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TITLE OF DOCUMENT: FIRST AMENDED AND RESTATED
DEVELOPMENT AGREEMENT

DATE OF DOCUMENT: January 22, October, 2026

GRANTOR: O'FALLON PLAYFIELD COMMONS LLC

GRANTOR'S MAILING ADDRESS: 2128 William Street, Ste. 161
Cape Girardeau, Missouri 63703
Attention: Andy Patel

GRANTEE: CITY OF O'FALLON, MISSOURI

GRANTEE'S MAILING ADDRESS: 100 North Main Street
O'Fallon, Missouri 63366
Attention: City Manager

RETURN DOCUMENTS TO: Mark D. Grimm, Esq.
Gilmore & Bell, P.C.
211 North Broadway, Suite 2000
St. Louis, Missouri 63102

LEGAL DESCRIPTION: See **Exhibit A-1**

FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT

Dated as of ~~January 22,~~October, 2026

BETWEEN THE

CITY OF O'FALLON, MISSOURI

AND

O'FALLON PLAYFIELD COMMONS LLC

FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
Parties	1
Recitals	1
 ARTICLE I DEFINITIONS	
Section 1.1. — Definitions of Words and Terms	2
 ARTICLE II IMPLEMENTATION OF THE PROJECT	
Section 2.1. — Ownership of the Project Site	4
Section 2.2. — Developer to Pay Certain Costs	5
Section 2.3. — Construction Plans; Governmental Approvals	5
Section 2.4. — Construction Schedule	5
Section 2.5. — Construction of the Project	6
Section 2.6. — Competitive Bids; Prevailing Wage; Federal Work Authorization	6
Section 2.7. — Certificates of Reimbursable Costs	7
Section 2.8. — Certificates of Substantial Completion	7
Section 2.9. — Inspection	7
Section 2.10. — Winged Foot Parcel	8
 ARTICLE III REIMBURSEMENT OF SPORTS FACILITY COSTS AND- PUBLIC IMPROVEMENT COSTS	
Section 3.1. — Community Improvement District	8
Section 3.2. — Transportation Development District	9
Section 3.3. — Application of Dedicated Revenues	9
Section 3.4. — Annual Appropriation	10
Section 3.5. — Shared Parking	11
 ARTICLE IV TAX ABATEMENT	
Section 4.1. — Partial Real Property Tax Abatement	11
Section 4.2. — Sales and Use Tax Exemption	12

~~ARTICLE V~~

**~~COVENANTS, REPRESENTATIONS AND AGREEMENTS OF
THE DEVELOPER AND THE CITY~~**

Section 5.1. Representations	12
Section 5.2. Operation and Maintenance Covenants	13
Section 5.3. Release and Indemnification	13
Section 5.4. Costs to be paid by Developer	14
Section 5.5. Additional Public Benefits	14
Section 5.6. Public Liability Strictly Limited	15
Section 5.7. No Waiver of Sovereign Immunity	15
Section 5.8. Insurance	15

~~ARTICLE VI~~

~~ASSIGNMENT AND OTHER TRANSFERS~~

Section 6.1. Assignment and Other Transfers	16
---	----

~~ARTICLE VII~~

~~DEFAULT AND REMEDIES~~

Section 7.1. Developer's Right of Termination	17
Section 7.2. City's Right of Termination	17
Section 7.3. Defaults and Remedies	17
Section 7.4. Interest on Late Payments	17
Section 7.5. Other Rights and Remedies of Parties; Delay in Performance Waiver	17

~~ARTICLE VIII~~

~~TERM OF AGREEMENT~~

Section 8.1. Term of Agreement	18
--------------------------------------	----

~~ARTICLE IX~~

~~MISCELLANEOUS PROVISIONS~~

Section 9.1. Notices	18
Section 9.2. Severability; Effect of Invalidity	19
Section 9.3. Governing Law; Venue	19
Section 9.4. Execution in Counterparts	19
Section 9.5. Third Party Rights	19
Section 9.6. Entire Agreement; Amendments	19
Section 9.7. Survival of Covenants	19
Section 9.8. Electronic Transaction	19
Section 9.9. Anti-Discrimination Against Israel Act	19

Exhibit A 1—Legal Description of the Project Site	
Exhibit A 2—Legal Description of Existing Hotel Parcels	
Exhibit A 3—Legal Description of Future Hotel Parcels	
Exhibit B—Project Improvements and Public Improvements	
Exhibit C—Concept Property Plan	
Exhibit D—Form of Certificate of Reimbursable Costs	
Exhibit E—Form of Certificate of Substantial Completion	
Exhibit F—Form of Federal Work Authorization Program Affidavit	
Exhibit G—Form of Cooperation Agreement	
Exhibit H—Winged Foot Parcel	
Parties	1
Recitals.....	1

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms.....	2
--	---

ARTICLE II

IMPLEMENTATION OF THE PROJECT

Section 2.1. Ownership of the Project Site	5
Section 2.2. Developer to Pay Certain Costs	5
Section 2.3. Construction Plans; Governmental Approvals.....	5
Section 2.4. Construction Schedule	5
Section 2.5. Construction of the Project	6
Section 2.6. Competitive Bids; Prevailing Wage; Federal Work Authorization	6
Section 2.7. Certificates of Reimbursable Costs.....	7
Section 2.8. Certificates of Substantial Completion	7
Section 2.9. Inspection.....	8
Section 2.10. Winged Foot Parcel	8

ARTICLE III

REIMBURSEMENT OF SPORTS FACILITY COSTS AND PUBLIC IMPROVEMENT COSTS

Section 3.1. Community Improvement District.....	8
Section 3.2. Transportation Development District	9
Section 3.3. Application of Dedicated Revenues.....	10
Section 3.4. Annual Appropriation	11
Section 3.5. Shared Parking.....	11

ARTICLE IV

TAX ABATEMENT

Section 4.1. Partial Real Property Tax Abatement	11
Section 4.2. Sales and Use Tax Exemption	12

ARTICLE V

COVENANTS, REPRESENTATIONS AND AGREEMENTS OF THE DEVELOPER AND THE CITY

Section 5.1.	Representations	12
Section 5.2.	Operation and Maintenance Covenants	13
Section 5.3.	Release and Indemnification	14
Section 5.4.	Costs to be paid by Developer	15
Section 5.5.	Additional Public Benefits	15
Section 5.6.	Public Liability Strictly Limited	15
Section 5.7.	No Waiver of Sovereign Immunity	16
Section 5.8.	Insurance	16

ARTICLE VI

ASSIGNMENT AND OTHER TRANSFERS

Section 6.1.	Assignment and Other Transfers	16
--------------	--------------------------------------	----

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1.	Developer's Right of Termination	17
Section 7.2.	City's Right of Termination	17
Section 7.3.	Defaults and Remedies	17
Section 7.4.	Interest on Late Payments	18
Section 7.5.	Other Rights and Remedies of Parties; Delay in Performance Waiver	18

ARTICLE VIII

TERM OF AGREEMENT

Section 8.1.	Term of Agreement	18
--------------	-------------------------	----

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MISCELLANEOUS PROVISIONS

Section 9.1.	Notices	18
Section 9.2.	Severability; Effect of Invalidity	19
Section 9.3.	Governing Law; Venue	19
Section 9.4.	Execution in Counterparts	19
Section 9.5.	Third Party Rights	19
Section 9.6.	Entire Agreement; Amendments	19
Section 9.7.	Survival of Covenants	20
Section 9.8.	Electronic Transaction	20
Section 9.9.	Anti-Discrimination Against Israel Act	20

Exhibit A-1 – Legal Description of the Project Site
Exhibit A-2 – Legal Description of Existing Hotel Parcels
Exhibit A-3 – Legal Description of Future Hotel Parcels
Exhibit B – Project Improvements and Public Improvements
Exhibit C – Concept Property Plan
Exhibit D – Form of Certificate of Reimbursable Costs
Exhibit E – Form of Certificate of Substantial Completion
Exhibit F – Form of Federal Work Authorization Program Affidavit
Exhibit G – Form of Cooperation Agreement
Exhibit H – Winged Foot Parcel

FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT, dated as of January 22, October, 2026, as from time to time amended and supplemented in accordance with the provisions hereof (this “**Agreement**”), between the **CITY OF O’FALLON, MISSOURI**, a home rule charter city organized and existing under the laws of the State of Missouri (the “**City**”), and **O’FALLON PLAYFIELD COMMONS LLC**, a Missouri limited liability company (including any successors in interest as an owner or owners of portions of the hereinafter-defined Project Site, the “**Developer**”).

RECITALS:

1. The City has determined that it is essential to the economic and social welfare of the City that it promote the vitality of the community by assuring opportunities for development and sound, stable commercial growth and recreational opportunities for the City’s residents.

2. The Developer owns approximately 20.59 acres of property located at the southeast corner of the intersection of Thornbury Crossing Drive and Veterans Memorial Parkway in the City (the “**Project Site**,” as more fully described on **Exhibit A-1** attached hereto and made a part hereof) and proposes to construct thereon an approximately 168,000 square foot indoor sports facility (the “**Sports Facility**”) and approximately 25,000 square feet of restaurant/commercial space (the “**Commercial Space**” and, collectively with the Sports Facility, the “**Project Improvements**,” as more fully described on **Exhibit B** attached hereto and made a part hereof).

3. The development of the Project Site and the Project Improvements will require the construction of various public infrastructure improvements (the “**Public Improvements**,” as more fully described on **Exhibit B** hereto). The Project Improvements and the Public Improvements are collectively referred to as the “**Project**.”

4. The parties expect the Project Improvements, when operational, to provide significant economic and other benefits to the City over time, by paying real estate and personal property taxes to the City and other taxing jurisdictions whose boundaries encompass all or part of the Project Site, by generating retail sales tax revenues for the City and other entities collecting retail sales taxes, and by providing recreational opportunities that are not currently available in the City.

5. ~~The~~ On January 22, 2026, the Council passed Ordinance No. 7275, pursuant to which the City and the Developer ~~desire to enter entered~~ into this Development Agreement whereby under which (a) the Developer ~~will agree agreed~~ to develop, construct and equip the Project and (b) the City ~~will agree agreed~~ to reimburse the Developer for a portion of the cost thereof, ~~as described herein.~~

6. On, 2026, the Council passed Ordinance No. _____ authorizing this Agreement.

~~6.7.~~ _____ The City is authorized to enter into this Agreement with the Developer pursuant to the provisions of Section 70.210 *et seq.* of the Revised Statutes of Missouri.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to words and terms defined elsewhere herein, the following words and terms as used herein shall have the following meanings:

“**Agreement**” means this First Amended and Restated Development Agreement dated as of January 22, October, 2026, between the City and the Developer, as from time to time amended and supplemented in accordance with the provisions hereof.

“**Calculation Period**” means initially, the period from the Commencement Date to the end of the calendar quarter during which the Commencement Date occurs; and thereafter, each calendar quarter.

“**Certificate of Reimbursable Costs**” means a document substantially in the form of **Exhibit D**, attached hereto and incorporated herein by reference, delivered by the Developer to the City in accordance with this Agreement, which shall (a) identify the Public Improvement Costs and Sports Facility Costs for which the Developer is seeking reimbursement under this Agreement and (b) include a detailed description of such reimbursable costs and copies of invoices or other records evidencing such costs.

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

“**CID**” means a community improvement district to be formed to fund a portion of the costs of the Public Improvements.

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

“**CID Sales Tax**” means the community improvement district sales and use tax to be levied by the CID at a rate of not more than 1% in accordance with the CID Act.

“**CID Sales Tax Revenues**” means the revenues generated by the CID Sales Tax, excluding, however, (a) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer and (b) any sum received by the CID that is the subject of a suit or other claim communicated to the CID, which suit or claim challenges the collection of such sum, until such suit or other claim is withdrawn or resolved against the claimant.

“**Commencement Date**” means the first day of the month following the month in which the Developer commences pouring of foundations for the Sports Facility.

“**Commercial Space**” means that portion of the Project Improvements consisting of restaurant/commercial space, as depicted on **Exhibit C**.

“**Concept Property Plan**” means the plan sheet attached as **Exhibit C** and incorporated by reference in this Agreement, depicting the conceptual plan for the Project in accordance with this Agreement.

“Construction Plans” means plans, drawings, specifications, construction schedules and related documents for the construction of the Project, as amended from time to time by the Developer in accordance with the City’s code, the same being on file at the principal office of the Developer, and which shall be available for reasonable inspection during normal business hours and upon not less than one business day’s prior notice by the City and its duly appointed representative.

“Cooperation Agreement” means an agreement to be entered into among the City, the CID (upon its establishment), the TDD (upon its establishment) and the Developer, as may be amended from time to time, in substantially the form attached as **Exhibit G**.

“Dedicated Revenues” means, collectively, (a) 20% of the revenues actually received by the City from its imposition on and after the Commencement Date of the Transient Guest Tax on the Existing Hotel Parcels, together with any improvements or businesses located thereon, (b) 80% of the revenues actually received by the City from its imposition on and after the date of this Agreement of the Transient Guest Tax on the Future Hotel Parcels, together with any improvements or businesses located thereon, and (c) 80% of the revenues actually received by the City from its imposition on and after the date of this Agreement of the General Sales Tax at the Project Site (including the Sports Facility and the Commercial Space) and the Future Hotel Parcels, but not to exceed \$200,000 during the term of this Agreement.

“Existing Hotel Parcels” means, collectively, (a) the approximately 3.1-acre parcel located at 1175 Technology Drive in the City, having a County Parcel ID of 3-157E-9579-00-0001.0000000, on which a Holiday Inn Express is currently located, and (b) the approximately 2.4-acre parcel located at 1155 Technology Drive in the City, having a County Parcel ID of 3-157E-9579-00-0003.0000000, on which a Staybridge Suites is currently located, both as legally described on **Exhibit A-2**.

“Future Hotel Parcels” means, collectively, (a) the approximately 3.3-acre parcel located at the northwest corner of Veteran’s Memorial Parkway and Winged Foot Drive in the City, having a County Parcel ID of 4-0053.1780.00-0014.4, and (b) the approximately 1.9-acre parcel located at 1150 Technology Drive in the City, having a County Parcel ID of 3-157E-C923-00-000B.0000000, both as legally described on **Exhibit A-3**.

“General Sales Tax” means the City’s 1% general sales tax, imposed by Section 145.020 of the City’s Code of Ordinances.

“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 construction of the Project.

“Land Use Approvals” means any zoning, planning or other governmental approvals necessary for the physical development of the Project.

“Project” means, collectively, the Project Improvements and the Public Improvements, and all additions, modifications, improvements, replacements and substitutions made thereto, as they may at any time exist.

“Project Improvements” means the buildings, structures, improvements and fixtures to be constructed on the Project Site, including but not limited to the Sports Facility and the Commercial Space, as set forth in the Recitals and in **Exhibit B** hereto.

“Project Site” means the approximately 20.5-acre parcel legally described on **Exhibit A-1** hereto.

“Public Improvement Costs” means those costs and expenses, excluding land acquisition costs, associated with the Public Improvements, including but not limited to site preparation costs, construction costs and professional fees. For sake of clarity, the acquisition by the CID or the TDD of a leasehold interest in land is a Public Improvement Cost.

“Public Improvements” means the road, sidewalk, parking lots, storm water detention and other public infrastructure improvements described in **Exhibit B** hereto, to be constructed by the Developer hereunder.

“Required Public Improvements” means all traffic, sidewalk, signalization, utility and lighting required by the City as a condition for receipt of an occupancy permit for the Sports Facility.

“Sports Facility” means that portion of the Project Improvements consisting of indoor basketball/volleyball courts, turf soccer fields, an equipment storage area, spectator viewing and waiting areas, concession areas, and restrooms, as depicted on **Exhibit C**. For sake of clarity, the Sports Facility does not include the Commercial Space or any Public Improvements (including any parking lots) adjacent to the Sports Facility building.

“Sports Facility Costs” means the costs and expenses of constructing the Sports Facility and any permanent fixtures relating thereto (such as lighting and fencing) but excluding other costs of outfitting, equipping and maintaining the Sports Facility. Costs for fixtures that benefit both the Sports Facility and the Commercial Space shall be allocated based on square footage or another method acceptable to the City within its sole discretion. Sports Facility Costs exclude land acquisition costs.

“TDD” means a transportation development district to be formed to fund a portion of the costs of the Public Improvements.

“TDD Act” means the Transportation Development District Act, Sections 238.200 to 238.280 of the Revised Statutes of Missouri.

“TDD Sales Tax” means the transportation development district sales tax to be levied by the TDD at a rate of 1% in accordance with the TDD Act.

“TDD Sales Tax Revenues” means the revenues generated by the TDD Sales Tax, excluding, however, (a) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer and (b) any sum received by the TDD that is the subject of a suit or other claim communicated to the TDD, which suit or claim challenges the collection of such sum, until such suit or other claim is withdrawn or resolved against the claimant.

“Total Reimbursement Amount” means \$48,000,000, which is the maximum amount of Sports Facility Costs and Public Improvement Costs that may be reimbursed to the Developer pursuant to one or more approved Certificate(s) of Reimbursable Costs.

“Transient Guest Tax” means the City’s 5% guest tax imposed pursuant to Section 67.1000 of the Revised Statutes of Missouri.

ARTICLE II

IMPLEMENTATION OF THE PROJECT

Section 2.1. Ownership of the Project Site. The Developer represents and warrants to the City that the Developer owns the Project Site and such other real property necessary for the Developer to construct or cause to be constructed the Project Improvements. The Developer will provide to the City, upon request and at no charge, all title commitments, appraisals, inspections, tests, surveys and reports in its possession relating to the Project Site.

Section 2.2. Developer to Pay Certain Costs. The Developer agrees to pay or cause to be paid all costs as necessary to construct the Project, subject to **Section 7.1** of this Agreement.

Section 2.3. Construction Plans; Governmental Approvals.

(a) All Construction Plans for the Project shall be prepared by a professional engineer or architect licensed to practice in the State of Missouri and shall be in sufficient completeness and detail to show that all aspects of construction will be in conformance with the Concept Property Plan and this Agreement and with all applicable City codes, ordinances and regulations and in accordance with applicable law.

(b) The Developer shall diligently pursue or cause to be pursued all applicable Governmental Approvals and Land Use Approvals necessary to complete or cause the completion of the Project in accordance with the Concept Property Plan and this Agreement, all subject to the Developer's right to terminate this Agreement as set forth in **Section 7.1**. The City agrees to expeditiously process and timely review plans and submittals as submitted to and received by the City in accordance with applicable City ordinances, its normal practices, this Agreement and the laws of the State of Missouri; provided, nothing in this Agreement shall require the City to grant any Governmental Approval or other approval.

Section 2.4. Construction Schedule.

(a) The City acknowledges that the Developer commenced construction of the Sports Facility within the time prescribed by the Development Agreement. The Developer shall cause the ~~commencement~~ and completion of the Project in accordance with the following schedule:

<u>Activity</u>	<u>Time for Performance</u>
Developer shall have commenced construction of the Sports Facility (i.e., pouring of foundations)	By June 1, 2026
Developer shall have substantially completed the Sports Facility and the <u>Required</u> Public Improvements	By June 1, 2027 <u>30, 2029</u>
Developer shall have substantially completed the remainder of the Project, including the Commercial Space	By June 1, 2028 <u>December 31, 2030</u>

(b) Notwithstanding the foregoing, times for performance of obligations hereunder shall be extended by the number of days of delay caused by actions or events beyond the control of the Developer, including, without limitation, damage or destruction by fire or casualty; strike; lockout; civil disorder; acts

of terrorism; significant escalation of hostilities involving U.S. armed forces; an inordinate delay in the issuance of any permits and/or legal authorization by a governmental entity that is necessary for the Developer to proceed with construction of the Project or any portion thereof (but only if the Developer files all necessary documentation relating thereto in a timely manner); shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other causes beyond the reasonable control of the Developer (each, an “**Excusable Delay**”). The Developer agrees that, to the best of its knowledge, no Excusable Delay exists at the time of execution of this Agreement.

(c) No Excusable Delay shall be deemed to exist (1) as to any matter that could have been avoided by the exercise of due care in accordance with industry standards, (2) as to any matter unreasonably sustained by the Developer, and (3) unless either (i) the Developer uses good faith efforts to provide the City with a written notice within 30 days after the date on which the Developer first becomes aware of the claimed Excusable Delay and specifying in reasonable detail the nature of the Excusable Delay, or (ii) the Developer demonstrates to the City’s reasonable satisfaction that the Developer has diligently pursued its obligations under this Agreement, but for reasons beyond the Developer’s reasonable control, has been unable to complete such obligations within the time specified in this Agreement. The parties agree that lender restrictions, financial conditions, economic conditions, market conditions, lack of tenant interest and similar conditions or events do not constitute Excusable Delays.

(d) Notwithstanding any provision herein to the contrary, no Excusable Delay shall extend the times for performance under this Section by more than 90 days unless approved by the City Council.

Section 2.5. Construction of the Project.

(a) The Developer shall construct the Project in a good and workmanlike manner in accordance with the terms of this Agreement and the City’s code.

(b) All construction contracts entered into in connection with the construction of the Project shall state that the contractor has no recourse against the City in connection with the contractor’s construction of the Project or any portion thereof.

Section 2.6. Competitive Bids; Prevailing Wage; Federal Work Authorization.

(a) The Developer shall comply with all federal, state and local laws relating to the construction of the Project. Without limiting the generality of the foregoing, the Developer agrees that, with respect to the Project, it will pay prevailing wages and fully comply with all requirements of Sections 290.210 through 290.340 of the Revised Statutes of Missouri, as amended, and will obtain payment and performance bonds, as required by Section 107.170 of the Revised Statutes of Missouri, as amended.

(b) In addition to the requirements above, the Developer shall cause its general contractor(s) to use reasonable efforts to solicit bids, when possible, from at least three qualified bidders for each aspect of the Project that is to be performed by any subcontractor. The Developer shall, upon request of the City, submit copies of all bid solicitation materials and the bids received to the City. The Developer shall make good faith efforts to solicit bids from subcontractors located in the City and, when deciding between bids of the same quality and cost, shall give preference to the bid from the subcontractor located in the City, if any.

(c) The Developer acknowledges that it and all of its contractors engaged for the Project must comply with Section 285.530 of the Revised Statutes of Missouri regarding enrollment and participation in a federal work authorization program with respect to employees working in connection with the Project. The Developer represents and warrants that it is in compliance with Section 285.530 of the Revised Statutes

of Missouri 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. On or before December 31 of each year during the term of this Agreement, beginning December 31, 2025, the Developer shall provide an affidavit in substantially the form of **Exhibit F**, attached hereto and incorporated herein by reference, and documentation to evidence the Developer's continued compliance with Section 285.530 of the Revised Statutes of Missouri.

Section 2.7. Certificates of Reimbursable Costs.

(a) The Developer may submit to the City, no more frequently than once per month, a Certificate of Reimbursable Costs. Each Certificate of Reimbursable Costs shall be accompanied by itemized invoices, receipts or other records that will demonstrate that all costs have been incurred and qualify for reimbursement pursuant to this Agreement.

(b) The City shall notify the Developer in writing within 60 days after each submission of its approval or disapproval of the costs identified in each Certificate of Reimbursable Costs. If the City determines that any cost does not qualify as a Sports Facility Cost or Public Improvement Cost, the City shall so notify the Developer in writing within 60 days after the submission, identifying the ineligible cost and the basis for determining the cost to be ineligible.

(c) The Developer shall provide such information, books and records (including copies of cancelled checks) as the City may reasonably request for the City to confirm that any cost is eligible for reimbursement hereunder.

Section 2.8. Certificates of Substantial Completion.

(a) The Developer shall furnish to the City a Certificate of Substantial Completion promptly after substantial completion of the Sports Facility, the Required Public Improvements and the Commercial Space, as applicable. The City shall, following the delivery of each Certificate of Substantial Completion, carry out such inspections as the City deems necessary in accordance with customary inspection practices of the City to verify to the City's satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. If the City conducts any inspections of the Project during the course of construction, the City shall notify the Developer if the City observes any improperly performed work that would prevent the City from approving the applicable Certificate of Substantial Completion; provided that failure of the City to so notify the Developer shall not relieve the Developer of the Developer's obligation to construct and complete each component of the Project in accordance with applicable state and local laws and this Agreement.

(b) A Certificate of Substantial Completion shall be deemed accepted by the City unless, within 60 days following delivery of the Certificate of Substantial Completion, the City furnishes the Developer with a written statement stating in reasonable detail in what respects the Developer has failed to complete the applicable component of the Project in reasonable accordance with this Agreement, or in what respects the Developer is otherwise in default hereunder, and what measures or acts the Developer must take or perform, in the reasonable opinion of the City, to obtain such acceptance. The Developer shall have a reasonable period of time to complete or correct such items or to take such action described in the City's written statement, and the Developer shall thereafter resubmit to the City a new Certificate of Substantial Completion as described above. Upon acceptance of each Certificate of Substantial Completion by the City, the Developer may record such Certificate of Substantial Completion in the office of the St. Charles County Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to satisfactorily complete the applicable component of the Project under this Agreement.

Section 2.9. Inspection. The City may conduct such periodic inspections of the Project as may be generally provided in the City's code. In addition, the Developer agrees that the City and its duly authorized agents may at reasonable times (during business hours but without disruption to the business), subject to at least 24 hours' advance notice and in observance of the Developer's usual business, proprietary, safety, confidentiality and security requirements, enter upon the Project Site to examine and inspect the Project and the records of the Developer that demonstrate compliance with this Agreement.

Section 2.10. Winged Foot Parcel. The City will work cooperatively with the Developer toward the transfer to the Developer of title to all or a portion of the "Winged Foot" parcel, as generally depicted on **Exhibit I** hereto. The City acknowledges that, if such transfer occurs, the Developer intends to construct on that parcel, at the Developer's expense, an entrance to the hotel to be constructed at the northwest corner of Veteran's Memorial Parkway and Winged Foot Drive. The City will work cooperatively with the Developer and MIMG XCVIII (or the then-current owner of the Westchester Village Apartment complex) toward an agreement regarding the future use and maintenance of any improvements located on that parcel.

ARTICLE III

REIMBURSEMENT OF SPORTS FACILITY COSTS AND PUBLIC IMPROVEMENT COSTS

Section 3.1. Community Improvement District.

(a) Unless the City otherwise consents in writing, the Developer shall petition the City for the creation of a CID encompassing, at a minimum, the Project Site and the property described in clause (a) of the definition of Future Hotel Parcels. The Developer shall cause the CID, promptly following constitution of a board of directors, to (1) authorize and enter into the Cooperation Agreement and (2) take such steps as are necessary to impose the CID Sales Tax for a maximum of 27 years.

(b) The parties acknowledge that the CID will be governed by a board of directors comprised of five individuals appointed by the Mayor with the consent of the City Council, four of whom shall be representatives of the owners of real property or businesses operating within the CID and one of whom shall meet the requirements set forth in Section 67.1451.2(3) of the Revised Statutes of Missouri.

(c) The Cooperation Agreement shall allow the City and its employees, agents, and representatives to inspect, within 10 business days after request therefor, all contracts, public documents and public records pertaining to the CID, including but not limited to the CID Sales Tax and the CID's financial statements. In addition, the CID will agree under the Cooperation Agreement to file Form 4379 with the Missouri Department of Revenue to designate the City's Finance Director as an authorized person to access all information regarding the CID Sales Tax under Sections 32.057 and 144.121 of the Revised Statutes of Missouri.

(d) The Cooperation Agreement shall provide that CID Sales Tax Revenues shall be applied as follows:

(1) first, to the payment of "Annual Operating Costs," which means up to \$15,000 beginning with the first fiscal year in which CID Sales Tax Revenues are generated, increased by 3% for each fiscal year thereafter; and

(2) second, to reimburse the Developer for Public Improvement Costs that have been approved by the City through Certificates of Reimbursable Costs.

(e) The Cooperation Agreement will require the CID to promptly advise the City of all disbursements.

(f) The City acknowledges that the CID is integral to the financing of the Sports Facility and the Public Improvements, and in that regard, the City will cooperate with and assist the Developer in all proceedings relating to the creation and certification of the CID.

Section 3.2. Transportation Development District.

(a) Unless the City otherwise consents in writing, the Developer shall petition the Circuit Court of St. Charles County, Missouri, for the creation of a TDD encompassing, at a minimum, the Project Site and the property described in clause (a) of the definition of Future Hotel Parcels. The Developer shall cause the TDD, promptly following constitution of a board of directors, to (1) authorize and enter into the Cooperation Agreement and (2) take such steps as are necessary to impose the TDD Sales Tax for a maximum of 27 years.

(b) The parties acknowledge that the City may appoint one or more advisors to the board of directors, who shall have no vote but shall have the authority to participate in all board meetings and discussions, whether open or closed, and shall have access to all records of the TDD and its board of directors.

(c) The Cooperation Agreement shall allow the City and its employees, agents, and representatives to inspect, within 10 business days after request therefor, all contracts, public documents and public records pertaining to the TDD, including but not limited to the TDD Sales Tax and the TDD's financial statements. In addition, the TDD will agree under the Cooperation Agreement to file Form 4379 with the Missouri Department of Revenue to designate the City's Finance Director as an authorized person to access all information regarding the TDD Sales Tax under Sections 32.057 and 144.121 of the Revised Statutes of Missouri.

(d) The Cooperation Agreement shall provide that the TDD Sales Tax Revenues shall be applied as follows:

(1) first, to the payment of "Annual Operating Costs," which means up to \$15,000 beginning with the first fiscal year in which TDD Sales Tax Revenues are generated, increased by 3% for each fiscal year thereafter; and

(2) second, to reimburse the Developer for Public Improvement Costs that have been approved by the City through Certificates of Reimbursable Costs.

(e) The Cooperation Agreement will require the TDD to promptly advise the City of all disbursements.

(f) The City acknowledges that the TDD is integral to the financing of the Sports Facility and the Public Improvements, and in that regard, the City will cooperate with and assist the Developer in all proceedings relating to the creation and certification of the TDD.

Section 3.3. Application of Dedicated Revenues.

(a) Subject to the provisions of **Section 3.4**, the City agrees:

(1) beginning on the first day of the calendar quarter following the Commencement Date and continuing on the first day of each calendar quarter thereafter until the later of the City's acceptance of the Certificate of Substantial Completion for the Sports Facility and the City's acceptance of the Certificate of Substantial Completion for the Required Public Improvements, to record in a liability account of the City an amount equal to 100% of the Dedicated Revenues that the City received during the preceding Calculation Period. The City shall provide the Developer with a statement showing each liability recorded under this clause (1);

(2) within 15 days after the later of the City's acceptance of the Certificate of Substantial Completion for the Sports Facility and the City's acceptance of the Certificate of Substantial Completion for the Required Public Improvements, to pay to the Developer all amounts recorded by the City pursuant to clause (1) above; and

(3) on the first day of each month thereafter, to pay to the Developer an amount equal to 100% of the Dedicated Revenues that the City received during the preceding Calculation Period, but not to exceed the Sports Facility Costs that have been approved by the City through Certificates of Reimbursable Costs.

(b) The City's obligation to pay Dedicated Revenues under clause (a)(3) above shall terminate on the earlier of (1) the date on which the Total Reimbursement Amount has been paid to the Developer (whether through CID Sales Tax Revenues, TDD Sales Tax Revenues or Dedicated Revenues) or (2) 20 years after the Developer receives an occupancy permit for the Sports Facility.

(c) Notwithstanding any provision hereof to the contrary, Dedicated Revenues payable from the General Sales Tax shall equal 80% of the revenues actually received by the City from the City's imposition on and after the date of this Agreement of the General Sales Tax at the Project Site (including the Sports Facility and the Commercial Space) and the Future Hotel Parcels, but not to exceed \$200,000 during the term of this Agreement.

(d) In each calendar year following the Commencement Date, and continuing under until the later of the City's acceptance of the Certificate of Substantial Completion for the Sports Facility and the City's acceptance of the Certificate of Substantial Completion for the Required Public Improvements, the Developer shall pay an annual administrative fee of \$500 to the City. After the City's acceptance of both the Certificate of Substantial Completion for the Sports Facility and the Certificate of Substantial Completion for the Required Public Improvements, the City shall deduct an administrative fee of \$500 from any Dedicated Revenues paid by the City to the Developer pursuant to subsection (a) of this Section.

(e) The City's obligation to apply Dedicated Revenues as provided above shall be limited to the amount of Dedicated Revenues actually received by the City less any administrative or collection fees retained by any other government or collecting agency responsible for collecting the same. In the event of a reversal of any Dedicated Revenues already applied as provided above, the City can adjust and withhold from future Dedicated Revenues an amount sufficient to be made whole. If the Developer or any other party asserts there has been an error in calculating the Dedicated Revenues or applying the Dedicated Revenues under subsection (a) of this Section, the Developer or other party must notify the City of such assertion within 60 days of the recording of the City's liability under (a)(1) of this Section or the City's payment to the Developer under subsections (a)(2) or (a)(3) of this Section, above, whichever is applicable to the Dedicated Revenues in question. In no case will the City be liable to the Developer or any other party for

the payment of any disputed Dedicated Revenues allegedly received by the City more than 90 days before the date of the notice required by this subsection.

(f) The Developer understands that the City makes no representations regarding the amount of Dedicated Revenues that will be generated. Thus, the City will assume no risk or responsibility regarding any revenue projections by the Developer or others or the financial viability of the Project.

(g) The City agrees to apply to the St. Charles County Road Board (the “Road Board”) for at least one-half of the estimated cost of roadway improvements required under this Agreement. The Developer agrees to pay the cost of such roadway improvements, less any amount awarded by the Road Board. The parties agree to use reasonable efforts, and to cooperate in good faith, to pursue such application to the Road Board.

Section 3.4. Annual Appropriation.

(a) The City is obligated only to make the payments set forth in **Section 3.3** as may lawfully be made from funds budgeted and appropriated for that purpose during the City’s then-current fiscal year. The City Council hereby directs the Finance Director or any other officer of the City at any time charged with the responsibility of drafting budget proposals to include the appropriations contemplated by this Agreement in the annual budgets presented to the City Council for its consideration.

(b) The obligation of the City to make the payments hereunder constitutes a current expense of the City, is from year-to-year only, and does not constitute a mandatory payment obligation of the City in any fiscal year beyond the then-current fiscal year of the City. The City’s obligations hereunder shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional, statutory or charter 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.

(c) Notwithstanding any provision hereof to the contrary, the decision whether or not to budget or appropriate funds for any subsequent fiscal year is solely within the legislative discretion of the then-current City Council.

Section 3.5. Shared Parking . The City will work cooperatively with the Developer toward the execution of an agreement for the use by the Developer of the City of O’Fallon Justice Center parking lot. The Developer acknowledges that the agreement, if entered into, will limit the Developer’s use of the parking lot to times that do not interfere with the City’s use of the Justice Center for its intended purposes.

ARTICLE IV

TAX ABATEMENT

Section 4.1. Partial Real Property Tax Abatement.

(a) In accordance with the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri and the City Charter, the City intends to issue industrial development revenue bonds (the “Chapter 100 Bonds”) in one or more series to provide partial real property tax abatement on (1) the Sports Facility and (2) any hotels constructed on the Future Hotel Parcels within one year after the City’s acceptance of the Certificate of Substantial Completion for the Sports Facility.

(b) The City and the Developer will negotiate the terms and conditions of the Chapter 100 Bond documents in conformance with this Agreement and applicable law. The Developer understands that the issuance of the Chapter 100 Bonds is subject to approval by the City Council by ordinance in its sole discretion. Subject to the foregoing, the City intends to incorporate the following terms into the Chapter 100 Bond documents:

(1) Fee title to the Project Site and one or more of the Future Hotel Parcels (County Parcel ID of 4-0053.1780.00-0014.4 and County Parcel ID of 3-157E-C923-00-000B.0000000), will be deeded to the City. The City expects such land and improvements thereon will be exempt from ad valorem real property taxes so long as the City owns title thereto.

(2) The Sports Facility will receive 100% real property tax abatement (other than for emergency service districts) for 20 years. Each hotel located on the Future Hotel Parcels will receive 50% real property tax abatement (other than for emergency service districts) for 20 years.

(3) The property tax exemptions described in this Agreement shall not apply to special assessments or ad valorem personal property taxes and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project or any portion thereof.

Section 4.2. Sales and Use Tax Exemption. Simultaneous with the issuance of the Chapter 100 Bonds, the City will provide one or more project exemption certificates to the Developer to facilitate a sales and use tax exemption on qualified building materials used to construct the Sports Facility and each hotel located on the Future Hotel Parcels.

ARTICLE V

COVENANTS, REPRESENTATIONS AND AGREEMENTS OF THE DEVELOPER AND THE CITY

Section 5.1. Representations.

(a) The Developer represents that as of the date of this Agreement:

(1) The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri. The Developer will, during the term of this Agreement, maintain its corporate existence and will continue to be a company authorized to do business in the State of Missouri.

(2) The Developer has the right, power and authority to enter into, execute, deliver and perform its duties and obligations under this Agreement.

(3) The execution, delivery and performance by the Developer of this Agreement have been duly authorized by all necessary action, and do not violate its articles of organization or its operating agreement, as the same may be amended and supplemented, or to the best of its knowledge, any applicable provision of law, nor do they constitute a breach of or default under or require any consent under any agreement, instrument or document to which the Developer is now a party or by which the Developer is now or may become bound.

(4) There are no actions or proceedings by or before any court, governmental commission, board, bureau or other administrative agency pending, or to the best of the Developer's knowledge, threatened or affecting the Developer that would impair its ability to enter into or perform its obligations under this Agreement.

(5) The Developer has obtained (or prior to the applicable time required will obtain) and will maintain all government permits, certificates and consents (including without limitation appropriate environmental approvals) necessary to conduct its business and to purchase, construct and operate the Project.

(b) The City represents that as of the date of this Agreement:

(1) The City is a home rule charter city duly organized and validly existing under the laws of the State of Missouri.

(2) The execution, delivery and performance by the City of this Agreement have been duly authorized by all necessary City actions.

(3) The City has the right, power and authority to enter into, execute, deliver and perform its duties and obligations under this Agreement.

(4) There are no actions or proceedings by or before any court, governmental commission, board, bureau or other administrative agency pending, or to the best of the current City Council's knowledge, threatened or affecting the City that would impair its ability to enter into or perform its obligations under this Agreement.

Section 5.2. Operation and Maintenance Covenants.

(a) Unless approved by the City in its sole and absolute discretion, any hotel developed on the Future Hotel Parcels shall be continuously maintained at a level that satisfies at least one of the following criteria during the term of this Agreement:

(1) the American Automobile Association (or a similar rating agency) rates the hotel three diamonds or higher; or

(2) STR, Inc. (or a similar rating agency) rates the hotel "upper midscale" or greater on its STR U.S. Chain Scales.

The obligation under this Section shall be a covenant running with the land, enforceable as if any subsequent transferee were originally a party to and bound by this Agreement. If at any time during the term of this Agreement any such hotel does not satisfy the above criteria, the City's sole remedy is to immediately cease payment of Dedicated Revenues attributable to the Future Hotel Parcels.

(b) Throughout the term of this Agreement, the Developer will at its own expense (1) keep and maintain the Project Improvements and all parts thereof in good repair and operating condition, making from to time all necessary repairs thereto and renewals and replacements thereof, (2) keep the Project Improvements and all parts thereof in safe condition and free from filth, nuisance or conditions unreasonably increasing the danger of fire, and (3) continuously operate the Project Improvements for their intended purposes. In the event of fire or other casualty, the Developer will not be considered in default of the foregoing sentence if the Developer proceeds with due diligence to restore the damaged facilities to the same or an improved condition as they were prior to the fire or other casualty.

Section 5.3. Release and Indemnification.

(a) *Releases.* Notwithstanding anything herein to the contrary, the City and its elected officials, officers, agents, servants, employees and independent contractors shall not be liable to the Developer for any damages or losses (including injuries and deaths) (1) resulting from any ordinance adopted in connection with this Agreement or the Project being declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof, (2) occurring at or about or resulting from the construction of the Project or (3) resulting from any lawful decision made or position taken by the City relating in any manner whatsoever to this Agreement or the Project. The Developer hereby acknowledges and agrees that (i) all covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its elected officials, officers, agents, servants or employees in their individual capacities and (ii) no official, employee or representative of the City shall be personally liable to the Developer.

(b) *Indemnifications.* The Developer covenants and agrees to indemnify, defend and hold harmless the City and its elected officials, officers, agents, servants, employees and independent contractors against any and all claims, demands, actions, causes of action, losses, damages, injuries, liabilities and/or expenses (including reasonable attorneys' fees and court costs) resulting from, arising out of, or in any way connected with:

(1) the Developer's failure to comply with any provision of this Agreement or the activities or transactions contemplated herein;

(2) the negligence or intentional misconduct of the Developer or an affiliate thereof, or its respective employees and agents;

(3) the presence of hazardous wastes, hazardous materials or other environmental contaminants on the Project Site, the Existing Hotel Parcels or the Future Hotel Parcels;

(4) any loss of or damage to property or any injury to or death of any person occurring at or about the Project Site, the Existing Hotel Parcels or the Future Hotel Parcels in connection with any activities, acts or omissions of the Developer or any of its contractors, agents or employees; or

(5) otherwise arising out of the adoption or administration of this Agreement or the construction or operation of the portions of the Project being undertaken by the Developer.

If the validity or construction of any state laws or local ordinances or resolutions in connection with this Agreement or affecting the Project are contested in court, the Developer shall defend, hold harmless and indemnify the City from and against all claims, demands and/or liabilities of any kind whatsoever including, without limitation, any claim for reasonable attorneys' fees and court costs, and the Developer shall pay any monetary judgment and all court costs rendered against the City, if any.

(c) The releases and indemnifications contained in this Section shall survive termination or expiration of this Agreement, but nothing in this Agreement shall be construed to require the Developer to indemnify the City or its elected officials, officers, employees, agents and independent contractors for any claims related to actions or events that occur after the termination of this Agreement. Upon written notice

from the City of any such claim or demand, the Developer shall defend the City in any such action or proceeding; provided, the City shall cooperate with the Developer and provide reasonable assistance in such defense. All costs related to the defense of the City shall be paid by the Developer.

Section 5.4. Costs to be paid by Developer. In addition to the administrative fees specified in **Section 3.3(b)** of this Agreement, the Developer shall pay all costs and fees reasonably incurred by the City, including but not limited to the legal fees of the City Attorney and special counsel to the City, in connection with the preparation and administration of this Agreement, carrying out the duties of the City under this Agreement, and effectuating (a) an assignment or transfer of this Agreement or (b) any action requested by the Developer which requires legislative proceedings by the City Council.

Section 5.5. Additional Public Benefits.

(a) All teams from the City's Parks and Recreation Department basketball and volleyball programs will be entitled to a tournament discount of 10% at the Sports Facility.

(b) The City's Parks and Recreation Department will be entitled to use of the Sports Facility at no cost to host programming or events for up to 260 hours per year (5 hours per week) during "off-peak" hours (Monday, 6 a.m. through Friday, 12:00 p.m.) at mutually agreed-upon times. During this programming, the Developer reserves the right to operate concession stands and/or utilize areas not in use by the City.

(c) The City may post advertising (i.e. banners, signage, etc.) in locations consistent with other advertising opportunities available throughout the Sports Facility at no cost. City advertising locations shall be utilized on an "as available" basis and shall not preclude the Developer from posting paid advertising at the Sports Facility.

(d) The Developer shall take reasonable steps to promote businesses within the City to all users of the Sports Facility.

(e) The Developer will take reasonable steps to coordinate with local public and private schools to determine how the Sports Facility can help fill their needs.

(f) The Developer will require all tournaments using the Sports Facility to promote stays only at hotels located within the City, to the extent of space available. The City will require all City-sponsored tournaments using the Sports Facility to promote stays only at hotels located within the City, to the extent of space available.

(g) The provisions of this Section shall run with the land and shall continue so long as the Sports Facility is located on the Project Site, notwithstanding any termination or expiration of this Agreement.

Section 5.6. Public Liability Strictly Limited. The Developer agrees that remedies for any claim arising out of this Agreement or any document relating hereto shall be limited to equitable relief including the availability of specific performance. In no event shall the City or any official, officer, agent, attorney, employee or representative thereof have any liability in damages or any other monetary liability to the Developer or any lessee, successor, assign, heir or personal representative of the Developer or any affiliate thereof in respect of any suit, claim or cause of action arising out of this Agreement or any document relating hereto. No official, officer, agent, attorney, employee or representative of the City shall be personally liable to the Developer or any lessee, successor, assign, heir or personal representative of the Developer or any affiliate thereof in the event of any default or breach by the City under this Agreement,

or for any amount that may become due to any party or on any obligations under the terms of this Agreement other than for intentionally wrongful conduct of the City.

Section 5.7. No Waiver of Sovereign Immunity. Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's sovereign immunity.

Section 5.8. Insurance.

(a) The Developer shall cause there to be in effect commercial liability insurance with coverages of not less than the current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri (which for calendar year 2026 is equal to \$3,547,658 for all claims arising out of a single accident or occurrence and \$532,148 for any one person in a single accident or occurrence). 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.

(b) The Developer shall provide evidence (in form and substance reasonably acceptable to the City Attorney) that the insurance policy referenced above or another applicable policy includes contractual liability insurance covering the Developer's obligations to indemnify the City, as provided in this Agreement.

(c) Simultaneously with the delivery of this Agreement and annually thereafter during the term of this Agreement, the Developer shall provide to the City Administrator evidence of continued insurance demonstrating compliance with this Section. The Developer agrees to provide immediate written notice to the City when the cancellation, termination, expiration or modification of the applicable contractual liability policy occurs.

(d) The insurance required pursuant to this Section shall be in form and content reasonably satisfactory to the City Attorney and shall be placed with financially sound and reputable insurers licensed to transact business in the State of Missouri with a financial strength rating of not less than A- and a financial size category of not less than VIII as designated in the most current available "A.M. Best" insurance reports. The policies shall name the City as an additional insured, shall be primary and non-contributory with respect to any insurance maintained by the City, and shall contain an agreement of the insurer to give not less than 10 days advance written notice to the City in the event of cancellation of such policy or change affecting the coverage thereunder.

ARTICLE VI

ASSIGNMENT AND OTHER TRANSFERS

Section 6.1. Assignment and Other Transfers.

(a) Except as otherwise provided in this **Article VI**, the benefits granted by the City to the Developer pursuant to this Agreement shall belong solely to the Developer, and such benefits shall not be transferred, assigned, pledged or in any other manner hypothecated.

(b) Prior to the City's acceptance of the Certificates of Substantial Completion for the Sports Facility, the Developer must obtain the City's prior written consent before any assignment, transfer, lease or other disposition of the Developer's interest in any portion of the Project Site, the Project Improvements or this Agreement, unless such disposition is to an entity controlled by or under common control with or

controlling the Developer. Notwithstanding the foregoing, the Developer may mortgage or grant a deed of trust against the Project Site or the Project Improvements without notice to or the consent of the City. In connection therewith, the Mayor and the City Administrator are authorized, at the Developer's expense, to execute an estoppel certificate in favor of any such lender.

(c) After the City's acceptance of the Certificate of Substantial Completion for the Sports Facility, the Developer shall comply with the following conditions with respect to any assignment, transfer, lease or other disposition of the Project Site, the Project Improvements or this Agreement:

- (1) the Developer shall notify the City of such disposition in writing;
- (2) such disposition shall be in writing, duly executed and acknowledged by the Developer and the party to whom an interest is being transferred;
- (3) any assignment shall include the entire then-unexpired term of this Agreement;
and
- (4) a copy of any instrument of transfer shall be delivered to the City within 10 days after the execution thereof.

(d) Any assignee of all the rights of the Developer shall agree to be bound by the terms of this Agreement. Upon such assignment of all the rights of the Developer and agreement by the assignee to be bound by the terms of this Agreement, the Developer shall be released from and have no further obligations under this Agreement.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1. Developer's Right of Termination. At any time prior to the delivery of Certificates of Substantial Completion for the Sports Facility and the Required Public Improvements, the Developer may, by giving written notice to the City, abandon or discontinue the construction of the Project and terminate this Agreement and the Developer's obligations hereunder. Upon such termination, (a) the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement, or for work performed hereunder, or for costs otherwise incurred or paid by the Developer, and (b) neither the Developer nor the City shall have any further obligation regarding the Project or this Agreement.

Section 7.2. City's Right of Termination. Subject to the Developer's right to cure as provided in **Section 7.3** below, the City may terminate this Agreement if the Developer fails to satisfactorily complete the Project in accordance with the time schedules and requirements established in this Agreement. Upon such termination, which shall be effective upon the Developer's receipt of written notice from the City, the City shall have no further obligation to reimburse the Developer for any amounts advanced under this Agreement, or for work performed hereunder, or for costs otherwise incurred or paid by the Developer or any other person or entity in connection with the construction of the Project or any portion thereof.

Section 7.3. Defaults and Remedies. In the case of any default or breach of any term or condition of this Agreement by either party, the defaulting or breaching party shall, upon written notice from the other party specifying such default or breach, cure or remedy such default or breach within 30 days after receipt of notice (or such longer period as is reasonably required to cure such default, provided

that (a) the breaching party has commenced such cure within said 30-day period, and (b) the breaching party diligently prosecutes such cure to completion). If such cure or remedy is not taken or not diligently pursued, or the default or breach is not cured or remedied as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching party or to terminate this Agreement. Notwithstanding the foregoing, if the Developer does not commence and complete the Sports Facility and the Required Public Improvements within 180 days after the date set forth in **Section 2.4** (as may be extended by Excusable Delays), Dedicated Revenues shall no longer include any portion of the Transient Guest Tax on the Existing Hotel Parcels.

Section 7.4. Interest on Late Payments. Any amounts owing by the Developer hereunder that are not paid when due shall bear interest at the interest rate of 10% per annum from the date such payment was first due.

Section 7.5. Other Rights and Remedies of Parties; Delay in Performance Waiver.

(a) Any delay by a party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the parties should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by a party with respect to any specific default by a party under this Agreement be considered or treated as a waiver of the rights of a party under this Section or with respect to the particular default, except to the extent specifically waived in writing by the other party.

(b) The rights and remedies of the parties to this Agreement (or their successors in interest) shall be cumulative. The exercise by any party of any remedy shall not preclude the exercise by it, at the same time or at another time, of any other remedy for the same default. No waiver made by any party with respect to the performance or obligation of another party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the performance or obligation of another party or condition to its own obligation beyond those expressly waived in writing.

ARTICLE VIII

TERM OF AGREEMENT

Section 8.1. Term of Agreement. Unless sooner terminated pursuant to the terms hereof, this Agreement shall become effective upon execution by the parties hereto and shall terminate on the earlier of (1) 30 years after the Commencement Date or (2) payment to the Developer (whether through CID Sales Tax Revenues, TDD Sales Tax Revenues or Dedicated Revenues) of an amount equal to the Total Reimbursement Amount.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (1) mailed by registered or

certified mail, postage prepaid, (2) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, or (3) transmitted electronically (and receipt confirmed by telephone or electronic read receipt), addressed as follows:

(a) To the City:

City of O'Fallon
100 North Main Street
O'Fallon, Missouri 63366
ATTN: City Administrator
Email: msnowden@ofallonmo.gov

with a copy to:

Curtis, Heinz, Garrett & O'Keefe, P.C.
130222 S. Bemiston AvenueCentral, Suite 2001000
Clayton, Missouri 63105
ATTN: Kevin O'Keefe
Email: kokeefe@chgolaw.com

(b) To the Developer:

O'Fallon Playfield Commons LLC
2128 William Street, Ste. 161
Cape Girardeau, Missouri 63703
ATTN: Andy Patel
Email: andy.patel@appleig.com

The City and the Developer may from time to time designate, by notice given hereunder to the other, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 9.2. Severability; Effect of Invalidity. If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, such invalid or unenforceable term will be deemed severed from this Agreement and the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 9.3. Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri. Any action arising out of, or concerning, this contract shall be brought only in the Circuit Court of St. Charles County, Missouri. All parties to this Agreement consent to the exclusive jurisdiction and venue of that court.

Section 9.4. Execution in Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 9.5. Third Party Rights. No person or entity that is not a party to this Agreement will have any right of action under this Agreement.

Section 9.6. Entire Agreement; Amendments. This Agreement, together with any other documents entered into of even date herewith in connection with the Project, constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior agreements, representations,

negotiations and understandings, both written and oral, between the City and the Developer with respect to the subject matter hereof. This Agreement shall not be modified or amended except by written agreement signed on behalf of the City and the Developer by their duly authorized representatives.

Section 9.7. Survival of Covenants. All warranties, representations, covenants and agreements of the Developer contained in this Agreement shall survive termination of this Agreement for any reason.

Section 9.8. Electronic Transaction. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 9.9. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Developer certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by or organized under the laws of the State of Israel or (c) persons or entities doing business in the State of Israel.

[Remainder of page intentionally left blank.]

|

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

CITY OF O’FALLON, MISSOURI

By: _____
Bill Hennessy, Mayor

[SEAL]

ATTEST:

By: _____
Bess Bacher, City Clerk

ACKNOWLEDGMENT

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

On this ____ day of _____, 2026, before me, the undersigned, a Notary Public in and for said State, personally appeared Bill Hennessy, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the **CITY OF O’FALLON, MISSOURI**, a home rule charter city, and that the foregoing instrument was signed and sealed on behalf of said City by authority of its City Council, and said Mayor acknowledged said instrument to be the free act and deed of said City.

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

Notary Public in and for said State

My commission expires:

O’FALLON PLAYFIELD COMMONS LLC,
a Missouri limited liability company

By: _____
AndyAnandkumar Patel, Manager

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF _____)

On this ____ day of _____, 2026, before me, the undersigned, a Notary Public in and for said State, personally appeared AndyAnandkumar Patel, to me personally known, who, being by me duly sworn, did say that he is the Manager of **O’FALLON PLAYFIELD COMMONS LLC**, a Missouri limited liability company, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its members, and said Manager acknowledged said instrument to be the free act and deed of said limited liability company.

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

Notary Public in and for said State

My commission expires:

EXHIBIT A-1

LEGAL DESCRIPTION OF THE PROJECT SITE

Real property in the City of O'Fallon, County of St. Charles, State of Missouri, described as follows:

Lot B of QUIKTRIP NO. 622 BOUNDARY ADJUSTMENT PLAT, according to the plat thereof recorded in Plat Book 49 Page 141 of the St. Charles County Records.

EXHIBIT A-2

LEGAL DESCRIPTION OF EXISTING HOTEL PARCELS

Parcel ID: 3-157E-9579-00-0003.0000000

Property Address: 1155 Technology Dr, O'Fallon, MO 63368

Real property in the City of O'Fallon, County of St. Charles, State of Missouri, described as follows:

LOT 3 OF PERSIMMON POINTE HOTEL DEVELOPMENT, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 41, PAGE(S) 79 OF THE ST. CHARLES COUNTY, MISSOURI, RECORDS.

and

Parcel ID: 3-157E-9579-00-0001.0000000

Property Address: 1175 Technology Dr, O'Fallon, MO 63368

Real property in the City of O'Fallon, County of St. Charles, State of Missouri, described as follows:

LOT 1 OF PERSIMMON POINTE HOTEL DEVELOPMENT, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 41, PAGE 79 OF THE ST. CHARLES, MISSOURI, COUNTY RECORDS.

EXHIBIT A-3

LEGAL DESCRIPTION OF FUTURE HOTEL PARCELS

Parcel ID: 4-0053.1780.00-0014.4

Property Address:

Real property in the City of O'Fallon, County of St. Charles, State of Missouri, described as follows:

A tract of land being part of U.S. Survey 1780, Township 47 North - Range 2 East, St. Charles County, Missouri and being more particularly described as:

Beginning at the intersection of the South right-of-way line of Interstate Highway 70 with the West line of property conveyed to Westchester Limited Partnership by deed recorded in Book 1018, Page 988 of the St. Charles County Records, said point being 274.60 feet perpendicular distance South of centerline Station 650+94.30 of said Interstate Highway 70; thence South 02 degrees 08 minutes 09 seconds East 300.13 feet along said West line of Westchester Limited Partnership property to the North right-of-way line of Relocated South Outer Road, being also the North line of property conveyed to the City of O'Fallon, Missouri by deed recorded in Book 1384, Page 27 of the St. Charles County Records; thence South 71 degrees 40 minutes 07 seconds West 228.80 feet along said North line of Relocated South Outer Road, being also the North line of property conveyed to City of O'Fallon, Missouri to the Northeast right-of-way line of said Relocated South Outer Road; thence North 39 degrees 34 minutes 40 seconds West 491.74 feet along said Northeast right-of-way line of Relocated South Outer Road, being also the Northeast line of said City of O'Fallon, Missouri property to the East line of property conveyed to the City of O'Fallon, Missouri by deed recorded in Book 1384, Page 33 of the St. Charles County Records, said point being 266.89 feet perpendicular distance South of centerline Station 645+75 of Interstate Highway 70; thence North 00 degrees 03 minutes 50 seconds West 56.89 feet along said East line of property conveyed to the City of O'Fallon, Missouri, being also the East line of said Interstate Highway 70, to the South right-of-way line of said Interstate Highway 70, said point being 210.00 feet perpendicular distance South of centerline Station 645+75; thence Eastwardly along said South right-of-way of Interstate Highway 70, the following courses and distances; North 89 degrees 56 minutes 10 seconds East 165.00 feet to a point being 210.00 feet perpendicular distance South of centerline Station 647+40, South 73 degrees 08 minutes 11 seconds East 240.42 feet to a point being 280.00 feet perpendicular distance South of centerline Station 649+70, and North 87 degrees 26 minutes 48 seconds East 124.42 feet to the point of beginning.

Parcel ID: 3-157E-C923-00-000B.0000000

Property Address: 1150 Technology Dr, O'Fallon, MO 63368

Real property in the City of O'Fallon, County of St. Charles, State of Missouri, described as follows:

Lot B of Subdivision of New Lot 3A of Persimmon Pointe Market Boundary Adjustment and Lot Consolidation Plat (P.B. 42, Page 60), according to the plat thereof recorded in Plat Book 51, Page 123 of the Saint Charles County, Missouri Records.

EXHIBIT B
PROJECT IMPROVEMENTS
AND
PUBLIC IMPROVEMENTS

The Project Improvements shall include, but not be limited to, the following:

- Eight (8) standard size hard surface basketball courts convertible to sixteen (16) standard size volleyball courts
- Two (2) indoor turf fields sized for 7v7 soccer
- Site development costs for the Sports Facility, including, but not limited to, earthwork, grading, and utilities extensions
- Hard construction costs for the shell and core of the Sports Facility, including, but not limited to, foundations, structural frames, roof, exterior envelope, HVAC systems, electrical systems, plumbing, and fire protection systems
- Interior build-out and finishes of the Sports Facility including but not limited to, spectator seating, scoreboards, timing systems, sound systems, sports facility concessions space, divider panels, interior walls, flooring, painting, interior finishes, changing rooms, and restrooms
- Professional and soft costs incurred in the construction of the Sports Facility, including, but not limited to, architectural and engineering design, civil engineering, structural engineering, MEP engineering, legal services, accounting services, development advisory services, and construction management fees

The Public Improvements shall ~~consist~~include all traffic, sidewalks, signalization, utilities and lighting required by the City as a condition for receipt of an occupancy permit for the Sports Facility, and may additionally include the following:

- Construction, reconstruction, installation, repair and ongoing maintenance of all improvements permitted by the CID Act, including, but not necessarily limited to, landscaping, parking surfaces, signage, traffic or related improvements, roadways, rights-of-way, egress and ingress to access roads, signalization, sidewalks, utilities and lighting
- Any and all improvements dedicated for use and enjoyment by the public
- Acquisition of a leasehold interest in the parking lots owned by the Developer within the CID

EXHIBIT C

CONCEPT PROPERTY PLAN

EXHIBIT D

FORM OF CERTIFICATE OF REIMBURSABLE COSTS

Certificate of Reimbursable Costs

TO:

City of O’Fallon
100 North Main Street
O’Fallon, Missouri 63376
Attn: City Administrator

Terms not otherwise defined herein shall have the meanings ascribed to such terms in the First Amended and Restated Development Agreement dated as of January 22, October, 2026 (the “Agreement”), between the City of O’Fallon, Missouri (the “City”), and O’Fallon Playfield Commons LLC (the “Developer”). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** hereto was incurred by the Developer for Public Improvement Costs or Sports Facility Costs (**Schedule 1** shows the category for each listed item).
2. The foregoing costs have been paid by the Developer or its affiliates, as substantiated by attached records and receipts, and are reimbursable under the Agreement.
3. Each item listed on **Schedule 1** has not been included in any other certificate previously filed with the City.
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 work for which reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.

Dated this ____ day of _____, 20__.

O’FALLON PLAYFIELD COMMONS LLC

By: _____
Name: _____
Title: _____

Approved this _____ day of _____, 20__.

CITY OF O'FALLON, MISSOURI

By: _____

Name: _____

Title: _____

EXHIBIT E

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

Certificate of Substantial Completion

The undersigned, O'Fallon Playfield Commons LLC (the "Developer"), pursuant to that certain First Amended and Restated Development Agreement dated as of January 22, October, 2026, between the City of O'Fallon, Missouri (the "City"), and the Developer (the "Agreement"), hereby certifies to the City as follows:

1. That as of _____, 202__, the [*Sports Facility*][*Required Public Improvements*][*Commercial Space*] [*has*][*have*] been substantially completed in accordance with the Agreement.

2. The [*Sports Facility*][*Required Public Improvements*][*Commercial Space*] [*has*][*have*] been constructed in a workmanlike manner and in accordance with the Construction Plans.

3. Lien waivers for the [*Sports Facility*][*Required Public Improvements*][*Commercial Space*] have been obtained.

4. This Certificate of Substantial Completion is accompanied by one or more architect's or engineer's certificate(s) 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, which, when taken together, certify that the [*Sports Facility*][*Required Public Improvements*][*Commercial Space*] [*has*][*have*] been substantially completed in accordance with the Agreement.

5. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer's satisfaction of all obligations and covenants with respect to the [*Sports Facility*][*Required Public Improvements*][*Commercial Space*].

6. The recordation of this Certificate with the St. Charles County Recorder shall evidence the satisfaction of the Developer's agreements and covenants to complete the [*Sports Facility*][*Required Public Improvements*][*Commercial Space*].

This Certificate shall be recorded in the office of the St. Charles 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.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

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

O'FALLON PLAYFIELD COMMONS LLC,
a Missouri limited liability company

By: _____
_____, Manager

ACCEPTED:

CITY OF O'FALLON, MISSOURI

By: _____
[Name], [Title]

(Insert Notary Form(s) and Legal Description)

EXHIBIT F

FORM OF FEDERAL WORK AUTHORIZATION PROGRAM AFFIDAVIT

STATE OF MISSOURI)
) SS
COUNTY OF _____)

I, the undersigned, am over the age of 18 years and have personal knowledge of the matters stated herein.

I am the Manager of O’Fallon Playfield Commons LLC, a Missouri limited liability company (the “*Company*”), and am authorized to attest to the matters set forth herein.

I hereby affirm the Company’s enrollment and participation in a “federal work authorization program” as defined in Section 285.525 of the Revised Statutes of Missouri.

The Company does not knowingly employ any person who is an “unauthorized alien” as defined in Section 285.525 of the Revised Statutes of Missouri.

Further Affiant Sayeth Not.

O’FALLON PLAYFIELD COMMONS LLC,
a Missouri limited liability company

By: _____
_____, Manager

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires on: _____

EXHIBIT G

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (this “Agreement”) is made and entered into as of January 22, 2026, by and among the **CITY OF O’FALLON, MISSOURI**, a home rule charter city and political subdivision of the State of Missouri (the “City”), the **O’FALLON PLAYFIELD COMMONS COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri (the “CID”), the **O’FALLON PLAYFIELD COMMONS TRANSPORTATION DEVELOPMENT DISTRICT**, a transportation development district and political subdivision of the State of Missouri (the “TDD”) and **O’FALLON PLAYFIELD COMMONS LLC**, a Missouri limited liability company (the “Developer” and, collectively with the City and the CID, the “Parties”).

RECITALS:

A. The Developer owns approximately 20.59 acres of property located at the southeast corner of the intersection of Thornbury Crossing Drive and Veterans Memorial Parkway in the City, on which the Developer proposes to construct an approximately 168,000 square foot indoor sports facility (the “Sports Facility”) and approximately 25,000 square feet of restaurant/commercial space (the “Commercial Space” and, collectively with the Sports Facility, the “Project Improvements”).

B. In connection therewith, (1) the City and the Developer entered into a Development Agreement dated January 22, 2026 (as amended, the “Development Agreement”) and (2) the Developer submitted a petition to the City for the creation of the CID.

C. On January 15, 2026, the City Council adopted Ordinance No. 7269 approving the creation of the CID and authorizing the execution of this Agreement.

D. On _____, 2026, the Board of Directors of the CID adopted a resolution authorizing the CID to execute this Agreement.

E. The Board of Directors of the CID agrees to terminate the District after a term of twenty-seven (27) years or a maximum benefit of \$25 million is reached, whichever occurs first.

F. O’Fallon Playfield Commons LLC agrees to terminate the TDD after a term of twenty-seven (27) years or a maximum benefit of \$12 million is reached, whichever occurs first.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

Section 1. Definitions. As used in this Agreement and unless otherwise defined herein, the following words and terms shall have the following meanings:

“*Annual Operating Costs*” shall have the meaning set forth in **Section 8(b)**.

“*CID*” means the O’Fallon Playfield Commons Community Improvement District and its successors and assigns.

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

“*CID Petition*” means the petition submitted to and verified by the City with respect to the formation of the CID and the development of the CID Project.

“*CID Sales Tax*” means a sales and use tax imposed by the CID at a rate of not to exceed one percent (1.00%).

“*City*” means the City of O’Fallon, Missouri.

“*District*” means the CID or the TDD, as applicable.

“*Related Entity*” means any party or entity related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended, or any party or entity controlled by or under common control with the Developer.

“*State*” means the State of Missouri.

“*TDD*” means the O’Fallon Playfield Commons Transportation Development District and its successors and assigns.

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

Capitalized words and terms that are not defined herein shall have the meanings assigned to such terms in the Development Agreement.

Section 2. Authority of the City. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

Section 3. Authority of the CID. The CID has the full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary CID proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the CID, enforceable in accordance with its terms.

Section 4. Authority of the TDD. The TDD has the full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary TDD proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the TDD, enforceable in accordance with its terms.

Section 5. Authority of the Developer. The Developer has the full right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and the Agreement has been duly and validly authorized and approved by all necessary Developer proceedings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

Section 6. District Administration. The CID and the TDD shall each employ or engage an administrator or legal counsel with experience managing special taxing districts to ensure that each District complies with this Agreement and all applicable laws and regulations. If either District (1) fails to comply with any reporting requirement contained in the CID Act or the TDD Act, as applicable, or other applicable law for two consecutive years, including, without limitation, timely submittal of annual reports, financial statements and budgets, (2) admits to or is found by a court to have committed two or more violations of Chapter 610 of the Revised Statutes of Missouri, or (3) is unresponsive to any inquiry or audit initiated by the Missouri State Auditor's office, then the City may designate an administrator or legal counsel for the CID or TDD as applicable, to engage, at the applicable District's cost, to ensure that the applicable District complies with this Agreement and all applicable laws and regulations.

Section 7. CID Governance.

(a) The Parties acknowledge that the CID will be governed by a board of directors made up of five individuals appointed by the Mayor with the consent of the City Council, three of whom shall be representatives of the owners of real property operating within the CID and two of whom shall be residents of the City who are qualified and registered to vote and who have no financial interest in any real property or business operating within the CID. Successor directors of the CID shall be appointed as set forth in the CID Petition.

(b) Except as expressly provided in **Section 9** of this Agreement, unless otherwise approved by the City in its sole and absolute discretion, the CID shall have no authorization to pay any costs, impose any tax, license, fee or assessment (other than the CID Sales Tax) or incur any obligations.

(c) The Developer and the CID shall allow the City and its employees, agents, and representatives to inspect, within ten business days after request therefore, all contracts, public documents and public records pertaining to the CID, including but not limited to the CID Sales Tax and the CID's financial statements. In addition, the CID agrees that, promptly upon request of the City, the CID will file Form 4379 with the Missouri Department of Revenue to designate the City's Finance Director as an authorized person to access all information regarding the CID Sales Tax under Sections 32.057 and 144.121 of the Revised Statutes of Missouri. The City shall be responsible for the safeguarding and dissemination of any and all information received by the City from the CID of the Missouri Department of Revenue.

Section 8. TDD Governance.

(a) Except as expressly provided in **Section 9** of this Agreement, unless otherwise approved by the City in its sole and absolute discretion, the TDD shall have no authorization to pay any costs, impose any tax, license, fee or assessment (other than the TDD Sales Tax) or incur any obligations.

(b) The Developer and the TDD shall allow the City and its employees, agents, and representatives to inspect, within ten business days after request therefore, all contracts, public documents and public records pertaining to the TDD, including but not limited to the TDD Sales Tax and the TDD's financial statements. In addition, the TDD agrees that, promptly upon request of the City, the TDD will file Form 4379 with the Missouri Department of Revenue to designate the City's Finance Director as an authorized person to access all information regarding the TDD Sales Tax under Sections 32.057 and 144.121 of the Revised Statutes of Missouri. The City shall be responsible for the safeguarding and dissemination of any and all information received by the City from the TDD of the Missouri Department of Revenue.

Section 9. Construction of the Project Improvements.

(a) The Developer shall construct the Project Improvements in accordance with the Development Agreement and shall cause to be advanced all funds therefor. The CID and the TDD shall have no authority to pay for any other projects other than as listed on **Exhibit A**.

(b) All construction contracts for the Project Improvements entered into by or on behalf of the Developer (including any Related Entity), the CID or the TDD shall state that the contractor has no recourse against the City in connection with the contractor's construction of the Project Improvements.

Section 10. Financing of Public Improvements.

(a) The CID Sales Tax Revenues and the TDD Sales Tax Revenues shall be applied as follows:

(1) first, to the payment of "Annual Operating Costs," which means up to \$15,000 beginning with the first fiscal year in which CID Sales Tax Revenues or the TDD Sales Tax Revenues, as applicable, are generated, increased by 3% for each fiscal year thereafter; and

(2) second, to reimburse the Developer for Public Improvement Costs that have been approved by the City through Certificates of Reimbursable Costs.

(b) The CID and the TDD shall each provide a monthly accounting of all disbursements to the City's Finance Director.

Section 11. Insurance.

(a) The CID and the TDD shall each maintain reasonable levels of insurance throughout their existence. Without limiting the generality of the foregoing, each District shall, simultaneously with the execution of this Agreement and annually thereafter through the term of this Agreement, provide evidence of a directors and officers liability or similar policy (in form and substance reasonably acceptable to the City Attorney or special counsel to the City) that includes coverage for 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 proceedings of the CID or TDD board of directors, as applicable, pursuant to the CID Act, the TDD Act and Chapter 610 of the Revised Statutes of Missouri.

(b) The policies of insurance required pursuant to clause (a) above shall be placed with MOPERM or financially sound and reputable insurers licensed to transact business in the State of Missouri with a financial strength rating of not less than A- and a financial size category of not less than VIII as designated in the most currently available "A.M. Best's" insurance reports. Each District shall deliver or cause to be delivered to the City evidence of all insurance policies maintained hereunder.

Section 12. Release and Indemnification.

(a) The indemnification and covenants contained in this Section shall survive expiration or earlier termination of this Agreement.

(b) The Developer hereby agrees that, anything to the contrary herein notwithstanding, it will defend, hold harmless and indemnify the City, each District and its respective governing bodies and governing body members, officials, employees, attorneys and agents against any and all claims, demands,

actions, causes of action, losses, damages, injuries, liabilities and/or expenses (including reasonable attorneys' fees and court costs) resulting from, arising out of, or in any way connected with:

(1) the Developer's failure to comply with any provision of this Agreement or the activities or transactions to be undertaken by Developer as set forth herein;

(2) the negligence or intentional misconduct of the Developer or an affiliate thereof, or their respective employees and agents with respect to Developer's actions or activities taken in conjunction with this Agreement;

(3) the presence of hazardous wastes, hazardous materials or other environmental contaminants within the property on which the Project Improvements will be constructed, other than for the presence of hazardous wastes, hazardous materials or other environmental contaminants within the property caused by the City, each District or their respective governing body members, officials, employees, attorneys or agents;

(4) any loss of or damage to property or any injury to or death of any person occurring in, at or about the Project Improvements in connection with any activities, acts or omissions of the Developer, a related party to the Developer, or any of their respective contractors, agents or employees;

(5) arising out of the construction or operation of the Project Improvements, other than for actions, losses, damages, injuries, liabilities and/or expenses caused by the City, a District or their respective governing body members, officials, employees, attorneys or agents; or

(6) otherwise arising out of the adoption or administration of this Agreement.

Section 13. Hold Harmless. Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer or either District for damages or otherwise if all or any part of a District or any ordinance or resolution of the City adopted in connection therewith is declared invalid or unconstitutional in whole or in part by any court of competent jurisdiction.

Section 14. Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

Section 15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

Section 16. Anti-Israel Discrimination. Pursuant to Section 34.600, RSMo., the Developer certifies it is not currently engaged in and shall not, for the duration of this Agreement, 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 17. Further Acts. The Parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Agreement, subject to any necessary legislative approvals.

Section 18. Modification. This Agreement shall not be amended, modified or canceled without the written consent of all parties to this Agreement.

Section 19. Governing Law. This Agreement shall be construed and governed in accordance with the law of the State of Missouri.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City, the CID, the TDD and the Developer have caused this Agreement to be executed in their respective names and the City has caused their respective seals to be affixed thereto, and attested as to the date first above written.

CITY OF O'FALLON, MISSOURI

By: _____
Bill Hennessy, Mayor

(SEAL)

Attest:

Bess Bacher, City Clerk

**O’FALLON PLAYFIELD COMMONS
COMMUNITY IMPROVEMENT
DISTRICT**

By: _____
_____, Chairperson

**O’FALLON PLAYFIELD COMMONS
TRANSPORTATION DEVELOPMENT
DISTRICT**

By: _____
_____, Chairperson

O’FALLON PLAYFIELD COMMONS LLC

By: _____
Name: _____
Title: _____

EXHIBIT A

DESCRIPTION OF PUBLIC IMPROVEMENTS

The Public Improvements consist of the following, to the extent approved by the City in connection with the submission of a Certificate of Reimbursable Costs:

- (a) Construction, reconstruction, installation, repair and ongoing maintenance of all improvements permitted by the Act including, but not necessarily limited to, landscaping, parking surfaces, signage, traffic or related improvements, roadways, rights-of-way, egress and ingress to access roads, signalization, sidewalks, utilities and lighting;
- (b) Any and all improvements dedicated for use and enjoyment by the public; and
- (c) Acquisition of a leasehold interest in the existing parking lot within the CID. The lease payments will be used by the developer to reimburse the developer for the costs of rehabilitation of the improvements within the CID and construction of a patio within the CID.

EXHIBIT H

WINGED FOOT PARCEL

