

**SALES TAX IMPROVEMENT, REIMBURSEMENT AND DEVELOPMENT
AGREEMENT FOR <INSERT NAME OF DEVELOPMENT>
BY AND BETWEEN
<INSERT NAME OF DEVELOPMENT COMPANY> AND
THE CITY OF ST JOSEPH, MISSOURI**

This agreement, made this _____ day of _____, _____ by and between <INSERT NAME> (hereinafter "Developer") and the City of St. Joseph, Missouri, a municipal corporation (hereinafter "City").

WHEREAS, Developer is proposing to develop a commercial project known as <INSERT NAME>, including <INSERT RETAIL USES> (hereinafter the "Development") with capital investment upon <INSERT NUMBER OF ACRES> acres of land which upon will create a value of approximately <INSERT DOLLAR AMOUNT>, located <INSERT AREA LOCATION WITH INTERSECTION AND ADDRESS> on a parcel of land described in Exhibit "A", attached hereto and incorporated herein (hereinafter the "Site"); and

WHEREAS, after due public notice in the manner prescribed by law, the City Council held a public hearing on <INSERT DATE OF PASSAGE OF PRELIMINARY PLAT>, to consider Special Ordinance Number _____ to adopt a preliminary plat for the Development and approved the preliminary plat as shown in Exhibit "B" attached hereto and incorporated herein; and

WHEREAS, on <INSERT DATE>, the City Council approved the final plat by Special Number _____ for <INSERT NAME OF SUBDIVISION/DEVELOPMENT> for final plat approval for <INSERT THE NAME OF OR NUMBER OF THE PHASE OF THE DEVELOPMENT THAT WILL PRODUCE SALES TAX REVENUE AND COMMON STREET ADDRESS>; and

WHEREAS, a part of the consideration of the preliminary and final plat review, City Staff reviewed a traffic study submitted by the Developer, prepared by <INSERT NAME OF PERSON/COMPANY WHO DID THE TRAFFIC STUDY>, dated <INSERT DATE> (hereinafter the "Traffic Study"); and

WHEREAS, the Traffic Study identified that certain public improvements identified in Exhibit "C", attached hereto and incorporated herein, are necessary to accommodate *existing* traffic; and

WHEREAS, the Traffic Study identified that certain public improvements identified in Exhibit "C" are necessary to accommodate *additional* traffic generated by the Development; and

WHEREAS, the public improvements identified in Exhibit "C" (hereinafter the "Public Improvements") will belong to the <INSERT CITY OR STATE – DEPENDING UPON WHO OWNS THE STREET OR HIGHWAY>, are for a public purpose and will inure to the benefit of the City and its citizens; and

WHEREAS, on <INSERT DATE>, Special Ordinance Number _____ was enacted, approving the final plat which included a [*CONFIRM NAME* OF FOLLOWING AGREEMENT] Development agreement providing for construction of the Public Improvements; and

WHEREAS, the Development is in need of financial assistance <INSERT WHAT FOR>

WHEREAS, the City and Developer agree that in order to mitigate the impact of additional traffic generated by the Development and to protect and improve the public health, safety and general welfare, the Public Improvements must be made in conjunction with the Development; and

WHEREAS, the City is unable to construct and fund the Public Improvements at this time, and

WHEREAS, the Developer shall not cause the relocation of a tenant into the redevelopment area which has the following characteristics: (i) directly causes a reduction in the tax revenues generated for the affected taxing jurisdictions by the existing business at its current location; and/or (ii) reduces the revenues that would otherwise be generated within the Redevelopment Area and deposited into the Special Allocation Fund for purposes of assisting in funding the Redevelopment project costs.

WHEREAS, the Developer and the City anticipate that the Development, when operational, will provide significant economic benefits to the City and other political subdivisions, including paying real property taxes to the City and other taxing subdivisions and generating significant retail sales tax revenues for the City and other entities collecting retail sales taxes; and

WHEREAS, the City and Developer desire to enter into this Agreement whereby the Developer will agree to develop the Site and construct the Development, including paying the cost of the Public Improvements, and the City will agree to reimburse the Developer, in installments, for a portion of the actual cost of the Public Improvements; and

WHEREAS, reimbursement to the Developer by the City serves the public purpose of enabling the Developer to proceed with the Development, thereby increasing economic Development in the City and adding to the tax base, and further serves the public purpose of providing public improvements in conjunction with the Development rather than at an unknown future date, thereby addressing existing needs and accommodating additional traffic <INSERT OTHER THINGS (SEWER, STREET LIGHTS ETC)>; and

WHEREAS, the City is authorized to enter into this Agreement with the Developer pursuant to the provisions of Section 70.210 *et seq* RSMo.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the City and Developer do hereby covenant and agree upon the following terms and conditions:

1. The Developer hereby agrees to develop the Site, build the Development, and construct the Public Improvements identified in Exhibit "C" with its own funds.
2. The City and Developer agree that the Public Improvements will be constructed in phases <OR STATE ALL AT ONCE>, in accordance with Exhibit "D", attached hereto and incorporated herein.

3. The City and Developer agree that no building permit for any portion of the Development will be issued until the City has reviewed and approved infrastructure plans for the construction of the Public Improvements and, as to Public Improvements located on State rights-of-way, the Missouri Department of Transportation (MoDOT) has reviewed and approved the plans for construction of the Public Improvements. <IF APPLICABLE>
4. The City and Developer agree that in accordance with Exhibit "D" and as the parcels are designated on Exhibit "B":
 - a) the Public Improvements listed in Phase I <IF PHASED> of Exhibit "D" shall be substantially complete prior to the issuance of a temporary or final occupancy permit for any building in the Development; and
 - b) <THIS IS ONLY NEEDED IF THE DEVELOPMENT IS TO BE PHASED>The Public Improvements listed in Phase II of Exhibit "D" shall be substantially complete prior to the issuance of a temporary or final occupancy permit for any building in the Commercial area of the Development; and
 - c) "Substantially Complete" shall be as defined in Chapter 25-90 of The City Code of the City of St Joseph hereafter referred to APWA standards.
5. The City and the Developer agree to share the Construction Costs of the Public Improvements as follows:
 - a) The first <INSERT A DOLLAR VALUE OF THE IMPROVEMENTS THAT THE DEVELOPER MUST PAY FOR> and the City will not reimburse the Developer for this portion; and
 - b) Up to the next <INSERT THE DOLLAR AMOUNT THAT THE DEVELOPER WILL BE REIMBURSED>, shall be reimbursed by the City to the Developer in accordance with the terms of this Agreement from City Sales Taxes generated at the Site; and
 - c) All Constructions Costs in excess of the amounts identified in paragraphs 5.a) and 5.b) shall be paid by Developer.
6. "Constructions costs" mean the costs actually incurred by the Developer to construct the Public Improvements identified in Exhibit "C" and "D". Construction costs will not be eligible for reimbursement until:
 - a) Public Improvements located on City rights-of-way have been finally accepted by the City in accordance with APWA standards, including submission of maintenance bonds as set forth in the City Subdivision Code Chapter 26; and
 - b) Public Improvements located on State rights-of-way have been finally accepted by MoDOT; and <IF APPLICABLE>

- c) The Developer has provided the City with proof of payment for the public improvements and lien waivers from all contractors performing work on the public improvements; and
 - d) The Developer has provided the City with <INSERT WHAT WE NEED FROM THE DEVELOPER> showing the public improvements as actually built; and
 - e) The Developer has provided MoDOT<INSERT WHAT MODOT NEEDS> showing the public improvements located on state right-of-ways.<IF APPLICABLE>
7. "City sales taxes" means the following retail sales taxes imposed by the City on the effective date of this Agreement and actually collected from the operation of retail businesses at the Site:
- a) <INSERT CITY SALES TAX AND RATE> * NOTE: THERE ARE SEVERAL *
8. For <INSERT THE TERM OF YEARS>, beginning on <INSERT START DATE>, the City shall reimburse to the Developer one hundred percent (100%) of the City sales taxes received from the Site. Such reimbursement by the City to the Developer will be made quarterly ending <SET FORTH ENDING DATE>.
9. For <INSERT TERM OF YEARS>, the City shall reimburse to the Developer <INSERT ANY REDUCED PAYMENT I.E. 75% FOR XX YEARS ETC> the City sales taxes received from the Site. Such reimbursement by the City to the Developer will be made quarterly ending <STATE ENDING DATE>. <Note: THIS PROVISION COULD BE USED 2,3 OR 4 TIMES AT, SAY, 100% 75% 50% ETC>
10. Quarters shall end on March 31, June 30, September 30 and December 31. Reimbursement to the Developer shall be due within 45 days of the end of the Quarter.
11. In no event will reimbursement by the City to the Developer exceed <INSERT AMOUNTS> nor shall the City be obligated to make any payments in addition to those described herein, even if the Developer is not reimbursed a total of <INSERT AMOUNTS>. The City may, at its sole option, make additional payments without incurring any penalty.
12. It shall be a mutual obligation of the City and the Developer to identify, track and document City sales taxes.
13. The City is obligated to make the payments set forth in this Agreement as shall be lawfully made from funds to be budgeted and appropriated for that purpose during the City's then current fiscal year. The City's obligation hereunder shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the City.
14. Subject to any applicable cure periods, the following conditions, occurrences or actions will constitute a default by the Developer during the term of this Agreement:

- a) Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer, or
 - b) Foreclosure of any lien against all or a portion of the Site or assignment or conveyance of the Site in lieu of foreclosure which materially and adversely affects the Development prior to completion of the Development.
15. In addition to specific provisions of this Agreement, failure or delay by either party to perform any term or provision of this Agreement, after receiving written notice and failing to cure, as set forth below, constitutes a default under this Agreement. A party claiming default (claimant) shall give written notice of default to the other party, specifying the default complained of.
- The claimant shall not institute proceedings against the other party, nor be entitled to damages if the other party, within fourteen (14) days from receipt of such written notice, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice or if such cure, correction or remedy cannot reasonably be completed within thirty (30) days, it is diligently and continuously prosecuted until completion thereof.
16. The Developer assumes responsibility, if any, for complying with any applicable prevailing wage laws.
17. The Developer agrees that it is responsible for coordinating all aspects of construction of the public improvements with the City and MoDOT <IF APPLICABLE> including lane closings, directing traffic and the like, to ensure safe and proper traffic control is maintained at all times during construction of the public improvements.
18. All public improvements in the City's right-of-way shall be designed and constructed in accordance with APWA standards.
19. All public improvements in the State's right-of-way shall be designed and construction in accordance with applicable MoDOT standards. <IF APPLICABLE>
20. All necessary right-of-way owned by the Developer shall be dedicated, at no cost to the City, prior to acceptance of the public improvements. The City agrees to acquire the easements at its cost, for construction of storm water sewers and sanitary sewers, through good faith negotiations or through the exercise of its power of eminent domain if the Developer is unsuccessful in its attempts to acquire the easements.
21. Written notices, demands and communications between the City and the Developer shall be sufficiently given by personal service or dispatched by registered or certified mail, postage prepaid, return receipt requested, or overnight courier, to the principal offices of the City or the Developer. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may designate from time

to time by mail as provided in this paragraph. Notwithstanding anything to the contrary herein, notice personally served shall be deemed to have been received as of the date of such service or the date service is refused if written verification thereof is received from messenger service attempting such delivery.

22. The City has the right to inspect, at reasonable times, the books and records of the Developer pertaining to the City's share of the construction costs as pertinent to the purposes of this Agreement.
23. The Developer, its assigns, successors, tenants, purchaser and mortgagees, may request from the City an estoppel letter, stating that the Developer is not in default of any of its obligations under this Agreement. Within thirty (30) days of said request, the City shall either issue the estoppel letter or provide a written description of how the Developer is in default hereunder.
24. Any legal actions related to or arising out of this Agreement must be instituted in the Circuit Court of Buchanan County, Missouri.
25. The laws of the State of Missouri shall govern the interpretation and enforcement of this Agreement, without giving effect to the choice of law rules thereof.
26. Except as otherwise expressly stated in this Agreement, the right and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
27. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
28. The Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement which may be made by either or both of the parties, provided said requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.
29. The City shall not be liable for any claims of brokers, agents or finders, licensed or unlicensed, and all such claims of real estate or other consultants which exist or may arise with respect to the Development. Developer shall cause any such claims to be discharged.
30. The Developer hereby expressly agrees to indemnify and hold the City harmless from and against all claims and demands of negligence of the Developer for injury or damage received or sustained by any person or entity in connection with or on account of the performance of work at the Site or on the public improvements pursuant to the terms of this Agreement. The Developer further agrees to aid and defend the City and must intervene in its own right in the event the City is named as a defendant in an action concerning the negligent performance of work pursuant to this Agreement, except where

such suit is brought by the Developer. The Developer is not an agent or employee of the City. Nothing in this paragraph or Agreement shall create liability of the Developer or the City to third parties which liability did not or does not exist absent this Agreement.

31. No person or entity who is not a party to this Agreement will have any right of action under this agreement.
32. Prior to completion of the Development, the benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City Council. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding of the heirs, successors, and assigns of the Developer.
33. 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 Missouri, and the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render them unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of 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 portion thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.
34. If the Developer does not commence actual, physical construction of any of the public improvements within one hundred and eighty (180) calendar days from the effective date of this Agreement, there shall be no further obligations whatsoever of the Developer or the City under the terms of this Agreement.
35. To the extent the City determines it has the legal authority to do so, the Development will be exempt from payment of any future excise taxes that may be implemented by the City. This agreement does not constitute a waiver of any requirements of applicable City ordinances with which the Developer must comply.
36. This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1-14 which constitute the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or part of the subject matter hereof. All amendments must be in writing executed by the appropriate authorities of the City and the Developer. Developer is a sophisticated buyer and Developer of real property and has participated in the drafting of this Agreement.

In witness whereof, the parties have executed this agreement the _____ day of _____, _____.

ATTEST

<INSERT NAME OF DEVELOPER>

ATTEST

CITY OF ST JOSEPH

City Clerk

City Manager

APPROVED AS TO FORM

City Attorney