



*Upstream from ordinary.*

**BOARD OF ALDERMEN SPECIAL MEETING**

RIVERSIDE CITY HALL  
2950 NW VIVION ROAD  
RIVERSIDE, MISSOURI 64150

**TENTATIVE AGENDA**

**APRIL 29, 2015**

**8:00 a.m.**

Call to Order  
Roll Call

**LEGISLATIVE SESSION**

1. First Reading: Bill No. 2015-036: **AN ORDINANCE APPROVING THE AMENDED AND RESTATED REDEVELOPMENT AGREEMENT WITH BRIARCLIFF DEVELOPMENT COMPANY IN CONNECTION WITH THE WEST PLATTE ROAD REDEVELOPMENT PLAN, AND APPROVING OTHER ACTIONS RELATING THERETO.** Point of Contact: City Attorney Paul Campo.
2. **Motion** to Adjourn



Tom Wooddell, Public Works Director

ATTEST:



Robin Littrell, City Clerk

Posted 04.24.2015 at 11:00 a.m.

**AN ORDINANCE APPROVING THE AMENDED AND RESTATED REDEVELOPMENT AGREEMENT WITH BRIARCLIFF DEVELOPMENT COMPANY IN CONNECTION WITH THE WEST PLATTE ROAD REDEVELOPMENT PLAN, AND APPROVING OTHER ACTIONS RELATING THERETO**

**WHEREAS**, pursuant to the Real Property Tax Increment Financing Allocation Redevelopment Act, Section 99.800 to 99.865 of the Revised Statutes of Missouri, as amended, the Tax Increment Financing Commission of Riverside, Missouri did recommend, after a public hearing on May 23, 2007 and pursuant to Resolution 2007-05-02 adopted May 23, 2007, and the Board of Aldermen of the City did approve, pursuant to Ordinance 2007-69 adopted July 3, 2007, the “West Platte Road Redevelopment Plan” (the “Redevelopment Plan”); and

**WHEREAS**, pursuant to Ordinance No. 2007-90 adopted August 14, 2007, the City and Briarcliff Development Company, as developer, entered into that certain Redevelopment Agreement dated August 14, 2007 relating to implementation of the Redevelopment Plan; and

**WHEREAS**, the Redevelopment Agreement was amended by that certain First Amendment to Redevelopment Agreement dated the 4th day of August, 2009, by that certain Second Amendment to Redevelopment Agreement dated December 22, 2009, and by that certain Third Amendment to Redevelopment Agreement dated January 7, 2014; and

**WHEREAS**, the City and Briarcliff desire to amend certain terms in the Redevelopment Agreement as amended by and set forth in the First, Second, and Third Amendments to Redevelopment Agreement.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF RIVERSIDE, MISSOURI, AS FOLLOWS:**

**Section 1.** The Amended and Restated Redevelopment Agreement, in substantially the form attached hereto as **Exhibit A** (with such changes, additions and deletions as may be approved by the officer executing such document, such execution being conclusive proof of such approval), the execution and delivery of such Agreement, and the performance of the City’s obligations thereunder are approved. The Mayor is authorized and directed to execute and deliver such Agreement on behalf of the City.

**Section 2.** The Mayor, the City Clerk and other officers and agents of the City are hereby authorized and directed to execute all documents and take such steps as they deem necessary and advisable in order to carry out and perform the intent of this Ordinance.

**Section 3.** This Ordinance shall take effect immediately upon passage.

**PASSED AND ADOPTED** by the Board of Aldermen of the City of Riverside, Missouri this 29<sup>th</sup> day of April, 2015.

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Kathleen L. Rose, Mayor

ATTEST:  
[Seal]

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Robin Littrell, City Clerk

**Exhibit A**

Amended and Restated Redevelopment Agreement

## AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

**THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT** (“Agreement”) is made and entered into as of this 29th day of April, 2015, by and between the **CITY OF RIVERSIDE, MISSOURI** (the “City”), a city and political subdivision duly organized and existing under the laws of the State of Missouri, and **BRIARCLIFF DEVELOPMENT COMPANY**, (the “Developer”), a Missouri S-Corporation.

### RECITALS

A. The Tax Increment Financing Commission of Riverside, Missouri (“TIF Commission”) was created pursuant to Ordinance No. 95-64, adopted by the Board of Aldermen of Riverside, Missouri (the “Board of Aldermen”) on September 12, 1995 in accordance with the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended (the “TIF Act”).

B. On May 23, 2007 following a public hearing held on that date, in accordance with the TIF Act, the TIF Commission adopted a resolution approving the redevelopment plan known as the West Platte Road Redevelopment Plan (the “Redevelopment Plan”) and recommending that the Board of Aldermen: (1) approve the Redevelopment Plan; and (2) approve and designate the Redevelopment Area as a “redevelopment area” as provided in the TIF Act.

C. On July 3, 2007 after due consideration of the TIF Commission’s recommendations, the City adopted: (1) Ordinance No. 2007-69 designating the Redevelopment Area as a “redevelopment area” as provided in the TIF Act, approving the Redevelopment Plan, and approving the redevelopment projects described in the Redevelopment Plan, adopting tax increment allocation financing for the Redevelopment Project 1 and Redevelopment Project 6, and establishing the Special Allocation Fund; and (2) Ordinance No. 2007-90 authorizing the City to enter into a redevelopment agreement with Developer, such ordinances being collectively, the “TIF Ordinances.”

D. The City and the Developer entered into that certain Redevelopment Agreement dated August 14, 2007 (the “Original Redevelopment Agreement”), and amended it by that certain First Amendment to Redevelopment Agreement dated the 4th day of August, 2009, by that certain Second Amendment to Redevelopment Agreement dated December 22, 2009, and by that certain Third Amendment to Redevelopment Agreement dated January 7, 2014.

E. Subsequent to entering into the Original Redevelopment Agreement, the Developer has constructed i) Redevelopment Project 1 (Linear Park), ii) the public infrastructure for Redevelopment Project 2 (East of Valley residential); and iii) 30,000 ft<sup>2</sup> of commercial space in Redevelopment Project 6.

F. The parties desire to enter into this Agreement for the primary purposes of i) removing provisions related to Redevelopment Projects 2, 3, 4, and 5 (the residential projects) from the Redevelopment Agreement; ii) releasing the City of the obligation to reimburse Developer for public infrastructure costs associated with Redevelopment Projects 3, 4, and 5; iii) revising the timeframe for Developer to complete Project 6 and restating the City’s remedy if Developer fails to perform; and iv) limiting the City’s obligation to reimburse Developer for redevelopment project costs to amounts that have already been paid and no more.

G. This Agreement amends and restates the Original Redevelopment Agreement (as it had been amended three times) in its entirety and accordingly, upon execution of this Agreement, the Original Agreement and its three amendments shall be superseded unless otherwise specified herein.

H. The Board of Aldermen hereby determines that the fulfillment generally of this Agreement is in the best interests of the City, and the health, safety and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan.

I. Pursuant to provisions of the TIF Act and the TIF ordinances, the City is authorized to enter into this Agreement.

## **AGREEMENT**

Now, therefore, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, and parties agree as follows:

### **ARTICLE I DEFINITIONS**

#### **1.1. Definitions**

As used in this Agreement, the following words and terms shall have the following meanings:

“*Agreement*” means this Amended and Restated Redevelopment Agreement.

“*Approving Ordinance*” means Ordinance No. 2007-69, designating the Redevelopment Area, approving the Redevelopment Plan, approving the Redevelopment Projects, adopting tax increment allocation financing for the Redevelopment Project 1 and Redevelopment Project 6 and establishing the Special Allocation Fund.

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

“*City*” means the City of Riverside, Missouri, a city and political subdivision duly organized and existing under the laws of the State of Missouri.

“*Construction Plans*” means plans, drawings, specifications and related documents, and construction schedules for the construction of the TIF Work, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with and as required by this Agreement.

“*Developer*” means Briarcliff Development Company, a Missouri S-Corporation, or its permitted successors or assigns in interest.

“*EATS Account*” means the Economic Activity Tax Account in the Special Allocation Fund.

“*Economic Activity Taxes*” or “*EATS*” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act but excluding the County’s dedicated parks sales tax and the County’s dedicated special road sales tax.

“*Finance Officer*” means the Finance Director of the City or her authorized agent.

“*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 the implementation of the Redevelopment Projects related to the Redevelopment Area and consistent with the Redevelopment Plan and this Agreement.

“*Inducement Resolution*” means Resolution 2007-06 passed by the Board of Aldermen of the City on May 2, 2007 inducing the Developer, at its sole risk, to proceed to implement the Redevelopment Plan even though not all conditions precedent may have been met so that such implementation will not result in the disallowance of any otherwise valid Redevelopment Project Cost.

“*Linear Park*” means the public park, water feature, and monument sign along West Platte Road.

“*Municipal Revenues*” means, while the Redevelopment Plan remains in effect and, subject to annual appropriation, the total additional revenue (excluding Payments In Lieu Of Taxes and economic Activity Taxes) appropriated by the City for payment of Reimbursable Project Costs.

“*Municipal Revenues Account*” means the account by that name created in Section 6.1 of this Agreement.

“*Payments in Lieu of Taxes*” or “*PILOTS*” means payments in lieu of taxes as defined in Section 99.805 of the TIF Act.

“*PILOTS Account*” means the PILOTS Account in the Special Allocation Fund.

“*Property*” means the real property comprising Redevelopment Project 6 described in ***Exhibit A***, attached hereto and incorporated herein by reference.

“*Redevelopment Area*” means the real property described in ***Exhibit B***, attached hereto and incorporated herein by reference, comprising approximately 64 acres of land.

“*Redevelopment Plan*” means the plan titled “West Platte Road Redevelopment Plan” as approved by the City on July 3, 2007, pursuant to Ordinance No. 2007-69, as such plan may from time to time be amended in accordance with the TIF Act.

“*Redevelopment Project 1*” means the demolition of the dilapidated commercial structures, removal of the mobile homes as well as the construction of the Linear Park along W. Platte Road, including landscaping, sodding, irrigation, lake construction, fountain, trails, acquisition of property, monument entry signs for the City of Riverside, and monument entry signs to the neighborhoods including the existing Indian Hill’s subdivision and relocations, the cost of such work and improvements being estimated at approximately \$2.3 million.

“*Redevelopment Project 6*” means the construction of the Commercial Phase: approximately 75,000 sq. ft. of high quality commercial buildings with a total estimated Redevelopment Project Costs of \$15,000,000.

“*Redevelopment Project Costs*” shall have the meaning ascribed to such term in Section 99.805(14) of the TIF Act.

“*Reimbursable Project Costs*” means those Redevelopment Project Costs which were identified in *Amended Exhibit E of Second Amendment to Redevelopment Agreement*, plus Financing Costs, and all Redevelopment Project Costs incurred by the City and the TIF Commission.

“*Relocation Plan*” means the relocation plan of the City for the Redevelopment Area as contained in the Redevelopment Plan, in conformity with the TIF Act.

“*Special Allocation Fund*” means the City of Riverside, Missouri, West Platte Road Special Allocation Fund created by the Approving Ordinance, including a PILOTS Account, and EATS Account, and a Municipal Revenues Account.

“*TIF Act*” means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended.

“*TIF Commission*” means the Tax Increment Financing Commission of the City of Riverside, Missouri.

“*TIF Revenues*” means: (1) Payments in Lieu of Taxes; and (2) Economic Activity Taxes.

“*TIF Work*” means all work necessary to prepare the Redevelopment Project Area and to construct or cause the construction of the Redevelopment Project 1 and Redevelopment Project 6 as specifically described in the Redevelopment Plan and this Agreement including, but not limited to: (1) property acquisition; (2) architectural, engineering, soil and surveying; (3) demolition and site preparation including without limitation site re-grading and excavation and environmental remediation; (4) construction or re-construction of utilities improvements, including water distribution and service facilities, sanitary sewers, roads, stormwater improvements, and electrical service facilities and street lights; (5) construction of a commercial development consisting of approximately 75,000 square feet of high-end commercial space and all associated landscaping and parking areas; (6) construction of a Linear Park including, but not limited to, grading, retaining walls, lake areas, trails, water features, City signage, monument signage for the project including monument entry signs to the existing Indian Hill’s neighborhood; and (7) irrigation, sprinkler systems, trees, landscaping and sod.

## **1.2. Other Definitions**

Any work or term not defined herein shall have the meaning ascribed to such term in the Redevelopment Plan.

## **ARTICLE II. SELECTION OF DEVELOPER**

### **2.1. Developer Designation.**

The City hereby continues its designation of Developer to perform or cause the construction of the Redevelopment Project 1 (as it relates to the maintenance of Linear Park as provided in Section 3.4(c)), and Redevelopment Project 6, namely the performance of the TIF Work, all in accordance with the Redevelopment Plan, this Agreement, and all Governmental Approvals.



**ARTICLE III.  
CONSTRUCTION OF REDEVELOPMENT PROJECTS**

**3.1. Acquisition of Property.**

Developer represents that, as of the date of this Agreement, Developer owns a fee interest in all of the Property of Redevelopment Project 6.

**3.2. Condemnation.**

As of the date of this Agreement, it is not anticipated that the use of eminent domain will be necessary to acquire any portion of the real property in the Redevelopment Area.

**3.3. Reserved.**

**3.4. Developer to Construct the Redevelopment Projects, Required Approval.**

**(a) Developer to Construct Linear Park.** The Developer has constructed and equipped the Linear Park pursuant to plans approved by the City.

**(b) Reserved.**

**(c) Maintenance.** The Developer may incur certain maintenance costs for the Linear Park. Such costs may be submitted to the City for reimbursement as a redevelopment project cost, or, notwithstanding any other provision of this Agreement that may be to the contrary, such costs may be reimbursed by the City from any other available public funds; provided that in either situation, such costs shall be reimbursed only to the extent approved by the City and to the extent the aggregate total of all such reimbursed maintenance costs are less than \$45,000.

**(d) Projects One and Six.** The Developer has constructed Redevelopment Project 1. The Developer shall construct Redevelopment Project 6 in an expeditious manner.

**(1) Project 1.** Project 1 is completed.

**(2) Project 6.** The Developer shall diligently pursue the design and construction of Redevelopment Project 6 to completion.

**(i) Critical Area Project.** With respect to the portion of Redevelopment Project 6 to be located with three hundred (300) feet of the L-385 Levee Project (“Critical Area Project”), such Critical Area Project has been completed.

**(ii) Non-critical Area Project.** With respect to the remainder of Redevelopment Project 6, which is not to be located with the three hundred (300) feet of the L-385 Levee (“Non-critical Area Project”), construction of the Non-critical Area Project shall be completed no later than December 31, 2019, absent an event of force majeure. In the event of any delay caused by an event of force majeure, including market conditions, Developer shall be granted additional time to complete the Non-critical Area Project; provided that regardless of force majeure, the Non-critical Area Project must be completed by December 31, 2020. If Developer has obtained a building permit for the required square footage and financing by this date and has started construction, this date shall then be extended to July 1, 2021.

(e) **Reserved.**

(f) **Insurance.** Prior to the commencement of construction of any portion of the Redevelopment Project 6, the Developer shall obtain or shall require that any of its contractors obtain workers' compensation, comprehensive public liability, and builder's risk insurance coverage in amounts customary in the industry for similar type projects or as otherwise required by City ordinances. The Developer shall require that such insurance be maintained by any of its contractors for the duration of the construction of such work. The Developer shall cause to be obtained and maintained throughout the entire period of construction liability insurance with respect to all public improvements. The City shall be named additional insured on each such policy.

(g) **Prevailing Wage.** To the extent that laws pertaining to prevailing wage and hour apply to any portion of the work, the Developer agrees to cooperate and take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws. However, outside of the laws pertaining to prevailing wage and hour the City is making no additional requirement to perform the work using wage and hour requirements.

### **3.5. Governmental Approvals and Grading Permit.**

The Developer shall, at its sole cost and expense, obtain or cause to be obtained all Governmental Approvals required for the TIF Work. Redevelopment Project 6 shall be constructed in accordance with the City building code and all applicable Governmental Approvals.

### **3.6. Planned District, Construction Plans, Changes.**

Redevelopment Project 6 shall be constructed as a *planned district* pursuant to City ordinances. The Construction Plans shall be prepared by a professional engineer or architect licensed to practice in the State of Missouri and the Construction Plans and all construction practices and procedures with respect to all work shall be in conformity with all applicable state and local laws, ordinances, and regulations. During the progress of the work, the Developer may make such reasonable changes as site conditions, market conditions or orderly development may dictate provided the general character of Redevelopment Project 6 is not materially changed and provided that each such change is in furtherance of the general objectives of the Redevelopment Plan; provided that (a) the Developer shall comply with all laws, regulations, and ordinances of the City and (b) prior to any material changes to any Redevelopment Project, the Developer shall obtain the advance written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

### **3.7. Rights-of-Way and Easements**

(a) **Utility Easements.** At the request of the City, the Developer agrees to transfer and convey to the appropriate utility provider any and all utility easements necessary or desirable for Redevelopment Project 6. All such transfers and conveyances shall be without cost or expense to the City.

(b) **City Rights-of-Way and Easements.** At the request of the City, the Developer agrees to transfer and convey to the City any and all rights-of-way and easements necessary or desirable for Redevelopment Project 6. All such transfers and conveyances shall be without cost or expense to the City.

### **3.9. Owners/Tenant Selection.**

(a) **Tax-Exempt Owners.** The Developer will ensure that not more than 7.5% of Redevelopment Project 6 is sold or leased to entities exempt from ad valorem taxation.

(b) **Tenants.** The Developer will give consideration in tenant selection to any tenant who will produce a higher volume of sales taxes for the City, all other economic terms and conditions being equal. However, the City recognizes that most of the commercial tenants will likely be office tenants and will not generate any substantial amount of sales tax, if any sales tax at all.

**ARTICLE IV.  
REIMBURSEMENT OF REIMBURSABLE PROJECT COSTS**

**4.1. City's Obligation to Pay or Reimburse Developer.**

The City shall not have any further obligation to pay or reimburse Developer for any Reimbursable Project Costs related to any Project, except as may otherwise be provided in Section 3.4(c). The City has previously reimbursed the Developer \$2,944,500 for Reimbursable Project Costs associated with Project 1 (\$2,040,000) and Project 6 (\$904,500). The Developer hereby specifically acknowledges and agrees that it waives any claim to reimbursement in the amount of \$385,500 related to Redevelopment Project 6 as was provided in the Amended Exhibit E to the Second Amendment to Redevelopment Agreement. The City shall be entitled to receive 100% of all future TIF Revenues to reimburse itself for reimbursements it has made to Developer related to Redevelopment Projects 1 and 6.

**ARTICLE V.  
NEIGHBORHOOD IMPROVEMENT DISTRICTS**

**5.1. Existing Neighborhood Improvement Districts**

(a) **Generally.** Pursuant to Article V of the Original Redevelopment Agreement, two Neighborhood Improvement Districts were created: i) Briarcliff Professional Plaza NID, and ii) Briarcliff Hills – East of Valley NID. Pursuant to Ordinance 1028 adopted August 31, 2010, the City confirmed the levying of the special assessments for the Briarcliff Professional Plaza NID. Pursuant to Ordinance 1029 adopted August 31, 2010, the City confirmed the levying of the special assessments for the Briarcliff Hills – East of Valley NID.

(b) **Cooperative Covenants to Be Placed in All Contracts of Sale.** The Developer shall continue to include (as provided in Section 5.7 of the Original Redevelopment Agreement), in all of its contracts relating to all or any portion of property subject to these NIDs, a provision providing notification of the creation of a NID and the imposition of NID assessments against such property. The provision shall further require the transferee of the property to cooperate in all matters relating to the NID and the NID assessments. Such provision will also include a requirement that all documents relating to any further transfers of the property contain the same provisions.

(c) **Waiver.** The Developer affirms (as contained in Section 5.9 of the Original Redevelopment Agreement) its waiver of the right to file suit to set aside the NID assessments or otherwise question the validity of the proceedings relating thereto.

**ARTICLE VI.  
SPECIAL ALLOCATION FUND;  
COLLECTION AND USE OF TIF REVENUES**

**6.1. Creation of Special Allocation Fund.**

There has been created and the City agrees to cause its Finance Officer to maintain the special Allocation Fund, including a “PILOTS Account,” and “EATS Account,” and a “Municipal Revenues Account,” and such further accounts or sub-accounts as are required by this Agreement.

**6.2. Cooperation in Determining TIF Revenues.**

The Developer will cooperate with the City in connection with the determination and payment of TIF Revenues. The Developer (or its successor(s) in interest as an owner or owner(s) of any portion of the Redevelopment Project Area 6) shall require each “seller” (as that term is defined in Section 144.010(11) of the Missouri Revised Statutes, as amended) located within the Redevelopment Project Area 6 to provide to the Finance Officer of the City the following information:

- (i) Each “seller’s” federal and state tax identification numbers.
- (ii) If applicable, with thirty (30) days of filing, copies of all sales tax returns filed with the Missouri Department of Revenue (on Form 53-S.F. Missouri Department of Revenue or such successor form) with respect to the sales taxes originating from businesses located within the Redevelopment Project Area. In the event that a “seller” has multiple business operations within the City, such “seller” shall file separate sales tax returns for the sales taxes originating from the business located within the Redevelopment Project Area.

The Developer (or its successor(s) in interest as an owner or owner(s) of any portion of the Redevelopment Project Area 6) shall also request any purchaser or transferee of real property and any lessee or other user of real property located within the Redevelopment Project Area 6 to designate sales subject to sales taxes pursuant to Chapter 144 of the Revised Statutes of Missouri, as amended, to be reported as originating from the Redevelopment Project Area 6 to the fullest extent permitted by law (including reasonable efforts to negotiate for the inclusion of a clause so providing in the leases of the Redevelopment Project Area 6). The Developer shall satisfy this requirement by including the obligations set forth in this Section within any deed conveying a portion of the Redevelopment Project Area 6 to, or any lease entered into with, any “seller.”

**6.3. Obligation to Report TIF Revenues.**

The Developer shall cause any purchaser or transferee of real property located within Redevelopment Project 6, and any lessee or other user of real property located within Redevelopment Project 6 required to pay TIF Revenues, to use all reasonable efforts to timely fulfill such obligations as are required by Section 6.2 of this Agreement. Until the expiration or termination of the West Platte Road Redevelopment Plan, the Developer shall cause such obligations to be covenants running with the land, which covenants shall be enforceable as if such purchaser, transferee, lessee, or other user of such real property were originally a party to and bound by this Agreement.

**6.4. Reserved.**

**6.5. Transfers/Notice to City of Transfer.**

The Developer will ensure that not more than 7.5% of usable building space of Redevelopment Project 6 is sold or leased to entities exempt from ad valorem taxation. The fee title to the Property for Redevelopment Project 6 shall not be sold, transferred or otherwise disposed of, whether voluntarily, involuntarily or by operation of law, without the prior written approval of the City, which approval shall not be unreasonably withheld provided the Developer demonstrates, to the satisfaction of the City, that

the proposed transferee has the experience and financial capability to undertake and complete such portions of the work and perform the Developer's obligations under this Agreement, all in accordance with this Agreement and such proposed transferee assumes, in a writing acceptable to the City, all such obligations. The Developer agrees to notify the City in writing of any such proposed sale, transfer, or other disposition. Said notice shall specify the name and address of the person to be acquiring any or all of the Property or any interest therein and shall identify the Property to be sold, transferred, or otherwise disposed, whether by voluntary transfer or otherwise.

## **ARTICLE VII. GENERAL PROVISIONS**

### **7.1. Liquidated Damages.**

If Developer fails to construct at least 25,000 ft<sup>2</sup> of additional office/commercial space in Redevelopment Project 6 by the timeframe specified in Section 3.4(d)(2)(ii), then Developer shall pay to the City as **liquidated damages** the amount of \$750,000.00. Developer's failure to timely complete Redevelopment Project 6 results in less TIF Revenues over the life of the Redevelopment Plan, which in turn damages the City by limiting the opportunity for it to be fully reimbursed for Reimbursable Project Costs that the City paid to Developer. Any such damage to the City arising from Developer's failure to timely complete Redevelopment Project 6 would be very difficult of accurate estimation. The liquidated amount to which the parties have agreed herein is intended as compensation and is not intended as punishment. If this \$750,000.00 is assessed by the City and paid by the Developer, the Developer shall then be released from all remaining obligations under this Agreement.

### **7.2. Successors and Assigns.**

(a) **Binding Effect.** This Agreement shall be binding on and shall insure to the benefit of the parties named herein and their permitted successors and assigns.

(b) **Assignment or Sale.** The rights, duties and obligations of the Developer under this Agreement with respect to Redevelopment Project 6 shall not be assigned in whole or in part without the prior written approval of the City, which approval shall not be unreasonably withheld provided the Developer demonstrates, to the satisfaction of the City, that the proposed assignee has the experience and financial capability to undertake and complete such portions of the Work and perform the Developer's obligations under this Agreement, all in accordance with this Agreement and such proposed assignee assumes, in a writing acceptable to the City, all such obligations. This City shall respond in writing to any request for consent under this paragraph within thirty (30) days after submittal of the same to the City. In the event that the City proposed to withhold or condition its consent with respect to any such request, the City shall specify its reasons in writing to the Developer with its response.

### **7.3. Remedies.**

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, except to the extent expressly provided in Section 7.1 with respect to Developer's failure to construct at least 25,000 ft<sup>2</sup> of additional office/commercial space in Redevelopment Project 6 by the timeframe specified in Section 3.4(d)(2)(ii).

### **7.4. Force Majeure.**

Except as otherwise expressly provided herein, neither the City nor the Developer shall be considered in breach or default of their respective obligations under this Agreement, and the times for performance of obligations hereunder shall be extended in the event of any delay caused by for majeure, including damage or destruction by fire or casualty; strike; lockout; civil disorder; war; acts of God; unusually adverse weather conditions; or other like causes beyond the parties' reasonable control; provided that the Developer notifies the City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

#### **7.5. Notices.**

Any notices, demands, consents, approvals and other communications required by this Agreement to be given by either party hereunder shall be in writing and shall be hand delivered or sent by United States first class mail, postage prepaid, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered or three days after mailing; provided, however that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal if mailed or courier delivered notice or communication.

In the case of the Developer, to:

Briarcliff Development Company  
4151 N. Mulberry Drive, Suite 205  
Kansas City, Missouri 64116  
Telephone: (816) 741-8540  
Fax: (816)746-5138

With a copy to:

Michael T. White  
White Goss  
4510 Belleview  
Kansas City, MO 64111  
Telephone: (816) 753-9200  
Fax: (816) 753-9201

In the case of the City, to:

City of Riverside, Missouri  
City Hall  
2950 NW Vivion Road  
Riverside, Missouri 64150  
Attention: City Administrator  
Telephone: (816) 741-3993  
Fax: (816) 746-8349

With a copy to:

Williams & Campo, P.C.

400 SW Longview Blvd., Suite 210  
Lee's Summit, Missouri 64081  
Attention: Paul A. Campo  
Telephone: (816) 524-4646  
Fax: (816) 524-4645

**7.6. Conflict of Interest.**

No member of the Board of Aldermen, the TIF Commission, or any branch of the City's government who has any power of review or approval of any of the Developer's undertakings, or of the City's contracting for goods or services for the Redevelopment Area, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the Board of Aldermen the nature of such interest and seek a determination by the Board of Aldermen with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein prescribed.

**7.7. Inspection.**

The Developer shall allow authorized representatives of the City reasonable access to the Work site from time to time upon reasonable advance notice prior to the completion of the work for reasonable inspection thereof under this Agreement. The Developer shall not unreasonably deny the City and its architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as the City determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement. This section shall not be construed to limit, in any way, the rights of the City to inspect and to enter property pursuant to City ordinances.

**7.8. Choice of Law.**

This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State of Missouri for all purposes and intents (without regard to conflict of law statutes).

**7.9. Entire Agreement; Amendment.**

The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing signed by the parties.

**7.10. Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

**7.11. Severability.**

In the event 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.

**7.12. Representatives Not Personally Liable.**

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 governing body members, officers, agents, attorneys, employees or independent contractors in their individual capacities. No governing body member, officer, agent, attorney, employee or independent contractor shall be personally liable to the Developer in the event of any default or breach by the City under this Agreement, or for any amount which may become due from the City under the terms of this agreement.

**7.13. Release and Indemnification.**

The indemnification provisions and covenants contained in this Section shall survive termination or expiration of this Agreement.

(a) The City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable to the Developer for damages or otherwise in the event that all or any part of the TIF Act, or any ordinance adopted in connection with either the TIF Act, this Agreement, or the Redevelopment Plan, is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgement 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.

(b) The Developer releases from and covenants and agrees that the City and its governing body members, officers, agents, attorneys, employees and independent contractors shall not be liable for, and agrees to indemnify and hold harmless the City, its governing body members, officers, agents, attorneys, employees and independent contractors against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed (excluding consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any negligent or malicious acts or omissions of the Developer, its officers, agents, attorneys, employees and independent contractors, in connection with its or their activities conducted redevelopment and construction of any Redevelopment Project.

**7.14. Survival.**

Notwithstanding the early expiration of this Agreement or its termination by the City as allowed herein, the provisions contained in **Section 5.1, Article V** and the provisions contained **Articles VI, VII and VIII** of this Agreement shall, except as otherwise expressly set forth herein, survive such early expiration or early termination of this Agreement.

**7.15. Recording.**

This Agreement shall be recorded in the Platte County Recorder's Office.

**7.16. Maintenance of the Property.**

The Developer shall remain in compliance with all provisions of the City's ordinances relating to maintenance and appearance of the Property during the construction of Redevelopment Project 6 or any portion thereof. Upon substantial completion of the Redevelopment Project 6 and so long as the Redevelopment Plan is in effect, the Developer or its successor(s) in interest, as owner or owners of the



affected portion(s) of the Property, shall, during the remainder of the term of this Agreement, maintain or cause to be maintained the buildings and improvements within the Redevelopment Project 6 which it owns in a good state of repair and attractiveness and in conformity with applicable state and local laws, ordinances during the term of this Agreement, each owner or lessee as a successor in interest to the Developer shall maintain or cause to be maintained the buildings and improvements on its parcel in a good state of repair and attractiveness and in conformity with applicable state and local laws ordinances and regulations.

**7.17. Cooperation.**

The parties shall lend friendly assistance and use all reasonable efforts to cooperate in the performance of their responsibilities under this Agreement.

**ARTICLE VIII.  
REPRESENTATIONS OF THE PARTIES**

**8.1. Representation of the City.**

The City hereby represents and warrants that it 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 all of the foregoing 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.

**8.2. Representations of the Developer.**

The Developer hereby represents and warrants it has full power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

[The remainder of this page is left intentionally blank.]

“CITY”:

CITY OF RIVERSIDE, MISSOURI

By: \_\_\_\_\_  
Kathleen L. Rose, Mayor

[SEAL]

Attest: \_\_\_\_\_  
Robin Littrell, City Clerk

STATE OF MISSOURI            )  
  ) SS  
COUNTY OF PLATTE         )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me appeared Kathleen L. Rose, to me personally known, who, being by me duly sworn, did say that she is the Mayor of the CITY OF RIVERSIDE, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

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

Notary Public

[SEAL]

My Commission Expires:

“DEVELOPER”:

BRIARCLIFF DEVELOPMENT COMPANY

By: \_\_\_\_\_  
President

STATE OF MISSOURI                    )  
  ) SS  
COUNTY OF \_\_\_\_\_            )

On this \_\_\_\_ day of \_\_\_\_\_ 2015, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the President of BRIARCLIFF DEVELOPMENT COMPANY, and that he is authorized to sign the instrument on behalf of said corporation by authority of its board of directors, and acknowledged to me that he executed the within instrument as said corporation’s act and deed.

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

Notary Public

[SEAL]

My Commission Expires:

**Exhibit A**

**Legal Description of Property of Redevelopment Project 6**

**Exhibit B**

**Legal Description of Redevelopment Area**