

FUNDING AND REIMBURSEMENT AGREEMENT
BETWEEN
THE TAX INCREMENT FINANCING COMMISSION
OF KANSAS CITY, MISSOURI
AND
THE CITY OF KANSAS CITY, MISSOURI,
FOR THE DESIGN OF OLD TIFFANY SPRINGS ROAD
BEGINNING AT NORTH HULL ROAD AND CONTINUING EAST
TO THE INTERSECTION OF NORTH GREEN HILLS ROAD
AS PROVIDED FOR BY
THE KCI CORRIDOR TAX INCREMENT FINANCING PLAN

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FUNDING AND REIMBURSEMENT AGREEMENT

THIS FUNDING AND REIMBURSEMENT AGREEMENT is made as of this _____ day of November, 2012, between the TAX INCREMENT FINANCING COMMISSION OF KANSAS CITY, MISSOURI (the "Commission") and the CITY OF KANSAS CITY, MISSOURI (the "City"), with respect to the following facts and objectives:

A. Pursuant to the Real Property Tax Increment Financing Allocation Act, Section 99.800 RSMo. 1988, et seq., as amended ("Act"), on March 11, 1999, the City Council of Kansas City, Missouri (the "Council"), by way of Ordinance No. 990256, approved the KCI Corridor Tax Increment Financing Plan, which has been amended from time to time (the "Plan") for an area designated therein as the redevelopment area (the "Redevelopment Area"); and

B. The Plan provides, among other things, for the design and the construction of certain roadways and other public infrastructure improvements within and adjacent to the Redevelopment Area, including the design of certain improvements to Old Tiffany Springs Road, beginning at North Hull Road and continuing east to the intersection of North Green Hills Road (the "Old Tiffany Springs Road Design"), pursuant to the Plan and as more specifically described on **Exhibit A**, attached hereto; and

C. In order to assist in financing the Old Tiffany Springs Road Design, the City, pursuant to Committee Substitute for Ordinance No. 120920, has expressed an interest in contributing \$174,800 (the "City's Contribution") toward the cost of the Old Tiffany Springs Road Design; and

D. The Commission desires to receive the City's Contribution and deposit it into an account dedicated for the purpose of paying or reimbursing costs related to the Old Tiffany Springs Road Design; and

E. Upon the recommendation of the KCI Corridor Tax Increment Financing Plan Advisory Committee, the City and the Commission desire to enter into this Agreement for the purpose of funding \$174,800 of costs related to the Old Tiffany Springs Road Design.

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

ARTICLE I DEFINED TERMS

Section 1.1 **Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

(a) "Act" shall mean Real Property Tax Increment Allocation Redevelopment Act, Mo. Rev. Stat. § 99.800 et seq. (1982, as amended).

(b) “Agreement” shall mean this Funding and Reimbursement Agreement.

(c) “City” shall mean the City of Kansas City.

(d) “City’s Contribution” shall mean \$174,800 to be paid by the City to the Commission for the purpose of financing certain costs related to the Old Tiffany Springs Road Design.

(e) “Commission” shall mean the Tax Increment Financing Commission of Kansas City, Missouri.

(f) “Plan” shall mean the KCI Corridor Tax Increment Financing Plan adopted by the City Council of the City, pursuant to Ordinance No. 990256 on March 11, 1999, and as amended from time to time.

(g) “Project Account” shall mean an account maintained by the Commission that is separate and apart from the Commission’s Special Allocation Fund, in which the Commission shall deposit the City’s Contribution.

Section 1.2 **Undefined Terms.** Any capitalized terms undefined by this Article shall the meanings ascribed to them under the Act.

ARTICLE II REPRESENTATIONS

Section 2.1 **Representations by the Commission.** The Commission represents and warrants to the City as follows:

(a) Organization and Authority. The Commission (i) is a real property tax increment financing commission duly organized and existing under the Act, (ii) has lawful power and authority to enter into, execute and deliver this Agreement, and to carry out its obligations hereunder, and (iii) by all necessary action has been duly authorized to execute and deliver this Agreement acting by and through its duly authorized officers.

(b) No Defaults or Violations. The execution and delivery of this Agreement by the Commission will not result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the Commission is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory laws, rules or regulations applicable to the Commission or its property.

(c) No Litigation. To the knowledge of the Commission, there is no litigation or proceeding pending or threatened against the Commission or any other person affecting the right of the Commission to execute or deliver this Agreement or the ability of the Commission to comply with its obligations under this Agreement. Neither the execution and delivery of this Agreement by the Commission, nor compliance by the Commission with its obligations under this Agreement, require the approval of any regulatory body, any parent company, or any other entity, which approval has not been obtained.

Section 2.2 **Representations by the City.** The City represents and warrants to the Commission as follows:

(a) **Organization and Authority.** The City (i) is a special chartered municipal corporation validly existing under the laws of the State of Missouri, (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder, and (iii) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) **No Defaults or Violations.** The execution and delivery of this Agreement by the City will not conflict with or result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any of the laws, rules or regulations applicable to the City or its property.

(c) **No Litigation.** To the knowledge of the City, there is no litigation or proceeding pending or threatened against the City or any other person affecting the right of the City to execute this Agreement or to otherwise comply with the obligations under this Agreement. Neither the execution and delivery of this Agreement by the City, nor compliance by the City with its obligations under this Agreement, require the approval of any regulatory body or any other entity, which approval has not been obtained.

Section 2.3 **Survival of Representations.** All representations of the City and Commission contained in this Agreement or in any certificate or other instrument delivered by the City or the Commission pursuant to this Agreement, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof.

ARTICLE III FUNDING OF PROJECT COSTS

Section 3.1 **Deposit by the Commission.** As soon as reasonably practicable after the receipt of the City's Contribution, the Commission agrees to deposit such money in the Project Account. The Project Account (a) shall be segregated on the books and records of the Commission from all other money, revenue, funds and accounts of the Commission, (b) shall be utilized to pay \$174,800 of the costs related to the Old Tiffany Springs Road Design, which have been certified by the Commission, pursuant to its Certification of Costs and Reimbursement Policy.

Section 3.2 **Covenants of the Commission.** The Commission hereby covenants and agrees:

(a) to pledge all right, title and interest in, to and under the Project Account to the payment of costs related to the Old Tiffany Springs Road Design;

(b) the Commission, pursuant to that certain agreement, dated March 30, 2006, between the Commission and MD Management, Inc., as amended on December 3, 2007, March 11, 2009, March 10, 2010, July 12, 2010 and June 13, 2012 (the "Redevelopment Agreement"), shall exert reasonable efforts to cause MD Management, Inc. to cause the Old

Tiffany Springs Road Design to be completed in accordance with **Exhibit A**, attached hereto, and reimburse certain costs related thereto, up to the amount of the City's Contribution, to the extent such costs have been certified in accordance with the Certification Policy and are available and on deposit in the Project Account; and

(c) in no event shall any portion of the City's Contribution be expended for any purpose other than for the payment of the Old Tiffany Springs Road Design.

(d) upon the completion of the Old Tiffany Springs Road Design and the Commission's payment of all certified costs related thereto, up to the amount of the City's Contribution, the Commission shall reimburse the City for any amount of the City's Contribution paid to the Commission from (i) available Economic Activity Taxes generated within the Redevelopment Area (as described by the Plan), which have not been pledged pursuant to any trust indenture and are available to reimburse the City and/or (ii) available proceeds of the Improvement and Refunding Revenue Bonds in the original principal amount of \$31,430,000 issued by the Industrial Development Authority of the County of Platte County ("Authority"), pursuant to that certain Trust Indenture by and between the Authority and First Bank of Missouri, dated March 15, 2009 and amended and supplemented on July 1, 2012.

Section 3.3 Covenants of the City. The City hereby covenants and agrees that the City, subject to appropriation, shall pay the City's Contribution to the Commission by December 31, 2012.

ARTICLE IV MISCELLANEOUS

Section 4.1 Term of Agreement. This Agreement shall be effective from and after its execution and delivery and shall continue in full force and effect until the earlier of (a) the reimbursement of the City's Contribution, or (b) the termination of this Agreement in accordance with Section 4.3 (the "Term").

Section 4.2 Breach; Compliance. If any party (the "Breaching Party") does not comply with provisions of this Agreement, in that the Breaching Party shall do, permit to be done, or fail or omit to do, or fail or omit to have done, anything contrary to or required of it by this Agreement, and if, within ten (10) days after notice of such default by any one of the other parties (the "Non Breaching Party"), the Breaching Party shall not have cured such default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said ten (10) day period, then the Non Breaching Party may institute such proceedings as may be necessary in its opinion to cure the default including, but not limited to, proceedings to compel specific performance by the Breaching Party.

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 Non Breaching 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 the Non Breaching Party shall apply to obligations beyond those expressly waived.

Section 4.3 **Termination of Agreement.** In the event that prior to the payment of the City's Contribution, as contemplated by this Agreement, the Commission is unable to cause MD Management, Inc., pursuant to the Redevelopment Agreement, to complete the Old Tiffany Springs Road Design or the Redevelopment Agreement is otherwise terminated, the parties hereto agree that this Agreement shall terminate and the Commission shall reimburse to the City the amount of the City's Contribution paid to the Commission and not utilized for the payment of the Old Tiffany Springs Road Design.

Section 4.4 **Notices.** All written notices required by this 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 or 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 hereinafter 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 such notice. Any notice so served by certified mail shall be deposited in the United States Mail with postage thereon fully 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.

Any notice to the Commission shall be addressed to the Secretary of the Commission at:

Tax Increment Financing Commission
of Kansas City, Missouri
1100 Walnut Street, Suite 1700
Kansas City, Missouri 64106

with a copy to:

Bryan Cave LLP
3500 One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105
Attn: Wesley O. Fields, Esq.

Notices to the City shall be addressed to:

City of Kansas City, Missouri
City Hall
414 E. 12th Street, 29th Floor
Kansas City, Missouri 64105
Attn: City Manager

with a copy to:

City of Kansas City, Missouri
Law Department
City Hall
414 E. 12th Street, 28th Floor
Kansas City, Missouri 64106

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days written notice thereof.

Section 4.5 **Audit.** The City Auditor, the City's Internal Auditor and the Aviation Department shall have the right to audit this Agreement and all books, documents and records relating thereto. The Commission shall maintain all its books, documents and records relating to this Agreement during the Term of this Agreement and for three (3) years thereafter. The books, documents and records of the Commission in connection with this Agreement shall be made available to the City Auditor, the City's Internal and the Aviation Department, within ten (10) days after the written request is made.

Section 4.6 **Performance Date Not a Business Day.** If any date for the taking of any action hereunder is on a Saturday, Sunday or business holiday of the City, then such action shall be taken, on the first business day thereafter with the same force and effect as if made on the date fixed for payment or performance.

Section 4.7 **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the City and the Commission and their respective successors and assigns.

Section 4.8 **Amendments, Changes and Modifications.** This Agreement may not be effectively amended, changed, modified, altered or terminated without the prior concurring written consent of all the parties hereto.

Section 4.9 **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 4.10 **No Pecuniary Liability.** All covenants, obligations and agreements of the City and the Commission contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the City or the Commission in other than their official capacity.

Section 4.11 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior oral agreements or written agreements, arrangements, and understandings relating thereto.

Section 4.12 **Severability.** If any provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into or taken thereunder, or any application of such provision, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Such illegality or invalidity of any application thereof shall not affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 4.13 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed pursuant to due authority as of the date first above set forth.

TAX INCREMENT FINANCING COMMISSION
OF KANSAS CITY, MISSOURI

ATTEST:

Heather Brown, Secretary

By: _____
Ronald Marc Yaffe, Chairman

Approved as to form:

Counsel to the Commission

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of November, 2012, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Ronald Marc Yaffe, Chairman of the Tax Increment Financing Commission of Kansas City, Missouri, a commission duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said commission, and such person duly acknowledged the execution of the same to be the act and deed of said commission.

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

NOTARY PUBLIC

My Commission Expires:

THE CITY OF KANSAS CITY, MISSOURI,

ATTEST:

Secretary

By: _____
Name: _____
Title: _____

Approved as to form and legality:

Assistant City Attorney

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of November, 2012, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of the City of Kansas City, Missouri, a special chartered city of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said City, and such person duly acknowledged the execution of the same to be the act and deed of said City.

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

NOTARY PUBLIC

My Commission Expires:

Exhibit A

Description of Old Tiffany Springs Road Design