
DEVELOPMENT AGREEMENT

among the

CITY OF EUREKA, MISSOURI,

the

THE ARBORS OF ROCKWOOD COMMUNITY IMPROVEMENT DISTRICT,

and

BREWSTER ROAD, LLC

dated as of

February 22, 2017

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EXHIBITS:

Exhibit A: Description of District Project and Estimated Reimbursable Project Costs

Exhibit B: Form of Certificate of Reimbursable Project Costs

Exhibit C: Form of Certificate of Substantial Completion

Exhibit D: District’s Legal Description

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”), entered into as of this 22nd day of February, 2017, among the **CITY OF EUREKA, MISSOURI**, a fourth-class city and political subdivision of the State of Missouri (together with all successors and assigns, the “**City**”), **THE ARBORS OF ROCKWOOD COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri (together with all successors and assigns, the “**District**”), and **BREWSTER ROAD, LLC**, a Missouri limited liability company (together with all successors and assigns, the “**Developer**”) (the City, the District and the Developer being collectively referred to herein as the “**Parties**,” and individually as a “**Party**,” as the context so requires).

RECITALS:

WHEREAS, on or about September 23, 2016, Developer filed a petition with the City Clerk of the City pursuant to the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended (the “**CID Act**”), which was amended by an amended petition filed by Developer on or about October 13, 2016 in accordance with Section 67.1421.5.1 of the CID Act, which proposed the formation of the District to pay for certain costs associated with the construction and installation of public infrastructure and improvements related to the construction of approximately five hundred and twenty eight (528) homes for the development project commonly known as The Arbors of Rockwood subdivision to be located in the City and the boundaries of the District (the “**Development**”); and

WHEREAS, the City, pursuant to Ordinance No. 2394 passed and approved on October 18, 2016, created the District in accordance with the CID Act (the “**Formation Ordinance**”); and

WHEREAS, the District is authorized under the CID Act to undertake the District Project (as defined herein and described on **Exhibit A** attached hereto and incorporated by reference), which includes certain public improvements within the District, and to impose the District Assessment (as defined herein), which will be used to reimburse the Developer for Reimbursable Project Costs (as defined herein); and

WHEREAS, the Parties desire to enter into this Agreement to provide for the process by which the District will reimburse the Developer for Reimbursable Project Costs, to provide for the payment of Operating Costs (as defined herein) and to provide assurances to the City regarding the implementation of the District Project; and

WHEREAS, the Board of Aldermen of the City and the Board of Directors of the District have found and determined that the actions to be taken pursuant to this Agreement are reasonably anticipated to serve a public purpose and that the District Project is necessary and advisable and in the best interest of the City and of its inhabitants and of the District in order to promote the public interest.

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

ARTICLE 1

DEFINITIONS, RECITALS AND EXHIBITS

Section 1.1. Recitals and Exhibits. The representations, covenants and recitations set forth in the foregoing recitals and the exhibits attached to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this

Section, and the appropriate exhibits are incorporated into each Section of this Agreement that makes reference to an exhibit.

Section 1.2. Definitions. Words and terms defined elsewhere in this Agreement shall have the meanings assigned therein. Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

“**Agreement**” shall mean this Development Agreement, as amended from time to time in accordance with its terms.

“**Annual Operating Fund Deposit**” shall mean for each fiscal year of the District an amount not to exceed \$12,000 plus a percentage increase equal to the average percentage increase in the Consumer Price Index (as computed by the United States Department of Labor’s Bureau of Labor Statistics), for the preceding fiscal year.

“**Authorized District Representative**” means the person or entity or such other person, persons or entity from time to time designated by the Board of Directors as the person, persons or entity authorized to act on behalf of the District under this Agreement.

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

“**Board of Directors**” means the governing body of the District, as appointed by the Mayor with the consent of the Board of Aldermen, in accordance with the CID Act, the Petition and the Formation Ordinance.

“**Bond Counsel**” means Armstrong Teasdale LLP, St. Louis, Missouri, or an attorney or firm of attorneys having nationally recognized standing in the field of tax-exempt municipal bonds approved by the Board of Directors.

“**Certificate of Reimbursable Project Costs**” means a certificate identifying Reimbursable Project Costs for each District Project Phase in substantially the form of **Exhibit B**, attached hereto and incorporated herein by this reference. The aggregate amount of approved Reimbursable Project Costs pursuant to one or more Certificates of Reimbursable Project Costs shall not exceed \$3,413,574, plus Costs of Issuance, plus the sum advanced by the Developer pursuant to **Section 4.4(a)** of this Agreement and plus the sum advanced by the Developer to pay Operating Costs pursuant to **Section 3.3** of this Agreement.

“**Certificate of Substantial Completion**” means a document substantially in the form of **Exhibit C**, attached hereto and incorporated herein by this reference, delivered by the Developer to the District and the City in accordance with this Agreement and which, upon the District’s and the City’s acceptance thereof, will evidence the Developer’s satisfaction of all obligations and covenants as it relates to the applicable District Project Phase in accordance with this Agreement.

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

“**City**” means the City of Eureka, Missouri, a fourth-class city and political subdivision of the State of Missouri, and its permitted successors or assigns.

“**City Code**” means the municipal code of the City, as amended.

“**Costs of Issuance**” means all costs reasonably incurred by the District or the City in furtherance of the issuance of the District Obligations, including but not limited to the fees and expenses of financial advisors and consultants, the District’s attorneys (including issuer’s counsel and Bond Counsel), the City’s attorneys (including special counsel), the City’s administrative fees and expenses (including fees and costs of planning consultants and other advisors), underwriters’ discounts and fees, the costs of printing any District Obligations and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any District Obligations.

“**County Recorder**” means the St. Louis County Recorder of Deeds.

“**Developer**” means Brewster Road, LLC, a Missouri limited liability company, and its permitted successors or assigns.

“**Development**” means the meaning set forth in the Recitals of this Agreement.

“**District**” means The Arbors of Rockwood Community Improvement District, a community improvement district and political subdivision of the State of Missouri, and its permitted successors or assigns.

“**District Assessment**” means the special assessment to be levied against the owners of real property in the District in the amounts set forth in the Petition.

“**District Bonds**” means the District Assessment revenue bonds issued by or on behalf of the District in one or more series in accordance with this Agreement.

“**District Notes**” means the special assessment revenue notes issued by or on behalf of the District in one or more series in accordance with this Agreement.

“**District Obligations**” means any District Bonds, District Notes or other obligations issued by or on behalf of the District to finance or refinance Reimbursable Project Costs.

“**District Project**” means the construction and installation of the following public improvements: lawns, trees, and other landscape, sidewalks, streets, traffic signs and signals, utilities, drainage, water, storm and sewer systems, and other site improvements, streetscape, and lighting within the District, and undertaking the construction of other useful, necessary, or desired improvements within the District. The Project may be completed in one or more phases.

“**District Project Phase**” means a portion of the District Project to be developed by the Developer, including District Project Phase 1, District Project Phase 2, and District Project Phase 3. District Project Phase 1, District Project Phase 2, and District Project Phase 3 being collectively referred to herein as the “**District Project Phases**” and individually as the “**District Project Phase**,” as the context so require.

“**District Project Phase 1**” means that portion of the District Project consisting of construction of certain public infrastructure improvements within a portion of the Development completed outside the scope of District Project Phase 2 or District Project Phase 3. Simultaneously with the execution of this Agreement, the Developer shall submit or cause to be submitted to the District the portions of the District included within District Project Phase 1.

“**District Project Phase 2**” means that portion of the District Project consisting of construction of certain public infrastructure improvements within a portion of the Development completed outside the

scope of District Project Phase 1 or District Project Phase 3. Prior to the commencement of any work with respect to District Project Phase 2, Developer shall submit or cause to be submitted to the District the exact portions of the District included within District Project Phase 2.

“District Project Phase 3” means that portion of the District Project consisting of construction of certain public infrastructure improvements within a portion of the Development completed outside the scope of District Project Phase 1 or District Project Phase 2. Prior to the commencement of any work with respect to District Project Phase 3, Developer shall submit or cause to be submitted to the District the exact portions of the District located within District Project Phase 3.

“District Revenues” means the money actually collected, pursuant to this Agreement and the CID Act, from the imposition of the District Assessment. District Revenues shall not include (a) the amount, if any, retained by the St. Louis County Collector of Revenue for the cost of collecting the District Assessment, (b) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, or (c) any sum received by the District that is the subject of a suit or other claim communicated to the District, which suit or claim challenges the collection of such sum, until such suit or other claim is withdrawn or resolved against the taxpayer.

“Event of Default” means any event specified in **Section 7.1** of this Agreement.

“Excusable Delays” means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, unusually adverse weather or wet soil conditions, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any federal or State regulatory body, unforeseen site conditions, material litigation by parties other than a Party and not caused by any Party’s failure to perform, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable Party using reasonable diligence to overcome which prevents such Party from performing its specific duties or obligations hereunder in a timely manner. Subject to **Section 4.1** and **Section 7.5** of this Agreement, Excusable Delays shall extend the time of performance for the period of such Excusable Delay.

“Formation Ordinance” means the meaning set forth in the Recitals of this Agreement.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, or other subdivision, zoning, or similar approvals required for implementation and construction of the District Project.

“Mayor” means the Mayor of the City.

“Operating Costs” means overhead expenses of the District incurred in connection with administration, supervision and operation of the District. Operating Costs include, without limitation, the following: (a) reimbursement of the City for actual expenditures by the City in connection with its review of the District’s activities pursuant to Section 67.1461.3 and Section 67.1511.2(3) of the CID Act and **Section 4.8** of this Agreement; (b) expenses incurred in the exercise of the contractual powers of the District pursuant to Section 67.1461.1(5) of the CID Act; (c) costs related to any authorized indebtedness of the District, including the Costs of Issuance and repayment of District Obligations pursuant to Section 67.1461.1(12) and Section 67.1491 of the CID Act; (d) the cost of insurance obtained by the District pursuant to Section 67.1461(3) of the CID Act; (e) the cost of any audit pursuant to Section 67.1461.1(5) of the CID Act; and (f) expenses incurred by the District in the exercise of the powers granted under Section 67.1461 of the CID Act, which consist of paying the costs of compensating employees or contractors, paying the costs of suits by or against the District, the cost of purchasing

property necessary or convenient for the District's activities, the costs of conducting economic, planning, marketing or other studies and the costs of collection and disbursement of funds for District activities.

“**Operating Fund**” means the “The Arbors of Rockwood Community Improvement District Operating Fund” established by the District pursuant to **Section 3.3** of this Agreement.

“**Parties**” or “**Party**” means the meaning set forth in the first paragraph of this Agreement.

“**Payment Date**” means any date on which the principal of or interest on any District Obligation is payable.

“**Petition**” means the Petition for Creation of a Community Improvement District filed with the City on or about September 23, 2016, which was amended by that Amended Petition for Creation of a Community Improvement District filed by Developer on or about October 13, 2016 in accordance with Section 67.1421.5.1 of the Act.

“**Plans**” means plans submitted by the Developer to the City, and approved by the City in furtherance of the Project.

“**Reimbursable Project Costs**” means all actual and reasonable costs and expenses that are incurred by or at the direction of the Developer with respect to the District Project as permitted under the CID Act, including the actual and reasonable cost of labor and materials payable to contractors, builders, suppliers, vendors and materialmen in connection with the construction contracts awarded for the District Project that is to be constructed or undertaken by the Developer, plus all actual and reasonable costs to plan, finance, develop, design and acquire the District Project, including but not limited to the following:

(a) all actual and reasonable costs of the District Project as set forth in **Exhibit A**, attached hereto and incorporated herein by reference;

(b) all Costs of Issuance advanced by the Developer and incurred in connection with the issuance of the District Obligations;

(c) all planning, legal, administrative and other costs associated with the District Project including, but not limited to, legal and administrative costs incurred or charged by the City in connection with the creation of the District and the negotiation of this Agreement;

(d) all Operating Costs of the District advanced by the Developer pursuant to the terms of this Agreement; and

(e) all other items of expense advanced by the Developer and not elsewhere specified in this definition which may be necessary or incidental to the review, approval, acquisition, construction, improvement and financing of the District Project and which may lawfully be paid or incurred by the District under the CID Act.

“**State**” means the State of Missouri.

“**Trust Fund**” means “The Arbors of Rockwood Community Improvement District Revenue Trust Fund” established by the District pursuant to **Section 3.2** of this Agreement.

ARTICLE 2

REPRESENTATIONS OF PARTIES

Section 2.1. Representations by the District. As of the effective date of this Agreement, the District represents that:

(a) The District is a community improvement district and political subdivision, duly organized and existing under the laws of the State, including particularly the CID Act.

(b) By proper action of its Board of Directors, the District is authorized to enter into this Agreement and to carry out its obligations under this Agreement, the Chair of the District has been duly authorized to execute and deliver this Agreement on behalf of the District and the District's Secretary has been duly authorized to attest to this Agreement.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the District is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the District or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreements to which the District is a party.

(d) There is no litigation or proceeding pending or, to the District's knowledge, threatened against the District affecting the right of the District to execute or deliver this Agreement or the ability of the District to comply with its obligations under this Agreement or which would materially adversely affect its financial condition.

(e) Construction of the District Project is of significant value to the District, the property within the District and the general public. The District Project will promote the economic welfare and the development of the City and the State through: (i) the creation of temporary and permanent jobs; (ii) stimulating development within the District; and (iii) increasing local and state tax revenues. Further, the District finds that the District Project conforms to the purposes of the CID Act.

Section 2.2. Representations by the City. As of the effective date of this Agreement, the City represents that:

(a) The City is duly organized and existing under the Constitution and laws of the State as a fourth-class city.

(b) The City is authorized to enter into this Agreement and to carry out its obligations under this Agreement, the Mayor has been duly authorized to execute and deliver this Agreement on behalf of the City and the City's City Clerk has been duly authorized to attest to this Agreement.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the City or any of its

property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

(d) There is no litigation or proceeding pending or, to the City's knowledge, threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

(e) Construction of the District Project is of significant value to the City, the property within the District and the general public. The District Project will promote the economic welfare and the development of the City and the State through: (i) the creation of temporary and permanent jobs; (ii) stimulating development within the City; and (iii) increasing local and State tax revenues.

Section 2.3. Representations by the Developer. As of the effective date of this Agreement, the Developer represents that:

(a) The Developer is a limited liability company organized and existing under the laws of the State of Missouri.

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

(c) To Developer's knowledge, the execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any organizational restriction or of any agreement or instrument to which Developer is now a party, and do not and will not constitute a default under any of the foregoing.

(d) To Developer's knowledge, no litigation, proceedings or investigations are pending or, to the knowledge of the Developer, threatened against the Developer or any member or owners of the Developer relating to the District Project. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer of the terms and provisions of this Agreement.

(e) To Developer's knowledge, the Developer is in material compliance with all laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, or operations as contemplated by this Agreement.

ARTICLE 3

COLLECTION OF FUNDS

Section 3.1. Imposition of the District Assessment. Prior to the issuance of District Obligations, the District shall approve resolutions that impose the District Assessment (subject to compliance with the CID Act).

Section 3.2. Administration and Collection of the District Revenues.

(a) The Parties expect the District Assessment to be collected by the St. Louis County Collector of Revenue. The Parties shall cooperate with one another in all respects and as necessary for the collection of the District Assessment. The District shall notify the St. Louis County Collector of Revenue, the St. Louis County Assessor and any other entity as may be required to effectuate the collection of the District Assessment, on an annual basis after the imposition of the District Assessment, of the total special assessments to be levied against each owner of real property within the District.

(b) Upon receipt of District Revenues, the District shall deposit the same into a special trust account to be known as “The Arbors of Rockwood Community Improvement District Revenue Trust Fund” and shall transfer, subject to annual appropriation by the Board of Directors, the money in the Trust Fund for application as contemplated in this subsection, **Section 3.3**, **Section 5.6**, and **Section 6.3(b)** of this Agreement. Subject to the specific provisions of any trust indenture relating to the District Obligations, District Revenues shall be collected, applied and used as follows: first, to transfer to the Operating Fund and to apply the money therein in accordance with **Section 3.3** of this Agreement; and second, to transfer to the Trust Fund and to apply the money therein in accordance with **Section 5.6** of this Agreement.

(c) Unless the Parties have approved another project pursuant to the CID Act, when all District Obligations have been repaid in full, the Board of Directors shall take such actions as may be necessary to repeal the District Assessment and to cause the District to be terminated as further described in **Section 3.6** of this Agreement

Section 3.3. Operating Costs. Money in the Operating Fund shall be used to pay Operating Costs, to pay the principal of or interest on District Obligations. The expected Operating Costs shall be included in the District’s annual budget, as provided in **Section 4.8** of this Agreement, but shall not exceed the Annual Operating Fund Deposit.

Section 3.4. Enforcement of the District Assessment. The District shall take all reasonable actions necessary for the collection of the District Assessment. The District may prosecute or defend any action, lawsuit or proceeding or take any other action involving third persons that the District deems reasonably necessary to secure the payment of the District Assessment. The Developer covenants to cooperate and take all reasonable actions necessary to assist the District in the collection and enforcement of the District Assessment.

Section 3.5. Records of the District Revenues. The District shall keep accurate records of the District Revenues collected. Any District records pertaining to the District Revenues shall be provided to any person upon written request, to the extent permitted by law. Notwithstanding the foregoing, to the extent applicable, the District shall comply with all records requirements and request for records under the Missouri Sunshine Law as defined in Chapter 610 of the Revised Statutes of Missouri, as amended.

Section 3.6. Expiration of Authorization to Levy District Assessment. Upon the earlier of: (a) all District Obligations having been paid, or (b) thirty-two (32) years from the effective date of the Formation Ordinance, the District shall not have the authorization to levy the District Assessment and shall take the steps necessary for the termination of the District. The District shall not implement the procedures for the termination of the District if the District has approved another project upon amendment of the Petition in accordance with the CID Act and adoption by the Board of Aldermen of an ordinance amending the Formation Ordination.

Section 3.7. Obligation to Report District Revenues. The Developer shall record a declaration of covenants, conditions, and restrictions concerning the Development with the County Recorder, which shall include, along with any amendments thereto, the obligation of any purchaser, transferee, lessee or any other owner of real property within the District, as applicable, to pay the District Assessment, as applicable to their property.

Section 3.8. Notice to City of Transfer of Development. Except for the sale and transfer of real property to residential owner-occupants in the Development in the ordinary course of Developer's business, Developer agrees to notify the City in writing of any sale, transfer or other disposition of any portion of the Development permitted by this Agreement at least fifteen (15) days prior to such sale, transfer or other disposition. Said notice shall specify the name and address of the person so acquiring any or all of the Development or any interest therein and shall identify the real property comprising the Development to be sold, transferred or otherwise disposed, whether by voluntary transfer or otherwise. Notwithstanding anything to the contrary in this Section 3.8, upon written request from the City, the Developer shall provide to the City within ten (10) business days the notice set forth in this Section 3.8 as it relates to the sale, transfer, or other disposition of any property within the Development to any residential owner-occupants; provided, however, that the City shall only be authorized to submit such request one (1) time per each calendar month.

ARTICLE 4

FINANCING THE DISTRICT PROJECT

Section 4.1. Design and Construction of District Project. The Developer shall design and construct the District Project on behalf of the District. The Developer agrees to design and construct the District Project substantially in accordance with the Plans and to substantially complete the District Project by June 30, 2024, subject to Excusable Delays. Notwithstanding anything herein to the contrary, including Excusable Delays, the District Project shall be substantially complete by June 30, 2026 in accordance with the provisions of this Agreement. The Developer shall advance all costs and expenses necessary for completion of the District Project, in accordance with **Section 4.4** of this Agreement.

Section 4.2. Developer to Complete or Cause Completion of the District Project. The Developer shall carry out or cause to be carried out the District Project in a good and workmanlike manner in accordance with the terms of this Agreement. The Developer may enter into one or more construction contracts to complete the District Project. Neither the City nor the District shall have any liability with respect to any construction contract executed by the Developer related to the District Project.

Section 4.3. Application of Prevailing Wage, Public Bidding and Federal Work Authorization. To the extent that prevailing wage, public bidding or other requirements of State and local laws, codes and regulations apply to any portion of the District Project, the Developer covenants and agrees to take all such actions as are necessary to comply with such laws, regulations or requirements, and the District shall cooperate with the Developer to the extent required to comply with the foregoing requirements. The Developer shall indemnify and hold harmless the District and the City from any liability resulting to either of them from failure of either the Developer or any contractor or subcontractor to pay prevailing wages or to otherwise comply with any public bidding or other requirements of State and local laws, codes and regulations that apply to any portion of the District Project. The Developer acknowledges that it must comply with Section 285.530 of the Revised Statutes of Missouri, as amended, regarding enrollment and participation in a federal work authorization program with respect to their respective employees working in connection with the District Project. The Developer represents and warrants that it is in compliance with Section 285.530 of the Revised Statutes of Missouri, as amended, at

the time of execution of this Agreement and has provided a sworn affidavit and supporting documentation affirming participation in a qualified work authorization program as evidence thereof.

Section 4.4. Financing the District Project.

(a) Upon execution of this Agreement, the Developer agrees to advance to the City the sum of \$25,000 to pay (1) the City's reasonable planning, legal, financial and other consultants, and (2) administrative costs and expenses that are incurred in connection with the review of the Petition, the negotiation and administration of this Agreement (including, without limitation, the review of Certificates of Reimbursable Project Costs and the Certificates of Substantial Completion), and the creation of the District; provided, however, that administrative costs and expenses shall not include any portion of salary and benefit costs related to City staff. The City shall obtain the Developer's approval before entering into any engagements with any third party and (ii) the City shall provide the Developer with a monthly statement showing each agreement executed, amounts paid pursuant to each agreement, and amounts remaining due with respect to each agreement. The sum advanced to the City under this subsection shall constitute Reimbursable Project Costs and may be reimbursed to the Developer solely as provided for in this Agreement. The Developer shall not be liable for any costs incurred by the City in excess of \$25,000, and any funds not spent by the City at the completion of the District Project shall be returned to the Developer.

(b) The Developer agrees to advance all costs of design, construction and installation of the District Project. All such funds so advanced shall be subject to reimbursement as a Reimbursable Project Cost solely as provided for in this Agreement.

(c) Reimbursable Project Costs shall not exceed the total amount set forth on **Exhibit A**, attached hereto and incorporated herein by reference, plus Costs of Issuance, plus the sum advanced by the Developer pursuant to subsection (a) above and plus the sum advanced by the Developer to pay Operating Costs pursuant to **Section 3.3** of this Agreement.

Section 4.5. Reimbursements Limited to Reimbursable Project Costs; Developer's Right to Substitute. Costs incurred by the Developer in connection with the District Project will be eligible for reimbursement upon submission by the Developer, and acceptance by the District, of a Certificate of Reimbursable Project Costs, as set forth below:

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

(b) The District shall notify the Developer in writing within 30 days after each submission of its approval or disapproval of the costs identified in each Certificate of Reimbursable Project Costs. If the District determines that any cost identified as a Reimbursable Project Cost is not a Reimbursable Project Cost under this Agreement or the CID Act, the District shall so notify the Developer in writing within 30 days after the submission, identifying the ineligible cost and the basis for determining the cost to be ineligible. The Developer shall then have the right to identify and substitute other costs as Reimbursable Project Costs, which shall be included with a supplemental application for payment submitted within 30 days after the District's notification of any ineligible costs. The District shall then review and notify the Developer in writing within 30 days after submission of its approval or disapproval of the costs identified in the supplemental application for payment. The Developer shall be entitled to reimbursement for Reimbursable Project Costs up to the total amount shown on **Exhibit A**, plus Costs of Issuance, plus the

sum advanced by the Developer pursuant to **Section 4.4(a)** of this Agreement and plus the sum advanced by the Developer to pay Operating Costs pursuant to **Section 3.3** of this Agreement.

(c) The Developer shall provide such information as the District may request, and shall make its books and records available to the District in order for the District to confirm that any cost qualifies under this Agreement and has been incurred and paid by the Developer. The District may retain such consultants as it deems necessary in connection with such review.

Section 4.6. Certificate of Substantial Completion.

(a) Promptly after substantial completion of each District Project Phase in accordance with the provisions of this Agreement, the Developer will furnish to the District and the City a Certificate of Substantial Completion so certifying for such applicable District Project Phase. The District and the City shall, within 30 days following delivery of the Certificate of Substantial Completion, carry out such inspections as they deem necessary to verify to their reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the District and the City unless, prior to the end of such 30-day period after delivery to the District and the City of the Certificate of Substantial Completion, the District or the City furnishes the Developer with specific written objections to the status of the District Project Phase detailed in the submitted Certificate of Substantial Completion, describing such objections and the measures required to correct such objections in reasonable detail.

(b) Upon acceptance of the Certificate of Substantial Completion by the District and the City or upon the lapse of 30 days after delivery thereof to the District and the City without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the County Recorder, and the same shall constitute evidence of the completion by the Developer of that District Project Phase. A Certificate of Substantial Completion issued for each District Project Phase shall be in substantially the form of **Exhibit C**, attached hereto and incorporated herein by reference.

(c) The District's and the City's acceptance or deemed acceptance of a Certificate of Substantial Completion shall not require the City to issue any temporary or final occupancy permits (which shall only be issued in accordance with the applicable provisions of the City Code). Likewise, any issuance of a temporary or final occupancy permit by the City shall not require the District or the City to accept any Certificate of Substantial Completion (which shall only be accepted by the District and the City in accordance with the provisions of this Agreement).

Section 4.7. Insurance.

(a) *Construction.* Prior to the commencement of construction of the District Project, the Developer shall obtain or shall require that any contractor selected by the Developer obtain workers' compensation, automobile liability, comprehensive public liability and builder's risk insurance coverage in amounts customary in the industry for similar type projects. The liability policies required by this subsection shall be "occurrence based" and the builder's risk policy required by this section shall provide "all-risks" coverage for all aspects of the District Project under construction. The Developer shall deliver to the District and the City evidence of such insurance prior to commencement of such construction. In the event of any material casualty affecting the improvements, any insurance proceeds shall be applied, to the extent necessary, to rebuild or restore the damaged improvements to at least equal value and substantially the same character as prior to the damage or destruction; subject, however, to rights and prior claims of (and subject to other application of such proceeds pursuant to the directions of) any holder of a deed of trust, mortgage, or similar encumbrance on the real property in the District securing loans,

advances or extensions of credit to finance or from time to time refinance all or any part of the costs of the District Project.

(b) *Liability Insurance.* Not less than ten (10) days prior to commencement of construction of the District Project, the Developer shall obtain or shall require that any contractor selected by the Developer obtain commercial general liability insurance together with an owner's contractor's policy with limits against bodily injury and property damage of not less than the current absolute statutory waivers of sovereign immunity as set forth in Sections 537.600 and 537.610 of the Revised Statutes of Missouri, as amended. Further, the policy shall be adjusted upward annually, to remain at all times not less than the inflation-adjusted sovereign immunity limits as published in the Missouri Register on an annual basis by the Department of Insurance pursuant to Section 537.610 of the Revised Statutes of Missouri, as amended. The policy shall provide that it may not be cancelled, terminated, allowed to lapse or be substantially modified without at least 30 days prior written notice to the City and the District. The City and the District shall be listed as an additional insured on such certificate. Such policy may be part of a blanket policy, shall include a severability of interests clause and the insurance shall be primary with respect to any applicable insurance maintained by the City or the District. Notwithstanding anything to the contrary contained herein, the requirements of this subsection shall terminate upon acceptance or deemed acceptance of the last Certificate of Substantial Completion relating to the entire District Project.

(c) *Contractual Liability Insurance.* The Developer shall provide evidence of contractual liability insurance (in form and substance reasonably acceptable to the City) covering the Developer's obligations under this Agreement by an insurance company with a rating by a reputable rating agency indicating excellent or superior financial strength (i.e., an A.M. Best rating of "A-" or better). The policy shall provide that it may not be cancelled, terminated, allowed to lapse or be substantially modified without at least thirty (30) days prior written notice to the City. Notwithstanding anything to the contrary contained herein, the requirements of this subsection shall terminate upon acceptance or deemed acceptance of the last Certificate of Substantial Completion relating to the entire District Project.

Section 4.8. Annual Budget; Annual Financial Statements.

(a) The District shall submit its budget for its first fiscal year to the City within 60 days after execution of this Agreement and, for each subsequent fiscal year, the District shall, no earlier than 180 days and no later than 90 days prior to the first day of each fiscal year, submit a proposed budget for the upcoming fiscal year to the City. Such budgets shall be approved by the Board of Directors in accordance with the CID Act and all other applicable statutes no later than 30 days prior to the first day of each fiscal year. Each budget for the District shall generally be prepared in accordance with all applicable State statutes including Section 67.010 Revised Statutes of Missouri, as amended. The fiscal year of the District shall be the same as that of the City, which shall be a fiscal year beginning July 1 and ending June 30. If the Board of Directors fails to adopt a budget by the first day of a fiscal year, the budget for the prior fiscal year shall be deemed to have been approved for the next fiscal year.

(b) The District shall promptly, and in any event within 120 days after the end of each fiscal year, provide to the Developer and the City copies of the annual financial statements of the District.

(c) The District shall annually reimburse the City for the reasonable and actual expenses incurred by the City to review annual budgets and reports of the District required pursuant to this section upon receipt of an invoice therefore; provided that, such annual reimbursement shall not exceed one and one-half percent of the District Revenues collected by the District in such year. Such reimbursement shall be considered an Operating Cost.

ARTICLE 5

DISTRICT OBLIGATIONS

Section 5.1. Payment of Operating Costs; Reimbursement of Costs; Issuance of District Obligations. The District shall use the District Revenues to pay the Operating Costs of the District, and, to reimburse the Developer for Reimbursable Project Costs through the issuance of District Obligations as provided herein. The District shall issue a separate series of District Obligations after approval of one or more Certificates of Reimbursable Project Costs and acceptance by the District of a Certificate of Substantial Completion for each applicable District Project Phase, and each series of the District Obligations shall mature no later than twenty (20) years from the date of the issuance of each such series of District Obligations. Nothing in this Agreement shall obligate the District to issue or further endorse District Obligations for any cost that is not a Reimbursable Project Cost that has been approved pursuant to a Certificate of Reimbursable Project Costs in accordance with this Agreement. Notwithstanding anything to the contrary contained herein, (a) no principal or interest payments on any District Obligations or other payments to the Developer for Reimbursable Project Costs shall be made until the Certificate of Substantial Completion related to the applicable District Project Phase is accepted or deemed accepted pursuant to **Section 4.6** and (b) no tax-exempt District Obligations may be issued without the City's prior written consent. Notwithstanding anything to the contrary herein, the failure to complete any District Project Phase as contemplated by this Agreement shall not impact any District Obligations already issued by the District related to an already completed District Project Phase.

Section 5.2. Limited Obligations. The District Obligations shall be payable solely from the District Revenues or proceeds of the District Obligations and not from any other source. The District Obligations shall be the exclusive responsibility of the District, and shall not constitute a debt or liability or general obligation of the District, the City, the State or any agency or political subdivision thereof.

Section 5.3. Cooperation in the Issuance of District Obligations.

(a) The Developer covenants to cooperate and take all reasonable actions necessary to assist the District and its Bond Counsel, underwriters and financial advisors in the preparation of offering statements, private placement memoranda or other disclosure documents and all other documents necessary to market and sell District Obligations, as appropriate. The Developer will not be required to disclose to the general public or any investor any proprietary or confidential financial information pertaining to the Developer, but upon the execution of a confidentiality agreement reasonably acceptable to the Developer, the Developer shall provide such information to the District and its Bond Counsel, financial advisors, underwriters and their counsel to enable such parties to satisfy their due diligence obligations. Such compliance obligation shall be a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

(b) If either the proceeds of the District Obligations or the District Revenues are insufficient to fund Costs of Issuance, such unfunded amount shall be paid by the Developer. All funds advanced by the Developer pursuant to this Section shall be considered Reimbursable Project Costs.

(c) It is intended for the District to issue District Notes to the Developer as reimbursement of the Developer for its advances of Reimbursable Project Costs, with the right of the Developer to assign or pledge such District Notes to a bank or third party. Upon the issuance of the District Notes, the Developer shall be deemed to have advanced funds necessary to purchase such District Notes and the District shall be deemed to have deposited such funds in a project fund created pursuant to the District's resolution authorizing the issuance of the District Notes, and shall be deemed to have reimbursed the

Developer in full for such costs of the applicable District Project Phase for which the District Notes were issued from the amounts deemed to be on deposit in such project fund from time to time.

Section 5.4. No Other Obligations or Uses of District Revenues. The District shall not issue any other indebtedness or obligations secured by the District Revenues generated or to be generated from the District other than the District Obligations provided for under this Agreement, unless the Developer consents to the issuance of such indebtedness or obligation.

Section 5.5. District Notes. Subject to the requirements of this Agreement, the District may issue, or caused to be issued, the District Notes in the form and substance as dictated by a resolution adopted by the Board of Directors approving the issuance of the District Notes. The District Notes shall be issued in up to three (3) series with an aggregate principal amount not to exceed \$3,413,574, plus Costs of Issuance, plus the sum advanced by the Developer pursuant to **Section 4.4(a)** of this Agreement and the sum advanced by the Developer to pay Operating Costs pursuant to **Section 3.3** of this Agreement. Any District Notes issued to the Developer shall bear interest at a fixed rate per annum equal to seven percent (7%).

Section 5.6. Application of District Revenues. From and after the District's initial issuance of District Obligations, the District shall transfer all District Revenues appropriated by the District for application as follows: *first*, to fund Operating Costs, provided that the amount of District Revenues appropriated to such purpose shall be limited to the Annual Operating Fund Deposit, *second*, to pay interest on and principal of the District Obligations, and *third*, if there are no District Obligations outstanding, to pay Reimbursable Project Costs on a pay as you go basis. Notwithstanding the foregoing, if the District has issued District Bonds to refund a portion but not all of the District Notes, then no money shall be applied to the payment of any District Notes so long as any such District Bonds remain outstanding.

Section 5.7. Conditions Precedent to Issuance of District Obligations. No District Obligations shall be issued as related to a District Project Phase until such time as the District has received and accepted a Certificate of Reimbursable Project Costs and a Certificate of Substantial Completion from the Developer for such applicable District Project Phase.

Section 5.8. District Bonds. The District may issue or cause to be issued on its behalf District Bonds in an amount sufficient to refund all or a portion of the outstanding District Notes and all or any portion of the Reimbursable Project Costs not previously financed by the issuance of District Notes. If the District is unable for any reason to refund all of the outstanding District Notes or issue District Bonds to finance all Reimbursable Project Costs, the District may issue District Bonds to refund only a portion of the District Notes or finance only a portion of the Reimbursable Project Costs, and the Developer agrees to subordinate any remaining District Notes to such District Bonds. Notwithstanding anything to the contrary contained herein this Section, so long as the Developer is the holder of District Notes, Developer may request that the District issue District Bonds in an amount sufficient to refund all or a portion of the outstanding District Notes held by the Developer. Upon receipt of such a request, the District will use reasonable efforts to issue District Bonds in an amount sufficient to refund all of the outstanding District Notes held by the Developer. The Developer hereby agrees to provide the District any such other documentation as the District may reasonably require of the Developer in order for the District's selected bond underwriting firm to properly advise the Developer regarding the proposed bond issue and in order for the District to obtain an opinion of Bond Counsel regarding the proposed District Bonds. For purposes of this section, "reasonable efforts" shall mean that, if the market conditions for such District Bonds are such that the payment terms of the District Bonds are sufficiently favorable that reasonably prudent financial officers or agents would undertake such a refunding or refinancing of the District Notes, then the District shall issue the District Bonds.

Section 5.9. Pledge of District Revenues. Upon the issuance of District Obligations, the District shall, subject to annual appropriation, pledge all District Revenues on deposit in the Trust Fund (less the Annual Operating Fund Deposit) to the payment of debt service on the District Obligations and costs related to the District Obligations in accordance with this Agreement and any resolution adopted by the Board of Directors approving the issuance of the District Obligations.

Section 5.10. Covenant to Request Annual Appropriation. The District agrees to cause the officer of the District at any time charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the District for each fiscal year that the District Obligations are outstanding, a request for an appropriation of District Revenues for application to the payment of District Obligations in accordance with this Agreement.

Section 5.11. Governance of the District.

(a) The District's Board of Directors shall consist of five (5) members to be appointed by the Mayor with the consent of the Board of Aldermen pursuant to the CID Act, the Petition and the Formation Ordinance. The number of persons constituting the Board of Directors shall not be increased by the District without the consent of both the Developer and the City.

(b) Each director must have all of the following characteristics:

- (i) be a citizen of the United States of America;
- (ii) be a Missouri resident for at least one year prior to appointment to the Board of Directors;
- (iii) be at least eighteen (18) years of age; and
- (iv) be an owner as defined in Section 67.1401.2(11) of the CID Act of real property located within the District (or a legally authorized representative thereof).

(c) Board of Directors Representation. In addition to the foregoing, as set forth in the Petition, the Board of Directors of the District shall be composed of the following:

- (i) For so long as the Developer, or one of its affiliates, or the City is an owner as defined in Section 67.1401.2(11) of real property within the District, the City shall have three (3) representatives on the Board of Directors. To the extent the Developer, or one of its affiliates, is an owner, but the City is not an owner, the Developer, or one of its affiliates, shall designate the City's three (3) representatives as its legally authorized representatives with respect to the Board of Directors.
- (ii) For so long as the Developer, or one of its affiliates, is an owner as defined in Section 67.1401.2(11) of the CID Act of real property located within the District, the Developer shall have two (2) representatives on the District's Board of Directors.
- (iii) In the event the Developer no longer is an owner as defined in Section 67.1401.2(11) of the CID Act of real property located within the District, then the homeowner's association established within the District and which acquired real

property from the Developer shall have two (2) representatives on the District's Board of Directors.

ARTICLE 6

SPECIAL COVENANTS

Section 6.1. Records of the District.

(a) The District shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to its business affairs. The District shall, within 120 days after the end of each fiscal year, submit a report to the City and the Missouri Department of Economic Development stating the services provided, revenues collected and expenditures made by the District during such fiscal year, and copies of written resolutions approved by the Board of Directors during the fiscal year.

(b) The District shall make its books and records available to the City and will furnish to the City such information as it may reasonably request concerning the District, including such statistical and other operating information requested on a periodic basis, in order to determine whether the covenants, terms and provisions of this Agreement have been met. The City may retain such consultants as it deems necessary in connection with such review, the cost of which shall be an Operating Cost payable by the District or the Developer in accordance with this Agreement. For that purpose, all pertinent books, documents and vouchers relating to the District's business, affairs and properties shall at all times during regular business hours be open to the inspection of such consultants and City representatives (who may make copies of all or any part thereof provided that the confidentiality of all records shall be maintained pursuant to such confidentiality agreements as the District reasonably requires).

Section 6.2. Developer's Covenants Related to the District. The Developer covenants and agrees as follows:

(a) The Developer shall in good faith cooperate and assist in obtaining approval for the District Assessment by petitioning for the District Assessment in accordance with Section 67.1521 of the CID Act.

(b) The Developer shall in good faith cooperate and assist the District by taking all reasonable actions necessary to cause District Revenues to be paid and deposited into the Trust Fund, including its cooperation with the St. Louis County Collector of Revenue, the District or the Authorized District Representative in the enforcement and collection of all such payments through all reasonable and ordinary means of enforcement.

(c) The Developer waives the right to file suit to set aside the District Assessment or otherwise question the validity of the proceedings relating thereto.

(d) The Developer shall provide an addendum to each contract that it enters into for the sale of any portion of the real property located within the Development that discloses the District Assessment. The addendum shall be in a form reasonably acceptable to the District and the City and shall disclose, at a minimum, the following:

(i) The purpose of the District Assessment;

(ii) The method of allocating the District Assessment upon the real property located within the Development;

- (iii) The method of collection of the District Assessment;
 - (iv) The annual amount of the District Assessment to be levied on the subject property;
 - (v) The maximum number of years of the District Assessment to be levied on the subject property; and
 - (vi) An explanation that any District Assessment that is due and owing shall constitute a perpetual lien against the subject property, which lien may be foreclosed upon in the same manner as any other special assessment lien as provided by State law.
- (e) The Developer shall cooperate with the District to obtain approval of any proposal for the termination of the District pursuant to the CID Act and as set forth in this Agreement.

The Developer's covenants in this Section shall run with the land to any purchaser, tenant or transferee of any of the Developer's real property within the District and the Developer shall record or cause to be recorded a memorandum of such covenants with the County Recorder.

Section 6.3. Developer's Obligations to the City Under Bond or Surety. The Parties agree that:

(a) The District Project, or any portion thereof, which the Developer is or becomes obligated to the City to construct pursuant to any City Code provision or ordinance, does not diminish the consideration to the District as recited in **Section 2.1** of this Agreement and shall be a Reimbursable Project Cost that may be reimbursed in accordance with this Agreement.

(b) If the City constructs or causes to be constructed any portion of the District Project pursuant to any action on a bond or other form of surety that is provided to the City by the Developer pursuant to the City Code or ordinance, then the City shall be entitled to reimbursement from the District for such Reimbursable Project Costs that are not paid or reimbursed to the City under such bond or surety. The City shall complete a Certificate of Reimbursable Project Costs in substantial compliance with **Exhibit B**, attached hereto and incorporated herein by reference, to receive such reimbursement, which shall be approved by the District in accordance with **Section 4.5** of this Agreement. Notwithstanding anything to the contrary contained herein, reimbursement to the City pursuant to this subsection shall be made prior to any payments of principal of or interest on the District Obligations.

Section 6.4. Governmental Approvals. The City agrees to employ reasonable and good faith efforts to cooperate with the Developer and the District and to process and timely consider and respond to all applications for Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State. The City shall cooperate with the Developer and the District in their efforts to obtain all approvals for the construction of the District Project and to provide the Developer and the District with all reasonable assistance in expediting any and all permits necessary to proceed with the District Project.

ARTICLE 7

DEFAULTS AND REMEDIES

Section 7.1. Events of Default. If any Party fails in the performance of any covenant, agreement or obligation imposed or created by this Agreement, and such default continues for 60 days

after a non-defaulting Party has given written notice to the defaulting Party specifying such default, such event shall constitute an Event of Default under this Agreement.

Section 7.2. Remedies on Default. If any Event of Default has occurred and is continuing, then any non-defaulting Party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting Party and its officers, officials, agents and employees, and may require and compel duties and obligations required by the provisions of this Agreement.

Section 7.3. Rights and Remedies Cumulative. The rights and remedies reserved by the Parties under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Parties shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and each Party hereby waives the right to raise such defense in any proceeding in equity.

Section 7.4. Waiver of Breach. No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting Party may nevertheless accept from the defaulting Party, any payment or payments without in any way waiving the non-defaulting Party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting Party.

Section 7.5. Excusable Delays. No Party shall be deemed to be in default of this Agreement because of Excusable Delays; provided, an Excusable Delay shall not be deemed to exist (a) as to any matter that could have been avoided by the exercise of due care, (b) as to any matter initiated or unreasonably sustained by the Party claiming the Excusable Delay, or (c) unless the Party claiming the Excusable Delay provides written notice to the other Parties within 30 days after such Party has actual notice of the claimed event.

ARTICLE 8

MISCELLANEOUS

Section 8.1. Agreement Effective. This Agreement shall become effective upon approval and execution by the parties hereto.

Section 8.2. Release and Indemnification. The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement.

(a) Notwithstanding any other provision of this Agreement to the contrary, the City and the District and their governing body members, officials, officers, agents, servants, employees and independent contractors shall not be liable to the Developer for damages or otherwise if all or any part of the CID Act or any resolution or ordinance adopted in connection, the creation of the District, the District Assessment, the District Project or this Agreement, 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 or the District 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 hereby releases from and covenants and agrees that the City, the District, and their governing body members, officials, officers, employees, agents and independent contractors shall not be liable for any suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, including court costs and attorneys' fees and expenses, resulting from, arising out of, or in any way connected with: (1) the creation of the District, (2) the imposition the District Assessment, (3) the construction of the District Project, (4) the negligence or willful misconduct of the Developer, its employees, agents or independent contractors in connection with the design management, development, redevelopment and construction of the District Project, and (5) the Developer's failure to comply with any applicable state, federal or local laws, regulations and ordinances as applicable to the property within the boundaries of the District; except that the foregoing release shall not apply in the case of such liability arising directly out of the gross negligence or willful misconduct of the City or the District or their respective authorized governing body members, officials, officers, employees, agents and independent contractors or which arises out of matters undertaken by the City or the District following termination of this Agreement as to the District Project or any portion thereof.

(c) All covenants, stipulations, promises, agreements and obligations of the City or the District contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City or the District and not of any of their respective governing body members, officials, officers, agents, servants or employees in their individual capacities.

(d) No official, employee or representative of the City or the District shall be personally liable to the Developer (1) in the event of an Event of a Default or breach by any Party under this Agreement, or (2) for any amount or any District Obligations which may become due to any Party under the terms of this Agreement.

(e) Notwithstanding the foregoing, the Parties hereby agree that neither the City nor the District is obligated to defend any action, suit or claim resulting from, arising out of, or in any way connected with: (1) the creation of the District, (2) the imposition of the District Assessment, (3) the construction of the District Project, (4) the conduct of the Developer, its respective employees, agents or independent contractors in connection with the design management, development, redevelopment and construction of the District Project, (5) the issuance of the District Obligations, (6) the Developer's failure to comply with any applicable State, federal or local laws, regulations and ordinances as applicable to the property within the boundaries of the District; provided, however, that the Developer may defend such actions, suits or claims on behalf of the City or the District to the extent necessary to preserve the rights and obligations contemplated by this Agreement; provided further that, if the Developer chooses to defend such actions, suits or claims on behalf of the City or the District and ethical rules of conduct prohibit such dual representation, the City or the District will be entitled to select a separate attorney for such action and the Developer agrees to pay all the costs and expenses including court costs and attorneys' fees and expenses of the City or the District, as applicable.

Section 8.3. Immunities. No recourse shall be had for any claim based upon any representation, obligation, covenant or agreement in this Agreement maintained against any past, present or future elected official, officer, member, employee, director or agent of the City or the District, or of any successor thereto, as such, either directly or through the City or the District, or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such elected officials, officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. The Developer is responsible for compliance with all applicable State laws and agrees to hold harmless and indemnify the City, the District and their respective governing body members, officials, officers, employees, agents and independent contractors from and against all suits,

claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, including court costs and attorneys' fees and expenses, resulting from, arising out of, or in any way connected with the Developer's failure to comply with any applicable State law.

Section 8.4. Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement among the Parties. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

Section 8.5. Notices. All notices, certificates or other communications required or desired to be given under this Agreement shall be deemed given when (i) deposited and mailed by registered or certified mail, postage prepaid, or (ii) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

(a) In the case of the District to:

The Arbors of Rockwood Community Improvement District
c/o Jeannie Aumiller
16091 Swingley Ridge Road, Suite 300
Chesterfield, Missouri 63017

With a copy to:

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

(b) In the case of the Developer to:

Brewster Road, LLC
c/o Jeannie Aumiller
16091 Swingley Ridge Road, Suite 300
Chesterfield, Missouri 63017

With copy to:

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

(c) In the case of the City to:

City of Eureka
100 City Hall Drive
P.O. Box 125
Eureka, Missouri 63025
Attention: City Administrator

With copies to:

Armstrong Teasdale LLP
7700 Forsyth Blvd., Suite 1800
St. Louis, Missouri 63105
Attention: Robert Klahr

or to such other address with respect to any Party as that Party may, from time to time, designate in writing and forward to the other.

Section 8.6. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. Any action arising out of, or concerning this agreement shall be brought only in the Circuit Court of St. Louis County, Missouri. All parties to this Agreement consent to the jurisdiction and venue of the Circuit Court of St. Louis County, Missouri.

Section 8.7. Representation of District and City. The District and the City agree that the engagement of common special legal counsel among such Parties does not materially limit the representation of those Parties and will not adversely affect the relationship among such Parties. To the extent that such common legal representation presents a conflict of interest, the District and the City hereby consent to common representation.

Section 8.8. Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement is deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 8.9. Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 8.10. Successors and Assigns. 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.

[Remainder of page intentionally left blank]

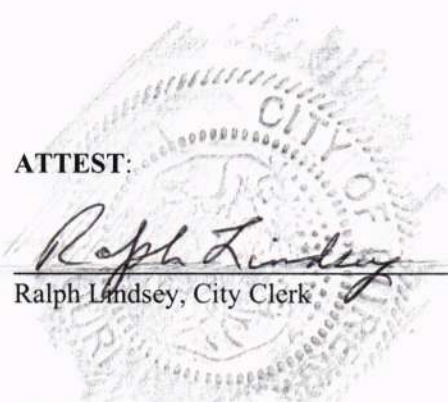
IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

[SEAL]

CITY OF EUREKA, MISSOURI

By: *Kevin M Coffey*
Kevin Coffey, Mayor

ATTEST:


Ralph Lindsey
Ralph Lindsey, City Clerk

ACKNOWLEDGMENT

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

On this 7th day of SEPTEMBER in the year 2017 before me, NANCY K. KOEBEL, a Notary Public in and for said state, personally appeared Kevin Coffey, Mayor of the City of Eureka, Missouri, known to me to be the person who executed the within Development Agreement in behalf of said political subdivision and acknowledged to me that he executed the same for the purposes therein stated.

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.

Nancy K. Koebel
Notary Public
Printed Name: NANCY K. KOEBEL

My Commission Expires:
Oct. 26, 2019

NANCY K. KOEBEL
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
Jefferson County
My Commission Expires: October 26, 2019
Commission No. 11488689

**THE ARBORS OF ROCKWOOD
COMMUNITY IMPROVEMENT DISTRICT**

By: *Kevin Coffey*
 Name: *Kevin Coffey*
 Title: *Chair*

ACKNOWLEDGMENT

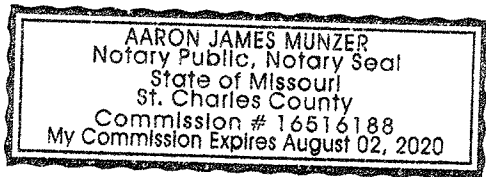
STATE OF MISSOURI)

) SS.

COUNTY OF ST. LOUIS)

On this 22nd day of February in the year 2017 before me, Aaron Munzer, a Notary Public in and for said state, personally appeared Kevin Coffey, Chair of The Arbors of Rockwood Community Improvement District, known to me to be the person who executed the within Development Agreement in behalf of said community improvement district and political subdivision and acknowledged to me that he/she executed the same for the purposes therein stated.

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

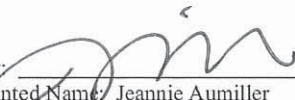


Aaron Munzer
 Notary Public
 Printed Name: Aaron Munzer

My Commission Expires:

8/2/2020

BREWSTER ROAD, LLC


By: 
Printed Name: Jeannie Aumiller
Title: Authorized Representative

ACKNOWLEDGMENT

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

On this 9th day of JUNE in the year 2017 before me, DONNA L. KNESE, a Notary Public in and for said state, personally appeared Jeannie Aumiller of Brewster Road, LLC, known to me to be the person who executed the within Development Agreement in behalf of said limited liability company and acknowledged to me that he/she executed the same for the purposes therein stated.

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


Notary Public
Printed Name: DONNA L. KNESE

My Commission Expires:
12/6/17



DONNA L. KNESE
My Commission Expires
December 6, 2019
St. Charles County
Commission #11510086

EXHIBIT A

DESCRIPTION OF DISTRICT PROJECT AND ESTIMATED REIMBURSABLE PROJECT COSTS

The District Project consists generally of the construction and installation of the following public improvements: lawns, trees, and other landscape, sidewalks, streets, traffic signs and signals, utilities, drainage, water, storm and sewer systems, and other site improvements, streetscape, and lighting within the proposed District, and undertaking the construction of other useful, necessary, or desired improvements within the proposed District. The Project may be completed in one or more phases.

The estimated Reimbursable Project Costs, not including Costs of Issuance, shall not exceed **\$3,413,574.**

EXHIBIT B

CERTIFICATE OF REIMBURSABLE PROJECT COSTS

To: Chair, The Arbors of Rockwood Community Improvement District

Re: Certificate of Reimbursable Project Costs

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement dated as of _____, 2017 (the "Agreement") among the City of Eureka, Missouri (the "City"), The Arbors of Rockwood Community Improvement District (the "District") and Brewster Road, LLC (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

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

Dated this ____ day of _____, 20 ____.

BREWSTER ROAD LLC

By: _____

Name: _____

Title: _____

Approved for Payment this ____ day of _____, 20 ____.

THE ARBORS OF ROCKWOOD COMMUNITY IMPROVEMENT DISTRICT

By: _____

Name: _____

Title: _____

SCHEDULE 1 TO CERTIFICATE OF REIMBURSABLE PROJECT COSTS

Itemization of Reimbursable Expenses

EXHIBIT C

CERTIFICATE OF SUBSTANTIAL COMPLETION

To: Chair, The Arbors of Rockwood Community Improvement District
City Administrator, City of Eureka, Missouri

Re: Certificate of Substantial Completion

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement dated as of _____, 2017 (the "Agreement") among the City of Eureka, Missouri (the "City"), The Arbors of Rockwood Community Improvement District (the "District") and Brewster Road, LLC (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. As of _____, 20____, District Project Phase _____ has been substantially completed in accordance with the Agreement.

2. All work associated with District Project Phase _____ has been performed in a workmanlike manner and in accordance with the Plans.

3. Lien waivers for applicable portions of the work associated with District Project Phase _____ have been obtained.

4. This Certificate of Substantial Completion is accompanied by an architect's certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as Appendix A and by this reference incorporated herein), certifying that District Project Phase _____ has been substantially completed in accordance with the Agreement.

5. This Certificate of Substantial Completion is being issued by the Developer to the District and City in accordance with the Agreement to evidence the Developer's satisfaction of all obligations and covenants with respect to District Project Phase _____.

6. Acceptance by the District or the City or the failure of the District or the City to object in writing to this Certificate of Substantial Completion within 30 days of the date of delivery of this Certificate of Substantial Completion to the District or the City (which written objection, if any, must be delivered to the Developer prior to the end of such 30 day period), and the recordation of this Certificate of Substantial Completion with the County Recorder, shall evidence the satisfaction of the Developer's agreements and covenants to perform as set forth in the Agreement with respect to District Project Phase _____.

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

All certifications or statements made or set forth in this Certificate of Substantial Completion are made solely for the benefit of the District and shall not be relied upon or used for any purpose by any third party in any proceeding, claim or contest of any kind, nature or character.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ____ day of _____, 20__.

BREWSTER ROAD, LLC

By: _____

Name: _____

Title: _____

ACCEPTED:

THE ARBORS OF ROCKWOOD COMMUNITY IMPROVEMENT DISTRICT

By: _____

Name: _____

Title: _____

ACCEPTED:

CITY OF EUREKA, MISSOURI

By: _____

Name: _____

Title: City Administrator

(Insert Notary Form(s) and Legal Description)

APPENDIX A

Architect's AIA Form

EXHIBIT D

A tract of land being part of Lot 5 and all of Lots 8 and 9 of "Calvin M. Christy's Subdivision" a subdivision according to the plat thereof recorded in Plat Book 4 Page 31 of the St. Louis County, Missouri Records in U.S. Survey 2010 and part of the Northeast Quarter of Fractional Section 34 and Part of the West Half of Fractional Section 35, Township 44 North, Range 3 East, City of Eureka, St. Louis County, Missouri and being more particularly described as follows:

Beginning at an Old Stone found at the intersection of Sections 26, 27, 34 and 35, Township 44 North, Range 3 East; thence along the north line of said Section 35, South 89°30'00" East, 122.64 feet to the northwest line of above said U.S. Survey 2010; thence along said northwest line of U.S. Survey 2010, North 59°19'53" East, 237.07 feet to an Old Stone found for the northernmost corner of said U.S. Survey 2010; thence leaving said northwest line and along the northeast line of said U.S. Survey 2010, South 28°04'26" East, 139.72 feet to a point on the north line of Fractional Section 35; thence leaving said northeast line and said north line of Fractional Section 35, South 89°30'00" East, 2294.02 feet to an Old Stone found on the west line of U.S. Survey 3206, last said Stone also being the northwest corner of Lot 29 of Louis Courtois Tract; thence leaving said north line and along said west line of said U.S. Survey 3206, South 00°17'24" West, 1345.17 feet to an Old Stone found at the southwest corner of said Lot 29, said corner also being the northwest corner of Lot 38 of said Louis Courtois Tract; thence continuing along said west line of U.S. Survey 3206, South 00°26'21" West, 2613.87 feet to an Old Stone found at the intersection of said west line of U.S. Survey 3206 and the northeast line of said U.S. Survey 2010; thence leaving said west line and along said northeast line of U.S. Survey 2010, North 29°38'43" West, 1031.53 feet to an Old Stone found at the southeast corner of above said Lot 5, said corner also being the easternmost corner of a tract of land conveyed to Thomas J. Rosemann, Trustee, by instrument recorded in Deed Book 17761, Page 4109 of above said records; thence leaving last said northeast line and along the northeast line of said Rosemann tract, North 46°25'52" West, 284.99 feet; thence continuing along last said northeast line and its prolongation, being the northeast line of a tract of land conveyed to Kenneth M. Rice and Sandra A. Rice, Husband and Wife, by deed recorded in Deed book 16873, Page 1495 of said records, North 52°46'56" West, 678.40 feet; thence continuing along said northeast line of Rice tract the following courses and distances: North 42°01'15" West, 383.09 feet; and North 25°08'51" West, 301.26 feet to a point on the centerline of Brewster Road, 40 feet wide; thence leaving last said northeast line, North 01°54'02" East, 20.00 feet to a point on the north right-of-way line of said Brewster Road; thence along said north right-of-way line of Brewster Road the following courses and distances: North 88°05'58" West, 355.59 feet; South 53°00'36" West, 345.53 feet; South 00°10'17" West, 1172.85 feet; and South 49°27'44" West, 879.61 feet to an iron pipe found on the southwest line of above said Lot 9, said pipe also being the southeast corner of a tract of land conveyed to Eden Community Church by instrument recorded in Deed Book 18822, Page 1107 of said records; thence leaving said north right-of-way line and along said southwest line of Lot 9 and its prolongation, North 29°33'44" West, 4520.32 feet to a point in the north line of said Fractional Section 34, from which an iron rod with aluminum cap marking the North Quarter Corner of said Fractional Section 34 bears North 87°57'52" West, 123.09 feet; thence leaving last said southwest line and along said north line of Fractional Section 34, South 87°57'52" East, 2516.51 feet to the Point of Beginning and contains 12,683,668 square feet, or 291.176 acres, more or less according to a survey by The Sterling Company during the month of July, 2015 under project number 14-08-284.

Excepting therefrom, a tract of land being Proposed Out Lot B of the Arbors of Rockwood Plat One being a part of lots 8 and 9 of "Calvin M. Christy's Subdivision" a subdivision according to the plat thereof recorded in Plat Book 4 Page 31 of said records in U.S. Survey 2010, Township 44 North, Range 3 East, City of Eureka, St. Louis County, Missouri and being more particularly described as follows:

Commencing at an old stone found at the intersection of Sections 26, 27, 34 and 35, Township 44 North, Range 3 East; thence along the north line of said Fractional Section 35, South 89°30'00" East, 122.64 feet to the northwest line of above said U.S. Survey 2010; thence leaving said north line and along said northwest line of U.S. Survey 2010, North 59°19'53" East, 237.07 feet to an old stone found for the northernmost corner of said U.S. Survey 2010; thence leaving said northwest line and along the northeast line of said U.S. Survey 2010, South 28°04'26" East, 139.72 feet to a point on said north line of Fractional Section 35; thence continuing along said northeast line, South 29°40'53" East, 2183.63 feet to a point in the centerline of Brewster road, 40 feet wide; thence leaving said northeast line and along said centerline of Brewster Road, South 42°47'37" West, 48.11 feet to a point; thence continuing along said centerline, North 88°05'58" West, 423.15 feet to a point being the northeast corner of a tract of land conveyed to Kenneth M. Rice and Sandra A. Rice, husband and wife, by deed recorded in Deed Book 16873, Page 1495 of the St. Louis County, Missouri records; thence leaving said centerline, North 01°54'02" East, 20.00 feet to a point on the north right-of-way line of said Brewster Road; thence along said north right-of-way line of Brewster Road the following courses and distances: North 88°05'58" West, 355.59 feet; South 53°00'36" West, 345.53 feet; South 00°10'17" West, 421.81 feet to the Point of Beginning; thence continuing along the west right-of-way line of Brewster Road South 00°10'17" West, 728.28 feet to a point of curvature; thence leaving said right of way and proceeding the following courses, distances, and curves: along an arc to the right with a radius of 20.00 feet, an arc length of 33.32 feet, the chord of which bears South 47°53'59" West, 29.60 feet to a point of reverse curvature; thence along an arc to the left with a radius of 120.00 feet, an arc length of 151.80 feet, the chord of which bears South 59°23'16" West, 141.88 feet to a point of reverse curvature; thence along an arc to the right with a radius of 80.00 feet, an arc length of 105.79 feet, the chord of which bears South 61°01'55" West, 98.25 feet to a point of compound curvature; thence along an arc to the right, with a radius of 20.00 feet, an arc length of 28.09 feet, the chord of which bears North 40°51'02" West, 25.84 feet to a point of reverse curvature; thence along an arc to the left with a radius of 325.00 feet, an arc length of 164.14 feet; the chord of which bears North 15°05'09" West, 162.40 feet to a point of tangency; North 29°33'14" West, 873.37 feet to a point of curvature, along an arc to the right with a radius of 250.00 feet, an arc length of 495.95 feet, the chord of which bears North 27°16'41" East, 418.53 feet; thence along a non-radial line, South 53°28'11" East, 434.30 feet; South 44°57'43" East, 256.65 feet to the Point of Beginning, containing 571,723 square feet (13.125 acres more or less) according to calculations performed by The Sterling Company on January 20, 2016, under order number 14-08-284.

AND

Lot 2 of Six Flags – Brewster Lot Split Plat, per the plat recorded in Plat Book 363, Page 603 of the St. Louis County Records;

AND

Lot 2 of the Eden Community Church Lot Split Plat, according to the plat thereof recorded in Plat Book 364 page 51 of the St. Louis County Records;

AND

Lot 2 of Eureka Commercial Park Outlot A Resubdivision, according to the plat thereof recorded in Plat Book 364 page 107 of the St. Louis County Records.