approved a signage program for the Development Phase Area acceptable to the Developer as set forth and with the conditions specified in Article VIII hereof if Developer has submitted a program at least eight weeks prior to Closing;

(i) Developer and the City shall have agreed upon an on-street parking and public transit plan with respect to the Development Phase Area as set forth and with the conditions specified in Article VIII hereof if Developer has submitted a plan at least eight weeks prior to Closing;

(j) Developer and the City shall have agreed upon a street and sidewalk utilization plan with respect to the Development Phase Area as set forth and with the conditions specified in Article VIII hereof if Developer has submitted a plan at least eight weeks prior to Closing;

(k) Developer shall have received a legal opinion from the City Counselor customary in similar transactions regarding the due execution and authorization of this Agreement by the City, and the enforceability of this Agreement against the City in accordance with its terms;

(l) the CID and the TDD have been formed and the CID Sales Tax, Springing TDD Sales Tax and TDD Ticket Tax (if applicable) described in Section 2.17 hereof have been authorized;

(m) reserved;

(n) the City has delivered written certification to the Developer that the City has received the executed Completion Guaranty, and such Completion Guaranty and the Guarantor are acceptable to the City; and

(o) the amendment to the Redevelopment Agreement described in Section 5.5 hereof shall have been fully executed by the parties thereto.

#### **Section 5.5 Amendment to Redevelopment Agreement.**

The parties agree to pursue an amendment to that certain Redevelopment Agreement by and among the Land Clearance for Redevelopment Authority of the City of St. Louis (LCRA), Gateway Stadium, L.L.C., and Gateway Parking, L.L.C., dated as of November 1, 2002, and as subsequently amended by that certain Agreement dated as of June 27, 2003 (collectively, the "Redevelopment Agreement") to be executed by the parties thereto, which amendment shall provide for the following:

(1) The commencement date for the liquidated damages described in Section 2.7(b) of the Redevelopment Agreement shall be extended to March 31, 2014 and such liquidated damages, if any, would become payable, subject to the other terms and conditions of the Redevelopment Agreement, on March 31, 2014 only if Substantial Completion on Ballpark Village Phase I has not occurred on or before such date; and

(2) The completion dates contained in Sections 2.3(a) and 2.3(b) of the Redevelopment Agreement shall be extended such that Substantial Completion and Final Completion of Ballpark Village Phase I shall be caused to occur not later than March 31, 2014; and

(3) The parties agree that the execution of this Agreement shall not be deemed to satisfy the condition in Section 5.5 of the Redevelopment Agreement related to the provision of tax increment financing for Ballpark Village Phase I until the Closing with respect to the Initial Development Project Phase occurs; and

(4) Upon the Closing of Bonds with respect to the Initial Development Project Phase:

(a) The definition of "Ballpark Village Phase I" contained in the Redevelopment Agreement shall be replaced with the "Initial Development Project Phase" as described in this Agreement; provided, that in the event the Closing does

not occur with respect to the Initial Development Project Phase within the time frame set forth herein, Ballpark Village Phase I shall, at the election of the Redevelopers (as defined in the Redevelopment Agreement) consist of the elements originally described in the Redevelopment Agreement;

(b) The definition of “Ballpark Village Phase I Site” contained in the Redevelopment Agreement shall be revised to reflect that Ballpark Village Phase I can be constructed on any portion or all of the Development Phase Area;

(c) The penultimate paragraph of Section 7.7 of the Redevelopment Agreement shall be revised to replace the term “Redevelopment Area” as used in such paragraph with “Ballpark Project Site” and the Development Area (as the latter is defined in this Agreement);

(d) The completion dates contained in Sections 2.3(a) and 2.3(b) of the Redevelopment Agreement shall be extended such that Substantial Completion and Final Completion of Ballpark Village Phase I shall be caused to occur not later than March 31, 2016;

(e) The commencement date for the liquidated damages described in Section 2.7(b) of the Redevelopment Agreement shall be extended to March 31, 2016 and such liquidated damages, if any, would become payable on March 31, 2016 only if Substantial Completion on Ballpark Village Phase I has not occurred on or before such date;

(f) If the Closing for the Initial Development Project Phase occurs, the LCRA’s obligation to assist the Redeveloper in obtaining funding for the Ballpark Village Project shall be deemed satisfied and the condition to the obligation of the Redeveloper to develop and complete Ballpark Village Phase I as set forth in Section 5.5 shall be eliminated and deemed satisfied;

(g) The Substantial Completion of the Initial Development Project Phase, with the exception of any unsatisfied obligation to pay liquidated damages (if any) described in Section 2.7(b) of the Redevelopment Agreement, shall satisfy any and all obligations of the Redevelopers (as defined in the Redevelopment Agreement) with respect to Ballpark Village Phase I under the Redevelopment Agreement; and

(h) The LCRA has evaluated the capabilities, experience, reputation and financial capacity of The Cordish Company and the Developer, and approves the selection of the Developer;

provided, however, that the parties will work cooperatively to obtain necessary approvals of the amendment from St. Louis County, Missouri, the State of Missouri, the Land Clearance for Redevelopment Authority of the City of St. Louis, Gateway Stadium, L.L.C., Gateway Parking, L.L.C., and any other parties necessary to memorialize the amendment described above. Notwithstanding anything in this Agreement to the contrary, if the amendment to the Redevelopment Agreement described in this Section 5.5 is not executed and effective within ninety (90) days after the effective date of this Agreement, the Developer shall have the right to terminate this Agreement by written notice to the City.

**ARTICLE VI  
SPECIAL ALLOCATION FUND;  
COLLECTION AND USE OF AVAILABLE REVENUES AND CONTRACTUALLY PLEDGED CITY REVENUES**

**Section 6.1           Creation of Special Allocation Fund.**

The City agrees to cause its Comptroller or other financial officer or other officials to maintain the Special Allocation Fund, including a “PILOTs Account,” an “EATs Account,” a “TDD Revenues Account,” a “CID Revenues Account,” a “New State Revenues Account” and a “Dedicated Municipal Revenues Account” and such further accounts or sub-accounts as are required by this Agreement or as may be required in connection with the administration of the Special Allocation Fund pursuant to this Agreement or pursuant to the Bond Indenture with respect to each Development Phase Area. Subject to the requirements of the MODESA Act and, with respect to Economic Activity Taxes and Dedicated Municipal Revenues, subject to annual appropriation by the Board of Aldermen, the City will promptly upon receipt thereof deposit all Payments in Lieu of Taxes generated within each Development Phase Area into the applicable sub-account for such Development Phase Area within the PILOTs Account, all Economic Activity Taxes generated within each Development Phase Area into the applicable sub-account for such Development Phase Area within the EATs Account, all CID Revenues generated within each Development Phase Area into the applicable sub-account for such Development Phase Area within the CID Revenues Account, all TDD Revenues generated within each Development Phase Area into the applicable sub-account for such Development Phase Area within the TDD Revenues Account, all New State Revenues generated within each Development Phase Area into the applicable sub-account for such Development Phase

Area within the New State Revenues Account and all Dedicated Municipal Revenues generated within each Development Phase Area into the applicable sub-account for such Development Phase Area within the Dedicated Municipal Revenues Account.

**Section 6.2 Certification of Base for PILOTs and EATS.**

(a) Upon the reasonable written request of the City, Developer shall use its reasonable efforts to provide or cause to be provided to the Comptroller, the Office of the Mayor, the Assessor and the Missouri Department of Economic Development or their authorized representatives any documents and information necessary for the City to calculate the base for PILOTs and EATS or necessary for the State to calculate New State Revenues, including, but not limited to: (i) the address and locator number of all parcels of real property located within each Development Phase Area; and (ii) information related to payment of economic activity taxes by any businesses, owners or other occupants of each Development Phase Area in the calendar year ending December 31, 2011. Provided, that this subsection shall require that for any business with multiple locations in the State of Missouri, separate information for any such location within the Development Area shall be provided.

(b) At least sixty (60) days prior to Closing with respect to any Development Project Phase, the City shall provide to the Developer (i) a certificate of the City Assessor's calculation of the total initial equalized assessed valuation of the taxable real property within the Development Phase Area based upon the most recently ascertained equalized assessed valuation of each taxable lot, block, tract, or parcel of real property within the Development Area in accordance with Section 99.957 of the MODESA Act; and (ii) a certification of the EATS generated within the Development Phase Area for the calendar year ending December 31, 2011.

**Section 6.3 Cooperation in Determining Available Revenues.**

The City and the Developer agree to cooperate and take all reasonable actions necessary to cause the MODESA Local Revenues, TDD Revenues, CID Revenues, New State Revenues, and Dedicated Municipal Revenues generated within each Development Phase Area to be paid into the Special Allocation Fund, including, but not limited to, the City's enforcement and collection of all such payments through all reasonable and ordinary legal means of enforcement. The Developer (or its successor(s) in interest as an owner or owner(s) of the affected portion(s) of the Property) shall use all reasonable efforts to require each "seller" (as that term is defined in Section 144.010(11) of the Missouri Revised Statutes, as amended) located in, or owner of any portion of, the Property to provide to the Comptroller of the City and the Missouri Department of Economic Development the following information:

- (a) Each "seller's" federal and state tax identification numbers and sales tax identification numbers.
- (b) Within thirty (30) days of the end of each calendar quarter, copies of a completed Quarterly Information Form, in the form attached hereto as Exhibit K, for each "seller's" business located within a Development Phase Area along with:
- (i) copies of all sales tax returns filed with the Missouri Department of Revenue (on Form 53-S.F. Missouri Department of Revenue or any successor form) with respect to the sales taxes originating from businesses located within the Development Phase Area for such quarter. In the event that a "seller" has multiple business operations within the State, such "seller" shall file separate sales tax returns for the sales taxes originating from the business located within the Development Phase Area.
- (ii) copies of all earnings tax returns filed with the City (on Business Return Form 234 or any successor form) with respect to earnings taxes originating from the business located within a Development Phase Area for such quarter. In the event that a business has multiple operations within the City, such business shall file separate earnings tax returns for the earnings taxes originating from the business located within the Development Phase Area.
- (iii) copies of all City and State earnings tax withholding reports filed with the City and the State (on Form W-10 or any successor form) originating from the business located within a Development Phase Area for such quarter. In the event that a business has multiple operations within the State, such business shall file separate earnings tax withholding reports for the earnings tax withholdings originating from the business located within the Development Phase Area.
- (iv) copies of all parking tax returns and restaurant tax returns filed with the City, with such returns filed separately for the location in the Development Phase Area in the event that the business has more than one location in the City.
- (v) information with respect to utility taxes consistent with the Developer's obligation to assist the City

in collecting and allocating such taxes as provided herein.

The Developer (or its successor(s) in interest as an owner or owner(s) of any portion(s) of the Property) shall also require any purchaser or transferee of real property and any lessee or other User of real property located within a Development Phase Area to designate sales subject to sales taxes pursuant to Chapter 144 of the Revised Statutes of Missouri, as amended, to be reported as originating from such Development Phase Area to the fullest extent permitted by law (including reasonable efforts to negotiate for the inclusion of a clause so providing in the leases of the Property). The Developer shall satisfy the requirements of this Section 6.3 by including the obligations set forth in this Section within any deed conveying a portion of the Property to or any lease entered into with any purchaser or User, or by any other document recorded against the Property, provided that, in the event Developer has exhausted its reasonable efforts in negotiating for inclusion of such a provision in a particular lease with a User, and the City has approved the exclusion from a particular lease, which approval shall not be unreasonably withheld or delayed, this subsection shall not be construed as to prohibit Developer from entering into such lease.

**Section 6.4 Use of Dedicated Municipal Revenues.**

Notwithstanding anything in this Agreement to the contrary, Dedicated Municipal Revenues generated within a Development Phase Area on deposit in the Special Allocation Fund shall be applied to the repayment of Bonds issued with respect to such Development Phase Area only in the event that the MODESA Local Revenues, the TDD Revenues, the CID Revenues, the New State Revenues and the Springing TDD Sales Tax Revenues, if any, generated within such Development Phase Area, deposited in the Special Allocation Fund and transferred to the Bond Trustee in accordance with Section 4.7 hereof, when aggregated, are not sufficient to make scheduled payments on the Priority Bonds issued with respect to such Development Phase Area in accordance with subparts (c) and (d) of Section 4.7; and in no event shall Dedicated Municipal Revenues be used to make any payment on any Subordinate Bonds. If all or any portion of the Dedicated Municipal Revenues generated within a Development Phase Area and on deposit in the Special Allocation Fund are not required in any given Bond Year to make scheduled payments on the Priority Bonds issued with respect to such Development Phase Area, such Dedicated Municipal Revenues attributable to such calendar year shall be released to the City, to be used by the City in any lawful manner.

**Section 6.5 Use of Springing TDD Sales Tax Revenues.**

Notwithstanding anything in this Agreement to the contrary, Springing TDD Sales Tax Revenues generated within a Development Phase Area on deposit in the Special Allocation Fund shall be deposited in the Springing TDD Sales Tax Revenues Sub-Account established pursuant to the applicable Bond Indenture and applied to the repayment of Bonds issued with respect to such Development Phase Area only in the event that the MODESA Local Revenues, the TDD Revenues, the CID Revenues and the New State Revenues, as well as any Contractually Pledged City Revenues, generated within such Development Phase Area, transferred to the Bond Trustee and deposited in the Special Allocation Fund in accordance with Section 4.7 hereof, when aggregated, are not sufficient to make scheduled payments on the Priority Bonds issued with respect to such Development Phase Area in accordance with subparts (c) and (d) of Section 4.7. If all or any portion of the Springing TDD Sales Tax Revenues generated within a Development Phase Area and on deposit in the Springing TDD Sales Tax Revenues Sub-Account are not required in any given Bond Year to make scheduled payments on the Priority Bonds issued with respect to such Development Phase Area or replenish the Debt Service Reserve Account established pursuant to the applicable Bond Indenture (as required therein), such Springing TDD Sales Tax Revenues attributable to such calendar year shall be transferred to the Springing TDD Sales Tax Revenues Sub-Account established pursuant to the Bond Indenture for any other series of Priority Bonds that are outstanding, in the order each series of Priority Bonds was issued (with refunding bonds deemed issued as of the date of issuance of the initial series of Priority Bonds refunded therewith), to be applied in accordance with such Bond Indenture solely to make scheduled principal and interest payments on the Priority Bonds issued with respect to such Development Phase Area or replenish the Debt Service Reserve Account established pursuant to the applicable Bond Indenture (as required therein).

**Section 6.6 Use of TDD Ticket Tax Revenues.**

If the TDD Ticket Tax is imposed with respect to the Development Area, any Bonds issued with respect to any Development Phase Area(s) shall include a separate series of Priority Bonds to be financed with TDD Ticket Tax Revenues (the "Ticket Tax Series"). Notwithstanding anything in this Agreement to the contrary, TDD Ticket Tax Revenues generated within a Development Phase Area on deposit in the Special Allocation Fund shall be deposited in the TDD Ticket Tax Revenues Account established pursuant to the applicable Bond Indenture and applied in accordance with Section 4.7(g) and (h) solely to the Ticket Tax Series of Priority Bonds issued with respect to such Development Phase Area. If all or any portion of the TDD Ticket Tax Revenues generated within a Development Phase Area and on deposit in the TDD Ticket Tax Revenues Account are not required in any given Bond Year to make the payments described in Section 4.7(g) and (h) on the Ticket Tax Series of Priority Bonds issued with respect

to such Development Phase Area (prior to application of Available Revenues therefor), such TDD Ticket Tax Revenues attributable to such calendar year shall be transferred (1) to the TDD Ticket Tax Revenues Account established pursuant to the Bond Indenture for any other Ticket Tax Series of Priority Bonds that are outstanding, in the order each such series of Priority Bonds was issued (with refunding bonds deemed issued as of the date of issuance of the initial series of Priority Bonds refunded therewith), to be applied in accordance with such Bond Indenture solely to make the payments described in Section 4.7(g) and (h) on the Ticket Tax Series of Priority Bonds issued with respect to such Development Project Phase; and (2) second, to the Revenue Fund established pursuant to the Bond Indenture for any other Ticket Tax Series of Priority Bonds that are outstanding, in the order each such Ticket Tax Series of Priority Bonds was issued (with refunding bonds deemed issued as of the date of issuance of the initial series of Priority Bonds refunded therewith), to be applied in accordance with such Bond Indenture solely to redeem such series of the Priority Bonds.

**Section 6.7        Deposit and Pledge of Contractually Pledged City Revenues.**

To facilitate the remediation of blight and the construction of the Development Project within the Development Area, the City hereby agrees, to the extent allowable by law, to reimburse the Developer for costs incurred within the Development Phase Area for each Development Project Phase that are not otherwise reimbursed as Reimbursable Development Project Costs hereunder (all such costs being the "Independent Costs"). The City agrees, to the extent allowable by law, to pledge: (a) during the term of the TDD Garage Ground Sublease, all TDD Garage Payments paid to the City, as described in Exhibit L hereto; and (b) during each of the ten (10) years following the termination of the MODESA Financing Term, fifty percent (50%) of all Contractually Pledged City EATs generated within each Development Phase Area to the payment of principal and interest on Priority Bonds, and (c) subject to the limitation set forth in this Section 6.7, during each of the ten (10) years following the termination of the MODESA Financing Term, the Dedicated Contractually Pledged City EATs, which Contractually Pledged City Revenues generated within each Development Phase Area shall be deposited into a separate account (or a sub-account thereof) established pursuant to the applicable Bond Indenture and not located within the Special Allocation Fund (such account being the "Contractually Pledged City Revenues Account"). The Contractually Pledged City Revenues Account established pursuant to the applicable Bond Indenture shall also include separate accounts (or sub-accounts thereof) into which the Springing TDD Sales Tax Revenues, the TDD Ticket Tax Revenues, all other TDD Revenues, and all CID Revenues, shall be deposited following the MODESA Financing Term. During the MODESA Financing Term, funds on deposit in the Contractually Pledged City Revenues Account established under each applicable Bond Indenture shall be applied to pay interest on the Priority Bonds issued with respect to such Development Phase Area that mature after the end of the MODESA Financing Term (prior to the application of Available Revenues to pay such interest in accordance with Section 4.7 hereof). Following the MODESA Financing Term, funds on deposit in the Contractually Pledged City Revenues Account (other than the Dedicated Contractually Pledged City EATs, the Springing TDD Sales Tax Revenues, the TDD Ticket Tax Revenues, all other TDD Revenues, and all CID Revenues) shall be applied in the same manner as Local MODESA Revenues are applied during the MODESA Financing Term pursuant to Section 4.7. Following the MODESA Financing Term, Springing TDD Sales Tax Revenues, the TDD Ticket Tax Revenues, all other TDD Revenues, and all CID Revenues on deposit in the Contractually Pledged City Revenues Account shall be applied in the same manner as such revenues on deposit in the Special Allocation Fund are applied during the MODESA Financing Term pursuant to Section 4.7. The parties agree that to the extent Contractually Pledged City Revenues are not sufficient to pay interest on that portion of the Priority Bonds that mature after the MODESA Financing Term, Available Revenues will be applied pursuant to Section 4.7 to pay interest on such Priority Bonds, and that such interest expense will be incurred in furtherance of the Development Project. If all or any portion of the Contractually Pledged City Revenues generated within a Development Phase Area and on deposit in the Contractually Pledged City Revenues Account are not required in any given Bond Year to make the payments described herein and in Section 4.7 with respect to such Development Phase Area, such funds shall be transferred to the Contractually Pledged City Revenues Account established pursuant to the Bond Indenture for any other Bonds that are issued for the purpose of paying Independent Costs, as provided in the Bond Indenture. Notwithstanding anything in this Agreement to the contrary, the Dedicated Contractually Pledged City EATs shall be deposited into a separate sub-account of the Contractually Pledged City Revenues Account and applied in the same manner as Dedicated Municipal Revenues are applied during the MODESA Financing Term pursuant to Section 4.7, provided, however, the application of such funds shall be limited in the same manner as Dedicated Municipal Revenues are limited during the MODESA Financing Term pursuant to Section 6.4 hereof.

**Section 6.8        No Tax Abatement.**

Developer agrees that neither Developer nor any person, partnership, company, corporation or other entity which owns, rents, or leases property in the Development Area may seek or request ad valorem real property tax abatement for the Development Area. The City agrees that the City shall not grant ad valorem real property tax abatement to any person, partnership, company, corporation or other entity which owns, rents, or leases property in the Development Area.

**ARTICLE VII  
THE PRECLOSING, PRECONSTRUCTION, AND CONSTRUCTION PERIODS**

**Section 7.1 Preclosing and Preconstruction Periods.**

The period from and after the Effective Date and prior to the Closing Date for each Development Project Phase is hereinafter referred to as the “Preclosing Period,” and the period from and after such Closing Date to the date of Commencement of Construction for such Development Project Phase is hereinafter referred to as the “Preconstruction Period.” In addition to all of the other agreements set forth in this Agreement with respect to the Preclosing Period and the Preconstruction Period, the terms and provisions of this Article VII sets forth the covenants, agreements and obligations of City and Developer with respect to the Preclosing Period and the Preconstruction Period.

**Section 7.2 Obligations and Agreements of City.**

City hereby agrees as follows:

(a) City or its designee will, during the Preclosing Period, take all reasonable actions, as may be necessary to obtain the approval of the MODESA Application and shall review the Preliminary Plans and other documents upon presentation of same to City or its designee by Developer and shall cooperate with Developer towards approval of such Preliminary Plans and other documents consistent with the terms of this Agreement. Further, during the Preclosing Period, the City shall cooperate with the Developer to achieve Closing for the Development Project Phase, including, for any Development Project Phase other than the Initial Development Project Phase, using its best efforts to facilitate the Financing Team’s negotiations with any potential purchaser of the Bonds that makes a bona fide offer consistent with the terms of this Agreement and the Bond Indenture, including any offer procured by Developer.

(b) Prior to the Closing Date, the City shall have the right to have designated members of the Financing Team confidentially conduct full due diligence relating to Developer, The Cordish Company, a Maryland corporation, Guarantor and/or any Related Entity, if any, for the purpose of determining their financial strength to satisfy the City as to the liquidity of and assurances provided by the Completion Guaranty; provided, however, that no information provided as a result of such due diligence shall be disclosed in any of the Bond Documents except as may be necessary and required to market the Bonds and only if, in each instance, the Developer has approved such disclosure in writing, which approval Developer may withhold in its sole discretion, except for any matters which would be required to comply with applicable laws. It is agreed that Developer shall have the right to require the Financing Team to review any information provided to the Financing Team without providing a copy of such information to City, except as may be required for the issuance of the Bonds that are approved by Developer in its sole discretion, but nothing herein shall prohibit the Financing Team from engaging in oral discussions with the City as to their findings from the due diligence investigations as long as the confidentiality of such information is preserved.

**Section 7.3 Obligations and Agreements of Developer—Preclosing and Preconstruction Period.**

During the Preclosing Period, Developer shall cause the Preliminary Plans to be prepared so that such Preliminary Plans include each and every Element of the Minimum Essential Elements for the Development Project Phase for which the Closing is intended to occur. During the Preconstruction Period, Developer shall cause the subdivision of Property as required to finance and construct such Development Project Phase in accordance with the Preliminary Plans, and shall cause the Construction Plans for the Work for such Development Project Phase to be prepared substantially in accordance with the Preliminary Plans and all applicable codes and laws, to attempt to permit same, to put same out for bid, to market space in the Development Project Phase, to arrange for closings on the debt and equity financing for the Developer’s share of the total cost of developing the Development Project Phase for which Closing has taken place. Developer shall submit to City a Certificate of Commencement of Construction in the form attached hereto as Exhibit F prior to commencement of construction of each Development Project Phase, which Certificate shall be accompanied by sufficient backup documentation to reasonably satisfy the City that the representations in such Certificate are in fact true and that construction is in fact ready to proceed.

**Section 7.4 Obligations of the Developer to Construct and Lease a Development Project Phase .**

If the Bonds are issued with respect to any Development Project Phase, Developer shall be obligated to complete the construction of such Development Project Phase in accordance with the schedule set forth in Section 2.5. Developer’s failure to commence construction of and complete any Development Project Phase following the issuance of the Bonds for such Development Project Phase and in accordance with such schedule shall be deemed a breach and default of this Agreement, and the City shall be

entitled, in addition to all other remedies provided to the City hereunder, to exercise its remedies under the Completion Guaranty provided with respect to such Development Project Phase upon such breach. City shall have the right to pledge the Completion Guaranty given with respect to any Development Project Phase in any way necessary to further the issuance of the Bonds for such Development Project Phase. Developer may, in its sole discretion and at any time following the issuance of the Bonds for any Development Project Phase, commence the construction of any other Development Project Phase identified pursuant to Section 2.4 hereof; provided, however, that Developer's failure to commence construction of or complete any Subsequent Development Project Phase thereof shall not constitute a breach or default under this Agreement unless Bonds have been issued with respect to such Subsequent Development Project Phase, and neither the City nor the Issuer shall have any rights or remedies in connection therewith under the Completion Guaranty, this Agreement, in the Bond Documents, or otherwise.

### **ARTICLE VIII DEVELOPMENT PROJECT CONSTRUCTION AND OPERATIONS ISSUES**

#### **Section 8.1        Signs and Graphics.**

City shall support and assist Developer with obtaining any necessary permits for signs, awnings, canopies and other advertising materials on the exterior of the structures located on or above the Development Area, and, if requested by Developer, in developing and seeking the necessary approvals for a signage program acceptable to Developer. The parties acknowledge that Developer intends to install significant signage on and in the Development Area that advertises and promotes the Development Project, Users and others. Such signage may, at the discretion of Developer, be similar in size and scope as the signage that exists on the date hereof at The Power Plant, Baltimore, Maryland and Power Plant Live, Baltimore, Maryland, subject to applicable federal and Missouri state laws and regulations. If the Developer's proposed signage program includes advertising materials that are not permitted under the City's Comprehensive Sign Control Regulations or other applicable City regulations (the "City Sign Regulations"), the City shall cooperate with Developer to implement any necessary modifications or variances to the City Sign Regulations. Following approval of such a signage program, the City shall not revoke its approval of such signage program if Developer proceeds with construction of the Initial Development Project Phase hereunder in accordance with the schedule set forth in Section 2.5 hereof, subject to any delays caused by Force Majeure in accordance with this Agreement.

#### **Section 8.2        Police and Security.**

The City will reasonably cooperate with Developer's efforts to maintain smooth pedestrian traffic flow and effective crowd management and control within the Development Area, in order to promote a safe and customer-friendly environment that is conducive to attracting visitors from within the region and outside the region, provided, however, such cooperation shall be at no cost to the City. The City will cause the St. Louis Metropolitan Police Department ("Police Department") to establish a police substation at the Initial Development Project Phase upon Substantial Completion of the Initial Development Project Phase if Developer agrees to lease space to the Police Department for such substation at no charge to the City or the Department. The City agrees to assist Developer with scheduling periodic meetings with the commanders of the Police Department district in which the Development Project Phase is located to discuss security needs and concerns, but City and Police Department shall not be obligated to fulfill the Developer's stated security needs and concerns and City and Police Department's failure to fulfill such needs and concerns shall not constitute a breach or default of this Agreement. Notwithstanding the foregoing, if a substation is located in the Initial Development Project Phase but Developer does not proceed with the Initial Development Project Phase hereunder in accordance with the schedule set forth in Section 2.5 hereof, subject to any delays caused by Force Majeure, the Police Department may at the Police Department's option remove the substation and such removal shall not constitute a breach or default of this Agreement.

#### **Section 8.3        Marketing.**

The City shall support the Development Project, cooperate with the efforts of Developer to market and promote public support of the Development Project, and encourage convention, visitors and tourism entities that promote the City to market and promote the Development Project, provided that Developer proceeds with the Initial Development Project Phase hereunder in accordance with the schedule set forth in Section 2.5 hereof, subject to any delays caused by Force Majeure. Any City sponsored marketing, promotion or advertising concerning the Development Project shall be subject to the prior approval of Developer, which approval shall not be unreasonably withheld.

#### **Section 8.4        Directional Signage.**

The City and Developer shall, promptly after the Closing Date for the Initial Development Project Phase, develop a

mutually acceptable directional sign program for the Development Project in the downtown streets of the City that identify the name and location of the Development Project with arrows pointing in the direction of the Development Project and the City shall implement same prior to Substantial Completion of the Initial Development Project Phase, but City's obligation to implement said directional sign program shall be limited to implementation possible with funds provided by Developer. Developer requests that City request that the State of Missouri Department of Transportation install an adequate number of directional signs related to the Development Project on the highways leading into the downtown of the City, and City shall use its reasonable efforts to obtain approval of such request from such Department. Notwithstanding the foregoing, if a directional signage program is implemented but Developer does not proceed with the Initial Development Project Phase hereunder in accordance with the schedule set forth in Section 2.5 hereof, subject to any delays caused by Force Majeure, City may at City's option remove all components of the directional signage program and shall have no further obligations hereunder with respect to such signage and such removal shall not constitute a breach or default of this Agreement.

#### **Section 8.5 Street Maintenance and Street Closing.**

The City shall maintain its streets located in and adjacent to the Development Area in good condition and repair in the same manner as provided for other similar rights-of-way. The City shall grant permits to Developer and/or one or more Users designated by Developer to temporarily close one or more of such streets designated by Developer for special events, as requested by Developer in exchange for the payment of permit and other fees customarily charged by the City for such temporary closings. The City shall grant permits for the closing of Clark Street between 8th Street and Broadway and the closing of new streets to be created by the Developer in the Development Area, should any such streets become dedicated City streets, upon request of the Developer, at no charge to Developer. Notwithstanding the foregoing, the City reserves the right to deny permits for the closing of other streets when such closings would, in the sole and subjective judgment of the City, interfere with other events in the City or with traffic flow in the City to an unacceptable extent. Further notwithstanding the foregoing, Developer shall initially install all street improvements and Developer shall be responsible after initial installation, at Developer's cost, for maintaining all street and sidewalk surfaces and street and sidewalk features other than the City's standard asphalt surfacing, and the City neither represents nor warrants that (a) the type or installation of asphalt surfacing installed by City in the course of routine repair and maintenance will be acceptable to Developer; or (b) that City will make repairs at times acceptable to Developer. Further notwithstanding the foregoing, if the Initial Development Project Phase does not proceed as set forth in Section 2.5 hereof, subject to any delays caused by Force Majeure, City may at City's option refuse to issue additional street closing permits in the City's sole discretion and/or, at the City's option, charge prevailing and customary fees for all street closings within the Development Area. The Developer and the City shall cooperate to establish a mutually acceptable street and sidewalk utilization plan for the Development Area consistent with the terms of this Section 8.5 and Section 8.6 below. Nothing in this Agreement shall be deemed to obligate Developer or the City to make any improvements outside the Development Area. Furthermore, nothing in this Agreement shall be deemed to obligate the Developer or the City to make any improvements to 8th Street, Walnut Street, Broadway, or Clark Street within the Development Area, except Developer shall be responsible for repairs and restoration necessitated or caused by the construction of the Development Project. Notwithstanding the foregoing, the parties agree, that as a result of the vacation of Stadium Plaza Drive, there will be necessary street and traffic improvements to 8th Street and Walnut Street inside and adjacent to the Development Area as required by applicable City ordinances (the "Vacation Improvements"). Developer shall be responsible for all costs associated with the Vacation Improvements, provided that if the City requires any street resurfacing as part of the Vacation Improvements, the City agrees to provide City labor and equipment with respect such resurfacing.

#### **Section 8.6 Sidewalk Utilization.**

The City shall grant permits to Developer and/or one or more Users designated by Developer for use of sidewalks immediately adjacent to the Development Project, as requested by Developer, in exchange for the payment of permit and other fees customarily charged by the City for such use. Notwithstanding the foregoing, if Developer does not proceed with the Initial Development Project Phase hereunder in accordance with the schedule set forth in Section 2.5 hereof, subject to any delays caused by Force Majeure, City may at City's option refuse to issue additional sidewalk use permits in the City's sole discretion and/or, at the City's option, charge prevailing and customary fees for all sidewalk utilization permits within the Development Area.

#### **Section 8.7 Liquor Licenses.**

Upon request by the Developer, the parties shall cooperate and use reasonable efforts to cause Section 311.086 of Missouri Revised Statutes (or an equivalent amendment to the Missouri Revised Statutes) to be applicable to the Development Project so as to enable Developer or its designee and any User of the Development Project designated by Developer to obtain and utilize a entertainment district liquor license.

**Section 8.8 On-Street Parking and Public Transit.**

Following the Substantial Completion of any Development Project Phase, the City, in and immediately adjacent to such Development Project Phase, shall implement and maintain an on-street parking program, with meters and rates reasonably acceptable to Developer at all times, passenger drop off areas, no parking areas, loading zones, and valet parking zones that in all respects are acceptable to Developer, provided, however, that (a) Developer shall agree to pay the cost of implementing any changes required to make such program acceptable to Developer, and (b) the program shall not, in the City's reasonable judgment, unduly interfere with other events in the City or with traffic flow in the City. The City, at Developer's request made from time to time, shall modify such areas to accommodate any of Developer's concerns articulated prior to the implementation of such program, provided, however, that Developer shall agree to pay the cost of implementing any changes required to make such program acceptable to Developer and such modifications shall not, in the City's reasonable judgment, unduly interfere with other events in the City or with traffic flow in the City. Thereafter, the City shall consider in good faith modifications to such areas to accommodate any such concerns, provided that the City may not reasonably deny any such subsequent requests if Developer agrees to pay the costs of any such requested modifications and such modifications shall not, in the City's reasonable judgment, unduly interfere with other events in the City or with traffic flow in the City. Developer and City agree to cooperate to develop, prior to Closing, a mutually acceptable plan for public/mass transit in and around the Development Project, which plan will take into account, without limitation, passenger drop off areas, location of transit stops, no loading areas, no stopping areas, no parking areas, loading zones, and/or valet parking zones necessary or desirable for the operation of the Development Project, provided, however, that such mutually acceptable plan shall in no event include any additional MetroLink stops or modifications to any existing MetroLink stops, and that the City's obligation to implement such Plan shall be contingent upon the Bi-State Development Agency's approvals of such plan to the extent that such approvals are required by any applicable law. Notwithstanding the foregoing, if Developer does not proceed with the Initial Development Project Phase hereunder in accordance with the schedule set forth in Section 2.5 hereof, subject to any delays caused by Force Majeure, City may at City's option refuse to modify the on-street parking and public transit plan as requested by Developer and may further make changes to any aspect of public right-of-way at the City's will.

**Section 8.9 Construction Street Closings and Construction Staging.**

The City and Developer shall mutually agree on a detailed schedule for closing the various public streets within and adjacent to the Development Area during the construction of the Development Project in exchange for the payment of permit and other fees customarily charged by the City for such temporary closings. Developer may modify such schedule during the construction of the Development Project with the consent of the City, such consent not to be unreasonably withheld, conditioned or delayed if such modifications shall not, in the City's reasonable judgment, unduly interfere with other events in the City or with traffic flow in the City, and the City shall cooperate with Developer in connection with street closings in accordance with Section 11.20 hereof. The parties hereby agree that the street closings in the schedule may be staged in accordance with Developer's construction schedule if, in the City's reasonable judgment, closings according to such schedule do not unduly interfere with other events in the City or with traffic flow in the City. Notwithstanding the foregoing, if the Developer does not proceed with the Initial Development Project Phase hereunder in accordance with the schedule set forth in Section 2.5 hereof, subject to any delays caused by Force Majeure, City may at City's option refuse to issue additional street closing permits in the City's sole discretion.

**Section 8.10 Acceptance of Proposed Street Plans.**

Developer and the City shall work cooperatively to obtain acceptance of the size and location of any street proposed by Developer, but only to the extent acceptable to the City.

**Section 8.11 Continuing City Obligations.**

The City hereby agrees that the covenants of the City set forth in this Article VIII shall remain in effect as on-going obligations of the City during the term of this Agreement.

**ARTICLE IX  
DEFAULT AND REMEDIES****Section 9.1 Defaults.**

(a) If at any time the Developer fails to comply (or cause compliance, as applicable) with any material term of this Agreement, and if Developer does not cure such failure within (i) 30 days in the event of any failure to comply with any material monetary term, or (ii) 60 days (or such longer period as may be necessary if such default is curable but cannot be reasonably cured

within such 60-day period) in the event of any failure to comply with any material non-monetary term, of receipt by the Developer from the City or its designee of written notice of such failure, then such failure shall constitute an "Event of Default" by the Developer hereunder, and upon the occurrence of an Event of Default by the Developer hereunder, the City may terminate this Agreement, and the Bond Trustee and the City may pursue their remedies at law or equity and/or as set forth in this Agreement. Notwithstanding the foregoing, the City shall not be allowed to terminate this Agreement with respect to any Development Project Phase or Element thereof for which: (i) the City has approved or is deemed to have approved a Certificate of Substantial Completion hereunder, or (ii) Bonds have been issued hereunder, if the Event of Default is not the result of Developer's failure to comply with its obligations with respect to such Development Project Phase or Element thereof and Developer reasonably anticipates that it will achieve Substantial Completion of such Development Project Phase or Element thereof within two years after the applicable Closing Date. Prior to a Closing with respect to any Subsequent Development Project Phase, in no event shall a failure to proceed with a Subsequent Development Project Phase constitute a default by Developer, unless Bonds have been issued for such Subsequent Development Project Phase. Any conduct on the part of the Developer that constitutes a default under any of the Bond Documents shall also constitute a default under this Agreement. Notwithstanding anything herein to the contrary, the failure of Developer to cause or use commercially reasonable efforts to cause Substantial Completion of each Development Project Phase to occur within two (2) years after Closing of the Bonds issued with respect to such Development Project Phase shall not constitute an "Event of Default" by the Developer hereunder, but the failure of Developer to make payments required in Section 4.3(g) hereof as and when due in accordance with the Bond Documents (subject to any applicable notice or cure period) shall constitute an "Event of Default."

(b) If the City fails, or fails to cause its designee, to comply with any material term of this Agreement, or the Bond Proceeds are not disbursed to Developer substantially in accordance with the terms of this Agreement, and if the City does not cure, or fails to cause its designee to cure such failure within (i) 30 days in the event of any failure to comply with any material monetary term, or (ii) 60 days (or such longer period as may be necessary if such default is curable but cannot be reasonably cured within such 60-day period) in the event of any failure to comply with any material non-monetary term, of receipt by the City or its designee from the Developer of written notice of such failure, then such failure shall constitute an "Event of Default" by the City hereunder, and upon the occurrence of an Event of Default by the City hereunder, the Developer may terminate this Agreement and except as otherwise provided herein, may pursue its remedies at law or equity and/or as otherwise set forth in this Agreement. Notwithstanding the foregoing, the Developer shall not be allowed to terminate this Agreement with respect to any Development Project Phase following the Closing with respect to such Development Project Phase. If the City fails to cause its designee to act in accordance with this Agreement, such failure shall constitute a default hereunder, except as otherwise expressly provided herein. Any conduct on the part of the City, the Issuer or their respective designees that constitutes a default under any of the Bond Documents shall also constitute a default under this Agreement.

### **Section 9.2 Remedies.**

Except as otherwise provided in this Agreement and in addition to the rights under Section 9.1 above, upon the occurrence of an Event of Default by any party hereto, 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, the termination of this Agreement and proceedings to compel specific performance by the defaulting or breaching party, or the aggrieved party may exercise any and all remedies available at law, in equity and/or as otherwise set forth in this Agreement. Notwithstanding anything in this Agreement to the contrary, (i) the Developer shall have no obligation or liability with respect to any Development Project Phase for which Developer has assigned its rights to a Related Entity; (ii) no Phase Developer shall have any obligation or liability with respect to any Development Project Phase if Developer has not assigned its rights hereunder with respect to such Development Project Phase to such Phase Developer pursuant to Section 11.1; and (iii) no assets of the Developer or any Phase Developer that is obligated hereunder with respect to a particular Development Project Phase shall be subject to levy, execution, or other judicial process for the satisfaction of any claims with respect to a separate Development Project Phase (unless such Developer or Phase Developer is also a Guarantor of such separate Development Project Phase, and then only to the extent of its obligations with respect to such separate Development Project Phase).

### **Section 9.3 Attorney Fees.**

If either the City, its designee or Developer brings suit or other legal proceedings to enforce the provisions of this Agreement against the other, then the party prevailing in such suit or proceeding shall be reimbursed by the other for all reasonable attorneys' fees and litigation and/or arbitration costs and expenses incurred by the prevailing party in connection with such suit or proceeding.

**ARTICLE X  
MORTGAGES AND MORTGAGEE RIGHTS**

**Section 10.1 Right to Mortgage.**

Notwithstanding any other provisions of this Agreement, Developer shall at all times have the right, from and after the Closing Date, to enter into or grant one or more Mortgages. Developer or any Related Entity that owns an interest in any portion of the Property may encumber, pledge, grant, or convey its rights, title and interest in and to the Property, or any portion or portions thereof, and/or to this Agreement by way of a mortgage (or assignment) to secure the payment of any loan or loans obtained by Developer or such Related Entity to finance or refinance any Development Project Phase or Element thereof and other improvements from time to time. Developer agrees to use commercially reasonable efforts to cause any Mortgage to contain a provision (the "Nonabandonment Provision") prohibiting the Mortgagee thereunder from abandoning the Development Project Phase following foreclosure (which standard shall not require the Developer to agree to any modification of the financial terms of any loan). Further, the Developer agrees to provide the City and its counsel with the opportunity to engage in discussions related to the inclusion of the above-described provision with each prospective Mortgagee that has entered into a construction loan commitment with Developer for any part of a Development Project Phase. Neither Developer nor any Related Entity that owns any interest in a portion of the Property shall be precluded from entering into any Mortgage without a Nonabandonment Provision if the Developer, after using commercially reasonable efforts and after providing the City with the opportunity to engage in discussions with such Mortgagee is unable to cause such a provision to be included. Developer shall participate in all such discussions between the City and each such Mortgagee and the City shall not engage in direct unilateral discussions with each such Mortgagee. In exchange for the Developer's agreement to use commercially reasonable efforts to cause the inclusion of the Nonabandonment Provision in any Mortgage for construction financing and to permit the City to engage in discussions with any such prospective Mortgagee, the City agrees to enter into a lender's rights agreement mutually agreeable to the City and the lenders and the City shall not require the inclusion of the Nonabandonment Provision as a condition to entering into such lender's rights agreement.

**Section 10.2 Notice of Breaches to Mortgagees.**

In the event the City gives written notice to Developer of a breach of its obligations under this Agreement, the City shall forthwith furnish a copy of the notice to the Mortgagees that have been identified in writing to the City by Developer. The City shall have no obligation to furnish a copy of any notice to any Mortgagee that has not been identified in writing to the City. To facilitate the operation of this Section, Developer shall at all times keep the City provided with an up-to-date list of Mortgagees.

**Section 10.3 Agreement Runs With Land.**

Upon execution, Developer shall cause this Agreement to be recorded with the Recorder of Deeds of the City of St. Louis on the property within the Development Area, and this Agreement shall run with the land and be binding on future transferees or owners of such property as if such owners or transferees were originally a party hereto.

**Section 10.4 Multiple Mortgagees.**

Notwithstanding anything to the contrary contained in this ARTICLE X, in the event there is more than one Mortgagee, unless the City is provided with an inter-creditor or other similar agreement that specifies such Mortgagees' rights hereunder in a manner acceptable to the City, in which case such agreement shall govern, the only Mortgagee that shall be recognized and treated as a Mortgagee for purposes of Section 10.2 hereof shall be the Mortgagee secured by the first Mortgage still outstanding granted by Developer.

**ARTICLE XI  
MISCELLANEOUS**

**Section 11.1 Successors and Assigns.**

(a) This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective heirs, administrators, executors, personal representatives, successors and assigns.

(b) 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 Substantial

Completion of any Development Project Phase, 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 (provided that, (1) the party to whom the interest in the Property or interest under this Agreement was disposed or assigned is a Related Entity to Developer, and (2) in any event, any such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement), provided, however, that, until Substantial Completion of such Development Project Phase, the fee title to the Property within the applicable Development Phase Area for such Development Project Phase shall not be sold, transferred or otherwise disposed of and the rights, duties and obligations of the Developer under this Agreement shall not be assigned in whole or in part to any Person that is not a Related Entity to Developer without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed upon a reasonable demonstration by the Developer of the proposed transferee's or assignee's experience and financial capability to undertake and complete such portions of the Work and perform the Developer's obligations under this Agreement, all in accordance with this Agreement. The parties acknowledge that pursuant to the foregoing sentence, (i) Developer may assign its rights and obligations under this Agreement with respect to a particular Development Project Phase thereof to any Related Entity (each a "Phase Developer") without the consent of the City, and (ii) Developer may cause separate Related Entities to own various portions of the Property. Upon the Developer's assignment of its rights and obligations under this Agreement with respect to a particular Development Project Phase to a Phase Developer, the assignor shall be released from further obligation under this Agreement with respect to such Development Project Phase. The City shall cause the Issuer to acknowledge and agree to the rights of the Phase Developer pursuant to the Bond Documents, provided that such Phase Developer shall acknowledge and agree to assume the obligations of the Developer under this Agreement and the Bond Documents with respect to such Development Project Phase.

(c) Notwithstanding anything herein to the contrary, the City hereby approves, and no prior consent shall be required in connection with: (a) the right of the Developer or any Related Entity that owns an interest in the Property to encumber or collaterally assign its interest in the Property within a Development Phase Area or any Development Project Phase or any portion thereof or its rights, duties and obligations under this Agreement to secure loans, advances or extensions of credit provided by Acceptable Financial Institutions to finance or from time to time refinance all or any part of the Development Project 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, provided, however, that the Developer (or any Phase Developer to which Developer has assigned its rights hereunder pursuant to subsection (b) above) shall remain liable hereunder for the Substantial Completion of the applicable Development Project Phase and shall be released from such liability hereunder only upon Substantial Completion of such Development Project Phase; and (b) the right of the Developer to sell or lease a residential unit or lease a commercial, retail or office unit or parking space to a User in the ordinary course of business (or to sell any commercial, retail or office unit to a User of such unit or to a third party investor or real estate holding company in connection with the location of a User within a Development Project Phase).

(d) The Developer shall provide to the City fifteen (15) days' advance written notice of any proposed assignment or transfer pursuant to this Section 11.1.

(e) Notwithstanding any other provision of this Agreement to the contrary, the Developer agrees that the Bonds issued with respect to the Initial Development Project Phase shall not be assigned or transferred prior to Substantial Completion of the Initial Development Project Phase without the prior written consent of the City except for a transfer or assignment to a Related Entity of Developer or for a collateral assignment to secure loans, advance or extensions of credit.

#### **Section 11.2 Force Majeure.**

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; war; lack of legal authorization by the governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof, or the City to proceed with the issuance of the Bonds; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other like causes beyond the parties' reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of the Development Plan, any Development Project Phase or the Bonds or this Agreement or any ordinance approving the same; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by the Developer in bad faith. Each party shall use commercially reasonable efforts to give notice to the other party of any claimed event of Force Majeure promptly after such party becomes aware of such event, and each party shall use commercially reasonable efforts to mitigate and overcome any event of Force Majeure.

**Section 11.3 Notices.**

All notices, demands, consents, approvals and other communications required by this Agreement to be given by either party hereunder shall be in writing and shall be hand delivered or sent by a nationally recognized overnight courier or United States certified mail, return receipt requested, with postage prepaid, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, on the next Business Day if sent by a nationally recognized overnight courier or three Business Days after deposit in the United States mail as aforesaid.

- (a) In the case of the Developer, to:

Ballpark Village Development Corporation  
c/o The Cordish Company  
601 East Pratt St., 6th Floor  
Baltimore, MD 21202  
Attention: Blake L. Cordish

And

Ballpark Village Development Corporation  
c/o The Cordish Company  
601 East Pratt St., 6th Floor  
Baltimore, MD 21202  
Attention: Charles F. Jacobs

With a copy to:

St. Louis Cardinals, LLC  
700 Clark Street  
St. Louis, Missouri, 63102  
Attention: Michael Whittle

- (b) In the case of the City, to:

City of St. Louis  
Office of the Mayor  
City Hall  
1200 Market Street, Room 200  
St. Louis, Missouri 63103  
Attention: Chief of Staff

And

City of St. Louis  
Office of the Comptroller  
City Hall  
1200 Market Street, Room 212  
St. Louis, Missouri 63103  
Attention: Ivy Neyland-Pinkston, Deputy Comptroller

With a copy to:

St. Louis Development Corporation  
1520 Market Street  
Suite 200  
St. Louis, Missouri 63103  
Attention: Rodney Crim, Executive Director

And:

Husch Blackwell LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
Attention: David G. Richardson

(c) In the case of the Authority, to:

Downtown Economic Stimulus Authority of  
the City of St. Louis  
c/o St. Louis Development Corporation  
1520 Market Street  
Suite 200  
St. Louis, Missouri 63103  
Attention: Dale Ruthsatz

With a copy to:

Gilmore & Bell  
One Metropolitan Square, Suite 2350  
St. Louis, Missouri 63102  
Attention: Mark Grimm

#### **Section 11.4 Conflict of Interest.**

No member of the Board of Aldermen, the SLDC, the Authority, 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 Development Area, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership 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 the nature of such interest and seek a determination by the City with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

#### **Section 11.5 Destruction of Development Project.**

In the event of total destruction of any Development Project Phase by fire or other casualty, during construction or thereafter during the term of this Agreement so long as any Bonds are outstanding and to the extent that the Developer owns the destroyed Property, the Developer shall determine and advise the City in writing within one year of such destruction whether Developer intends to restore, reconstruct and repair any such destruction so that such Development Project Phase will be completed or rebuilt in accordance with the Development Plan and this Agreement. Should the Developer determine not to restore, reconstruct and repair, the Developer shall, after satisfaction of any terms or obligations of any Mortgage, deed of trust, promissory note, or financing agreement entered into by the Developer for the financing of all or any part of such Development Project Phase (if such Mortgage, deed of trust, promissory note, or financing agreement is between the Developer and an Acceptable Financial Institution), tender that portion of the proceeds to which Developer is entitled from any fire or casualty insurance policy (whether directly as the insured or as an additional insured under any policy carried by a User, pursuant to any contractual obligation of such User) at the ratio of 33% of such proceeds to the City and 67% to the Developer, provided that: (i) the maximum amount tendered to the City from such proceeds shall be the outstanding principal amount of the Bonds issued with respect to such Development Project Phase, plus accrued interest thereon (upon payment of such maximum amount, all remaining proceeds to be retained by the Developer), and (ii) any amounts paid to satisfy any Mortgage, deed of trust, promissory note or financing agreement shall be treated and credited herein as amounts paid to the Developer for the purpose of apportioning such proceeds. So long as any Bonds are outstanding with respect to a Development Project Phase, Developer shall maintain insurance for the replacement cost of each completed Element of such Development Project Phase following Substantial Completion of each such Element and shall provide proof of such insurance to the City upon the City's request and hereby further agrees to provide such other replacement cost property, liability and casualty insurance and to document the provision of proof of such insurance at times as may be reasonably required by the Issuer and Bond Trustee. Notwithstanding the foregoing, Developer may satisfy the insurance requirements herein by requiring any purchaser, transferee, lessee or other User of all or any portion of a Development Project Phase to maintain such insurance instead of Developer,

and, in such event, Developer shall require in each lease or deed with any such User that Developer be named as an additional insured under any fire or casualty insurance policy maintained by such User that covers damage to or destruction of improvements paid for by Developer.

**Section 11.6 Inspection.**

The City may conduct such periodic inspections of the Work as may be generally provided in the building code of the City and the other laws of the City. In addition, the Developer shall allow other authorized representatives of the City reasonable access to the Work site from time to time upon reasonable advance notice prior to Substantial Completion for inspection of the Work.

**Section 11.7 Choice of Law.**

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

**Section 11.8 Entire Agreement; Amendment.**

This Agreement incorporates all prior negotiations and discussions between the parties regarding its subject matter and represents the entire agreement of the City and Developer for the Development Area. This Agreement may only be modified by written instrument executed by the City and Developer.

**Section 11.9 Counterparts.**

This Agreement may be executed in multiple counterparts, each of which, when taken together, shall constitute one and the same instrument.

**Section 11.10 Severability.**

If any term, covenant, condition, or provision of this Agreement, or the application to any person or circumstance shall, at any time or to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall (except to the extent such result is clearly unreasonable) not be affected thereby, and under such circumstances each term, covenant, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, insofar as such enforcement is not clearly unreasonable. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 11.11 Representatives Not Personally Liable.**

No elected or appointed official, agent, employee or representative of the City, the SLDC or the Issuer 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. No member, partner, agent, employee or representative of the Developer shall be personally liable to the City, the Issuer or the SLDC 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.

**Section 11.12 Actions Contesting the Validity and Enforceability of the Development Plan and Other Documents.**

In the event a third party brings an action against the City or the City's officials, agents, attorneys, employees or representatives contesting the validity or legality of the Development Area, the Development Plan, the Bonds, or the ordinance approving this Agreement, 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. The Developer shall be responsible for all reasonable and necessary costs and expenses incurred by the City and by the Developer in connection with the defense of such claim or action, provided that 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. All cost of any such defense, whether incurred by the City or the Developer, shall be deemed to be Reimbursable Development Project Costs and reimbursable from any amounts in the Special Allocation Fund, subject to Article III of this Agreement and only if funds remain in the Special Allocation Fund after all required Bond payments have been made. Notwithstanding anything in this Agreement or in any other document to the contrary, and without limiting the meaning of the

foregoing, the City shall not be liable for any judgment or for any impact of such judgment on Developer that renders the this Agreement or any law or ordinance or other document related in any way to this Agreement invalid or unenforceable.

**Section 11.13 Release and Indemnity.**

The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement.

(a) The City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable to the Developer for damages or otherwise in the event that all or any part of the MODESA Act, or any ordinance adopted in connection with either the MODESA Act, this Agreement or the Development Plan, is 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.

(b) The Developer releases from and covenants and agrees that the City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the City, its governing body members, officers, agents, attorneys, employees and independent contractors against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed (excluding consequential and punitive damages), to persons or property to the extent occurring or allegedly occurring as a result of any negligence or willful misconduct of the Developer, its governing body members, officers, agents, attorneys, employees and independent contractors, in connection with its or their activities conducted pursuant to this Agreement.

(c) The City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, employees, independent contractors or any other persons who may be about the Property or the Work except for matters arising out of or relating to the gross negligence or willful misconduct of the City and its governing body members, officers, agents, attorneys, employees and independent contractors.

(d) 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 governing body members, officers, agents, attorneys, employees or independent contractors in their individual capacities.

(e) No governing body members, officers, agents, attorneys, employees or independent contractors of the City shall be personally liable to the Developer (i) in the event of a default or breach by any party under this Agreement or (ii) for any amount or any Bonds which may become due to any party under the terms of this Agreement.

The Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold the City, its governing body members, officers, agents, attorneys, employees and independent contractors, harmless from and against any and all third party suits, interest, claims and cost of reasonable attorneys fees incurred by any of them, to the extent resulting from, arising out of, or related to (i) the enforcement of this Agreement, the validity of the Bonds or the enforcement or validity of any other agreement or obligation made in connection therewith and their approvals (excluding opinions of counsel and of the City's financial advisors whenever such claim is based on such party's own negligence); (ii) the negligence or willful misconduct of the Developer or its officers, agents, employees or independent contractors in connection with the design, management, development, redevelopment and construction of the Work, or (iii) the compliance by the Developer with all applicable state, federal and local environmental laws, regulations and ordinances as applicable to the Property, to the extent such condition existed prior to the acquisition thereof by the Developer. The foregoing release and indemnification shall not apply in the case of such liability resulting from, arising out of or related to the negligence or willful misconduct of the City or its governing body members, officers, agents, attorneys, employees and independent contractors or which results from, arises out of or relates to matters undertaken by the City following termination of this Agreement as to the Development Project or any particular portion thereof.

**Section 11.14 Term.**

The term of this Agreement shall commence on the Effective Date and shall terminate at such time as the Bonds are no longer outstanding, unless earlier terminated in accordance with the terms of this Agreement.

**Section 11.15 Survival.**

Notwithstanding the expiration or termination or breach of this Agreement by either party, the agreements contained in Section 2.19, and Section 11.7 through Section 11.13 of this Agreement shall, except as otherwise expressly set forth herein, survive such early expiration or early termination of this Agreement by any party.

**Section 11.16 Exclusive Development Rights.**

The City shall grant or cause to be granted to Developer the exclusive right to develop the Development Area during the term of this Agreement, provided, however, that: (a) if any Development Project Phase is not completed on or before the deadline for Substantial Completion set forth herein, subject to any applicable extensions resulting from Force Majeure or as otherwise permitted hereunder, the exclusive development rights with respect to such Development Phase Area to which such Development Project Phase pertains, and any portion of the Development Area for which Bonds have not been issued shall terminate, and (b) any exclusive development rights with respect to the Development Area shall terminate on the tenth anniversary of the Effective Date of this Agreement. Notwithstanding the foregoing, the condemnation rights granted under Section 2.2 shall terminate within five (5) years of the date of approval of the Development Plan, or on the expiration of the five-year period following the renewal of the determination of blight contained in the Approving Ordinance as provided in Section 523.274.2 of the Revised Statutes of Missouri, as amended, whichever occurs later.

**Section 11.17 Subsequent Development of the Development Area.**

Nothing in this Agreement shall be deemed to prevent Developer, BVHC, or their Related Entities from seeking additional financial or other assistance from the City and/or other public entities in connection with any additional phase or component to be developed within the Development Area that is beyond the scope of the Development Project described herein, provided, however, that such assistance shall be subject to all requisite approvals of the City and/or other public entities providing such assistance, and further provided that such approvals and assistance are in the sole unfettered discretion of the City and the City has no obligation to grant any such assistance. Notwithstanding anything herein to the contrary, the City hereby agrees that this Agreement does not create any obligation of the Developer to expend any funds or complete any work in connection with Subsequent Development Project Phases or other phases of development within the Development Area and Developer agrees that this Agreement does not create any obligation of the City to support in any way any subsequent phases of development beyond the Development Project as expressly described herein.

**Section 11.18 Authority of the Parties.**

(a) The City hereby represents and warrants that it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement. This Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

(b) The Developer hereby represents and warrants it has full power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary corporate and limited liability company proceedings. This Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

**Section 11.19 Mutual Assistance.**

The parties to this Agreement agree to take such reasonable actions, including the execution and delivery of such documents, instruments, petitions and certifications supplemental hereto, and the obtaining of grants of access to and temporary easements over public property, as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and which do not impair the rights of the signing party as they exist under this Agreement, and to aid and assist each other in carrying out said terms, provisions and intent; provided that nothing herein shall be construed to obligate the City to grant municipal permits or other approvals it would not be obligated to grant, acting as a political subdivision absent this Agreement.

**Section 11.20 Consents and Approvals.**

The City and Developer commit to work harmoniously with each other, and except in instances (if any) where a consent or approval is specified to be within the sole discretion of either party, any consent or approval contemplated under this Agreement shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything herein to the contrary, nothing herein shall

be deemed to usurp the governmental authority or police powers of the City. Unless a shorter or longer time period is specified in this Agreement, the City shall give or withhold (provided such withholding is reasonable under the circumstances, unless a sole discretion standard expressly applies) such approvals, certifications, or consents as are required pursuant to this Agreement within twenty (20) Business Days, time being of the essence, unless taking such action within such time frame would violate any State or City law. Whenever this Agreement refers to the consent or approval of the City as to any matter, the consent or approval of the Mayor of the City shall constitute the consent or approval of the City, unless some other standard of consent or approval is expressly set forth herein.

**Section 11.21 Arbitration.**

All disputes, disagreements, controversies or claims arising under Section 2.2 and Section 4.6(b) of this Agreement shall be exclusively and finally settled by binding arbitration conducted before three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In any arbitration, the parties shall be entitled to conduct discovery in accordance with the applicable rules of the Federal Rules of Civil Procedure, with such modifications thereto as may be mutually agreeable to the parties unless the arbitrators appointed to hear the case rule that discovery should be limited in light of the particular dispute. In the event the parties are unable to agree on the three arbitrators, the parties shall select the three arbitrators by striking alternatively (the first to strike being chosen by lot) from a list of 13 arbitrators designated by the American Arbitration Association. Each of the parties to the arbitration shall bear the cost of the arbitration (including reasonable attorneys' fees) on such basis as the arbitrators of the matter shall determine. The arbitrators shall be further authorized to take whatever interim or temporary measures deemed necessary, including injunctive relief and measures for the protection or conservation of property. Such interim relief may take the form of an interim award, and the arbitrators may require security for the costs of such measures.

**Section 11.22 Broker.**

The City and Developer each represent and warrant for itself that it has not dealt with any broker in connection with this Agreement or the Property and each covenants and agrees to indemnify and hold the other harmless from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this warranty.

**Section 11.23 Payment or Performance on Non-Business Day.**

Whenever the provisions of this Agreement call for any payment or the performance of any act on or by a date that is not a Business Day, including the expiration date of any cure periods provided herein, then such payment or such performance shall be required on or by the immediately succeeding day that is a Business Day.

**Section 11.24 Incorporation into Agreement and Recitals.**

The recitals set forth above are true and correct and are incorporated herein by reference and made a part of this Agreement. Unless otherwise provided herein, all exhibits attached hereto are incorporated herein by reference.

**Section 11.25 Conflict of Terms.**

It is the intention of the City and Developer that if any provision of this Agreement is capable of two constructions, one of which would render this provision valid and enforceable, then the provision shall have the meaning which renders it valid and enforceable.

**Section 11.26 No Waiver.**

No failure on the part of the City or Developer to enforce any covenant or provision contained in the Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.

**Section 11.27 No Tax Representations or Warranties.**

The parties hereby agree that neither Developer or the City is making any representations or warranties to the other about the tax treatment, implications or treatment of the transactions contemplated in this Agreement.

**Section 11.28 Estoppel Certificates.**

The City and Developer, at any time and from time to time prior to Substantial Completion, upon not less than ten (10) Business Days prior written notice from a party hereto, or to a person designated by such party, such as a User or a Mortgagee, shall execute, acknowledge, and deliver to the party requesting such statement, a statement in reasonably acceptable form to the requesting party certifying, among other matters, (a) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating whether or not, to the best knowledge of the signer of such certificate, the City or Developer is in breach and/or default in performance of any covenant, agreement, or condition contained in this Agreement and, if so, specifying each such breach and/or default of which the signer may have knowledge, and (c) any other factual matters reasonably requested in such estoppel certificate, it being intended that any such statement delivered hereunder may be relied upon by the party requesting such statement and/or any person not a party to this Agreement (if such other person is identified at the time such certificate was requested). At any time after Substantial Completion of any Development Project Phase as provided herein the City shall, at the request of Developer, promptly execute, acknowledge and deliver to Developer a statement to that effect and to the effect, to the extent true, that all of Developer's obligations under this Agreement with respect to such Development Project Phase have been fulfilled.

**Section 11.29 Confidential Information of Developer.**

In each provision set forth in this Agreement in which the Developer agrees to provide information to the Financing Team or third parties other than the City which may constitute trade secrets protected by law, the Financing Team or such third party shall first execute and deliver to the Developer a confidentiality agreement for such information as a condition of delivery of such information. Notwithstanding anything in this Agreement to the contrary, Developer agrees to provide all information to the Financing Team as necessary to allow the Financing Team to comply with the applicable law, market conventions, or regulations, guidelines or rules of the Municipal Securities Rulemaking Board regarding disclosure in connection with the offering of the Bonds.

**Section 11.30 Rule Against Perpetuities Savings Clause.**

City and Developer intend that all of the rights, titles and interests granted under this Agreement to either party constitute current interests that are vested in the parties, to the extent not fully vested upon the execution of this Agreement, upon the Closing Date and the consummation of Closing with respect to the Initial Development Project Phase. If and to the extent that any of the rights, title or interests granted under this Agreement, or in any document or instrument hereinafter entered into in connection with (a) a Development Project Phase, (b) the creation of any rights, titles or interests with respect to any matters referenced herein, or (c) any other matter referenced or described herein, are deemed to be or to constitute future estates or interests so as to be void or unenforceable in whole or in part as a result of the application of the rule against perpetuities, then, to the extent that there is no other rule of law, statute or judicial decision that would cause such rights to remain enforceable without regard to the provisions of this Section 11.30, then City and Developer agree that all such rights, titles or interests that would otherwise be void or unenforceable in whole or in part as a result of the application of the rule against perpetuities, shall terminate as of that date which is twenty (20) years and three hundred sixty-four (364) days after the date of the later to occur of the last to die of the issue of the sons of David S. Cordish living as of the date of this Agreement.

**Section 11.31 Assignment or Sale to Exempt Organization.**

Prior to any sale, transfer or other disposition of all or any portion of the Property or any interest therein to an organization exempt from payment of ad valorem property taxes, such organization shall be required to agree not to apply for an exemption from payment of such property taxes for a period ending on the earlier of the date that all Bonds are paid in full or twenty-five (25) years from the effective date of the Approving Ordinance. The Developer shall make this requirement a covenant running with the land, enforceable for such period as if such purchaser or other transferee or possessor thereof were originally a party to and bound by this Agreement. Notwithstanding the foregoing, the lease (but not the sale) of space to any tax-exempt User shall be excluded from the scope of this Section if and only if all taxes which could be assessed and levied on such property if not exempt (both land and improvements) are paid by the owner of the underlying fee.

**Section 11.32 Developer's Right to Manage Project.**

Subject to the limitations of and except as otherwise provided in this Agreement, Developer retains the right to: (a) market, lease, and sell all or any portion of any Development Project Phase, at such times and such rates or prices as Developer shall determine in Developer's sole discretion, and (b) from time to time, modify Developer's plans with respect to the marketing, leasing, and sale of all or any portion of any Development Project Phase, provided, however, that in no event shall Developer make any modifications that reduce the size of any Element to a size less than the applicable Minimum Essential Element.

*[signatures appear on following pages]*

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

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.

“CITY”:

**CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_  
Francis G. Slay, Mayor

By: \_\_\_\_\_  
Darlene Green, Comptroller

(SEAL)

Attest:

\_\_\_\_\_  
Parrie May, City Register

Approved as to Form:

\_\_\_\_\_  
Steven J. Kovac, City Counselor

“DEVELOPER”:

**BALLPARK VILLAGE DEVELOPMENT CORPORATION, a Delaware corporation**

By: \_\_\_\_\_  
Blake L. Cordish, Authorized Person

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

On this \_\_\_\_ day of March, 2012, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a 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 Board of Aldermen, and said individual 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.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

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

On this \_\_\_ day of \_\_\_, 2012, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a 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 Board of Aldermen, and said individual 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.

Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF )
) SS.
OF )

On this \_\_\_ day of \_\_\_, 2012, before me appeared Blake L. Cordish, to me personally known, who, being by me duly sworn, did say that he is an Authorized Person of Ballpark Village Development Corporation, a Delaware corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said individual acknowledged said instrument to be the free act and deed of said corporation.

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

Notary Public

My Commission Expires:

\_\_\_\_\_

EXHIBIT A
Legal Description of the Development Area

Parcel 1:

Lot 3 of "South Downtown Plaza", in City Block 6466 of the City of St. Louis, Missouri, according to plat thereof recorded in Plat Book 12232003 Page 0248 of the Office of the Recorder of Deeds of the City of St. Louis. Including also part of vacated Broadway, Walnut Street and Stadium Plaza, adjacent to Lot 3, according to plat thereof recorded in Plat Book 09272005 Page 696 of the St. Louis City Records. EXCEPTING THEREFROM, that portion of Clark Street Dedicated by instrument recorded in Plat Book 12062006 Page 322 and by Ordinance No. 67243 of the City of St. Louis Records. (Note: To be known as Amended Lot 3 of "South Downtown Plaza"). Parcel Number 64660000350.

Parcel 2:

Appurtenant easement rights as set forth in that certain "Stadium West Pedestrian Bridge Agreement" dated as of March 21, 1996, by and between Gateway Stadium, L.L.C., a Missouri limited liability company and Civic Parking, L.L.C., a Missouri limited liability company, as recorded March 21, 1996 in Book M1194 Page 1117.

**Parcel 3:**

Tract 5 of CIVIC CENTER SUBDIVISION PLAT 3 according to the plat thereof recorded in Plat Book 37, Page 28, of the City of St. Louis Recorder’s Office and being also Block 6466 of the City of St. Louis. Parcel Number 64650000100.

The Development Area further includes the public rights-of-way adjacent to the parcels described above.

**EXHIBIT B  
[RESERVED]**

**EXHIBIT C  
[RESERVED]**

**EXHIBIT D  
Form of Notice to Proceed**

[Initial ] Development Project Phase [No. \_\_\_\_]

The undersigned, BALLPARK VILLAGE DEVELOPMENT CORPORATION (the “Developer”), pursuant to that certain Development Agreement dated as of \_\_\_\_\_, 2012, between the City of St. Louis, Missouri (the “City”) and Developer (the “Agreement”) hereby elects, pursuant to Section 2.4 of the Agreement, to initiate that certain Development Project Phase described in the Development Plan as follows:

Developer elects to have the following Development Project Phases (as identified in the Development Plan, as defined in the Agreement) combined into one Development Project Phase for the purposes of the Agreement:

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this day of \_\_\_\_\_, 20\_\_.

**BALLPARK VILLAGE DEVELOPMENT CORPORATION, a Delaware corporation**

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

EXHIBIT F

**Exhibit E**  
**List of Tenants in Other Projects**

White Marsh Baltimore, MD	Power Plant Live! Baltimore, MD	Power Plant Baltimore, MD	4 <sup>th</sup> Street Live! Louisville, KY	Bayou Place Houston, TX	Seminole Paradise Hollywood, FL
<ul style="list-style-type: none"> <li>• Carter's Babies &amp; Kids</li> <li>• Chico's</li> <li>• Crazy 8</li> <li>• Famous Footwear</li> <li>• Just Birkenstock Shoes</li> <li>• Justice</li> <li>• LOFT</li> <li>• Men's Warehouse</li> <li>• Old Navy</li> <li>• Pier 1 Imports</li> <li>• A. C. Moore</li> <li>• Bath &amp; Body Works</li> <li>• Games Workshop</li> <li>• Great Moments</li> <li>• Spoiled Rotten K-9</li> <li>• Staples</li> <li>• Ulta</li> <li>• Yankee Candle Company</li> <li>• Barnes &amp; Noble Bookellers &amp; Café</li> <li>• Halldmark Creations</li> <li>• Chili's Bar &amp; Grill</li> <li>• Cold Stone Creamery</li> <li>• Della Rose's Avenue Tavern</li> <li>• Don Pablo's Mexican Kitchen</li> <li>• Kobe Japanese Steak House</li> <li>• Omaha Steaks</li> <li>• Red Brick Station Restaurant &amp; Pub Bar</li> <li>• Starbucks Coffee Co.</li> <li>• Tiked Kilt</li> <li>• Z-Burger</li> <li>• Bubbles Salon</li> <li>• Spa on The Avenue</li> <li>• Sports Clips</li> <li>• Vision Works</li> <li>• AMC IMAX Theatres</li> <li>• Verizon Wireless</li> <li>• Sprint</li> </ul>	<ul style="list-style-type: none"> <li>• Angek Rock Bar</li> <li>• Baltimore Comedy Club</li> <li>• Havana Club</li> <li>• Howl at the Moon</li> <li>• Joe Squared</li> <li>• Kettle Hill</li> <li>• Leinenkugel's Beer Garden</li> <li>• Luckie's Liquor</li> <li>• Luckie's Tavern</li> <li>• Maryland Art Place</li> <li>• Mex Tequila Bar</li> <li>• Mosaic</li> <li>• PBR Baltimore</li> <li>• Rams Head Live!</li> <li>• Ruth's Chris Steakhouse</li> <li>• TATU</li> </ul>	<ul style="list-style-type: none"> <li>• Barnes &amp; Noble</li> <li>• Hard Rock Café</li> <li>• Phillips</li> <li>• Best of Luck</li> </ul> <p style="text-align: center;"><b>Pier IV</b></p> <ul style="list-style-type: none"> <li>• Dick's Last Resort</li> <li>• Eli Banbo</li> <li>• Potbelly's</li> <li>• Houlihan's</li> <li>• Chipotle</li> </ul>	<ul style="list-style-type: none"> <li>• Angek Rock Bar</li> <li>• Howl at the Moon</li> <li>• Maker's Mark</li> <li>• Bourbon House &amp; Lounge</li> <li>• Sully's Restaurant &amp; Saloon</li> <li>• Tingo Sed Cantina</li> <li>• Improv Comedy Club and Dinner Theatre</li> <li>• Wet Willie's</li> <li>• Ri Ra Irish Pub &amp; Restaurant</li> <li>• The Sports &amp; Social Club</li> <li>• PBR Louisville</li> <li>• Mosaic</li> <li>• The Pub</li> <li>• J. Gumbo's</li> <li>• Gordon Biersch Brewery</li> <li>• Mozzeria Italian</li> <li>• Taipei Café</li> <li>• Subway</li> <li>• Wendy's</li> <li>• Taco Bell</li> <li>• KFC</li> <li>• Philly Station</li> <li>• CVS</li> <li>• Footlocker</li> <li>• T-Mobile</li> <li>• Hard Rock Café</li> </ul>	<ul style="list-style-type: none"> <li>• Hard Rock Café</li> <li>• Samba Grille</li> <li>• Sundance Cinemas</li> <li>• The Blue Fish</li> <li>• Verizon Wireless Theatre</li> <li>• PBR Houston</li> <li>• Lucie's Liquors Houston</li> <li>• Shark Bar</li> <li>• Chapel Spirits</li> </ul>	<ul style="list-style-type: none"> <li>• The Beach Club</li> <li>• Ben &amp; Jerry's</li> <li>• Blue Plate</li> <li>• Bluepoint Ocean Grill</li> <li>• Bongos</li> <li>• Center Bar</li> <li>• Constant Grind</li> <li>• Council Oak</li> <li>• Food Court</li> <li>• Hard Rock Café</li> <li>• Hooters</li> <li>• Johnny Rockets</li> <li>• Kibbin's</li> <li>• Martoranos</li> <li>• Renegade Barbeque</li> <li>• Rock N Hookah</li> <li>• Tatu</li> <li>• Tequila Ranch</li> <li>• Wetzel's Pretzels</li> <li>• Rock Shop</li> <li>• The Seminole Store</li> <li>• Seminole Auto Salon</li> <li>• Bijoux Tamer</li> <li>• Boss Connection</li> <li>• Brats</li> <li>• Brookstone</li> <li>• Cache</li> <li>• Gelkerit</li> <li>• Hollywood East</li> <li>• Kooch Jewellers</li> <li>• Lucky Devil Tattoo</li> <li>• Maccimo</li> <li>• Perry Elks</li> <li>• Quicksilver</li> <li>• Resort Wear</li> <li>• Shooz</li> <li>• Sergio Kachatti</li> <li>• Simbad Sports</li> <li>• Unforgettable</li> <li>• White House Black Market</li> </ul>

"Acceptable Tenants" shall also include other tenants of substantially similar or better in quality that would complement an urban entertainment center type project, such as the Power Plant in Baltimore, Maryland, Power Plant Live in Baltimore, Maryland, Fourth Street Live in Louisville, Kentucky, Bayou Place in Houston, Texas and Seminole Paradise, in Hollywood, Florida or a "Main Street center, such as Boulevard at the Capital Centre, in Prince George's County, Maryland

**Form of Certificate of Commencement of Construction**

[\_\_\_\_\_ square feet of \_\_\_\_\_ space, as an Element of]  
[the Initial ] Development Project Phase [\_\_\_\_] (the "Development Project Phase")

The undersigned, BALLPARK VILLAGE DEVELOPMENT CORPORATION (the "Developer"), pursuant to that certain

Development Agreement dated as of \_\_\_\_\_, 200\_\_, between the City of St. Louis, Missouri (the "City") and Developer (the "Agreement") hereby certifies to the City as follows:

1. All real property within the Development Phase Area necessary for the Development Project Phase has been acquired by Developer in accordance with the Agreement.

2. Developer has entered into one or more Guaranteed Maximum Price Contracts with General Contractors of national or regional standing which, taken together, encompass substantially all of the work necessary to complete the Construction of [\_\_\_\_\_, as an Element of] the Development Project Phase, exclusive of Developer-Funded Tenant Improvements and User Improvements. The estimated Total Costs with respect to such [Element][Development Project Phase] are \$\_\_\_\_\_, exclusive of the budgeted User Improvement Costs.

3. Developer has submitted to the MBE/WBE Compliance Officer a copy of Developer's MBE/WBE Subcontractor's List and MBE/WBE Utilization Statement, which are attached hereto as Appendix B.

4. Developer has obtained and closed all necessary financing to achieve Substantial Completion of [\_\_\_\_\_ square feet of \_\_\_\_\_ space, as an Element of] the Development Project Phase except for User Improvement Costs.

5. This Certificate of Commencement of Construction is being issued by Developer to the City and the Authority in accordance with the Development Agreement to evidence Developer's satisfaction of all obligations and covenants with respect to commencement of construction of [\_\_\_\_\_ square feet of \_\_\_\_\_ space, as an Element of] the Development Project Phase.

6. Notwithstanding anything to the contrary herein, the City and the Authority shall have no recourse against any member, authorized person, manager, principal, officer, representative, partner, shareholder, trustee or employee of Developer or any of their respective properties or assets in connection with the execution and delivery of this Certificate by Developer.

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\_\_.

**BALLPARK VILLAGE DEVELOPMENT CORPORATION, a Delaware corporation**

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

**EXHIBIT G  
Form of Certificate of  
Reimbursable Development Project Costs**

TO:

\_\_\_\_\_ (the "Bond Trustee")

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Re: City of St. Louis, Missouri, Ballpark Village

[Initial ] Development Project Phase [\_\_\_\_\_] (the "Development Project Phase")

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement dated as of \_\_\_\_\_, 2012 (the "Agreement"), between the CITY OF ST. LOUIS, MISSOURI (the "City") and BALLPARK

VILLAGE DEVELOPMENT CORPORATION, a Delaware corporation (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on Schedule 1 hereto is a Reimbursable Development Project Cost and was incurred in connection with the construction of the Development Project Phase.

2. These Reimbursable Development Project Costs have been paid by the undersigned and are reimbursable under the Bond Indenture and the Agreement, or such items are presently due and payable.

3. The following amounts of Reimbursable Development Project Costs have been incurred in the completion of the Development Project Phase and are subject to reimbursement from TDD Revenues, CID Revenues, MODESA Local Revenues or New State Revenues (as such terms are defined in the Agreement), respectively:

Transportation Revenues:

CID Revenues:

MODESA Local Revenues:

New State Revenues:

4. 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 any project fund established pursuant to the Bond Indenture, and no part thereof has been included in any other certificate previously filed with the City.

5. 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.

6. All Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Development Plan and the Agreement.

7. If any cost item to be reimbursed under this Certificate is deemed not to constitute a "Development Project Cost" within the meaning of the MODESA Act, the Bond Indenture and the Agreement, the Developer shall have the right to substitute other eligible Reimbursable Development Project Costs for payment hereunder.

8. The Developer is not in default or breach of any material term or condition of the Agreement beyond the applicable cure period, if any.

9. Developer has received letters of intent or leases that have been executed by potential Users for, in the aggregate, \_\_\_\_\_square feet of Leasable Area in the Development Phase Area.

10. When the amount of this request for reimbursement is added to the amount of all previous requests for reimbursement, the total amount of such requests does not exceed the amount permitted in the Draw Schedule to be disbursed at this time.

11. To our knowledge, all necessary permits and approvals for that portion of the Work to which this certificate relates have been issued.

12. The construction of the Development Project Phase has achieved the completion percentage required in the Draw Schedule.

13. Notwithstanding anything to the contrary herein, the City and the Authority shall have no recourse against any member, authorized person, manager, principal, officer, representative, partner, shareholder, trustee or employee of Developer or any of their respective properties or assets in connection with the execution and delivery of this Certificate by Developer.

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

**BALLPARK VILLAGE DEVELOPMENT CORPORATION, a Delaware corporation**

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

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

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

**Schedule 1**

The Developer has incurred the following Reimbursable Development Project Costs:

	CATEGORY	FROM MODESA LOCAL REVENUES	FROM NEW STATE REVENUES	FROM TDD REVENUES	FROM CID REVENUES	FROM ALL REVENUES
(a)						
(b)						
(c)						
(d)						
(e)						
(f)						
	Total Reimbursable Development Project Costs					

**EXHIBIT H**

**Form of Certificate of Substantial Completion**

CERTIFICATE OF SUBSTANTIAL COMPLETION

[\_\_\_\_\_ square feet of \_\_\_\_\_ space, as an Element of]  
 [the Initial ] Development Project Phase [\_\_\_\_] (the "Development Project Phase")

The undersigned, BALLPARK VILLAGE DEVELOPMENT CORPORATION, a Delaware corporation (the "**Developer**"), pursuant to that certain Development Agreement dated as of \_\_\_\_\_, 2012, between the City of St. Louis, Missouri (the "**City**") and the Developer (the "**Agreement**"), hereby certifies to the City as follows:

1. That as of \_\_\_\_\_, \_\_\_\_\_, Substantial Completion in accordance with the Agreement has been achieved for [\_\_\_\_\_ square feet of \_\_\_\_\_ space, as an Element of] the Development Project Phase.

2. To Developer's knowledge, such Work has been performed substantially in accordance with the Construction Plans (as those terms are defined in the Agreement).

3. This Certificate of Substantial Completion is accompanied by the project architect's or owner representative's certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as Appendix A and incorporated herein by reference, certifying that the Work in connection with [\_\_\_\_\_ square feet of \_\_\_\_\_ space, as an Element of] the Development Project Phase has been substantially completed in accordance with the contract between the Developer and \_\_\_\_\_, the general contractor for [\_\_\_\_\_ square feet of \_\_\_\_\_ space, as an Element of] the Development Project Phase.

4. This Certificate of Substantial Completion is being issued by the Developer to the City and/or its designee in accordance with the Agreement to evidence the satisfaction of all material obligations and covenants with respect to the Development Project Phase with respect to [the portion of the Work in connection with the Development Project Phase described herein.] [the Work in connection with the Development Project Phase.]

5. The acceptance (below) or the failure of the City or its designee to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the City (which written objection, if any, must be delivered to the Developer prior to the end of such thirty (30) days) shall evidence the satisfaction of the Developer's agreements and covenants to substantially complete [the portion of the Work in connection with the Development Project Phase described herein.] [the Work in connection with the Development Project Phase.]

6. Upon acceptance by the City or its designee, or the failure of the City or its designee to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the City and/or its designee as provided in Section 5 above, the City and its designee shall execute and Developer may record this Certificate in the office of the City's Recorder of Deeds. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

7. Notwithstanding anything to the contrary herein, the City and the Authority shall have no recourse against any member, authorized person, manager, principal, officer, representative, partner, shareholder, trustee or employee of Developer or any of their respective properties or assets in connection with the execution and delivery of this Certificate by Developer.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BALLPARK VILLAGE DEVELOPMENT CORPORATION, a Delaware limited liability corporation**

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

ACCEPTED:

[\_\_\_\_\_]

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

CITY OF ST. LOUIS, MISSOURI

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

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

COMES NOW \_\_\_\_\_ and states that the foregoing is true to the best of their knowledge, information and belief.

Subscribed and sworn to before me, a Notary Public, in and for the above City and State, this \_\_\_st day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public



**EXHIBIT K**  
**Form of Quarterly Information Form**

[PDF Form to be inserted upon execution]

**EXHIBIT L**  
**Terms of TDD Garage Ground Sublease**

The following is a general outline of the terms and conditions of the TDD Garage Ground Sublease, and the terms and conditions of the financing, construction, ownership and operation of a parking garage to be constructed as part of the Parking Element for any Subsequent Development Project Phase and related improvements. Such terms and conditions may be modified by the Developer as necessary to facilitate issuance of the Bonds and financing of the Parking Element for such Subsequent Development Project Phase in accordance with the Agreement.

1. Pursuant to the TDD Garage Ground Sublease, Developer will sublease to the TDD the land underlying the parking garage to be constructed as part of the Parking Element for the applicable Subsequent Development Project Phase and related improvements, which may include streets and/or sidewalks in the Development Area (the "leased premises") for an initial term of 40 years and three 25-year renewal options.

2. The TDD will finance, construct and own such parking garage, using proceeds disbursed from the Project Fund to the TDD in accordance with the terms of the Agreement. The TDD will be responsible for all obligations typically in a triple net lease, including operation and maintenance of the leased property as a first-class parking facility, provided, however, that to the extent that parking operating revenues (excluding TDD or CID taxes or assessments) are insufficient to cover (a) Base Rent or (b) other payments due under the TDD Garage Ground Sublease or (c) operating expenses of the parking facility, Developer shall be liable for such expenses. Expenses for capital expenditures and annual operating shortfalls shall be the obligation of Developer.

3. Subject to Developer's approval, the TDD may enter into a management agreement with an operations manager to carry out the TDD's obligations under the TDD Garage Ground Sublease.

4. Base Rent under the TDD Garage Ground Sublease will be at a market rate rental for the land based on a schedule to be determined prior to the execution of the TDD Garage Ground Sublease. Additional Rent will also be payable in an amount equal to the difference between the operating revenues generated by the leased premises and the operating expenses incurred with respect to the leased premises. Developer and the City will restructure the rent obligations under the TDD Garage Ground Sublease as reasonably necessary to accommodate any concerns of TDD counsel or Bond Counsel in connection with the state law analysis or tax-exempt financing analysis of the TDD Garage Ground Sublease, provided that the economic circumstances of the parties will not be affected.

5. Developer will reserve right to restrict access to a designated number of parking spaces for any Element of a Development Project Phase. A gating system will be established to separate these designated parking spaces, as necessary.

6. The TDD Garage Ground Sublease will include a fee schedule for spaces designated for use by the Retail Element and the Office Element of the Development Project that will (i) establish maximum parking fees for anticipated parking garage users (i.e., hourly, monthly, special events, etc.), (ii) require the TDD to provide tenants with ability to negotiate preferred parking fees (and implement a validation system for the tenant's patrons, as agreed), and (iii) allow the TDD and operations manager to set parking fees for individual tenants, subject to Developer approval.

7. At the end of the financing period, the City will have the option to assume the TDD Garage Ground Sublease, provided, however, that the rental payments will be recalculated to reflect the market conditions and anticipated need for capital expenditures existing at the time such option is exercised. The City shall acknowledge its right to this option by the execution of an acknowledgement and consent to the TDD Garage Ground Sublease, and this option shall satisfy the requirements set forth in Section 238.275.1 R.S.Mo., as amended. Upon any termination of the TDD Garage Ground Sublease, ownership of the parking garage would revert to the Developer, and any ownership interest of the TDD in the underlying land would also revert to the Developer.

8. A portion of the parking spaces in the leased premises, to be determined prior to execution of the TDD Garage Ground Sublease, shall remain undesignated and available for free parking (which may require certain reasonable tenant validations).

9. As a political subdivision, the TDD will be exempt from ad valorem property taxes. In consideration of the City entering into this Development Agreement, Developer will enter into an agreement with the City to pay \$300,000 per year upon the deadline for Substantial Completion of the applicable Development Project Phase to the City for deposit into the Contractually Pledged City Revenues Account, which payment will be in lieu of all ad valorem property taxes otherwise applicable to the parking garage and the land underlying such parking garage (the "TDD Garage Payment"), which amount will be prorated on a monthly basis in the first year of operations and increase by 5% every five years. The obligation to make the TDD Garage Payment shall be an operating cost of the leased premises which is covered by the Developer's obligation to fund annual operating deficits under the TDD Garage Ground Sublease. If at any time during the term of the TDD Garage Ground Sublease, Developer or any Related Entity pays any incremental real property taxes (in excess of the amount of taxes which would be due based upon the equalized assessed value in the taxable year prior to the execution of the TDD Garage Ground Sublease) with respect to any interest in the land subject to the TDD Garage Ground Sublease and/or any improvements thereon, the TDD Garage Payment shall be reduced by the amount of any such payment.

**EXHIBIT M  
Form of Completion Guaranty**

**EXHIBIT N  
[RESERVED]**

**EXHIBIT O  
[RESERVED]**

**EXHIBIT P  
INITIAL PHASE BOND SCHEDULE  
[To Be Provided]**

**EXHIBIT Q  
DRAW SCHEDULE**

Disbursements from the Project Fund established in the Bond Indenture for each Subsequent Development Project Phase shall be based upon the Project Budget and a Schedule for Construction (which Schedule shall be submitted to the Financing Team a minimum of three (3) weeks prior to Closing for such Development Project Phase). Such Schedule(s) shall detail the amount of time reasonably anticipated to complete construction of the applicable Subsequent Development Project Phase or Element thereof in the stages typically provided in a construction schedule and in accordance with the Guaranteed Maximum Price Contract. Draws on the Project Fund shall be limited in accordance with the following:

A. Guaranteed Maximum Price Contract. Developer shall have entered into and shall have provided to the Financing Team one or more Guaranteed Maximum Price Contracts for any Development Project Phase or Element thereof for which a disbursement is sought, which, taken together, encompass substantially all of the work necessary to complete the Construction of such Development Project Phase or Element thereof, exclusive of Developer-Funded Tenant Improvements and User Improvements;

B. Distribution Schedule to be Provided before Any Project Fund Disbursement: No disbursement shall be made from the Project Fund with respect to any Development Project Phase until Developer has provided to Issuer a distribution schedule for the amounts to be withdrawn from the applicable subaccounts (collectively the "Subaccounts" and each a "Subaccount") in the Project Fund for MODESA Local Revenues, New State Revenues, TDD Revenues, and CID Revenues, together with a sufficiently detailed description of the costs for which Developer shall request payment from each such Subaccount for Bond Counsel to determine the eligibility of such costs, and Bond Counsel has determined that such costs are eligible for reimbursement in accordance with the MODESA, CID and TDD Acts.

C. Permits: No disbursement shall be made from the Project Fund for any Element of a Development Project Phase until Developer has obtained building and other necessary permits for the commencement of Construction of the Development Project Phase or applicable Element thereof.

D. Financing: No disbursement shall be made from the Project Fund until Developer has demonstrated to the reasonable satisfaction of the Financing Team that Developer has secured the debt and equity financing necessary to complete the Development Project Phase (or Element thereof) in accordance with the Project Budget (except for Developer-Controlled Costs and

User Improvement Costs), and the Completion Guaranty with respect to such Development Project Phase has been executed and delivered to the City in accordance with the provisions of the Development Agreement.

E. Limitations Based on Overall Funding Sources: Before any disbursement is made from the Project Fund for a Development Project Phase, Developer shall also have complied with and presented evidence of such compliance with any related provisions in the Development Agreement and the provisions of A, B, C, D and F hereof, in addition to the requirements of this paragraph. Following satisfaction of the such provisions, Developer may request draws from the Project Fund by making such requests to City or its designee, and the Bond Trustee, provided that Developer shall, with each such request: (a) provide evidence of private debt and equity funds expended towards the completion of the Development Project Phase, including an itemized listing and supporting expenditure documentation for any amount expended by Developer in connection with the Development Project Phase, including the payment of predevelopment expenses and soft cost expenses to third parties unrelated to Developer; (b) designate the Subaccount(s) from which such requested payment is to be made; and (c) provide sufficient detail on the expenditures made to enable a determination to be made as to whether such requested payment has been paid or is due and whether such requested payment is appropriate from such Subaccount(s). Subsequent disbursements may be made in accordance with the provisions of this paragraph as further limited by the provisions in paragraph F below, but the total of such disbursements shall in no event exceed the Maximum Reimbursable Development Project Costs for each Element of the Development Project Phase.

Upon City's or City designee's approval or deemed approval of such request and upon satisfaction of the related conditions in the Development Agreement and upon satisfaction of the provisions of A, B, C, D, and F hereof, amounts in the Project Fund for a particular Development Project Phase shall be disbursed to Developer to pay Reimbursable Development Project Costs: (1) for the Infrastructure Element and the Parking Element of such Development Project Phase, at any time following Closing; and (2) for all other Elements of such Development Project Phase, in accordance with a ratio of Project Fund disbursements to documented private debt and/or equity expenditure determined in accordance with the following formula:

Maximum Reimbursable Development Project Costs/( Total Cost –Leasing Commissions – User Improvement Costs - Maximum Reimbursable Development Project Costs) using such categories of funding sources and uses and the amounts associated therewith as set forth on the Project Budget. Additionally, payments to the Developer for Reimbursable Development Project Costs cannot exceed, in the aggregate, the amounts established in the Bond Indenture as the maximum cumulative draw schedule under the terms of the Bonds;

provided that no disbursement shall be sought or made based on private debt and/or equity expenditures for Developer-Controlled Costs for any Development Project Phase that, when added to Developer-Controlled Costs upon which disbursements for such Development Project Phase have previously been based, would exceed the amounts set forth in the Project Budget for such Developer-Controlled Costs.

F. Limitation Based on Leasing Progress: Notwithstanding anything herein to the contrary, no disbursements shall be made from the Project Fund for any Development Project Phase until twenty five percent (25%) of the Leasable Area in the Retail Element and twenty five percent (25%) of the Leasable Area in the Office Element of such Development Project Phase have been Pre-Leased (the "Initial Pre-Leasing Requirement"). For purposes of this section, "Pre-Leased" shall mean a prospective Acceptable Tenant (including any Related Entity of Developer) has executed and delivered to Developer (or Related Entity of Developer) and Developer has also executed a letter of intent (in the form attached hereto as Schedule Q-1 or any other commercially reasonable form of letter of intent provided by such Acceptable Tenant) or lease or purchase agreement with respect to Leasable Area in the Retail Element or Office Element of a Development Project Phase.

**EXHIBIT R**  
**[RESERVED]**

**EXHIBIT S**  
**M/WBE Subcontractor's List**  
**[Form to be inserted at execution]**

**EXHIBIT T**  
**M/WBE Utilization Statement**  
**[Form to be inserted at execution]**

Approved: July 24, 2012