

230973

TAX REDIRECTION AGREEMENT

Between

City of Kansas City Missouri

And

Red Bridge Properties, Inc.

Dated XX/XX/2023

TAX REDIRECTION AGREEMENT

THIS TAX REDIRECTION AGREEMENT (the "Agreement") is made as of the ___ day of _____, 2023 (the "Effective Date"), by and between the **CITY OF KANSAS CITY, MISSOURI**, a constitutionally chartered municipal corporation of the State of Missouri (the "City") and **RED BRIDGE PROPERTIES, INC.**, a Missouri limited liability company, (the "**Developer**") (collectively, the "**Parties**").

RECITALS

A. Reference is made to certain properties owned by Red Bridge Properties, Inc. (the "**Property Owner**") in Jackson County, Kansas City, Missouri, and generally located in the vicinity of Holmes Rd. and 112th St.(the "Project Area") as shown on the site plan attached hereto as Exhibit A (the "Site Plan") and legally described on Exhibit B.

B. The previous grocery tenant in the Project Area has discontinued grocery services and vacated the property, creating limited grocery offerings for Kansas City residents in the surrounding areas.

C. The Developer proposed the reinstatement of grocery services to the location as the Red Bridge Farm Fresh Market (the "**Development Project**") and intends to sign a 15year lease with options to extend for the Project Area.

D. The Development Project is anticipating employment of 80+ new employees at an anticipated average income of \$17+ per hour.

E. The Developer and the City believes that utilizing a portion of the City's net new revenues generated by the Development Project will advance multiple primarily public purposes including, but not limited to, (i) provides grocery services in a highly residential area, (ii) prioritizes high quality produce and options to support a healthy diet, (iii) establishes or expands Project's economic presence in City, (iv) promotes economic development in the area of City which the Business Site is located, (v) results in generation of tax revenues to City from the conduct of business and other activities in City that would not otherwise occur, (vi) serves as a catalyst for additional investment in and further redevelopment and rehabilitation of the area of City in which the Business Site is located, and (vii) furthers City's policy of encouraging economic stability and growth.

F. The City and the Developer desire to enter into this Agreement for the purpose of setting forth their respective covenants, agreements and obligations.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

GENERAL PROVISIONS, DEFINITIONS & EXHIBITS

Section 1.01 Recitals. The Recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

Section 1.02 Scope of Agreement.

The purpose of this Agreement is to provide a coordinated and clear outline of the obligations contemplated of City and Developer and agreement to negotiate in good faith concerning the incentives necessary to complete the Development Project.

Section 1.03 Definition, and Rules of Interpretation.

Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

(a) The terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement, other than in accordance with this Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection and exhibit references are to this Agreement, unless otherwise specified. Whenever an item or items are listed after the word "including," such listing is not intended to be a listing that excludes items not listed.

(c) The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

Section 1.04 Defined Terms.

In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth as follows:

(a) "City" means City of Kansas City, Missouri.

(b) "City Council" means the City Council of the City of Kansas City, Missouri.

(c) "Code" means the Municipal Code of Ordinances for the City of Kansas City, Missouri.

(d) "Developer" means Red Bridge Properties, Inc.

(e) "Development Project" means reinstatement of grocery services at a 35,026-building requiring equipment and interior updates.

(f) "Eligible Reimbursement Funds" means an amount equal to 1.25 percent (1.25%) of the net annual taxable retail sales including the 1% Capital Improvements Sales Tax and 0.25% Public Safety Sales Tax made in the Project Area. Based on the maximum Reimbursement Amount the average annual projection for reimbursement would be One Hundred Thirty-Seven Thousand Five Hundred Dollars (\$137,500.00). Such amounts shall be net of any fees or discounts applied or granted by the State of Missouri for the retail sales tax.

(g) "Indemnified Parties" means City and any and all of its officials, officers and employees.

(h) "Operator" means the lessee of the Development Project who will operate the grocery store.

(i) "Reimbursement Amount" means an amount equal to one hundred percent (100%) of the reimbursable expenses incurred for the Development Project, provided that such expenditure shall not exceed an aggregate amount of One Million Three Hundred Seventy-Five Thousand Dollars (\$1,375,000.00), which amount shall be subject to the provisions of Section 4.02 of this Agreement.

(j) "Reimbursable Expenses" means the expenses for purchase of cases, refrigerators, décor package, cooking equipment, shelving, and self-checkout units.

(k) "Reimbursement Period" means the period beginning upon the earlier of (A) written notice from Developer to City of the start of grocery operations at the Development Site or (B) August 30, 2024, and ending upon the earlier to occur of (i) the date upon which the Developer has received Eligible Reimbursement Funds in an aggregate amount equal to the maximum Reimbursement Amount, or (ii) ten (10) years thereafter.

(l) "Substantially complete" means the issuance of a certificate of occupancy or temporary certificate of occupancy for the project, whichever is issued first.

Section 1.05 Term.

This Agreement shall become effective on the Effective Date and shall remain in full force and effect until the end of the Reimbursement Period, unless otherwise terminated by, or deemed terminated by, Developer pursuant to Section 4.02(d).

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 City Representation and Warranties

(a) **Organization, Authorization.** The City (1) is a constitutionally chartered city validly existing under the laws of the State of Missouri; (2) has lawsuit power and authority to

enter into, execute and deliver this Agreement and to carry out its obligations hereunder, and (3) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) **Effect on Prior Agreements.** 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.

(c) **Litigation.** To the best knowledge of the City, there is no action, threatened or pending, against the City, which would prevent or impair the City's performance hereunder.

(d) **Warranty.** The City represents and warrants to the Developer that the foregoing items (a), (b) and (c) are true, accurate and complete as of the Effective Date and agrees that upon closing any transaction contemplated by this Agreement, the City shall confirm that the foregoing items (a), (b) and (c) shall be accurate, true and complete as of the Closing Date of such transaction.

Section 2.02 Developer Representation and Warranties.

(a) **Organization, Authorization.** The Developer (1) is a limited liability company validly existing under the laws of the State of Missouri; (2) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; and (3) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) **Prior Agreements.** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms or conditions hereof do not and will not conflict with or result in a breach of any terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(c) **Litigation.** To the best knowledge of Developer, there is no action, threatened or pending, against the Developer which would prevent or impair the Developer's performance hereunder.

(d) **Warranty.** The Developer represents and warrants to the City that the foregoing items (a), (b) and (c) are true, accurate and complete as of the Effective Date and agrees that upon closing any transaction contemplated by this Agreement the Developer shall confirm that the foregoing items (a), (b) and (c) shall be accurate, true and complete as of the Closing Date of

such transaction.

ARTICLE III

OBLIGATIONS OF DEVELOPER

Section 3.01 In General.

(a) **Compliance with this Agreement.** The Developer will or will cause Operator to finance, design, develop, construct and cause to be operated and maintained the Development Project pursuant to this Agreement.

(b) **Grocery Store.** Developer shall cause the Development Project to be operated and maintained as a full-service retail food store or retail supermarket offering fresh produce, prepared foods, and with a full-stock and inventory as is usual and customary for a grocery store the size reflected in Exhibit A, for no less than ninety (90) hours per week for the entire Reimbursement Period. Failure of the premises to operate as a grocery store open to the general public for a period of more than thirty (30) days shall constitute a breach of this agreement and be grounds for termination of the reimbursement; provided that such failure shall not be a breach of this agreement if the closure is related to repair of the premises following a casualty or condemnation, government-mandated closures.

(c) **Developer Ownership.** The Developer shall or shall cause the construction, maintenance, and operations for the Development Project

(d) **Financing.** The Developer is responsible for or for causing Operator to obtain private capital in an amount sufficient, when added to the Eligible Reimbursement Funds, to finance the Development Project. The Developer will or will cause Operator, along with other equity partners and participants, to find the amount of private equity necessary to complete the financing of the Development Project.

(e) **Good Faith and Best Efforts.** Developer shall exercise good faith and best efforts in performing its obligations under this Agreement.

(f) **Compliance with Law.** Developer shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the Development Project.

(g) **ADA Accessible.** The Development Project will be constructed according to ADA accessibility requirements.

Section 3.02 Non-Discrimination.

The Developer shall itself not and shall require that the Operator, and any contractor on the Development Project not discriminate against any employee or candidate for employment on the basis of an individual's race, hair texture or hair style associated with an individual's race, color, sex, religion, national origin, including limited English proficiency, or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of the Code.

Developer shall itself not and shall require that any contractor not engage in any discrimination as prohibited by Chapter 3 of the Code. Furthermore, Developer shall comply with Title VI of the Civil Rights Act of 1964.

Section 3.03 Affirmative Action.



(a) Developer shall maintain in effect, throughout the duration of this Agreement, an Affirmative Action Program in accordance with the provisions of Chapter 3, Article IV, Division 1 of the Code and the rules and regulations relating thereto, as amended.

(b) If Developer fails, refuses or neglects to comply with the provisions of Chapter 3 and the rules and regulations relating thereto, then such action shall be deemed a total breach of this Agreement may be terminated, canceled or suspended, in whole or in part, and the Developer may be declared ineligible for any further contracts funded by City for a period of one (1) year.

Section 3.04 Intentionally omitted.

Section 3.05. Intentionally omitted.

Section 3.06. Intentionally omitted.

Section 3.07. Intentionally omitted.

Section 3.08. Construction Completion Timeline.

Pursuant to Code § 74-12, all incentive granted pursuant to this agreement, including the Eligible Reimbursement Funds, are contingent on the Developer substantially completing the Development Project within three (3) years of _____ (ordinance approval date). If the Development Project is not substantially complete within three years of _____, Developer shall forfeit all right to any incentives authorized by this agreement and shall be required to pay to the City any Eligible Reimbursement Funds that were previously paid for the Development Project. Such repayment shall be made within sixty (60) days of the City notifying Developer of their failure to substantially complete the project within the time provided by this Agreement.


ARTICLE IV

FINANCING AND INCENTIVES FOR DEVELOPMENT PROJECT

Section 4.01 Incentives. The City, in good faith, agrees to support Developer in capturing certain revenues for reimbursements as follows:


(a) Reimbursement.

(i) In order to make possible the Development Project and to support the resulting economic development, the City agrees, subject to the annual appropriation of funds for such purposes, to reimburse Developer with the Eligible Reimbursement Funds



generated by the Development Project up to the Reimbursement Amount for the Reimbursement Period. Developer agrees that such reimbursement shall be passed through to Operator for the sole purpose of funding the purchase of cases, refrigerators, décor package, cooking equipment, shelving, and self-checkout units, pursuant to the terms of the lease between Operator and Developer for the purposes of securing a retail grocery tenant at Project Area.

a) City Agreement to Reimburse. The City will, during the Reimbursement Period and subject to annual appropriation, pay to the Developer all Eligible Reimbursement Funds (defined in Section 1.04) received by the City, until the Developer has received payment in full of the Reimbursement Amount. Notwithstanding the foregoing, in the event that the Eligible Reimbursement Funds generate less than the full Reimbursement Amount during the Reimbursement Period, the City shall not be obligated to fund the difference.



b) Payment of Reimbursement Amount. The City during the Reimbursement Period shall bi-annually transfer these funds to the Developer within 90 days of receipt of required sales tax data subject to certification of expenditures by City of the Project's costs as stated in 4.02(b).

c) Sales Tax Data – Developer shall or shall cause Operator to shall furnish to the City bi-annually on July 31 and subsequent January 31 such information in such format as the City may reasonably require with respect to tax revenues generated within the Project Area for purposes of calculating the amount of Eligible Reimbursement Funds to be remitted pursuant to this Agreement. Notwithstanding anything herein to the contrary the City shall not be required to budget or contribute any Eligible Reimbursement Funds in the absence of the Developer's full compliance with its obligations under this Agreement.

d) Tenant Reporting. In connection with this Agreement Developer shall require Operator and all tenants of Operator to provide the City with access to such parties' sales, or other appropriate tax returns for economic activities located in or generated by the Development Project. Failure of Operator or Operator's tenant to provide such information as the City may require shall be deemed default on this Agreement by Developer, and shall be grounds for termination of this Agreement.

e) Annual Budget Request. The chief executive of the City or other officer of the City at any time charged with the responsibility of formulating budget proposals shall include in the budget proposals submitted to the Council, in each fiscal year in which this Agreement shall be in effect, a budgeted amount to be paid under this Agreement for the ensuing fiscal year; it being the intention of the

City that the decision to budget or not to budget under this Agreement shall be made solely by the respective governing body and not by any other official of the City.

f) Restriction on Use of Proceeds. Notwithstanding any provision of this Agreement to the contrary, the parties acknowledge and agree that the Eligible Reimbursement Funds may include sums generated from sales taxes that are restricted in their use to such purposes as are included within the terms of those statutes and ordinances authorizing the imposition and collection of such sales taxes. In the event that a court of competent jurisdiction shall have finally determined that any portion of the Eligible Reimbursement Funds may not lawfully be made for the purposes of reimbursing or paying certain costs related to the implementation of the Development Project, then the City shall not be required to budget or contribute such portions.

g) Eligible Reimbursement Funds to Constitute Current Expense. The parties acknowledge and agree that the Eligible Reimbursement Funds shall constitute currently budgeted expenditures of the City, and shall not in any way be constructed or interpreted as creating a liability or a general obligation or debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of general credit, tax revenues, funds or money of the City. The City's payment obligations under this Agreement shall be from year to year only, and shall not constitute a mandatory payment obligation of the City in any ensuing fiscal year beyond the then current fiscal year.

(b) Certification of Costs – Notwithstanding anything herein to the contrary, no costs or expense incurred by Developer or Operator shall be eligible for reimbursement under this Agreement, and no such cost or expense shall be payable to Developer under this Agreement, until such costs or expense has been certified pursuant to the Certification of Costs and Reimbursement Policy attached hereto as Exhibit D. The costs of such Cost Certification may be paid by Developer or, in the alternative, paid by the City in the form of a deduction against those amounts otherwise contributable to Developer pursuant to this Agreement.

ARTICLE V

DEFAULT AND REMEDIES

Section 5.01 Event of Default.

A party (the Defaulting Party”) to this Agreement shall be in default of this Agreement

upon the happening of any of the following events within thirty (30) days after notice of the happening of any of the following events by any other party to this Agreement (a “Non-Defaulting Party”) to the Defaulting Party, the Defaulting Party shall not have cured such a default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period (each, an “**Event of Default**”):

(a) Any party does not comply with the provisions of this Agreement, in that a party shall do, permit to be done, or fail to omit to have done anything contrary to or required of it by this Agreement;

(b) The suspension or revocation of any act, power, license, permit or authority that has the effect of preventing and stopping Developer or City from performing under this Agreement;

(c) The failure of any party to perform its materials obligations under this Agreement. Material obligations include failure by Developer or Operator to comply with the provisions of Sections 3.01(b), 3.01(g), 3.02, 3.03, 3.04, 3.05, 3.06, 3.07, and 3.08.

Section 5.02 Breach; Compliance.

Upon an Event of Default, a Non-Defaulting Party shall have the option to pursue any one or more or all of the following **remedies**, without notice or demand whatsoever, except as otherwise provided for herein, as such Non-Defaulting Party's sole and exclusive remedies:

(a) If City is the Non-Defaulting Party, then City, at its option, may terminate this Agreement by written notice to Developer.

(b) If Developer is the Non-Defaulting Party, then Developer may maintain this Agreement in full force and effect, in which case the Parties shall perform all of their respective obligations hereunder, subject to a Non-Defaulting Party's right to elect to terminate this Agreement at any time, provided any such Event of Default remains uncured, and pursue specific performance of City's obligations herein.

(c) Pursuit by the Non-Defaulting Party any remedy herein provided shall not constitute a forfeiture or waiver of any amounts then due to the Non-Defaulting Party hereunder or of any amounts accruing to the Non-Defaulting Party by reason of the violation of any terms, provisions, and covenants herein contained. No waiver by the Non-Defaulting Party of any violation or breach of any terms, provisions or covenants herein contained shall be deemed or construed to constitute a waiver of any violation or breach of any of the terms, provisions or covenants herein contained. Forbearance by the Non-Defaulting Party in enforcing one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such default or of the Non-Defaulting Party's right to enforce any such remedies with respect to any such default of any subsequent default.

The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by was party shall apply to obligations

beyond those expressly waived.

ARTICLE VI

MISCELLANEOUS

Section 6.01 Acceptance, Approval, Consent of City.

Any consent, approval or acceptance by the City permitted or required pursuant to this Agreement, may be exercised in the reasonable discretion of the City Manager without further City Council approval, unless approval by the City Council is otherwise required by any provision of law in effect on the Effective Date of this Agreement.

Section 6.02 Modification.

The terms, conditions and provisions of this Agreement can be neither modified, amended nor eliminated, except by written agreement of each signed by the Developer and the City. The City Manager shall have the authority to execute any amendment to this Agreement, and any other documents required or contemplated by this Agreement, without further approval of the City Council, provided such amendment does not result in any additional material monetary obligation of the City or modify a material term on this Agreement.

Section 6.03 No Gratuities and Kickbacks.

The provisions of Kansas City Municipal Code Section 3-303 prohibiting gratuities to City employees, and kickbacks by contractors, and Sections 3-307 and 3-309, imposing sanctions and penalties for violations shall apply to this Agreement.

(a) Gratuities. Neither Developer nor Operator has or will offer or give any City employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advise, investigation, auditing or any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefor.

(b) Kickbacks. City and Developer certify that no payment, gratuity, offer of employment or benefit has been or will be made or on behalf of or solicited from any third party contractor under a contract to City or Developer has an inducement for the award of a subcontract or order in connection with the subject matter of this Agreement. Developer shall require Operator to similarly certify that that no payment, gratuity, offer of employment or benefit has been or will be made or on behalf of or solicited from any third party contractor under a contract to City or Developer has an inducement for the award of a subcontract or order in connection with the subject matter of this Agreement.

Section 6.04 Conflicts of Interest.

Code § 3-301, prohibiting City officers and employees from having a personal financial interest in any contract with the City, and §§ 3-307 and 3-309, imposing sanctions and penalties for violations, shall apply to this Agreement. City and Developer each certify that no officer or employee of City or Developer has, or will have, a direct or indirect financial interest in this Agreement which is incompatible with the officer's or employee's discharge of official duties in the public interest, and that no officer or employee of City or Developer, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of City or Developer in this Agreement. Developer will similarly require that Operator certify that no officer or employee of City or Operator has, or will have, a direct or indirect financial interest in this Agreement which is incompatible with the officer's or employee's discharge of official duties in the public interest, and that no officer or employee of City or Operator, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of City or Operator in this Agreement.

Section 6.05 Anti-Discrimination Against Israel.

Developer shall certify that it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

Section 6.06 Notice.

All notices required by the Agreement shall be in writing and shall be served either personally or by certified mail, or by any other delivery service which obtains a receipt for delivery unless any such notice is required by law and such law provides a different form of delivery service. Any such notice or demand served personally shall be delivered to the party being served (provided that such notice may be delivered to the receptionist or any other person apparently in charge of such party's office at its address herein after set forth), and shall be deemed complete upon the day of actual or attempted delivery, as shown by an affidavit of the person so delivering the notice. Any notice so served by certified mail shall be deposited in the United States Mail with postage prepaid and addressed to the party or parties so to be served at its address hereinafter stated, and service of any such notice by certified mail shall be deemed complete on the date of actual or attempted delivery as shown by the certified mail receipt. Service of any such notice by another delivery service shall be deemed complete upon the date of actual or attempted delivery as shown on the receipt obtained by such delivery service. Notices shall be addressed as follows:

City: City Manager
City Hall, 29th Floor
414 E. 12th Street
Kansas City, Missouri 64106

with a copy to: City Attorney
City Hall, 23rd Floor
414 E. 12th Street

Kansas City, Missouri 64106

with a copy to: Finance Department
City Hall, 3rd Floor
414 E. 12th Street
Kansas City, Missouri 64106

Developer: Red Bridge Properties, Inc.
c/o LANE4 Property Group
Attn: Brandon Buckley
4705 Central Street
Kansas City, Missouri 64112
Email: bbuckley@lane4group.com

with a copy to: Stinson LLP
Attn: Christopher Frantze
1201 Walnut, Suite 2900
Kansas City, Missouri 64106
Email: chris.frantze@stinson.com

Section 6.07 Validity and Severability.

(a) It is the intention of the Parties hereto that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Missouri, 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 shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed to delete or modify, in whole or in part, in 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.

(b) If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereto (such provisions shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder. In the event any provision of this Agreement is capable of more than one interpretation, one which would render the provision invalid and one which would render the provision valid, the provision shall be interpreted so as to render it valid.

Section 6.08 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. This Agreement sets forth the entire agreement between the Parties in regard to the subject matter hereof and supersedes any and all prior agreements between the Parties in regard to the subject matter hereof.

Section 6.09 Time is of the Essence.

Time and exact performance are of the essence of this Agreement. Developer and City agree to diligently seek to finalize this agreement so Developer can confidentially share with financing parties.

Section 6.10 Binding Effect, Entirety.

- (a) Binding Effect. This Agreement shall be binding upon the Parties hereto and upon their assigns, transferees and successors in interest, provided no party may assign this Agreement or the rights or obligations hereunder without the express written consent of the other Parties; provided further that Developer shall be permitted to assign this Agreement to any purchaser of Project Area upon written notice to City and the City's consent to such assignment, so long as such purchaser agrees in writing to assume the obligations of this Agreement.
- (b) Entirety. This Agreement sets forth the complete understanding of City and Developer and supersedes all previous negotiations, representations and agreements between them and their agents.

Section 6.11 Multiple Counterparts.

This Agreement may be executed in multiple counterpart copies, each of which will be considered an original and all of which shall constitute but one and the same instrument, binding on all Parties hereto, even though all the Parties are not signatory to the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages which together contain the signatures of all Parties hereto shall be deemed for all purposes a fully executed original.

Section 6.12 Continued Cooperation of Parties.

The City and Developer agree, upon the request of another party, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications and provide such other information as may be reasonably requested, necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent and to give full force and effect to the intent of the provisions, terms and covenants of this Agreement.

Section 6.13 Indemnification.

(a) General Indemnification. Developer shall defend, indemnify, and hold harmless Indemnified Parties from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the Development Project and/or performance of its obligations under this Agreement, caused in whole or in part by the Developer or the contractors selected by the Developer, except for any claims, damages, liability, losses, costs and expenses incurred due to the negligence or willful misconduct of the Indemnified Party. Developer shall require Operator all their contractors to defend, indemnify, and hold

harmless Indemnified Parties from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with this Agreement, caused in whole or in part by the contractors, except for any claims, damages, liability, losses, costs and expenses incurred due to the negligence or willful misconduct of the Indemnified Party.

(b) Indemnification for Professional Negligence. Developer to cause any architects or engineers ("Professionals") hired in connection with the Development Project to indemnify and hold harmless City any of its officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, but only to the extent caused by the negligent acts, efforts, or omissions of such architects or engineers, their employees, agents or others for whom such Demolition Professionals are legally liable, in the performance of professional services in connection with this Agreement. The Developer's Professionals shall not be obligated under this section to indemnify City for the negligent acts of City and any of its officials, officers, or employees.

Section 6.14 Insurance.

Developer shall itself or shall ensure that Operator maintain the following insurance policies in the amounts and subject to the terms herein:

A. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds
- b. Contractual Liability
- c. Per Project Aggregate Liability limit
- d. No Contractual Liability Limitation Endorsement
- e. Additional Insured Endorsement, ISO form CG20 10 and CG20 37, current edition, or their equivalent.

B. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers Liability \$1,000,000 accident with limits of:

- \$1,000,000 disease-policy limit
- \$1,000,000 disease-each employee

C. Professional Liability Insurance, if applicable, Developer shall obtain Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.

D. Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an "any auto" basis and on an "each accident" basis. This insurance policy will be written on a Commercial Automobile Liability form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Development Project and/or performance of Developer's obligations under this Agreement by Developer or their contractors.

The Commercial General Liability Insurance specified above shall provide that City and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will

be named as additional insureds, including completed operations, for the Development Project. Developer shall provide to the City a certificate of insurance showing all required coverage and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

All insurance policies must be provided by Insurance Companies that have an A.M. Best's rating of "A-V" or better, and are licensed or authorized by the State of Missouri to provide insurance in Missouri.

Developer or Operator's failure to maintain the required insurance coverage will not relieve Developer of its contractual obligation to indemnify the City. If the coverage afforded is cancelled or changed or its renewal is refused, Developer shall give at least thirty (30) days prior written notice to the City. In the event Developer fails to maintain the required insurance coverage in effect, the City may order Developer or its contractors to stop work.

In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions and by law.

6.15 No Third-Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns. Any Agreement that Developer enters into with Operator or any tenant or lessor of the Project during the Reimbursement Period that references or incorporates this Agreement shall include a provision acknowledging that Operator, or the lessor or tenant has no right or remedy under this Agreement.

6.16. Negation of Partnership.

It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture between the City and the Developer or as constituting the Developer as the agent or representative of the City for any purpose or in any manner under this Agreement, it being understood that the Developer is an independent contractor hereunder.

[Signature Pages Follow]

CITY:

CITY OF KANSAS CITY, MISSOURI

By: _____

Brian Platt, City Manager

Approved as to form:

Emalea Kaye Black
Assistant City Attorney

RED BRIDGE PROPERTIES, INC.

By: _____

INDEX OF EXHIBITS

- A Site Plan
- B Legal Description
- C HRD Instructions for Tax-Incentivized Construction Contracts
- D Prevail Wage Procedures Policy (still need actual name)
- E Certification of Costs and Reimbursement Policy

EXHIBIT A

Site Plan

EXHIBIT B

Project Parcels • Legal Descriptions

EXHIBIT C

Intentionally Omitted

Exhibit D

Certification of Costs and Reimbursement Policy

Policy Statement: The purpose of this Certification of Costs and Reimbursement Policy is to outline the procedure and set forth all such requirements and obligations that must be observed and complied with as a requirement of any contribution of sales taxes to any development project.

Actions Required Prior to Certification

1. The City Council must have authorized, by ordinance, the execution of the agreement pursuant to which sales tax revenues are to be contributed.
2. The City and the relevant developer must have properly executed an agreement identifying the improvements for which the Developer or Operator will incur costs and seek reimbursement. Costs shall not be certified or reimbursed if the Developer is in breach of such agreement, or any other agreement related to the project executed by any public entity pursuant to which real and/or personal property taxes are to be abated or exempted.

Obligation of Developer Prior to Reimbursement

1. Prior to the City's reimbursement of any eligible reimbursable costs, the Developer or Operator shall submit two (2) copies of all documentation, as reasonably requested by the City or the Cost Certifier, to substantiate that such costs were incurred and have not been reimbursed or otherwise paid from any other public source.
2. The Developer or Operator may be requested to meet with City staff or the Cost Certifier to address questions or concerns that may arise concerning a certification request, in which event, Developer and/or Operator shall attend such meeting.

Obligation of City Staff During Certification Process

1. City staff will forward to the Cost Certifier the certification request as stated by the Developer or Operator, along with the original documentation submitted by the Developer or Operator and any other information requested by the Cost Certifier.
2. In the event questions or requests for additional documentation arise during the review process, City will maintain a copy of all additional documentation provided to the Cost Certifier.
3. The City shall not consider requests for reimbursement from the Developer or Operator (a) that are not submitted pursuant to this policy and (b) that are not submitted to the City within eighteen (18) months from the date such costs were incurred by the Developer or Operator.

Cost Certifier's Review and Report: Certification

1. Upon the Cost Certifier's receipt of a request for certification, the Cost Certifier shall review all documentation provided with such request and will issue a report

notating the amount recommended for certification by the City, and any disallowed or questioned costs.

2. City will notify the Developer of disallowed or questioned costs and the reason for the questioned costs included in the recommendation from Cost Certifier. In the event the Developer is able to address the disallowed or questioned costs, City will cooperate with the Developer and Cost Certifier to answer the questions and complete the report.

3. The certification of costs shall be made by the City's Director of Economic Development. Following such certification the amounts so certified shall be distributed in accordance with the terms of the applicable agreement under which the sales taxes are being contributed.

Selection of Cost Certifier

The City shall select the Cost Certifier to be used hereunder from the list of Cost Certifiers providing such services to the Tax Increment Financing Commission of Kansas City, Missouri.